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Editorial

This issue of NIU *Journal of Legal Studies* touches on the Issues and Challenges Nigerian Hire Purchase Act, Social Justice in Contemporary Socieities, as well as Customary Land Tenure.

One of the papers, in this edition, critically examines of the Nigerian Hire Purchase Act and the limitations and imbalances therein and suggests legislative amendment to address these limitations and imbalances.

Another paper reveals that in most parts of Nigeria, rural lands are under the customary land tenure, regulated by customs and culture of the communities. It is therefore, recommended that the Land Tenure Law should adopt the operation of the customary land tenure with modifications and that the intervention on the system dislocated rural peace.

In sum, this issue of *NIU Journal of Legal Studies* features many empirical and theoretical based articles which can be of great benefit to every reader.

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Examining the Nigerian Hire Purchase Act: Addressing Monetary Limitations and Imbalances in Legal Protection to Enhance Commercial Development

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Abstract. A hire purchase agreement is intended to make goods available to customers through installment payments and automatic transfer of ownership upon full payment after the specified time, thereby facilitating trade and commerce. This, however, proves that the act, now obsolete, hinders growth commercially. It is specifically Section 1(a), which places monetary limits on goods except motor vehicles, whereas Sections 9(2) and (5) protect the hirer excessively at the expense of the firm owner. None of these provisions reflects the modern economic realities. In this regard, hire purchase transactions have associated inefficiencies. This study is a critical appraisal of the Nigerian Hire Purchase Act and the limitations and imbalances therein. Specific objectives include an evaluation of monetary limitations contained in Section 1(a) to assess the implications of Sections 9(2) and (5) and propose reforms to bring this act in tandem with the sharply changing economic realities. The research adopts qualitative methodology and doctrinal analysis of statutory provisions and case law along with using secondary data sources from legal and commercial literature. Findings show that monetary limits under Section 1(a) are not at all realistic in light of inflation and changing market conditions, while Sections 9(2) and (5) put off owners from entering into hire-explore agreements. The study, therefore, concludes with recommendations for legislative amendment to address these, as a balanced and progressive framework for hire purchase in Nigeria is thereby formed.

Keywords: Nigerian, Hire Purchase, Act, Legal, Commercial

1. Introduction

The hire purchase system is the system that allows the owner of the goods to grant credit to a person who is unable to pay outrightly in full the purchase price of the goods he or she wants to buy (Agbonika & Agbonika, 2014). Under the hire purchase agreement, the owner of the goods will agree to let the goods to the prospective buyer on hire and the hirer will agree to take the goods into consideration for either weekly, quarterly, monthly or annual installment payments of the hire purchase price of the goods and along with the right of the hirer to exercise an option to purchase the goods or return the goods at the end of the hire purchase agreement (Agbonika & Agbonika, 2014).

In a hire purchase transaction, the goods are let out on hire by an owner of the goods to the hirer, the hirer is required to pay an agreed amount in periodical installments during a given period (Vaines, 1973). The ownership of the property remains with the owner of the goods and passes on to the hirer on the payment of the last installment. Hire purchase is characterized by an arrangement where goods are hired out by the owner to the hirer. Under the arrangement, the owner of the goods will agree to let the goods to the hirer and the hirer will agree to take the goods and pay the hire purchase price by instalments (Edwards, 1878). The hirer is given an option to purchase the goods, after paying all the installments and most importantly under hire purchase transaction except the hirer complete his installment payment of hire purchase price and then exercise his right to purchase the goods at the end of the installment payment (Aidonojie et al., 2024), that is the ownership of the goods will revert back and remains with the owner of the goods (Alobo, 2021).

The importance and the need for hire purchase were brought about by two notable English case of Lee v Butler (1893) 2 QB 318, and Helby v Matthews (1895) AC. 471, HL. In the case of Helby v Matthews. Wherein, Helby a dealer, delivered a piano to one Brewster on terms that Brewster would pay a monthly rent of 10 shillings, 6 pence and that after 36 payments, the piano would become Brewster's property. In the meantime, the property would remain in Helby (Borrie, 1970). Brewster could terminate the hiring at any time by returning the piano to Helby and stopping the payment of instalments. Meanwhile, after making a few payments, Brewster pledged the piano to a third party, Matthew, who took it in good faith and without notice of Helby's rights. Helby tried to recover the piano from Matthew, and the question which had to be answered was whether Matthew had a good title to the piano (Alewo, 2014). The House of Lords unanimously decided that the agreement between Helby and Brewster did not constitute an agreement for Brewster to buy within Section 9 of the Factors Act, 1889. All that he undertook to do was to make monthly payments in instalments, although he had the option to buy the piano. If he had exercised the option, he would have become the purchaser of the piano instead of the hirer (Umenweke, 2009). The judicial stamp of approval thus given by the court to the practice of hire-purchase increased the popularity of the practice, both on the part of the owner and the hirer.

However, with education, the Nigerian consumers started to understand and embrace the fact that the hire-purchase system gives him access to one of the simplest and least expensive forms of secured financing for trade operations (Ofo, 2010). One of the most popular ways that owner of goods gives their consumers extended credit is through hire-purchase. Most people would consider this type of agreement to be a contract of sale in which the amount is paid in installments. Yet the fact that sales contracts and hire-purchase agreements differ. The hire-purchase system was fully embraced by both investors and customers by the early 1960s. In Nigeria, hire purchase transactions are governed by the Nigerian Hire-purchase Act and the English Common Law Rules (Afolayan & Kumapayi, 2021). The objectives of this is to determine the issue of monetary limitation on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act if is realistic in the current economic reality in Nigeria. And to also appraise Section 9(2) and (5) of the Hire Purchase Act, as an over protection of the hirer to the detriment of the owner and as such a detriment to the advancement of the hire purchase transaction in Nigeria.

However, the scope of this research centers on the appraisal of the Hire Purchase Act which has outlived its usefulness. It is now an impediment to the development of rapid commercial activities (Igweike, 1999). This is because it contains some provisions which negatively impact on commercial activities or it does not provide for critical issues which have developed over time. The study will embark on the voyage of critical appraisal of those provisions of the Hire Purchase Act which are inappropriate posing an impediment to the development of rapid commercial activities (Afolayan, 2021). In appraising the provision of the Hire Purchase Act the focus of this research is not the entire Act but rather it is going to be limited to the provision of Section 1, 9(2) and (5) of the Hire Purchase Act. Therefore, this research is guided by the following question: Whether the monetary limit on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act is realistic given the current economic reality in Nigeria. Whether the provision of Section 9(2) and (5) of the Hire Purchase Act is an over protection of the hirer to the detriment of the owner and as such hinders the advancement of hire purchase transaction in Nigeria.

2. The History of Hire Purchase Law in Nigeria

The concept of Hire Purchase is an important aspect of commercial law and commercial transactions. The system of hire purchase was developed in the United Kingdom (Adelaju, 2017). The first English Hire Purchase Act was in 1938. The origin of the modern

Hire Purchase agreement is the mid-Victorian custom in furniture trade under which persons who were unable to pay for the furniture at the time they desired to purchase it or who were not sufficiently worthy of open credit were allowed to take them (Antai et al., 2024). In the case of household furniture, it was successful for it prevented the property passing until full payment was received (Raimi, 2015).

The true Hire Purchase agreement did not come to being until the Factors Act 1889 and Sale of Good Act 1893 which contain overlapping provisions to the effect that enable a person who has bought or agreed to buy or who is in possession of goods or document of title of goods with the consent of the owner to pass a valid title to a third party who bought without notice of the right of the original owner (Achike, 1985). This situation caused great anxiety and hardship to sellers and owners of goods who under the circumstance lose their ownership of their goods as well as their possession and therefore, all the rights accruing to such ownership and possession (Okany, 1996). As was held in the case of *Lee v. Buttler*, in that case, A, being in possession of some piece of furniture under a purported hire purchase agreement with the plaintiff sold and delivered the same to the defendant before the last installment had accrued or been paid. The defendant received the goods in good faith and without knowledge of the plaintiff's right in respect of them (Agbonika & Agbonika, 2014). The court held that the sale and delivery of the goods to the defendant were within the provision of Section 9 of the Factors Act 1889. It was also held further that A was person who bought or agreed to buy and therefore the sale to defendant was valid and the furniture could not be recover by the owner. After this case there was intense desire to avert this kind of pitfall arising from such situation. It was this desire that led to development and recognition of hire purchase. Hire purchase system received judicial approval and blessings in the case of *Helby v. Matthews*, In that case, the owners of a piano agreed to let it on hire to H at a monthly rent of ten shillings and six pence (Izevbuwa et al., 2024; Majekodunmi et al., 2024). The agreement gave possession of the piano to H and permitted him to return it to the owner at any time subject to payment by him all the installment due at the date of return. It further provided that if and when the installment paid by H totaled (18) Eighteen guineas, the piano becomes his property but until such payment, it remained the property of the owner who will be entitled to resume possession of it, if H defaulted in his installmental payment or failed to keep the piano at his own address. Having taken possession and having paid some installments, H pledged the piano to a pawnbroker, as a security for a loan (Budiyanto et al., 2024; Haruna et al., 2024). The owner took this action to recover possession, the House of Lords, unanimously held that the action succeeded. It was held further that H was not a person who has bought or agreed to buy the piano within the meaning of Section 9 of the Factors Act, 1889. The holding of Lord Herschel is stated below:

"All that he undertook was to make the monthly payments of ten shillings and six pence so long as he kept the piano. He has an option no doubt to buy it by continuing the stipulated payments for a sufficient length of time. If he has exercised that option, he would have become the purchaser. I cannot see under these circumstances how he can be said either to have bought or agreed to buy the piano. The terms of the contract did not upon its execution bind him to buy, but left him to do so or not as he pleased."

In Nigeria, Originally, the Nigeria Hire Purchase Act 1965 is modeled after the United Kingdom Hire Purchase Act 1938 and the advertisement (Hire Purchase) Act 1957 with some modification to meet local needs. The Nigeria Hire Purchase Act was originally passed in 1965 applicable to only Lagos State but by virtue of Hire purchase (Application) Degree No. 42 of 1966 it was made applicable to the rest of the country. It came into force in October 1, 1968 by virtue of Hire Purchase Act, 1965 (Application Day) order 1968. The Hire Purchase (Amendment Decree No.23 of 1970) made minor changes to section 8 and 9 of the Act. The Hire Purchase Regulation of 1968 was made and published by Commissioner for Trade and Industries in exercise of his power under Section 5 and 8 of Hire Purchase Act of 1965. These amendments and further adjustment were made when the Act was re-enacted in 1990. The practice of hire purchase in Nigeria existed before this 1965 Act was enacted. Local traders sold items on credit basis.

Prior to 1965, Nigeria had no legislation governing hire purchase transaction. The principle of contract at common law governed hire purchase transactions. At that time, the owners of goods which are the subject matter of the hire purchase transaction, subjected the practice to abuse (Ekpenisi et al., 2024). Take for instance, an owner of a goods under a hire purchase transaction could at any time enter the premise of the hirer to repossess their goods from the hirer for a minor default. That situation was seen clearly in Atere v Amao wherein the total sum of a hire purchase price was N2, 000. The hirer had paid N1, 990 leaving a balance of N10. When this N10 fell due, the hirer could not pay. The owner seized the vehicle and sold it and was held to have acted rightly (Vaines, 1973). In the light of that situation, consequently, were

immediate repossession of goods became the order of the day by the owner of goods on a tiny delay in the payment of instalment by the hirer. The owner of a goods made a considerable profit at the detriment of the hirers whose right to exercise an option to purchase has been brought to an end and this in turn rendered the hire purchase system unattractive to potential hirers (Safi' et al., 2024). Besides this abuse, unjust hardship on the hirer, they only enjoyed a minimum legal protection.

In a bid to protect the hirer from the hardship cost by the principles of common law, the Hire Purchase Act, was enacted in Nigeria as the first statute governing hire purchase transaction in Nigeria. Notwithstanding the tremendous change and advancement in commerce and industry in Nigeria, the law and policy makers have done nothing to make the Hire Purchase Act move with the tremendous change and advancement of commerce and industry in Nigeria. In this light, the Hire Purchase Act, has only been amended once in 1970. And as such, there are still some provisions in the Hire Purchase Act that are begging for amendment.

3. The Concept of Hire Purchase

On the concept of hire purchase, it is enough to ask the question, "What is hire purchase?" Different scholars, statutes, and judicial decisions have provided answers to this question. This will be looked at in a bid to provide a proper understanding of the concept in question (Edwards, 1878). Under Section 20 of the Hire Purchase Act, the term hire purchase is defined as the "bailment of goods in pursuance of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee." And this is to say that hire purchase is that agreement under which goods are given on hire and the hirer is given an option to purchase at the end of full payment of instalment (Alobo, 2021).

In Halsbury's Law of England Vol. 9(1), fourth Edition at page 15, referred to contract of hire purchase as a contract of bailment under which goods are hired by the owner and although the hirer is not obliged to buy the goods, he has the contractual option to purchase them should he so choose (Borrie, 1970). Furthermore, Crossley Vaines, in his book did explained hire purchase contract as that agreement in its accepted sense is a complex transaction, not a contract of sale but a bailment whereby the owner of a chattel lets it out on hire for a periodic rent with the provision that on due compliance with the various terms of the agreement, the hirer shall have the option of purchasing the chattel upon the completion of the agreed number of payments of rent or of returning the chattel at any time before their completion.

Meanwhile, the courts have also had to lend a definition to the term. For instance, the court per Okagbue, JCA in *Samuel Aro v. Joe Allen & Co. Ltd [1979] 2 FNR 292,295* defined Hire-Purchase as: "A system whereby the owner of the goods lets them on hire for periodic payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so however, that the hirer may return the goods at any time without any obligation to pay the further balance of rent accruing after return; until the conditions have been fulfilled the property remains in the owner's possession".

Flowing from the above definitions, hire purchase is characterized by the following. It is an arrangement where goods are hired out by the owner to the hirer. Under the arrangement, the owner of the goods will agree to let the goods to the hirer and the hirer will agree to take the goods and pay the hire purchase price by installments (Alewo, 2014). The hirer is given an option to purchase the goods, after paying all the installments and most importantly under hire purchase transaction except the hirer complete his instalmental payment of hire purchase price and then exercise his right to purchase the goods at the end of the installmental payment, the property in the goods, that is the ownership of the goods remains with the owner of the goods (Igweike, 1999).

4. Hire Purchase Distinguish from Other Similar Commercial Transactions

It's possible to mistake hire-purchase for other transactions with like features. As is evident, the word is a combination of the words "hire" and "purchase," the combination of these words will mean hire plus an option to purchase (Okany, 1996). It is not surprising, given this context, that this construct, "Hire-Purchase," exhibits similarities to other commercial transactions (Umenweke, 2009). As can be seen, a hire-purchase transaction has unique characteristics that may not be present in other commercial transactions of a comparable nature. These similar commercial transactions include hire Purchase and Sale of Goods, hire purchase and credit sale, hire purchase and loan, hire purchase and hire, hire purchase and conditional sale agreement:

(i) Hire Purchase and Sale of Goods

Sale has been defined by section 1(1) of the Sale of Goods Act as 'a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer

for a money consideration called the price.' In other words, per the dictum of Wilde C.J, when two parties amicably agree that one of them shall purchase the goods of the other, it amounts to a contract purporting that the one shall sell and the other shall buy. In *Yakassi v Incar Motors (Nig.) Ltd.* the Supreme emphasized the clear difference between the hire purchase and sale of goods by saying that the difference between an outright sale and hire purchase agreement is that in the former the property in the goods passes to the purchaser as soon as the contract is entered into whereas in the latter, the property in the goods remains vested in the owner until payment is made. In a sale of goods transaction, the buyer pays the full purchase price of the goods outrightly and takes ownership of it immediately, while in a hire purchase transaction, the hirer make payment for the hire purchase instalmentally with the option to buy the goods at the end of instalmental payments (Achike, 1985).

Thus, for a contract to be said to be a sale, four ingredients must be present to wit:

- A contract between the buyer and the seller.
- A contract which the subject matter is goods.
- A contract which purpose is for the transfer of the property in the goods.
- A contract for which the transfer of the property in the goods is for money consideration.

While a sale may appear similar to a hire purchaser, they are in no wise the same. In the first instance, a contract of sale is governed by the Sale of Goods Act, 1893, whereas the hire purchase contract is governed by the Hire Purchase Act, 1965.

(ii) Hire Purchase and Credit Sale

The Hire Purchase Act in Section 20 defines credit sale as the sale of goods in pursuance of an agreement under which the whole or part of the purchase price is payable in five or more installments. This is a situation where a person wants to make an outright purchase of goods but may find out that he does not have sufficient money to make full payment for them. In this instance, the person may pay in installments, while the goods pass to the buyer on credit.

The difference between hire purchase and credit sale is clearly shown in the judicial case of Ajagbe v Idowu where the Supreme Court held that in a credit sale agreement for the purchase of a property, the buyer pays a deposit followed by installment payments. Once the agreement is entered into by the parties, ownership of the vehicle is transferred to the buyer (Raimi, 2015). If the buyer defaults or is unable to meet his financial obligations to the seller, the option open to the seller is an action to recover that balance of payment owed by the buyer. On the other hand, in a hire purchase agreement, ownership of a property remains with the seller until payment is fully made. Failure of the buyer or hirer to pay the installments entitles the owner to take possession of the property (Imoisi & Aidonojie, 2023; Aidonojie et al., 2022). Continuing, the court clarified that the difference between a contract of sale at a price payable by installment and a contract of hire purchase is that in the former, the purchaser has no option of terminating the contract and returning the chattel, whereas in the latter, the hirer has the option to terminate the hire purchase contract and return the goods to the owner (Adelaju, 2017).

In a hire purchase agreement, where there is a default of payment by the hirer, the owner may take repossession of the goods, but in the case of credit sale, where there is a default by the buyer to meet up with his or her financial obligation, the only option open to the seller is to institute an action to recover the balance of the payment owed by the buyer.

(iii) Hire purchase and Loan

The basic difference between a loan and hire-purchase is that, the title in the subject matter of a loan agreement is never intended to revert to the beneficiary of the loan even though he/she might be expected to pay back the loan with interest. Again, most often than not, the subject matter of a loan agreement is usually money, on the other hand, money cannot reasonably be the subject matter of a hire-purchase agreement (Afolayan & Kumapayi, 2021).

Oftentimes, a buyer may desire to obtain goods on credit but a seller may be unwilling to grant such. The only alternative may be by way of a loan obtained from a third party to finance the credit. In this manner of the transaction, the buyer may be granted the loan on conditions that the ownership of the goods be given to the third-party finances until the loan is repaid in full with interest. This type of transaction is different from hire purchase

(iv) Hire Purchase and Hire.

Hire is a transaction under which a party lets out his goods, property, or services and a fee for a period agreed by the parties. The hirer takes possession of the subject matter of the hire, though the title in same is not transferred to him, he however hands over the

possession of the subject matter of the hire at the expiration of the hire period (Adelaju, 2017).

Hire is a kind of contract that does not pass title of the goods at a future date. Hire Purchase is different from the concept of hire. Hire only enables a person who does not want to own the goods or property to use the goods for his immediate use. The hirer will return the goods to the owner after its use. It is also a kind of bailment in which the hirer is given possession of an article during the period of the particular hiring agreement.

(v) Hire-Purchase and Conditional Sale Agreement

A conditional sale agreement was defined by Okay Achike in his book titled, "Commercial Law in Nigeria", as an agreement for the sale of goods in which the purchase price or part thereof is payable instal mentally and it is expressly agreed that the property in the goods is to remain in the seller. Notwithstanding that the buyer is in possession of the goods, until the instalments are fully paid or upon the fulfilment of other conditions contained in the agreement (Afolayan & Kumapayi, 2021). A conditional sale agreement is seen as a sale agreement in which the buyer gains immediate possession but the seller retains the title until the buyer performs a condition, especially payment of the full purchase price.

Given the above definition of conditional sale agreement, the question of option to return the goods, as will be observed in a hire-purchase agreement, does does not arise. Therefore, in a conditional sale agreement the buyer must buy the goods, because the agreement is one for sale and it is governed by the provision of Sale of Goods Act.

It suffices at this juncture to state that hire purchase is an arrangement where goods are provided for hire with the possibility of purchasing them after the full payment of installments (Aidonojie & Francis, 2022). This concept has been defined by scholars, statutes, and court decisions in various ways. Essentially, it involves lending goods to a person (bailee) who may choose to buy them or gain ownership of the goods (Afolayan, 2021). In hire purchase, a contract is established allowing the hirer to pay installments, possess, and use the goods. Once the agreed number of payments is completed, the hirer becomes the rightful owner of the goods. Key characteristics of hire purchase include being a contract, a bailment (temporary transfer of possession), the transfer of property, the ability to determine the agreement, and the option to purchase. In Nigeria, the law governing hire purchase is influenced by English common law, and the first English Hire Purchase Act was enacted in 1938. The distinctive aspect of hire purchase is its combination of temporary hire and the opportunity to buy the goods.

5. Legal Analysis of Nigeria Higher Purchase Act

The main purpose of enacting the Hire-Purchase Act is to regulate the hire-purchase transactions which have hitherto been executed under the ordinary law of contract, and under which some owners have exploited the ignorance of the people to enforce oppressive agreements (Afolayan, 2021). The legislation is intended to strike at the root of many injustices which were highlighted during the debate on the Bill in Parliament.

Under the common law principles then, the recovery of goods by the owner under a hire-purchase agreement could be effected with or without proceedings in court. But such acts of repossession have serious pitfalls. For example, if an owner were interested in retaking possession, he could execute his action at any time of the day or night and at any place he finds the goods (Aidonojie et al., 2021). In the case of motor vehicles, the practice is that the owner retains a spare key until the last instalment has been paid, so that in the event of any default by the hirer, the car may be conveniently recovered by the owner (or his agents) with dispatch. In some instances, the hirer had to put up with a strong resistance to attempts to seize the goods. This practice has led to unpleasant scenes and far-reaching consequences and in some instances unwary parties were exposed to criminal prosecutions for breach of peace or affray for the scuffles which ensued (Afolayan, 2021). Lamenting on this unsatisfactory state of affairs, Hon. Ukegbu, member for Owerri in the Federal Parliament, contributing to the debate on the Bill on Hire-Purchase Act, 1965, declared that:
"Strong and thug-like people are employed by the finance companies to seize-the vehicles and these people normally charge a certain percentage of the money paid in order to recover the vehicles".

This unsatisfactory nature of right of recovery under the common law is best illustrated in where the hirer is in default of payment after he has already paid substantial instalments. The hirer is exposed to the danger of losing possession of the goods as well as the large percentage of the purchase price he has already paid. The injustice occasioned by such sudden termination of the hire-purchase agreement was aptly

illustrated in *Atere v Dada*." There, under a hire-purchase agreement in respect of a lorry whose purchase price was £1,000, the plaintiff paid a total of £995, leaving a balance of £5. The plaintiff failed to pay this balance when fell due, and in consequence the hire-purchase agreement terminated, and the owner became entitled to recover possession of the vehicle. This the defendant did. He then sold the vehicle in order to recover the balance of £5; in fact, he realized more than the short payment of £5 payable under the last instalment It was held that, the defendant was not bound to account to the hirer for the excess recovered. In fact, even late payment agreed to with the owner which was not supported by any consideration is sufficient ground for exercising the right of seizure." The injustice to the hirer is really more disturbing, because the court does not, even on equitable grounds, come to the aid of the hirer from the consequence of his default." Nor will it make any difference that the hirer tenders the arrears of the instalments due which the owner refuses, for the owner's right to retake possession remains unassailable"

Another problem which arises under the common law is that even after the owner has retaken possession of the goods from the hirer and invariably has sold it, it is common practice for the owner and the hirer to stipulate in the agreement that the termination does not relieve the hirer from the liability to make further payments to the owner under the notorious 'minimum payment clause'." The Hire-Purchase Act, 1965 and the amendment made thereunder have reasonably curtailed the injustice occasioned to the hirer by these obnoxious conditions imposed on him under the common law (Ofo, 2010).

The Hire Purchase Act is the main law that majorly regulates hire purchase transactions in Nigeria. This Act, to mention but a few defines hire purchase transaction, the nature of hire purchase transaction, implied terms of hire purchase agreement, and the differentiating requirement of a valid hire purchase agreement and as well as how hire purchase agreement can be terminated. The hire purchase contains 20 sections and those sections contain provisions regulating and governing hire purchase transactions in Nigeria we will be studying some of those sections below:
Section 1 of the hire states that the provision of this Hire Purchase Act applies in regulating, defining, and governing hire purchase transactions in the country concerning two categories of goods and this is namely: First, goods other than motor vehicles of which total hire purchase price or total purchase price does not exceed two thousand naira and the other goods is all motor vehicles without any restriction to the total hire purchase or total purchase and as well as the type of motor vehicles (Okongwu et al., 2022).

Section 2 of the Act provides for the formation and termination of the hire purchase agreement between the hirer and the owner of the goods. This section obligates the owner of the goods to ensure that he state the actual cash price at which the goods may be purchased by him in writing or state in note or memorandum to the prospective hirer. This obligation on the part of the owner of the goods by virtue of subsection one of this section must be met. Otherwise by virtue of subsection 2 of this section, an owner of the goods will be incapable in the event of the breach of the hire purchase agreement to enforce the hire purchase agreement or contract of guarantee made in relation to the hire purchase agreement or enforce any right to recover the goods from the hirer and no security given by the hirer in respect of money payable under the hire hire-purchase agreement or security given by the guarantor in respect of money payable under the contract of guarantee in relation to the hire purchase agreement.

6. Issues and Challenges of the Nigeria Higher Purchase Act

The hire purchase Act, even though it has been amended once in 1970, is still clothe with number of issues and inappropriate provisions that are begging for amendment, in fact the Hire Purchase Act seems to have outlived its usefulness. And this is to say that, the amendment of the Hire Purchase Act in 1970 was not a thorough one that would have taken care of all those issues and inappropriate provisions in the Hire Purchase Act, which this research has identified to deal with. However, this research has identified two issues and inappropriate provisions in the Hire Purchase Act and they include the followings:

6.1 Monetary Limit on Goods on Hire

The issue of monetary limit on goods is a challenge that has the effect of hindering the growth and advancement of the hire purchase practice in Nigerian. Since, the majority of consumer durables goods listed in the first schedule to the Hire Purchase Regulations, such as refrigerators, air conditioners, dishwashing machines, cookers, household furniture, and bicycles, which may have cost less than $1,000 (2,000 naira) in 1965, are now in present day economic reality of Nigeria, there are marketed at much higher prices due to inflationary effect. Hence, the monetary limit placed on goods which is the subject matter of hire purchase transaction other than motto vehicle captured in Section 1(a) of the Hire Purchase Act is inappropriate,

as it has outlived its usefulness in the current economic reality in Nigeria.

The question is whether the monetary limit on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act is realistic given the current economic reality in Nigeria. Well given the community reading of the provision of Section 1(a) the Hire Purchase Act and the First schedule of the Hire Purchase Regulation the answer is strongly yes and nothing more. Consequently, the monetary limit imposed on goods eligible for hire-purchase transactions, as stipulated in Section 1(a) of the Hire Purchase Act, is no longer appropriate and has lost its relevance

6.2 Over Protection of The Hirer

Section 9(2) and (5) of the Hire Purchase Act, which pertains to the repossession of goods by the owner in the case of default in periodic payment of installments by the hirer under a hire purchase transaction, can be seen as inappropriate and an overprotection of the hirer. The provision heavily favors the hirer by making it difficult for the owner to repossess the goods in case of default, creating an imbalance in the rights and responsibilities of both parties involved in the hire purchase transaction. And we shall be subsequently looking at the issue of whether the provision of Section 9(2) and (5) of the Hire Purchase Act is an over protection of the hirer to the detriment of the owner and as such hinders the advancement of hire purchase transaction in Nigeria.

The Provisuon of section 9(2) to the Act has been criticized for being excessively harsh towards the owner of the hired goods. Ofo argues that this subsection completely disregards the purpose and structure of a hire purchase agreement. Forcing the owner of the goods to reimburse the hirer for previous installments paid is an unfair financial advantage given to the hirer without merit. Nat Ofo, in his research titled “Hire Purchase Legislation in Nigeria: Making a Case for Reform” believes that the installments paid by the hirer were meant to cover the periods when the hirer had possession and use of the goods. In this way, the hirer received something valuable in exchange for the payments made. It is not justifiable to compel the owner to refund previous installments due to a wrongful repossession of goods involved in a hire purchase agreement. Such an action does not align with the principles of justice in this situation.

It is also the findings of this research that the provision of section 9(5) is also a reflective of an over protection of the hirer since under the provision of subsection (5), the law is that before an owner of the goods in relation to motor vehicle can exercise a right to recover his or her goods from a hirer who abuse and misuse the goods for safe keeping pending the determination of action in court. The condition is that the he hire must first default in three or more installments of the hire purchase price of a motor vehicle under the agreement if not the owner cannot remove the motor vehicle to any premises under his control for the purpose of protecting it from damage or depreciation and retain it there pending the determination of any action in court. The research identified that this provision still favors the hirer (the person leasing the goods) and shows an excessive level of protection towards them, on the ground that the provision has not clearly state whether the three or more instalments due and unpaid must be consecutive before the owner can exercise the right of interim re-possession.

According to subsection (5) of section 9, the law states that in order for the owner of the goods (in this case, a motor vehicle) to recover their goods from a hirer who is abusing or misusing them, the hirer must first default in three or more installments of the hire purchase price. Only then can the owner remove the motor vehicle to their premises for protection and retain it there until any legal action is resolved.

Section 9 (5) which requires three or more instalments to fall due and unpaid before the owner could be allowed to remove a vehicle to keep it safe from damage and depreciation is rather unreasonable and unfair to the owner. Three or more instalments is rather long, in as much as the Act aims at protecting the hirer who seems to be negotiating with the owner from a weaker position, the owner should not be unnecessarily punished.

However, the research points out that this provision, which was initially intended to address the difficulties faced by owners who couldn't repossess their vehicles from mischievous hirers, still excessively favors the hirer. The provision allows the hirer to intentionally abuse and misuse the vehicle, even if they have paid a significant portion (three-fifths) of the hire purchase price through irregular installments or in breach of the hire purchase agreement.

Given the foregoing discussion, the Hire Purchase Act of 1965 imposes a financial limit of N2,000 for goods other than motor vehicles, which is considered inappropriate under the current economic situation in Nigeria. This monetary limit hinders the growth of the hire purchase practice in the country. Despite this, the Minister responsible for hire-purchase business lacks

the authority to adjust this limit. Additionally, the provisions of Section 9(2) and (5) of the Hire Purchase Act overly protects the hirer at the expense of the owner, making it difficult for owners to recover their goods or receive payment for outstanding amounts. To address these issues, it is crucial to reassess and adjust the monetary limit on consumer durables subject to hire purchase transactions and reconsider the provisions to achieve a fair balance between the rights of hirers and owners.

7. Conclusion And Recommendation

The extant Hire-Purchase Act has outlived its usefulness. This is because it contains some provisions which negatively impact on commercial activities. The Hire Purchase Act has become an impediment to the development of commercial activities and requires revision. The current financial limit set for goods other than motor vehicles is inappropriate and hampers the growth of hire purchase practice in Nigeria. The Act also provides excessive protection to the hirers, making it difficult for owners to repossess goods. To address these issues, the Act needs to be updated and amended to ensure a fair balance of rights between hirers and owners in hire purchase transactions.

The Hire Purchase Act, 1965 has several issues that need to be addressed. These issues include monetary limiting on goods other than motor vehicles and over protection of the hirer. The previous amendment in 1970 was not thorough enough to resolve these issues. The Act requires further revision to adapt it to the current economic situation and ensure a fair balance of rights between hirers and owners in hire purchase transactions. In proffering solution to the aforementioned issues with the Hire Purchase Act, this research makes the following recommendations:

First, the legislature should cure the effect of the provision of section 1(a) of the Hire Purchase Act by either amending the provision itself or by extending the Minister's powers captured in Section 5 of the Hire purchase Act
This minister's power can be extended by adding a subsection under it in this manner.
"Notwithstanding the provision of Section 1(a) of the Hire Purchase Act, the minister shall by regulations published in the Federal Gazette have power to adjust the financial limit placed on goods other than motor vehicles based on the prevailing market condition in terms of inflation or price increases".
Alternatively, the legislature can amend the provision of Section 1(a) of the Hire Purchase Act in this manner.
"The provisions of this Act shall apply to all hire purchase transaction in relation to goods other than motto vehicle under which the hire-purchase price or total purchase price as the case may is not below two thousand naira"

Second, the provision of Section 9(2) of the Hire Purchase Act is very harsh on the owners of goods in hire purchase transaction, since it entitles the hirer to all sums paid to the owner of the goods in the event of wrongful repossession of the goods by the owner. It is unfair for the owner of the goods to suffer this huge penalty because the hirer had received value from the payment of the instalments of the use of the goods. Compelling the owner to make a refund of the whole instalment paid on account of wrongful repossession of the goods cannot be said to meet the justice of the matter and am very sure this is constituting an impediment to commercial growth. Hence, the legislature should amend this provision in this manner. "in the event of wrongful possession of the goods on hire purchase by the owner from the hirer. the hirer shall be entitled to damages for any loss the hirer suffered as a result of such wrongful possession of the goods".

Third, the provision of section 9(5) of the Hire Purchase Act should be amended by the legislature to provide that there should be two consecutive instalments of the hire-purchase price of a motor-vehicle under the agreement due and unpaid, instead of three or more installments the provision of this High Purchase Act contemplate, for the owner to remove the motor vehicle to any premises under his control for the purpose of protecting it from damage or depreciation and retain it there pending the determination of any action.

References

Achike, O. (1985). *Commercial Law in Nigeria*. Enugu: Fourth Dimension Publishers.

Adelaju, K. (2017). Repossession of goods under hire purchase transaction in Nigeria: An appraisal. *Journal of Commercial Law*, *3*(1), 346.

Adelobo, E. E. (2021). *Commercial Law and Practice*. Princeton & Associate Publishing Co. Ltd.

Afolayan, M. S. (2021). Legal analysis of electronic payment systems and frauds associated with e-commerce transactions in Nigeria. *Nnamdi Azikwe University Journal of Commercial and Property Law*, *8*(3).

Afolayan, M. S., & Kumapayi, A. O. (2021). A comparative legal analysis of elements of the contract of sale under the laws regulating the

contract of sale in Nigeria, South Africa, and the United States. *International Journal of Research and Innovation in Social Science*, *5*(11).

Agbonika, J. A. M., & Agbonika, J. A. A. (2014). *Hire-Purchase (Commercial Law)*. Ibadan: Ababa Press Limited.

Aidonojie E. C., Aidonojie P. A., Eregbuonye O., Mutawalli M., Adebayo A. K., and Banki L. L., (2024), "Legal Issues and Consumer Awareness on the Effect of Poorly Processed Garri Edo North, Edo State, Nigeria", *Food Science and Technology Journal* (Foodscitech), 7(1), 31-45, http://dx.doi.org/10.25139/fst.vi.8190

Aidonojie P. A. and Majekodunmi T A, Adeyemi-Balogun O J, (2023), The Legal Issues Concerning the Operation of Fin-Tech in Nigeria, *Jurnal Media Hukum,* 30(20): 78-79

Aidonojie P. A., Eregbuonye O., Inagbor M., Ogbemudia O., (2024), "Legal and Socioeconomic Issues Concerning the Nigeria Higher Institution Loan Act 2023", JURNAL LEGALITAS, 17(1), 1-23, https://doi.org/10.33756/jelta.v17i1.23143

Aidonojie P. A., Esther Chetachukwu Aidonojie, Eregbuonye Obieshi, Adedoyin Olusegun Akinsulore, Antai Godswill Owuche, Adebayo Adesoji Kolawole (2024), "Combating the Silent Threat of Street Trading Resulting in Illegal Dumping of Waste in Uganda", *Kanun Jurnal Ilmu Hukum*, 26(2): 337-358

Aidonojie P. A., Ikubanni O. O. and Okoughae N., (2022), The Prospect, challenges and Legal Issues of Digital Banking in Nigeria, *Cogito Multidisciplinary Journal*, Vol. 14(3), PP. 186 – 209,

Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayoedeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,

Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, Vol. 5(2), PP. 161-174, DOI:10.28946/slrev.Vol5.Iss2.852.pp161-174

Aidonojie P.A., Aidonojie E. C., Majekodunmi T. A., Eregbuonye O, Adesoji K.A. (2024) "The Competence and Authority of Midwives in giving Birth without the assistance of a Doctor in Nigeria" *Jambura Law Review*, Vol. 6(1), 150-182

Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System*, Vol. 2(3), 209-224, https://doi.org/10.53955/jhcls.v2i3.40

Aidonojie P.A., Mulegi T, Muwaffiq J., Imiefoh A.I., Owoche A.G. (2024), "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges", *Fenomena*, 23(2), 131-144

Aidonojie P.A., Toyin A. M., Obieshi E., and Ogbemudia I.O. (2024), "Legal Issues Concerning of Data Security and Privacy in Automated Income Tax Systems in Nigeria", *Hang Tuah Law Journal,* 8(1), 14-41, https://doi.org/10.30649/htlj.v8i1.223

Aidonojie, P. A. (2023), 'Voluntary Assets and Income Declaration Scheme a Panacea to Tax Evasion in Edo State, Nigeria', Administrative And Environmental Law Review, 4(1): 1-20, https://doi.org/10.25041/aelr.v4i1.2822

Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from https://lawjournal.ub.ac.id/index.php/law/article/view/508

Aidonojie, P. A., Nwazi, J. and Ugiomo E., (2022), The Legality, Prospect, and Challenges of adopting Automated Personal Income Tax by States in Nigeria: A Facile Study of Edo State, *Cogito Multidisciplinary Journal*, Vol. 14(2), PP. 149 – 170,

Aidonojie, P. A., Okuoghae N., Agbale, O. P., Idahosa, M. E., (2022), Supervisor and Supervisee Relationship: The Legal and Ethical Issues Concerning Academic Theft in Nigeria Tertiary Institution, *Euromentor Journal*, Vol. 13(1), PP. 113-138

Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum*, 29(1), 65-78, DOI:https://doi.org/10.18196/jmh.v29i1.12595

Alewo, J. (2014). *Hire-Purchase (Commercial Law)*. Ibadan: Ababa Press Ltd.

Antai, G., Okpoko, M., Obisesan, O., Ismaila, H., & Aidonojie, P.A. (2024). Legal Framework and Mechanism for Combating International Crimes: A Comparative Analysis between

Nigeria and Uganda. *NIU Journal Of Social Sciences*, 10(3), 37-52. doi:10.58709/niujss.v10i3.1978

Antai, G., Okpong, D., Jufri, M., Imiefoh, A., Collins, E., & Aidonojie, P.A. (2024). The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the "Nwa Boyi" in South-East Nigeria. *NIU Journal Of Humanities*, 9(3), 127-138. doi:10.58709/niujhu.v9i3.1958

Borrie, G. J. (1970). *Commercial Law*. London: Butterworths & Co.

Budiyanto Budiyanto, Ahmad Masum, Paul Atagamen Aidonojie, Jamal Aslan, "Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua", Law Reform, 20, no. (2024): 278-300

Crossley Vaines. (1973). *Personal Property*. London: Butterworths & Co.

Edwards, I. (1878). *A Treatise on the Law of Bailments: Contracts Connected with the Custody and Possession of Personal Property* (2nd ed.). Bank and Brothers.

Ekpenisi C., Aidonojie P. A., Antai G. O., Akinsulore A., Okonji C. and Damina J. J., (2024), "Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria", *Nexus International University*, (2024) 10(1): 5-14

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and Issues Concerning the Regulatory Regime of E-Payment System in Nigeria. *Journal of Digital Technologies and Law*, 2(2), 372–393. https://doi.org/10.21202/jdtl.2024.19

Igweike, K. I. (1999). *Nigerian Commercial Law: Hire Purchase* (2nd ed.). Lagos: Malthouse Press.

Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. *Yuridika*, 38(2), 61-84, https://doi.org/10.20473/ydk.v38i2.44999

Izevbuwa, O., Aidonojie, P. A, Imiefoh, A., Obieshi, E., & Antai, G. (2024). Concept of Automated Income Tax in Edo State Nigeria: Learning from the American System. *NIU Journal Of Legal Studies*, 10(2), 19-36. doi:10.58709/niujls.v10i2.2006

Majekodunmi, T., Sogunle, B., Adeyemi-Balogun, M., Antai, G., Onwubiko, K., & Aidonojie, P.A (2024). Issues and Challenges concerning access to Justice in Nigeria: Clinical Legal Education Aid as a Panacea. NIU Journal Of Legal Studies, 10(2), 37-50. doi:10.58709/niujls.v10i2.2007

Ofo, N. (2010). Hire-purchase legislation in Nigeria: Making a case for reform. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.30

Okany, M. C. (1996). *Nigerian Commercial Law*. Onitsha: Africana First Publishers Plc.

Okongwu C. J., Ugbo S., Aidonojie P. A., (2022), Investigation of Companies'affairs and Ownership in Nigeria, *African Journal Of Law And Human Rights,* Vol. 6(2), 44-65

Raimi, A. I. (2015). The right of the owner to recovery of the hired goods from the hirer under the Hire Purchase Act, 1965: A right in existence or extinction. *International Journal of Humanities and Social Science*, *5*(10).

Safi', Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", El-Mashlahah, 14(1), 95-126

Umenweke, N. M. (2009). *Commercial Law and Practice in Nigeria*. Enugu: Nolix Educational Publications.

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Criminal Behaviour Tendencies: Concepts, Prevalence, Consequences and Compassion-Focused Therapy

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Abstract. Criminal behaviour tendencies are global phenomenon that affects individuals, families and societies at large. People are born innocent with a clean mind but as the individual interacts with the environment, they learn different behaviour, both bad and good. Hardly a day passes without hearing disturbing news about criminal activities. Not only do people get involved in criminal behaviour, but their actions also pose risks to their victims as well as the society. A crime-free society promotes incredible growth and development, whereas crime-ridden communities suffer from oppression, poverty and underdevelopment. Factors like dysfunctional families, parenting, peer influence, economic deprivation, and substance misuse exacerbate these tendencies. Sutherland's Differential Association Theory and Routine Activity Theory revealed criminal behaviour's learned nature, influenced by social interactions, motivated offenders, attractive targets, and inadequate guardianship. Compassion-Focused Therapy (CFT), developed by Gilbert, is a psychological intervention that counteracts negative thought patterns and reduces criminal thinking, promoting rehabilitation among offenders, emphasizing the need for comprehensive strategies. This study therefore reviews the concept, prevalence, consequences of Compassion-Focused Therapy on criminal behaviour tendencies.

Keywords: Criminal Behaviour Tendencies, Differential Association Theory, Routine Activity Theory, Compassion-Focused Therapy

1. Introduction

Crime and criminal behaviour inclinations are an extensive field that differ across cultures and historical dynamics. While one conduct may be legally prohibited in one group, it may be considered the norm in another. Regardless of differences in legality and criminal laws, crime knows no borders; it affects people of all ages, genders, religions, and socioeconomic backgrounds. There is rarely a day that goes by without hearing disturbing news about criminal activity. Not only do individuals involved in criminal behaviour endanger themselves, but their actions also pose risks to their victims as well as the society. A crime-free society promotes incredible growth and development, whereas crime-ridden communities suffer from oppression, poverty, underdevelopment, and illiteracy. Unfortunately, both men and women, young and old, are implicated in criminal behaviour. The United Nations Department of Economic and Social Affairs (UN DESA), through the World Youth Report (WYR, 2020), has warned that the youth population, between the ages of 18–24 years, stands at 1.1 billion, constituting 18% of the global population and 24% of those aged 24 years and younger are indexed. The agency emphasized that young people are more likely to channel their energies in the wrong direction due to untapped and underutilized energy, coupled with poor guidance and direction. According to Youth (2030) Agenda for Sustainable Development, the United Nations explicitly states that youth are the future and must be guided and nurtured to secure a sustainable future. Youth violence and criminal behaviour have permeated societies, causing havoc and untold hardship for individuals and communities. These issues are frequently highlighted in media reports and can be observed in everyday experiences.

2. Concept of Criminal Behaviour Tendencies

According to Howitt (2006), criminal behavioural tendencies refer to traits or characteristics within an individual that make them likely to engage in criminal activities. These tendencies are not necessarily innate but may develop over time through exposure to certain environments and experiences. Hentig (2009) posited that humans learn through imitation, observing and emulating the behaviours of those in their social surroundings. Criminal behavioural tendencies often involve engaging in illegal activities such as theft, burglary, violence, vandalism, and drug use. Among adolescents, these tendencies manifest as behaviours that disregard societal norms, violate laws, and infringe on the rights of others (e.g., property, sexual, legal, and emotional violations). Adolescents with such tendencies may display physical aggression, life instability, and impulsivity, often leading to violations of legal standards (Nnachi, 2000).

These behaviours can cause immediate physical or psychological harm and may escalate to broader negative outcomes, such as self-injury, suicide, hazardous sexual behaviour, substance misuse, and dangerous activities like driving under the influence of alcohol or drugs (Correia & Jackson, 2020). Research indicates that more young individuals have been arrested by their early twenties than in previous generations. Their offenses range from status violations, underage drinking and smoking, to more severe property and violent crimes (Moffit, 2006). Several factors influence the development of criminal tendencies these include gender, family values, parental influence, parental education levels, peer pressure, home environment, and self-esteem. These factors interplay to shape individuals' behavioural patterns and decision-making processes, particularly during adolescence.

3. Factors Contributing to Criminal Behaviour Tendencies

According to UN-HABITAT (2007), several factors, such as family, parenting practices, peer pressure, social media, drug and alcohol misuse, and economic considerations, all contribute to crime and violence by providing possibilities for criminal activity.

Family Factors: Dysfunctional families significantly influence students' tendencies toward criminal behaviour (Broadhurst, Duffin, & Taylor, 2008). Marital disruptions, such as divorce, separation, or single parenting, often result in stress and frustration, leading to anger, aggression, and disruptive behaviour among students (Young et al., 2007; Odedokun 2022b). Even intact families may exhibit issues like alcoholism, child abuse, or spousal violence, contributing to future criminal behaviour in children (Utting, Montiero, & Ghate, 2006). When all these are not well managed, it could lead to a criminal behaviour tendency.

Parenting Styles: Permissive parenting, characterized by indulgence and lack of boundaries, often fosters entitlement and irresponsibility among students, increasing the likelihood of criminal tendencies (Kopko, 2007; Utti, 2006). Uninvolved parenting, marked by neglect and minimal interaction, can lead to emotional detachment, social instability, and risky behaviours in adolescents (Wargo, 2007; Odedokun, 2022a). Poor parental supervision, lack of engagement in school activities, and failure to provide guidance exacerbate these issues (Hill, and Tyson, 2009; Boroffice, 2004).

Social Factors: Community instability, including political violence, gang activity, and high crime rates, shapes student behaviour negatively (Leoschut, 2008). Students in such environments are exposed to normalized deviant behaviour, increasing their risk of involvement in criminal activities.

Peer Influence: Peer pressure is a critical factor in shaping adolescent behaviour. Association with criminal peer groups often fosters attachment to deviant behaviours and increases the likelihood of offending (Young et al., 2007; McCord et al., 2001). Many young people engage in criminal activities to gain respect or impress their peers, which can include acquiring weapons or engaging in violence (NCH, 2008).

Economic Factors: Economic deprivation directly impacts students' behaviour. Those from impoverished backgrounds are more likely to live in high-crime areas, face limited educational and economic opportunities, and be exposed to anti-social behaviours (Campbell, 2021). Such students may resort to criminal activities to achieve material wealth and social status unavailable through legitimate means (Margo, 2008).

Substance Abuse: Drug and alcohol misuse are significant contributors to youth crime. Regular alcohol consumption is associated with violent incidents and poor school performance, often leading to exclusion and increased risk factors for offending (Matthews, Brasnett, & Smith, 2006; Richardson & Budd, 2003). Drugs are particularly accessible in deprived areas, fostering higher levels of youth involvement in crime (Utting et al., 2006, Omopo and Odedokun, (2024). In addition, drug abuse, particularly excessive alcohol use and drug usage, is another significant factor that contributes to criminal behaviour in educational institutions. According to

Asiyai and Oghuvbu (2020), these actions function as important stimulants, creating an atmosphere where employees and students may commit crimes. When taken as a whole, these issues present a sobering image of the condition of education in many institutions, where social vices and criminal activity jeopardise both safety and learning. Restoring order, promoting a sense of security, and maintaining the integrity of educational settings all require coordinated efforts to address these problems.

4. Consequences of Criminal Behaviour Tendencies

Criminal behaviour tendencies have serious repercussions that affect the entire educational community in addition to the individuals directly engaged. The safety and stability of learning settings are upset by such acts, which foster an atmosphere of fear and insecurity that jeopardises the wellbeing of both the staff and the students. The social fabric of institutions is weakened by this erosion of safety and confidence, endangering both the goal of education and the advancement of society. Educational institutions, which ought to be havens of knowledge and development, are coming under more and more pressure from social vices and other illegal activity. Nwikpo et al. (2022) have observed that incidents like violence and the carrying of weapons have become frighteningly frequent. These environments' moral and social standards are further undermined by other problems like rape, premarital cohabitation, and indecent and provocative clothing (Oluwadare et al., 2020; Nwikpo & Offordueze, 2022).

5. Prevalence of Criminal Behaviour Tendencies

The prevalence of criminal behaviour tendencies among young people has grown to be a major global concern, with recent data pointing to alarming patterns in different geographical areas. Globally, similar patterns emerge. Reports from Europe, Asia, and the Americas reveal widespread youth involvement in street gangs, drug abuse, riots, and armed robbery. These behaviours reflect a universal challenge driven by socioeconomic and systemic factors, calling for urgent intervention to address their root causes. According to the World Crime Index, Venezuela has the highest global crime index score at approximately 80.7%, followed by Papua New Guinea with a score of 80.3%, and then Haiti at 78.9%. at 66.6%, Nigeria is placed 11th and exhibits startlingly high rates of theft, drug trafficking, and armed robbery. The prevalence of armed robbery has peaked at 85.32% (Numbeo, 2025).

In Nigeria, the situation on campuses and within communities has become increasingly precarious. Garba and Kabir (2023) documented incidents of terrorist kidnappings in the northern regions and sexual violations in the southern areas, emphasizing the dangers faced by students and the broader population. Similarly, Nwikpo et al. (2022) reported a sharp rise in weapon possession and usage among students to perpetrate violence, further underscoring the severity of criminal behaviour tendencies. Economic hardship and poverty remain central drivers of these behaviours. Abatta (2023) observed that unemployment and limited opportunities push many young people toward criminal activities such as theft, drug trafficking, and internet fraud. These acts often serve as a means of survival or a way to achieve social status. Within educational institutions, cultism and thuggery are pervasive, as highlighted by Eleje et al. (2024). These behaviours compromise the safety of campuses and hinder academic pursuits, leaving students vulnerable to both internal and external threats. Substance abuse also plays a critical role in exacerbating criminal tendencies. Asiyai and Oghuvbu (2020) identified drug misuse as a major catalyst for criminal behaviour within Nigerian tertiary institutions, affecting both students and staff. This aligns with earlier findings by the National Bureau of Statistics (2017), which reported that youth crimes such as bullying, drug abuse, thuggery, and armed robbery dominate the crime index in Nigeria. Which could be found in the higher institution.

6. Theoretical Framework

Theoretical frameworks, incorporating behavioural science, psychology, sociology, and criminology, analyse factors influencing criminal behaviour and guide effective treatments, emphasizing compassion-focused therapy for fostering behavioural skills and empathy.

6.1 Differential Theory of Association

Differential association theory, introduced by Sutherland in 1939 in the Principles of Criminology, explains criminal behaviour as a learned process shaped by social interactions and environments (Sutherland, 1939). This theory posits that individuals acquire criminal tendencies through communication within intimate social groups. Sutherland emphasized that criminal behaviour is not inherited or biologically determined but is instead learned through exposure to specific values, techniques, and motives that favour lawbreaking (Akers & Sellers, 2012).

The theory outlines nine principles to explain the learning process:

- Criminal behaviour is learned, not inherited or biologically predisposed (Sutherland, 1939).
- This learning occurs through interaction and communication with others.
- Learning happens within close, intimate groups rather than impersonal relationships.
- The learning includes techniques for committing crimes and specific motives, drives, rationalizations, and attitudes.
- The direction of motives and drives is influenced by whether definitions of legal norms are seen as favourable or unfavourable.
- A person becomes delinquent when exposure to definitions favourable to lawbreaking outweighs those unfavourable to it.
- The process of learning varies in frequency, duration, priority, and intensity based on social associations (Akers & Sellers, 2012).
- The mechanisms for learning criminal behaviour are the same as those for learning any other behaviour.
- Criminal behaviour is not explained solely by general needs or values, as non-criminal behaviours can also fulfil similar needs (Vold, Bernard, & Snipes, 2002).

Symbolic interactionism suggests that individuals' perceptions of reality are shaped by social relationships and shared meanings, influencing their interpretation of societal norms and potential criminal behaviour (Vold, Bernard, & Snipes, 2002). Sutherland's differential association theory emphasizes the role of socialization in promoting criminal behaviour, focusing on the broader social context and intimate associations as a learning mechanism.

6.2 Routine Activity Theory

Routine activity theory focuses on the conditions that enable criminal activity. Routine Activity Theory emphasises the opportunity structures that either promote or discourage crime, in contrast to theories that concentrate on the motivations behind crime or the socio-political causes for criminal behaviour. The concept was initially put forth by Felson and Cohen in their 1979 seminal paper titled "Social Change and Crime Rate Trends: A Routine Activity Approach." The hypothesis has been used widely and is now among the criminology theories that are most frequently quoted. In routine activity theory, crime is likely to occur when three essential elements of crime converge in space and time: a motivated offender, an attractive target, and the absence of capable guardianship (Cohen, Cantor & Kluegel, 1981). The analytic focus of routine activity theory takes a macro-level view and emphasizes broad-scale shifts in the patterns of victim and offender behaviour. It focuses on specific crime events and offender behaviour/decisions. Routine activity theory is based on the assumption that crime can be committed by anyone who has the opportunity. The theory also states that victims are given choices on whether to be victims mainly by not placing themselves in situations where a crime can be committed against them.

6.3 Psychological Intervention- Compassion-Focused Therapy

Gilbert (2000) created the psychotherapy technique known as Compassion-Focused Therapy (CFT) to assist people in developing empathy for both themselves and other people, particularly those who are dealing with feelings of guilt and self-criticism (Gilbert, 2005). To combat negative inner dialogues, it places a strong emphasis on cultivating self-kindness and compassionate self-talk. According to Kolts (2018), CFT views human challenges through the prism of evolution, emotional brain dynamics, the impact of early experiences, and social relationships. CFT, which has its roots in Buddhism, supports the Dalai Lama's (2001) idea of lessening one's own and other people's suffering.

According to Neff (2009), CFT lessens feelings of loneliness by accepting and being gentle when dealing with challenging circumstances and self-criticism. Three interconnected elements form the foundation of the therapy:

1. Self-Kindness vs. Self-Judgement: Self-compassionate individuals are understanding and compassionate towards themselves, recognizing that challenges are inevitable and not judging them, rather than reacting with judgment and criticism.
2. Common Humanity vs. Isolation: Self-compassionate individuals acknowledge that all humans experience suffering and are never alone in our mistakes or imperfections, which can help reduce feelings of isolation.
3. Mindfulness vs. Over-Identification: Mindfulness involves recognizing negative thoughts and emotions without judgment, while self-compassion observes thoughts without attachment, preventing exaggeration or minimization of these feelings. CFT promotes psychological well-being by allowing individuals to experience emotions while maintaining healthy emotional distance, fostering positive emotions and

mental health through compassionate engagement with oneself and others. (Gilbert, 2005; Neff, 2003).

6.3.1 Empirical Support for Compassion-Focused Therapy

Compassion-based therapy has emerged as a promising intervention for addressing criminal thinking and fostering rehabilitation among offenders. Rezapour-Mirsaleh, Shafizadeh, Shomali, and Sedaghat (2021) found that compassion-based treatment effectively reduces criminal thoughts in male convicts, which is consistent with earlier findings by Morley (2015, 2018), Neff and Vonk (2009), and Woldgabreal et al. (2014). Cognitive distortions, which are frequently amplified by personality qualities such as lack of empathy, self-orientation, and irresponsibility, play a substantial role in criminal behaviour (Hare, 1996). Compassion-focused therapies assist offenders gain self-confidence, empathy, and a better understanding of shared human suffering by addressing these distortions (Gilbert & Procter, 2006; Neff, 2003a, 2003b). These interventions also give offenders, particularly those with traumatic past, a sense of inner warmth and the ability to self-soothe, opening the path for long-term behavioural change and reduced recidivism.

8 Weeks of Compassion-Focused Therapy Treatment Package for Criminal Behaviour Tendencies

Week One
Session 1: General Orientation and Pre-test Administration

Objectives:

During and by the end of the session, the counselling psychologist achieved the following:

I. Introduced themselves to the participants and facilitated their introductions.
II. Created a tension-free and relaxing environment.
III. Established rapport and a good working relationship with the participants.
IV. Provided an overview of the program's goals and structure to the participants.
V. Enlightened the members about the benefits of the program.
VI. Agreed on meeting times, venue, and the preferred method of information dissemination.
VII. Administered the pre-test assessment.

Presentation:

The researchers welcomed the participants and introduced themselves as the counsellor, along with other team members involved in coordinating the program. They engaged the participants by asking for their names to create a comfortable and familiar atmosphere. The participants were briefed on the program's details, including its objectives, structure, and eight-week duration. The researcher highlighted the potential benefits of participation and agreed with the group on a convenient time and place for future sessions. Participants were reassured that their contributions were valued and encouraged to feel at ease sharing openly as the training progressed. The researcher motivated the participants to identify specific personal changes they hoped to achieve through the program and encouraged them to fully participate with those goals in mind. After the orientation, a pre-test assessment was conducted. The researcher then opened the floor for participants to ask questions.

Closing:

The researchers thanked the participants for their attendance and for volunteering to participate in the training. They reminded them of the time and venue for the next meeting and appealed to them to take time to review the take-home task, which would be discussed alongside the subsequent session's topic.

Session Notes:

The program to reduce tendencies toward criminal behaviour emphasized a comprehensive and holistic approach addressing both immediate challenges and underlying causes. Compassion-Focused Therapy (CFT) was identified as a promising intervention for nurturing self-compassion and enhancing emotional regulation among polytechnic students. The eight-week program aimed to foster self-compassion, reduce self-criticism, and improve emotional regulation. It addressed psychological factors contributing to criminal tendencies, promoting positive behavioural changes and enhancing psychological well-being. Participants learned how unmanaged emotions, impulsivity, and a harsh inner dialogue could lead to risky or harmful behaviours and how CFT could replace these patterns with compassionate strategies.

Week Two
Session 2:

Objectives:

By the end of the session, the participants had:

I. Defined Compassion-Focused Therapy (CFT).
II. Enumerated the three components of CFT.
III. Explained criminal behaviour tendencies and their consequences.
IV. Discussed the importance of CFT as a buffer against criminal behaviour tendencies

Introduction: The researcher warmly welcomed the participants to the session and used their names during communication to enhance their sense of belonging and acceptance.

Closing: The researcher appreciated the participants for their active participation and contributions during the session and appealed to them not to miss the next session.

Homework: Participants were asked to journal about a self-critical thought and practice responding with self-kindness.

Session Notes:

Compassion-focused therapy (CFT), developed by Gilbert, was presented as a therapeutic approach for managing challenging emotions and fostering healthier responses to life's difficulties through self-compassion. The three components of CFT self-kindness, mindfulness, and common humanity were explained. Participants learned how criminal behaviour tendencies often arise from unresolved emotional struggles, impulsivity, and a lack of positive coping skills. The session highlighted the significant consequences of criminal behaviour, including legal, social, and personal repercussions. CFT was presented as a critical tool for addressing these tendencies by fostering emotional regulation, building resilience, and encouraging thoughtful rather than impulsive actions. The participants explored how developing self-compassion could help them handle stress, setbacks, and challenges with greater stability and reduce the likelihood of engaging in harmful behaviours. In summary, the session underscored the role of CFT in promoting positive behavioural changes, enhancing emotional well-being, and reducing tendencies toward criminal behaviour through compassion-based strategies.

Week Three

Session 3: Understanding Emotional Patterns and Self-Compassion

Objectives:

By the end of this session, participants:

I. Identified and understood their recurring emotional responses and triggers.

II. Became aware of self-critical thoughts or attitudes, enabling them to identify areas for greater self-compassion.

III. Practiced self-compassion by fostering a kind, forgiving attitude toward themselves, which built emotional resilience and well-being.

IV. Equipped themselves with skills to respond to emotions in a healthy, constructive way, improving emotional regulation and resilience.

Introduction: The session began with the researcher emphasizing the importance of understanding emotional patterns and fostering self-compassion as essential skills for emotional growth and resilience. Participants explored how recognizing their recurring emotional responses helped them manage stress and challenges more effectively. They also learned how self-compassion could transform their relationship with emotions, promoting stability and emotional strength over time.

Homework: Participants were instructed to maintain an emotion awareness diary, noting emotional triggers and practicing compassionate responses.

Session Notes:

Understanding Emotional Patterns

1. Recognizing Emotional Triggers:

Participants identified situations, words, or events that evoked strong emotional responses. They learned that understanding triggers helped prevent automatic reactions.

• Emotion Journaling: Students kept a daily journal, recording what triggered specific emotions (e.g., anger, sadness, joy) and their reactions.

• Reflection: At the end of the week, participants reviewed their entries to identify patterns and insights into how certain situations or interactions influenced their feelings.

2. Identifying Automatic Responses and Coping Styles:

Participants explored their automatic responses to emotions, such as withdrawing, lashing out, or shutting down, and considered healthier coping mechanisms.

• Role-Playing Scenarios: Participants practiced identifying feelings and reactions in controlled hypothetical situations.

• Goal: To recognize habitual responses and develop alternative, constructive ways to handle emotions.

3. Tracking Patterns Over Time:

Participants consistently tracked their emotional patterns to uncover deeper insights into recurring triggers.

• Mood Tracking Tools: Students used digital apps or worksheets to document moods, intensity, and triggers, helping them understand the influence of thoughts on emotions.

Fostering Self-Compassion

1. Practicing Kind Self-Talk:

Participants learned to replace harsh self-criticism with kind, supportive inner dialogue.

• Reframing Self-Talk: They practiced rewriting self-critical thoughts as if speaking to a friend (e.g., changing "I failed" to "I tried, and I'll keep improving").

• Goal: To shift from harsh criticism to supportive and understanding self-talk.

2. Self-Compassion Exercises:

Participants engaged in exercises that encouraged a positive, supportive relationship with themselves.

• Loving-Kindness Meditation: A guided meditation helped participants send positive, kind wishes to themselves and others.

• Self-Compassion Journal: Participants reflected on challenging experiences, acknowledging difficulties and responding with kindness and compassion.

Week Four

Session 4: Building Compassionate Imagery

Objectives:

By the end of this session, participants:

Developed self-compassion by using compassionate imagery to foster kindness toward themselves.

Enhanced emotional resilience through compassionate imagery for managing difficult emotions.

Strengthened empathy by visualizing compassion in interactions with others.

Reduced self-criticism by replacing negative thoughts with supportive mental imagery.

Session Notes

Participants were introduced to the practice of building compassionate imagery, focusing on four key areas: self-compassion, emotional resilience, empathy, and reducing self-criticism.

1. Developing Self-Compassion: Participants practiced compassionate imagery, creating positive mental images to foster kindness and warmth toward themselves. They learned to counter self-criticism and negative self-talk by visualizing themselves in a kinder light and offering themselves understanding and patience.

2. Enhancing Emotional Resilience: Participants visualized compassion and inner strength, learning to handle stress, frustration, and setbacks more effectively. This practice equipped them with the ability to stay grounded and balanced during adversity.

3. Strengthening Empathy: Through compassionate imagery, participants developed a more patient, understanding approach to their relationships. They practiced mental exercises that promoted empathy, fostering a sense of connection and shared humanity.

4. Reducing Self-Criticism: Participants replaced harsh inner dialogue with supportive mental imagery, shifting to a positive self-view. This new perspective encouraged healthier, constructive inner dialogue over time.

In summary, participants engaged in exercises that cultivated self-compassion and empathy while building emotional resilience and reducing self-criticism. These practices aimed to foster a healthier, more supportive relationship with themselves and others.

Exercise I: how to build compassionate imagery

This exercise is to help build up a compassionate image for you to work with and develop (you can have more than one if you wish, and they can change over time). You may choose to develop a compassionate image which is sitting next to you (the driver) on your bus and will offer you unconditional support and guidance. Whatever image comes to mind, or you choose to work with note that it is your creation and therefore your own personal ideal what you would really like from feeling cared for and cared about. In this practice it is important that you try and give your image certain qualities. These will include; Wisdom, Strength, Warmth and Non-Judgement. Your compassionate image will be there for you no matter what and will always by your side to support you and give you wisdom and strength. Here are some questions that might help build the image.

1. How would you like your ideal caring, compassionate image to look/appear – visual qualities. Does your compassionate image seem old or young; male or female (or non-human looking e.g., an animal, sea or light).

If possible, we begin to focus on our breathing, finding a calming rhythm and making a half smile. Then we can let images emerge in the mind as best we can- do not try too hard, if nothing comes to mind, or the minds wander, just gently bring back to the breathing and practice compassionately accepting.

How would you like your ideal caring-compassionate image sound? (voice/tone)

What other sensory qualities can you give to it

_____

3. How would you like your ideal caring-compassionate image to relate to you?

_____

4. How would like to relate you like to relate to your caring compassionate image?

_____

Homework: Participants were tasked with practicing compassionate imagery daily in real-life situations, applying the skills learned during the session to foster kindness and resilience.

Closing Remarks: The facilitator expressed gratitude to the participants for their patience, active participation, and cooperation throughout the session. The researcher encouraged them to attend the next session and continue their engagement with the program.

Week Five

Session 5: Developing Self-Soothing and Distress Tolerance Skills

Objectives:

By the end of this session, participants should be able to:

I. Develop the ability to recognize and understand emotional triggers.

II. Learn and practice self-soothing techniques that engage the senses.

Homework: Participants were encouraged to practice a self-soothing exercise daily and note its effects on their mood or stress levels.

Session Notes:

Understanding Self-Soothing Skills

Self-soothing skills provide comfort during emotional distress by engaging the senses, promoting grounding, and reducing emotional intensity.

Importance: These skills help redirect attention to positive sensory experiences, reducing the impact of negative emotions and providing a pause for reflection.

Techniques:

Sight: Observe calming visuals like nature scenes or create a comforting visual space.

Sound: Listen to soothing music or nature sounds.

Smell: Use relaxing scents like lavender or vanilla.

Taste: Mindfully savor comforting foods or beverages.

Touch: Engage in tactile comfort, like cuddling a soft blanket or using a weighted blanket.

Distress Tolerance Skills

These skills help individuals endure and manage intense emotions without impulsive actions.

Purpose: Not to eliminate distress but to help tolerate and navigate it constructively.

Techniques:

Distraction: Engage in hobbies or activities that shift focus from negative emotions.

Improving the Moment: Use positive visualization or mindfulness practices to create inner peace.

Week Six

Session 6: Compassionate Communication

Objectives:

By the end of this session, participants should be able to:

I. Develop greater awareness of their emotions, needs, and triggers in communication.

II. Cultivate Nonviolent Communication (NVC) principles in real-life scenarios.

III. Foster empathy by responding with compassion rather than reaction.

IV. Articulate feelings and needs effectively while respecting others.

Homework: Participants were asked to apply a specific compassionate communication technique (e.g., active listening or nonjudgmental responses) in a conversation and document their experience.

Session Notes:

Compassionate communication emphasizes empathy, understanding, and connection.

Frameworks:

1. Nonviolent Communication (NVC): Involves observation, feelings, needs, and requests.
2. Mindful Communication: Focuses on being present and nonjudgmental in conversations.

Week Seven

Session 7: Integrating Compassion into Daily Life and Future Challenges

Objectives:

Participants were guided to:

• Reflect on their progress and set future goals for using CFT skills.

• Explore ways to apply compassion in daily routines and challenges.

Homework: Complete a self-reflection on CFT skills learned and outline the next steps for continued growth.

Session Notes:

Practical strategies for daily compassion:

1. Self-Kindness: Practice supportive self-talk and engage in self-care rituals.
2. Common Humanity: Share struggles and recognize shared human experiences.
3. Mindfulness: Use meditation and breathing exercises to stay present.
4. Self-Compassion Journal: Reflect on experiences and respond with kindness.
5. Positive Affirmations: Develop and repeat affirmations to reinforce self-worth.

Week Eight

Session 8: Skill Application, Conclusion, and Post-Test Administration

Objectives:

By the end of this session, participants should:

I. Recap and rehearse skills learned throughout the program.

II. Be encouraged to integrate the skills into their daily lives.

III. Stay motivated in pursuing academic and life goals.

IV. Conclude the training program.

V. Complete the post-test assessment instrument.

1. Closing Remarks:

The facilitator acknowledged the participants' progress and commitment over the past eight weeks, emphasizing the transformative power of self-compassion. Participants were encouraged to continue practicing these skills as lifelong habits, facing challenges with kindness and resilience.

The session ended with gratitude for their openness and participation, alongside well-wishes for their future growth and compassionate journeys.

References

Abatta, C. (2023). Youth involvement in criminal activities in Oyi Local Government Area. *Journal of Interdisciplinary Research in Education, Social Sciences, and Arts, 1*(2), 29-45.

Akers, R. L., & Sellers, C. S. (2012). *Criminological Theories: Introduction, Evaluation, and*

Application. New York: Oxford University Press.

Asiyai Romina Ifeoma & Oghuvbu Enamiroro Patrick, (2020). Prevalent Crime in Nigerian Tertiary Institutions and Administrative Strategies for its Effective Management," *International Journal of Higher Education*, Sciedu Press, vol. 9(2), pages 270-270, April.

Bahall, M. (2023). Gangs, Low Detection Rates, and Educational Achievement: Major Drivers of Violence. *Journal of Health and Medical Sciences*, *6*(4), 237-252.

Broadhurst, K; Duffin, M and Taylor, E. (2008). *Gangs and schools: Interim report: An interim report for the NASUW.T* London: NASUWT The teaching union.

Campbell, E. (2021). Developmental and life-course pathways for antisocial behaviour among young adults in the Western Cape, South Africa.

Cohen, L. E., & Felson, M. (1979). Social change and crime rate trends: A routine activity approach. *American Sociological Review, 44*(4), 588-608.

Cohen, L. E., Cantor, D., & Kluegel, J. R. (1981). Robbery victimization in the United States: An analysis of a nonrandom event. *Social Science Quarterly*, *62*(4), 644.

Correia, C., & Jackson, C. (2020). Risk to self: Identifying and managing risk of suicide and self-harm. *Behavioural Journal of Psychology Advances*. https://www.cambridge.org/core/journals/bj psych-advances/article/risk-to-self-identifying. DOI:10.36018/dsiij.v13i.204

Eleje, Lydia & Urama, Celestine & Metu, Ifeoma & Christopher, Chidiebere. (2024). Students' Involvement in Cultism in Tertiary Institutions in Nigeria: Undergraduate Students' View of the Causes, Effects, and Solutions. Journal of Theoretical and Empirical Studies in Education, Vol. 8 No. 2, 8. Pp. 200-209

Felson. 1979. Routine Activity Theory. Retrieved from https:/onlinelibrary.wiley.com.dol>pdf. Accessed on 10/4/2018

Garba Mahdi and Kabir Adejumo (2023). Education Under Attack As Nigerian Tertiary Institutions Face Increased Wave Of Violent Crimes. HumAngle

Gilbert, P. (2000). "Social mentalities: internal 'social' conflicts and the role of inner warmth and compassion in cognitive therapy" in *Genes on the couch: Explorations in evolutionary psychotherapy*. eds. P. Gilbert and K. G. Bailey (Hove: Psychology Press), 118–150.

Gilbert, P. (2005b). "Social mentalities: a biopsychosocial and evolutionary reflection on social relationships" in *Interpersonal cognition*. ed. M. Baldwin (New York: Guilford), 299–333.

Gilbert, P., & Procter, S. (2006). Compassionate mind training for people with high shame and self-criticism: Overview and pilot study of a group therapy approach. *Clinical Psychology & Psychotherapy: An International Journal of Theory & Practice*, *13*(6), 353–379.

Hare, R. D. (1996). Psychopathy: A clinical construct whose time has come. *Criminal Justice and Behaviour*, *23*(1), 25–54.

Hentig, H. V. (2009). The criminal & his victim. New Yourk: Yale University Press.

Hill, N. E., & Tyson, D. F. (2009). "Parental involvement in middle school: A meta-analytic assessment of the strategies that promote achievement." *Developmental Psychology, 45*(3), 740–763.

Howitt, D. (2006) Introduction to Forensic and Criminal Psychology (2nd edition). Harlow: Pearson.

Kolts, R. L., Bell, T., Bennett-Levy, J., and Irons, C. (2018). *Experiencing therapy from the inside out: A self-practice/self-reflection workbook for therapists*. Guilford Publications.

Kopko, K. (2007). Parenting style and adolescents. USA: Cornell University.

Leoschut L. (2008). Running Nowhere Fast: Results of the 2008 National Youth Lifestyle Study*, Centre for Justice and Crime Prevention, Monograph, 6*, Cape Town, 2009.

Margo, J. (2008). *Make me a criminal: Preventing youth crime.* London: Institute for Public Policy Research.

Matthews, S; Brasnett, L and Smith, J. (2006). Underage drinking*: Findings from the 2004 Offending, Crime and Justice Survey.* London: The Home Office.

McCord, J. and Ensminger, M. (2001). 'Pathways from aggressive childhood to criminality.' Paper presented to the American Society of Criminology, Boston.

Moffit, J. (2006). Youth and crime: 2nd (Ed.). London: Sage Publication, Inc.

Morley, R. H. (2015). Self-compassion and criminality: The role of self-compassion in predicting criminal thinking and attitudes. *Aggression and Violent Behavior, 24*, 226–240.

Morley, R. H. (2018). The impact of mindfulness meditation and self-compassion on criminal impulsivity in a prisoner sample. *Journal of*

Police and Criminal Psychology, 33(2), 118–122.

NCH. (2008). Step inside our shoes*: Young people's views on gun and knife crime.* London: NCH.

Neff, K. 2003b. Self-compassion: An alternative conceptualization of a healthy attitude toward oneself. *Self and Identity, 2*, 85–101.

Neff, K. D. (2003). Self-compassion: An alternative conceptualization of a healthy attitude toward oneself. *Self and Identity, 2*(2), 85-101.

Neff, K. D., and Vonk, R. (2009). Self-compassion versus global self-esteem: Two different ways of relating to oneself. *Journal of Personality*, *77*(1), 23–50.

Nnachi, R. O. (2000). Achievement, Gender and Self-Concept as Correlates of secondary school students' career preference and attitude in science. Unpublished Ph.D. Thesis, Ahmadu Bello University, Zaria

Numbeo. (2025). Crime index by country 2025. Numbeo.
https://www.numbeo.com/crime/rankings_by_country.jsp?title=2025

Nwikpo M.N and Ofodueze O.A (2022). Prevalence, causes and consequences of premarital cohabitation and academic performance of undergraduates of Nnamdi Azikiwe University, Awka, *International Journal Of Management, Social Sciences, Peace And Conflict Studies* (ijmsspcs), vol.5 no.4 December, 2022; p.g. 45- 60; issn: 2682-6135

Odedokun, S.A (2022a). Psychosocial Factors as Predictors of Academic Behavioural Confidence among Pre-Medical Students of University of Ibadan. *European Scientific Journal* 18 No 31: 89-97

Odedokun, S.A. (2022b). The relationship between dysfunctional family, substance abuse emotional intelligence and recidivism among young adult inmates in Agodi Correctional Centre, Ibadan, Nigeria. *European Journal of Social Sciences Studies* 7 (5), 29 – 43

Oluwadare C. T. & Agboola, A. E. (2011). Gender Disparity in Criminal Behaviour in Ado-Ekiti, Ekiti State, Nigeria. *International Multidisciplinary Journalf, Ethiopia*; 5(5), 199-211

Omopo, O.E, & Odedokun, S.A (2024) Mind Over Smoke: Transformative Effects of Cognitive Reframing Therapy on Tobacco Smoking Dependency Behaviour among Male Inmates in Correctional Centres in Oyo State *NIU Journal of Social Sciences* 10 (2) 56-68

Rezapour-Mirsaleh, Y., Shafizadeh, R., Shomali, M., & Sedaghat, R. 2021. Effectiveness of Self-Compassion Intervention on Criminal Thinking in Male Prisoners. *International Journal of Offender Therapy and Comparative Criminology*, *65*(1), 100-116. https://doi.org/10.1177/0306624X20936192

Richardson, A and Budd, T. 2003 *Alcohol, crime and disorder: A study of young adults.* London: The Home Office (2007). SAPS. *Crime statistics 2006/2007*, SAPS, Pretoria.

Sutherland, E. H. (1939). *Principles of Criminology*. Philadelphia: Lippincott.

Sutherland, E. H. (1949). White collar crime. New York, NY: Holt, Rinehart, and Winston.

The Dalai Lama. (2001). An open heart: Practicing compassion in everyday life. Boston, MA: Little Brown and Company.

The Home Office, (2003). The Department of Health, the Department for Education and Skills and The Department for Culture, Media and Sport.

Un Habitat (2007), Global report on Human Settlements*; crime and violence at glance*: UN Habitat

United Nations Department of Economic and Social Affairs. (2020). *World youth report: Youth social entrepreneurship and the 2030 agenda*. United Nations. Retrieved from https://social.desa.un.org/publications/world-youth-report-2020

Utti, A. (2006). Relationship *between* parenting styles and students' academic achievement in secondary schools *in* Ethiope East L. G. A of Delta State. Unpublished M. Ed Thesis of Delta State University, Abraka.

Utting, D; Montiero, H and Ghate, D. (2006). *Interventions for children at risk of developing antisocial personality disorder: Report of the Department of Health and Prime Minister's Strategy Unit.* London: Policy Research Bureau.

Vold, G. B., Bernard, T. J., & Snipes, J. B. (2002). *Theoretical Criminology*. New York: Oxford University Press.

Wargo, E. (2007). Adolescents and risk: Helping young people make better choices. ACT for Youth Center of Excellence Research Facts and Findings./ www.actforyouth.net.

Woldgabreal, Y., Day, A., & Ward, T. 2014. The community-based supervision of offenders from a positive psychology perspective. *Aggression and Violent Behaviour*, *19*(1), 32–41.

Young, T; Fitzgerald, M; Hallsworth, S and Joseph, I. 2007. *Groups, gangs and weapons.* London: Youth Justice Board.

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Examination on Social Injustice in Contemporary Societies Amartya Sen's Approach

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Abstract. The article looks at Amartya Sen's perspective on the injustice problem as well as the idea of justice. To understand Sen's view of justice, one must consider his critique of Rawls' Theory of Justice. One could read Sen's Idea of Justice as both a critique of Rawls' theory of justice and a suggestion for a different approach. Sen's criticism of Rawls' theory of justice led to the development of his own view of justice. Furthermore, by examining and understanding Sen's notion of justice, Niti and Nyaya's human reasoning is able to differentiate between injustice and justice. Adam Smith proposes the unbiased observer as the moral criterion in the Theory of Moral Sentiments. This concept is used by Sen to the question of political fairness. Sen offers the Capability Model as a remedy for the equal justice problem in his works.

Keywords: Justice, Niti and Nyaya, Amartya Sen.

1. Introduction

Amartya Sen's contributions to welfare economics and social choice theory, as well as his concern in the issues facing the most impoverished sections of society, earned him the 1998 Nobel Prize in Economic Sciences. He applies comparative and evaluative approaches to justice. Sen adds to his earlier work on capabilities and tries to develop a broad theory of comparative justice in his book The Idea of Justice, which he dedicated to John Rawls. Sen first separates two schools of thinking that are connected to the concept of social justice in order to do this. The political climate in Europe and America changed as a result of the social and economic changes brought about by the European Enlightenment in the 18th and 19th centuries, and Sen claims that even though the topic of social justice has been debated for ages, the idea was greatly bolstered by these developments. Thus, there are two distinct approaches and two distinct paths in the line of thought on justice among the major thinkers.

2. Various Approaches on Justices

The justice approach, the first of these strategies, was first proposed by Thomas Hobbes in the 17th century and was later adopted by prominent philosophers of various schools, including Rousseau, Locke, Kant, and Rawls. The 'social contract' theory is a prevalent approach in contemporary political philosophy that emphasizes social justice mechanisms. This method is also referred to by Sen as the transcendental institutionalism method. Smith, Condorcet, Wollstonecraft, Bentham, Mill, and Marx all promoted various institutions that have an impact on justice. According to the comparative philosophy of justice, justice can be achieved by contrasting various lives under it (Sen, 2009:6-7). Instead of comparing justice and injustice in real communities, Sen implies that the

transcendental institutionalism approach seeks to define what is right and what perfect justice is, without specifically addressing real societies. Sen considers this aspect of the approach- which emphasizes the equitable arrangement of institutions rather than individuals and real societies- to be a contractual way of thought, claiming that it assumes a hypothetical social contract scenario. This social contract is obviously relevant given that it provides the perfect counterbalance to confusion and chaos. "The results of this approach lead to the development of theories of justice that focus on the transcendent identity of ideal institutions," Sen says, highlighting the arrangement-focused nature of the transcendental institutionalism approach (Sen, 2009:6). Sen notes that the other approach to justice, the comparative justice approach, is realization-focused. Comparative theorists attempt to rectify this by demonstrating the injustice in the world and that social realization (actual institutions, behaviors, and other effects on human life) claims that they concentrate on the outcomes. Rather than restricting their research to the transcendent analysis of an ideal society, these theorists have compared current or likely cultures and focused entirely on eliminating injustice worldwide (Sen, 2009:7).

As a key distinction between the arrangement-focused and realization-focused approaches to justice, the realization-oriented approach- that is, the comparative justice approach—focuses on people's real behavior rather than their compliance with ideal behavior. The realization-oriented approach asks "How can justice be developed?" in contrast to the regulation-oriented approach (transcendental institutionalism approach), which asks "How is a competent just institution?" The realization-oriented approach concentrates on the actual realization of justice in societies rather than merely on institutions and regulations; in other words, it emphasizes comparison rather than taking a transcendent path (Sen, 2009:7-9). Sen contends that transcendental institutionalism is the prevailing perspective on justice in contemporary political philosophy and cites John Rawls as an example of this perspective. According to Sen, the principles of justice may be seen in Rawls' Theory of Justice, where our relationship with perfectly just institutions is fully defined and specified, and the standards of proper action in the moral and political environment are illuminating. Sen contends that the transcendental institutionalism approach, which incorporates Rawls, has two issues with regard to justice. First, there can be an irrational consensus on what constitutes a just society, even in the face of rigorous standards of impartiality and open-minded examination (as in Rawls' initial view, for instance).

Sen declares that this is a transcending solution that has been agreed upon and that the viability of the result reached is the issue. The selection of the extremely unlikely ideal scenario from among potential options and the real selection requirements for a comparison framework of justice in the application of practical reason are two more of these issues. The repetition problem of research in terms of a transcendent answer is what Sen refers to as this (Sen, 2009:9). A fictitious state of equality (the initial position) is presumed to exist at the beginning of Rawls' theory of justice, as does the idea that individuals who are ignorant of themselves will all agree on one of the two principles of justice. Rawls, however, is unable to explain why other perspectives on justice were not selected. Sen, attempts to demonstrate with this approach to justice that Rawls' explanation of this concept of justice is incorrect. Sen contends that since Rawls developed his argument to highlight objectivity, various alternative viewpoints might readily reject it as unhelpful and unreliable. According to Sen, this blocks the fulcrum of Rawls' theory of justice. Sen is interested in ways to lessen unfairness, notwithstanding the fact that we all have diverse ideas about what a rationally consistent ideal system might look like.

In this regard, Sen views "the diversity of systems and lifestyles as things that signify human freedom, rather than as an error or mistake" (Sen, 2009:12). Sen contends that there can never be complete agreement on what constitutes a just world. There can be more than one competing cause for justice, all of which claim to be impartial. because Sen (2009:16) contends that "there are multiple systems of values and criteria to consider justice." The fundamental idea of Rawls' theory of justice is truth, according to Sen (2009:54), who also notes that "The principles of justice in Rawls' formulation determine the basic social institutions that regulate society."

When determining the principles of justice and impartiality in a hypothetical original circumstance, accuracy becomes necessary. Since the inception of political theory, "justice as truth has been central as a right" (Sen, 2009:55). The identification of suitable principles that dictate the consensus selection of just institutions required for a society's fundamental structure is one of the structural goals of righteousness practice. Accuracy and impartiality are integrated in Rawls to choose the right justice principles. This is where Sen situates Rawls alongside Kant.

According to Sen, "Those who defend a universal law, as Kant did, accept that the characteristics such as not being emotional and being objective are shared by most people" (Sen, 2009:57). Sen then discusses the

variety of conflicting objective principles and attempts to clarify this by using the example of three kids playing a flute (Sen, 2009:16): Our three children are named Anne, Bob, and Carla, and we own a flute. One of these three kids has to get this flute. Bob wants that flute because he doesn't have any toys, Carla says she made the flute herself, and Anne thinks she only deserves it because she can play it.

In the aforementioned example, Sen, highlights that every youngster has a unique motive for possessing the flute, making it extremely challenging to decide who should receive it. Sen claims that liberals, utilitarians, and proponents of economic equality will all have different opinions about who should be given the flute. Because Bob is the poorest, for instance, economic egalitarians will support him; liberals will want to give the flute to Carla because Carla made it; and utilitarians will support giving it to Mother because only Anne is proficient on the flute and she will enjoy playing it the most. For Rawls and his adherents, Sen contends, only one of these kids will be correct, and the choice will be made accordingly.

Rawls is part of the transcendental institutionalism perspective, which views justice as universal and necessary, applicable everywhere and at any time. Sen, who contends that this is impossible, highlights that according to Rawls' theory of justice, there is only one kind of just society, and that is described in terms of principles. That is, this ideal form of Rawls cannot account for tenable, rational responses to the plurality that exists in the modern world, and all other replies fall short. However, according to Sen, in the case of the three kids, we always violate at least one justice standard when we give the flute to one of them: Not giving the flute to Anne will result in human performance; not giving the flute to Bob will lead to the abolition of poverty; and not giving the flute to Carla would be incompatible with the right to enjoy the fruits of one's labor. Sen, notes that the aforementioned example makes it clear that there are valid reasons for each child to receive a flute. To put it another way, Sen contends that if we have to make a choice, we can only come up with three distinct answers for three distinct people. Sen contends that potential solutions are likewise illegitimate, emphasizing that it is extremely challenging to come to an agreement on the fundamentals of justice. Instead of talking about ideal solutions that might not work, the emphasis should be on selecting from among plausible alternatives. "If we try to choose between Picasso and Dali, we should not do it by referring to the diagnosis that Mona Lisa is the most ideal painting in the world," Sen (2009:16) tries to justify this decision.

Sen claimed that each of the three children's justifications in the "three children with a flute" scenario demonstrates non-arbitrary justifications and various forms of impartiality. Sen contends that no social institution, but only social negotiation, can bring about a peaceful resolution to such a dispute. In order to quantify justice, he highlights that this is achievable by eliminating standards that do not stem from common sense (Sen, 2009:14-15). As Sen notes, the flute example illustrates various basic concepts about what constitutes a just society that are examined independently and argued objectively.

As a result, it appears impossible to identify the institutions required for the fundamental framework of society and to define the fundamentals of justice. Sen claims that "it is very difficult to use the whole procedure/procedure of justice as the correctness developed by Rawls in his theory" (Sen, 2009:57) because of this. In his book Theory of Justice, Rawls makes the case that the development of justice principles will occur independently and that those who join together in the first place will not select other alternative beliefs about justice. Sen views Rawls' method as an attempt to arrive at a transcendent ideal. Sen, claims that although Rawls acknowledged later that it was difficult to get to a unanimous agreement on the one set of justice principles, this unsolvable issue had disastrous consequences for the notion of justice as truth. Sen, however, asserts that Rawls' theory "enriched political philosophy with its thoughts and played a great role in our understanding of various aspects of the idea of justice" (Sen, 2009: 58). However, Sen (2009:18) believes that "knowledge about the creation and regulation of institutions and rules cannot replace the importance of experiences and realizations in human life."

With regard to Sen, an achievement/skill-based conception of justice is closely tied to people's real lives, and such an approach to justice is necessary. Sen contends that regulations and institutions are undoubtedly crucial and have a significant impact on events and circumstances. The ability or inability to manage one's own life is not included in this organizational picture, therefore institutions and regulations only provide a portion of the real world. Therefore, Sen, finds himself closer to the justice tradition (comparative justice approach) to which intellectuals such as Adam Smith, Jeremy Bentham, John Stuart Mill, and Karl Marx belong. Sen believes that comparative theorists focus directly on social realization (the implications of actual institutions, conduct, and other factors) by plainly explaining the injustice in the world and seeking to correct injustice.

Sen claims that rather than creating an entirely unfair world, "these thinkers believed that injustices were correctable by gathering around the desire to eliminate injustice" (Sen, 2009:7).

Sen particularly supports and believes that Smith's Theory of Moral Sentiments is significant at this point. Sen supports the idea of an unbiased audience proposed by Smith in place of Rawls' veil of ignorance. For Sen, Rawls introduced objectivity into the discourse on justice by utilizing the idea of the veil of ignorance. Rawls contended that, presuming that individuals beneath the veil of ignorance were unaware of their position, they selected the principles of justice in a hypothetical, fictional scenario.

Smith, on the other hand, introduced the idea of a neutral audience, which he defined as an impartial observer who monitors, challenges, or influences an individual's moral behavior to some degree. The individual in society determines whether his moral behavior is right or wrong, just like he would if he were another person (impartial audience), and his action is shaped accordingly. The individual and the neutral audience are like two distinct selves and may not always be consistent with one another. Instead of being a part of one's character, the objective observer is a second self-established in one's mind. But it comes before one's character, and it influences and molds the other to some degree. Stated differently, Smith believes that both reason and emotion work together to influence our behavior or help us develop our character (Metin, 2010:68-69). Sen, makes reference to Smith's idea of an unbiased audience, which he proposed as a way to achieve objectivity in public discourse. Sen believes that the veil of ignorance in Rawls' original position is a less practical and straightforward application of Smith's idea of the neutral audience. Sen contends that an unbiased audience directs an outlook that acknowledges shortcomings and incompleteness, does not require a perfect, just world, and finds a reasonable and plausible conception of justice to be adequate. Sen contends that when we adopt such a viewpoint, we must rely on our ability to judge justice and keep it apart from our preferences and interests.

However, Sen (2009:20–21) uses two distinct terms from the Sanskrit literature on ethics and legal doctrine in the ancient Indian legal system as a helpful example to help readers better grasp the differences between the realization-oriented approach to justice and the regulation-oriented approach. Nyaya and Niti are two distinct ideas that are used in traditional Sanskrit literature in place of or in place of justice. Despite their differences, these ideas are connected.

3. Sen's Conception of Niti and Nyaya

Niti is a notion that emphasizes rules and institutions and relates to behavioral correctness and organizational relevance. Sen argues that Niti therefore takes the place of the notion of a society that is perfectly fair and that, in the contemporary world, it aligns with the transcendental institutionalism approach that seeks to address the issue, "What do competent just institutions look like?" On the other hand, Nyaya's concept is about breaking through. Nyaya is, in other words, a comprehensive plan or vision of justice that is accomplished. The more realistic and holistic concept of justice is represented by Nyaya, which focuses on specific outcomes, whereas Niti is the procedural sense of justice and the tool of codification. In addition, Nyaya in particular provides practical life guidance to individuals. Nonetheless, both Niti and Nyaya hope for the formation of fair, comprehensible fairness. According to Sen, when justice is viewed from Nyaya's broader and more inclusive perspective, institutions, laws, and organizations play essential roles, but they are inextricably tied to the real world.

In this regard, he asserts that the realization-oriented comparative justice approach is compatible with the Nyaya notion. Nyaya's approach to justice centers on the topic of "how justice can be developed," rather than "how perfect just institutions look." Sen (2009:21). The ancient Indian tradition emphasizes that justice is viewed as Nyaya rather than Niti. According to Sen (2009:411), "the difference between transcendental institutionalism and social realization approaches regarding justice to the difference that exists between Niti and Nyaya".

According to Sen, the lawmakers of ancient India also engaged in a debate known as matsyanyaya. In accordance to this discourse, "the big fish can freely swallow the small fish, which is justice in the world of fish." Sen maintains that we must take into account this degrading discourse—referred to by lawmakers as matsyanyaya—for a particular purpose. Since "justice in the fish world" shouldn't be permitted to infiltrate the human world, justice's primary function should be to prevent matsyanyaya. Sen contends that the accomplishment of justice through Nyaya consciousness and society's self-reasoning are more important in this case than evaluating institutions and regulations. In order to avoid the Matsyanyaya example mentioned above, Sen affirms that transcendental ideas for the development of capable just societies or social arrangements do not result in a solution. "The realization-oriented approach makes it

easier for us to understand the importance of preventing sharp injustices seen in the example of matsyanyaya and to prevent or correct the injustices that exist in the actual world," according to Sen (Sen, 2009:21). Sen uses the uprisings to end slavery in the 18th and 19th centuries as an example in this regard. It is not required to look for agreement on what constitutes a just society in order to abolish slavery; rather, slavery was abolished by a majority vote, according to Sen, who claims that Adam Smith, Condorcet, and Mary Wollstonecraft are among those who underline that a society with slaves is unjust. Slavery was abolished as a result of the American Civil War.

Sen highlights that the "great strike launched for justice in America, the enhancement of justice through the abolition of slavery, cannot be shown within the transcendental institutionalism approach, but within the social realization approach (comparative justice approach or realization-oriented approach)" (Sen, 2009:22). Sen argues that a correct comprehension of social realization, or the Nyaya-based perspective on justice, "contains a comprehensive, broad explanation (including process) of the events and situations that occur through the right processes" (Sen, 2009: 24). However, Sen's conception of justice places a high value on the global aspect of justice. Sen (2009:24) contends that "the restrictive/limiting perspective of the dominant view of transcendental institutionalism in political philosophy emphasizes that it will not be possible to realize global justice from this perspective." A transcendent and unresolved assertion, according to Sen, is that a competent global justice may be established by creating perfectly just institutions. This claim is made within the framework of the regulation-oriented (transcendental institutionalism) justice approach cannot satisfy the needs of a just world at the global level in our day and age. In fact, a thorough clustering of institutions is necessary to apply the Rawlsian approach to the theory of justice in order to identify the fundamental components of a just society.

Rawls does not resort to imaginative explanations or compromise his principles of justice when considering how to think about global justice. Rawls's later work, The Law of Peoples, aims to illustrate how this will occur between nations while pursuing demands for justice as truth. Sen asserts that "this addition, which includes the resolution of the fundamental problems of humanity through negotiations between the delegates of different countries, remains very weak and qualifies justice in a very limited way" (Sen, 2009:26).“What is the international reform we need to create a less unjust world?” Sen wonders. Sen poses the query (2009:25). Sen highlights that the interests of underprivileged and oppressed nations should also be adequately taken into account in order to benefit from economic connections, technological advancements, and the advantages of political opportunities. Sen views widespread global inequality and poverty as a fundamental issue at the core of globalization, and he calls for the enormous benefits of globalization to be shared more fairly. "The impoverished should have a better and fairer arrangement with less economic, social, and political inequalities of opportunity," says Sen (2010:156).

The benefits that the domestic and international reorganizations will offer should be discussed. At this point, Sen may benefit greatly from the implementation or bolstering of social security laws as well as other beneficial public initiatives. Sen argues that while disagreements on other issues continue, achieving global justice for a competent just society may lead to consensus through public debate. Sen stresses that in order to reduce injustice and address current injustices, the institutional framework of the modern world needs to be changed. Sen observes, for instance, that the medications required by underprivileged AIDS patients may be manufactured more readily, marketed for less, and obtained more readily from the market. The reformation of the rules pertaining to this is a straightforward issue that has some ramifications for global justice. In contrast, Hobbes highlighted the 'evil, wild, and short' nature of people's life in his 1651 book Leviathan, which can be considered a model work. "This Hobbesian conclusion regrettably still constitutes a good starting point for today's theories of justice," according to Sen (2009:412).

Despite tremendous material advancement, Sen contends that far too many people worldwide still live with these awful characteristics. Sen's methodology focuses on the lives and abilities of individuals, as well as their oppression, pain, and deprivation. According to Sen, various theories of justice share some presumptions about the nature of human existence, such as degrading and embarrassing others, causing them pain, being harsh, lacking empathy, arguing, disagreeing, etc. Sen stated that the prevalence of these characteristics in human existence does not dictate a certain theory of justice, but rather that, despite our diverse lifestyles, we should strive for fairness generally and eradicate injustice from human society.

Sen affirms in his argument that he emphasizes human capability and ability a lot and compares it to other conceptions of justice. Sen believes that some people and societies shouldn't be destined to live solitary lives

because they lack basic human characteristics like communication, empathy, empathizing with others, reconciliation, and cooperation. Regarding the quality of human life, Sen believes that avoiding solitude is crucial. Hobbes highlights the hardship of solitude by highlighting the 'bad, wild, and short' nature of people's lives in Leviathan, according to Sen. To put it another way, Sen's observations about the predicament of the isolated people and the challenges of loneliness that Hobbes highlights are same in this instance (Sen, 2009:415). Sen, claims that in a world that is already terrible, we are subjected to a number of problems, like as oppression and starvation, and to make matters worse, we constantly quarrel with one another yet are unable to connect with one another. At this point, Sen, stresses public reason and advocates for the replication of genuine democratic possibilities and discussion places. In the final section of The Thought of Justice, Sen discusses the real-world issues of the past 25 years and makes the case that justice ought to be global in scope today. Sen calls us to a non-local, neutral mind rather than putting forward an ideal of justice in Rawls' manner. You examine things from the perspective of Smith's unbiased audience, highlighting the necessity to examine our inclinations, habits, and preferences while avoiding the assumption that there is just one possible approach (Sen, 2009:394-396). Sen calls for us to rely on public reason that is not tied to any particular ideal in order to achieve justice. He says that in order to assess the far-reaching effects of social arrangements without compulsively adhering to formal and procedural rules, we must compare the effects of specific policies that were implemented in the name of impartiality and integrity. (Sen, 2009: 408–409).

Sen concludes by saying that the transcendental institutionalism approach is the dominant paradigm of justice today. Despite being supported as well-meaning rhetoric, many issues pertaining to justice are disregarded. The restrictive/limiting transcendental institutionalism approach that predominates in the philosophy of justice needs to be abandoned, according to Sen. Sen, 2009:26–27. Nyaya and Niti are both translated as "justice," yet he forces us to choose Nyaya over Niti and Smith over Kant. Sen contends that this kind of public reason ought to govern some societies' areas of action on a worldwide scale without reducing their degree of liberty. Sen believes that at this juncture, having the viewpoint of an unbiased audience is essential for nations, particularly wealthy and strong ones. Sen holds that wealthy and influential nations ought to consider the interests of the weak and impoverished and compare their lives with those of others who are living in extreme poverty, oppression, persecution, and starvation (Sen, 2009: 403-407). Sen asserts that by making an effort to understand the viewpoints of those around us, we may also consider their interests and develop a sense of solidarity with them. According to Sen, "we can start by trying to be a global impartial audience in our own lives and work," even if he acknowledges that this is by no means a simple task (Brown, 2010:11).

Instead of presenting the illusory goal of defining a just society universally, it offers a pluralistic perspective on justice by demonstrating sensitivity to behavioral contexts and practical reason. This is because it aims to establish a human-centered justice paradigm that transforms an obsessive commitment to the justice approach focused on regulating the structures of institutions and rules.

4. An Examination of Amartya Sen's Justice Philosophy

The ideas of individualism and freedom were positioned with liberalism as the foundation of justice theories. Freedom and the individual are valued and elevated in liberalism. A person who possesses the fundamental rights of life, liberty, and property and whose purpose is within himself is considered an individual. The state must take into account each of these rights when making legal arrangements. The justice system's goal is to safeguard each person's legal rights. The only responsibility of the state is to administer justice while respecting each person's freedom and rights. There is no way for the state to interfere with an individual's freedom and rights. Justice is the defense of rights in any way, and the state is the state of law. In the majority of circumstances, justice has also been regarded as freedom since liberal theory guarantees freedom in the exercise of rights. However, it is unclear at this time if freedom is a goal or a means. Because freedom in this situation is both a goal to be achieved and a way to achieve the goal. The significance of the idea of the right to justice in liberalism is readily grasped if freedom is regarded as a right in and of itself. Freedom is a prerequisite for exercising rights. According to his rights, a person can be free. There is no freedom to vote, for instance, if a person is not allowed to do so. In a sense, granting freedoms also entails ensuring rights. Because human rights and liberties are inextricably linked (Gündoğan, 2003:2-3). Amartya Sen, a professor of philosophy and economics, has a capacity method that illustrates this internal connection between freedoms and human rights. Capability, according to Sen (2004a:108), refers to "different combinations of functions that a person can achieve."

Sen proposes that unequal financial distribution frequently results in a far smaller distribution of rights

and capacities. Inequality is socially reproduced because of the original unequal distribution of capacities. However, in the context of social policy, the endowment of access to rights really means that measures to redistribute skills are required. Sen supports that, in order to lessen inequality, it is necessary to redistribute capacities rather than just national income. Sen argues, for instance, that poverty is not just a lack of money but also a lack of rights and the ability to take advantage of life's chances.

On the one hand, poverty stems from the lack of rights like the right to education, the right to health, the right to access culture and other collective services, civil and political rights, and most importantly, the right to participate in public decisions. These rights are just as important as the right to cash income because they increase one's capacity for decision-making. However, they are tangible representations of both poverty and insufficient income. According to Sen, these rights define individual freedoms and constitute a whole along with the right to monetary earning (İnsel, 2000:18–19).

5. The Capability Approach of Amartya Sen

Amartya Sen and Martha Nussbaum provided the groundwork for the capabilities approach, which was organized in the late 1980s under the auspices of the United Nations Development Program (UNDP) (Tilak, 2002:192). Sen and Mahbub ul Haq developed the Human Development Index (HDI) in 1989. Unlike previous development indices, the HDI considered capabilities such basic health and education. The construction of the index and the identification of the significance of some unrealized liberties have both profited considerably from the previously described "feminist economics" (Sen, 2004b:80).

According to Tilak (2002), Sen "created the human development approach in 1999 and presented it as a capability approach." Human wellbeing is tackled from several angles in Sen's capability approach, "which is the most serious criticism developed against utilitarian liberal justice theories" (Seker, 2009:260). This method exhibits an interdisciplinary aspect. This method was applied in empirical research and served as a theoretical foundation for the human development paradigm. "The capability approach addressed the question of 'what is equality?' in liberal political philosophy and concentrated on what people can do and become effectively, rather than their happiness or income and expenditures" (Nussbaum, 2005:168; Robyns, 2005:93). The capacity approach suggests a development strategy that is viewed as a process of extending people's fundamental liberties, in contrast to conventional money or benefit-based methods. It is believed that the primary goal and instrument of growth are the increase of freedoms. According to Sen, these are the fundamental and crucial roles that freedom plays in development, respectively. The essential human liberties and the foundational function of freedom It's about making your life better.

Basic abilities like the freedom to escape starvation, malnourishment, avoidable illnesses, and early death are examples of fundamental freedoms. Other freedoms include the ability to practice calculus and reading, to participate in politics, and to express oneself freely. Contrarily, instrumental freedoms focus on how various rights, chances, and privileges enhance an individual's overall ability to live a more liberated life. For instance, the general ability required for an individual to live more freely tends to be influenced by instrumental freedoms including political freedom, economic opportunity, social opportunity, transparency guarantees, and protective security (Sen, 2004a:57-58).

The importance of values like rights and freedoms in human welfare was neglected by benefit and income approaches, which prioritized other development standards" (Sen, 2000:19). Though it rejects seeing them as a goal, this method, which offers a more comprehensive view of human progress, acknowledges the instrumental significance of rising national and individual incomes in extending liberties. The freedom to live and grow into their potential should also be granted to individuals. According to the capacity approach, people's competences are used to construct the goals of justice, development, and human welfare. According to Sen, individual liberties are the fundamental components of the capacity approach. The idea here is that "individuals can choose the lifestyles that they value" (Sen, 2004a:101). What you value in this situation is freedom itself, not the results of freedom. Expanding people's ability to live the lifestyles they value is of interest to Sen. The term "capacity" refers to the many combinations of functions that an individual may do (Sen, 2004a:108). Therefore, what counts in this situation is the ability to act, which is what represents the different things one may choose to be or accomplish.

Sen emphasizes the idea of capability and action capacity, arguing that the former is a necessary flexibility (the ability to adopt different lifestyles) in order to arrive at different combinations of action capacity. Alayrak (2003) states that "capability is the capacity to use the goods and services owned or achieved and to benefit from and reach individual-social rights."

In this instance, capacity manifests as the liberties that allow a person to achieve the lifestyle they choose. In other words, capacity indicates the freedom of the individual to make decisions in life and is the absolute requirement for a person to be a real individual living in society. Sen therefore views a lack of capability as being far more significant than a shortage of revenue.

Sen differentiates between two forms of poverty—income poverty and capacity/sufficiency poverty—in contrast to the traditional definition of poverty, which explains poverty solely in terms of income poverty. According to Sen, a nation's growing supply of goods and services undoubtedly helps to prevent poverty and uphold the rule of law, but these factors by themselves cannot raise people's standard of living. Additionally, people should be able to do more. growing talents is more important to Sen than growing income and products since he views true poverty as a condition in which one is devoid of fundamental abilities. Because, in Sen's words, "income is only instrumentally important; however, the lack of capacity is a problem related to the existence of man, his field of existence" (Sen, 2004a:131). Therefore, in accordance with Sen, a person's methods of achieving another goal—increasing his capacities—are more important than his money or fortune. For instance, receiving primary health care and basic education will both enhance the person's quality of life and immediately aid in his emancipation by raising his earning potential. Sen believes that a nation should prioritize improving general health care and basic education before implementing any other policies. Sen contends that extreme poverty and injustice won't exist in nations that are able to completely achieve these aims.

It is evident that, in contrast to conventional economic theory, Sen has a multifaceted view of poverty. According to conventional economic theory, unemployment and government interference in free markets exacerbate poverty, whereas economic development and higher worker productivity can alleviate poverty. According to conventional economic theory, maximizing utility and producing more commodities efficiently are crucial. However, the "capability approach is a universal approach, every thought, every individual, and everything that is considered as a goal is important" (Nussbaum, 2000: 241). "There is a very close relationship between human rights and human competencies" is also stressed (Nussbaum, 2000:243, 2005:184; Osmani, 2005:206; Sen, 2005a:163, 2005b:8).

Osmani (2005:206) considers the capacity approach as a "bridge connecting human rights and poverty" when examining poverty and human rights from this angle. Since "rights are moral reasons based on a moral basis and they should be handled without prejudice and impartially," morality should be utilized while describing human rights (Sen, 2005a: 153; Sen, 2005b:8). "Human rights and human competencies should be considered together," according to the capability approach, which views all rights and competencies as a basic matter of justice (Nussbaum, 2000:244, 2005:184; Sen, 2005a:153). It is easier to comprehend each scenario when these factors are taken into account. Given the inextricable link between freedoms and rights, some liberties ought to be regarded as rights. Sen (2005a:185) states that "fundamental freedoms need to be protected, integrated, and expanded." According to Sen (2004a:56), fundamental freedoms include "basic capabilities to avoid hunger, malnutrition, preventable diseases, and premature death, to receive education, to benefit from political participation and free expression." The capacity method, however, also highlights how women's capabilities are viewed as inferior to men's in historically sexist society.

The aforementioned perspective, which views women's rights as human rights, contends that women's uneven social and political circumstances give them unequal human competences and capacities (Nussbaum, 2000:240, 2005:183). Sen has used the term of "missing women" to refer to women who, in most areas of the world, receive less assistance in doing the necessities of life. "In reality, the'missing women' are second-class citizens, despite their theoretical equality" (Nussbaum, 2000:241). According to Mary Wollstonecraft, the world is a huge prison that restricts women's ability to be creative. Sen claims that "the description of Wollstonecraft, who lived and started the defense of human rights, is still valid today, two and a half centuries ago" (Sen, 2005b:3). Sen noted in his study on gender that women face discrimination and therefore disadvantage in every sphere of social life. This circumstance is "not acceptable in terms of universal norms of equality and freedom, and needs to be reconsidered in terms of the distribution of opportunities and resources," claims Nussbaum (2000:242).

More resources must be made available to people or organizations dealing with these issues. When it comes to raising consciousness and offering alternatives, education is the most crucial factor in resolving these issues (Nussbaum, 2005:184). According to the capacity perspective, rights are viewed as an extension of human freedom, and education is regarded as a basic human right regardless of its economic significance. "A wider educational

perspective that emphasizes people's capacity to select the lives they value is highlighted by the idea that education is a right" (Sen, 1997:1959).

Capacity and education are interdependent. Capacity describes the range of possible combinations that an individual is likely to select. The freedom that enables an individual to choose their own way of living is thus the emphasis of "capability thinking" (Saito, 2003:20). Accordingly, "people are deprived of their freedom when they are unable to obtain an education or have poor educational attainment" (Costantini & Monni, 2005:335). "Education enhances an individual's inner peace, self-confidence, employment opportunities, and the capacity to take various beneficial actions" (Alkire, 2005:129). Human skills are expanded through education, according to the capacity perspective. People become more liberated when they acquire values and develop their abilities via education. It is believed that education increases personal liberties. Whether or whether individual freedom of action is curtailed, this perspective, which views individual liberties as the fundamental building blocks, views education as a virtue. The capacity approach views education as an aim in and of itself, whereas other development models view it as a tool to boost profits.

The capacity approach holds that poverty is both a result of and a cause of a lack of education. As previously stated, it distinguishes between two forms of poverty: capacity/adequacy poverty and income poverty. It does not only explain poverty in terms of income. Sen claims that capacity/competence poverty is the true definition of poverty, stating that it is "the state of being deprived of certain rights, opportunities, and options" (Sen, 2004a:101). As previously observed, Sen's method in contemporary economic theory represents a fresh start in the fight against the insistence that all preferences and tangible wants are only particular manifestations of a universal and abstract need notion like utility. Using the conventional instruments of economic theory, Sen, however, defined utility as an individual's capacity for action rather than wellbeing. This concept eliminates the necessity of interpreting utility as contentment or the fulfillment of wishes. The ideas of choice and freedom are manifestations of utility, which is the potential of an individual to act. Sen's theory of freedom, in other words, contends that utility represents an individual's capacity to act rather than the outcome, in contrast to the welfare theory, which is predicated on the utility-happiness pair. Choice and freedom are two ideas that are essential to ethics. Freedom is the expansion of one's options for achieving a desired lifestyle, and this assessment is made for a number of reasons. Here, freedom is the primary objective of growth. Sen's approach is based on the fundamental tenet that freedom itself, rather than the results of freedom, better reflects the value to the person.

In your opinion, freedom is significant not just because it enables you to pursue certain goals but also for its inherent significance, which transcends the worth of the condition attained. Thus, freedom requires more than just material wealth, income, and formal privileges; it also requires the ability to take advantage of and expand upon chances for fundamental human action. The complement of freedom is the power to choose and carry out decisions. Achieving a position of choice involves more than just maximizing personal benefit (İnsel, 2000:15–17).

Thus, the fundamental tenet of the capacity approach is that the human, who is the decision unit (agency) as an individual with identity, is the decision unit instead of the "self-interested" type of person caused by utilitarianism, which is one of the strong currents of the Enlightenment philosophy. With this broad perspective that he brought to the definition of economic human (homo economicus), he "advocated that welfare economics should be methodologically addressed within a broader set of variables (such as famine, hunger, injustice, income distribution, malnutrition, and gender discrimination)" (Seker, 2009:275). Sen's capacity approach, which acknowledges the development of human potential as a fundamental tenet, incorporates "many basic variables pushed out of welfare economics, without compromising scientificity and measurability, are theoretical researches." As opposed to positivist and unethical economics methodology, which excludes such evaluative approaches because they are not measurable variables with the concern of being scientific (Seker, 2009:270).

6. Conclusion

Through the process of realization, Sen's conceptions of Niti and Nyaya have the power to eradicate social injustice and establish justice. Sen argues that the Niti is a concept of a just world, a tool for codification, and a procedural sense of justice. Nyaya is a complete plan or vision for justice that is accomplished. It concentrates attention on specific outcomes and embodies the practical and comprehensive concept of justice. Nyaya's primary goal is to prevent matsanyaya, or the unfair practice of huge fish consuming little fish. 'Justice in the fish world' should not be permitted to infiltrate the human world; its primary function should be to prevent matsyanyaya.

Sen, fundamental acceptance is based on society's self-reasoning and the accomplishment of justice with Nyaya awareness rather than on evaluating institutions and regulations. To do this, he stresses public reason through human reason by distinguishing between fairness and injustice through a realization process, and he advocates for the replication of genuine democratic possibilities and debate places. Social injustice will be eliminated, and a system of justice and equality will be established.

References

Alkire, S. (2005). Why The Capabilities Approach? *Journal of Human Development,* 6, 115-133.

Costantini, V.,& Monni, S. (2005). Sustainable Human Development for European Countries. *Journal of Human Development*, 6, 329-351.

Gundogan, A. O. (2003). Right and Justice. http://www.aliosmangundogan.com/PDF/Bildiri/Ali-Osman-Gundogan-Hakve Adalet

İnsel, A. (2000). Ethics of Freedom versus Economic Theory: Amartya Sen's teaching on Ethical Economics. *Journal of Society and Science*, 86, 7-21.

Nussbaum, M. C. (2000). Women's Capabilities and Social Justice. *Journal of Human Development*, 1, 219-247.

Nussbaum, M. C. (2005). Women's bodies: Violence, Security, Capabilities. *Journal of Human Development,* 6, 167-183.

Osmani, S. R. (2005). Poverty and human rights: Building on the Capability Approach. *Journal of Human Development*, 6, 205-219.

Saito, M. (2003). Amartya Sen's capability approach to education: A critical exploration. *Journal of Philosophy of Education,* 37, 17-33.

Seker, F. (2009). The capacity approach of Amartya Sen. *Journal of Erciyes University Faculty of Economics and Administrative Sciences*, 32, 259-280.

Sen, A. (1997). Editorial: Human capital and human capability. World Development, 25, 1959-1961.

_____(2000). A decade of human development. *Journal of Human Development, 1, 17-23.*

_____*(2004a). Development with freedom. (*Trans. Yavuz Alogan) Istanbul: Ayrıntı Publications.

_____(2004b). *Dialogue capabilities, lists, and public reason: Continuing the conversation. Feminist Economic*s, 1, 77-80.

_____(2005a). Human Rights and Capabilities. *Journal of Human Development*, 6, 151-166.

_____(2005b). *Mary, Mary, quite the contrary! Feminist Economics,*11, 1-9.

_____(2009). *The Idea of Justice.* The Belknap Press of Harvard University Press.

_____(2010). *Identity and Violence*. (Trans. Ahmet Kardam) Istanbul: Optimist Publications. Tilak, J.B, (2002). Education and Poverty. *Journal of Human Development*, 3, 191-207.

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Restructuring of the Nigerian State: A Veritable Tool for National Development

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Abstract. There are a variety of different states, cultures, and religions in Nigeria, and they have suffered from political instability, economic stagnation, and social disintegration. The reason for these problems is generally associated with the current structural framework, which many scholars and policymakers think is not sufficient to meet the peculiar nuances of the Nigerian nation. For example, the research is looking at the restructuring of the Nigerian state as an achievable viable pathway to the sustainable national development goal. Inevitably, however, the present model of centralized governance can never meet these objectives; it continues to favor an unequal distribution of resources, marginalization, agitation for self-determination, and all forms of agitation by various groups. It seeks to examine the nature of restructuring-the decentralization of power, equity in resource distribution, and greater autonomy for subnational units- aimed at redressing such issues and promoting national unity, economic growth, and development. Thus, a mixed-method approach combining qualitative and quantitative data shall be used, wherein qualitative analyses of historical and legal frameworks would be used alongside surveys and economic dividends to measure the impact of any proposed restructuring models. The results imply that a restructured Nigerian state could douse socio-political grievances, increase efficiency in governance, and ensure inclusive development through empowerment of local governments and accountability mechanisms. Restructuring is thus mandatory for Nigeria's transition: it calls for constitutional reforms, active involvement of all stakeholders, and provisions for ensuring fairness and justice. By so doing, Nigeria will strengthen its weaknesses and, as summed up in the able provisions of the Constitution, duly harness its diversity as a strength to achieve its developmental aspirations.

Keywords: Restructuring, Nigerian State, Tool, Development

1. Introduction

Since Independence till date, Nigeria has been facing a lot of developmental challenges and system restructuring; which may be social, cultural, political, economic, religious, educational and environmental (Abiola, 2006). However, it appears that despite the legal frame works that were put in place for National development, there is no light at the tunnel yet (Aidonojie et al., 2024; Mukhlis et al., 2023). The reason is simple: The legal frameworks or the processes of establishing those relevant laws to build stable and prosperous nation or promote justice and human rights have never been autochthonous (Aidonojie and Egielewa, 2020). Hence, there is no way the Nigerian State will develop successfully or address her various developmental challenges without true restructuring or a restructuring that is autochthonous (Garbner, 2990).

In the course of this discussion, we shall make a case for restructuring which is truly autochthonous as a veritable tool for National Development (Imoisi and Aidonojie, 2023; Edetalehn and Aidonojie, 2023; Gunawan et al., 2023). The reason is that, any country that does not restructure her legal system through the free will and involvement of her citizens without any external influence or interest may remain underdeveloped (Aliyu, 22014). In fact (Elias, 1977), it will be very difficult for such country to build a stable and prosperous nation, ensure high quality of life for her citizens, encourage economic growth and promote social justice and human rights (Aidonojie et al., 2022; Imoisi et al., 2023; Egielewa and Aidonojie, 2021).

Clearly, the Nigerian State has been undergoing various reforms or restructuring beginning from the policies of Sir Fredrick Lugard after the amalgamation of the Northern and Southern Protectorates till date (Agekanle, 2018). In May 1967, for instance, General Yakubu Gowon restructured the regional political structures of the Nigerian States to twelve (12) States. Currently, the 1999 Constitution recognizes the existence of thirty six (36) States and the Federal Capital Territory, Abuja (Aidonojie et al., 2024; Mutawalli et al., 2024). Notwithstanding the foregoing and other adjustment made on legal frame works for socio- political and economic developments in Nigeria, the clamour for more States or return to the old regional system of government or a combination of both still persist (Agekanle, 2018). The reason once again is that what the Nigerian State needs is a restructuring that is truly autochthonous and not one coerced on th people by force or made to please certain parts of the Federating units (Aidonojie et al., 2023; Aidonojie and Francis, 2022). Restructuring must be home grown and without any external influence to be a veritable tool for National Development (Emordi, 2007). So, until the process is made home grown without any external influence the restructuring will not give the desired effects in Nigeria.

2. Definition of Terms

2.1 Restructuring

According to the Black's Law Dictionary, "Restructuring is the act of re-organizing a business or corporation, typically to reduce debt, cut cost and increase efficiency, often through downsizing refinancing or divestiture of assets or subsidiaries (Aidonojie et al., 2024; Mukhlis et al., Mukhlis et al., 2024). In bankruptcy law, restructuring refers to the process of reorganizing debtors' financial affairs to enable it to pay off debts and continue operating" Restructuring is also defined as a fundamental and sometimes drastic change that will alter the organization or structure of a company (Aliyu, 22014). In fact, it is a change that will alter the existing relationships of established structures within a defined territory or geopolitical entity (Agekanle, 2018). Restructuring amounts to increasing or decreasing the number of component parts that make up a system and re-defining the interrelationship between them in such a way that the entire system performs more efficiently (Haruna et al., 2024; Aidonojie et al., 2024; Safi et al., 2024).

2.2 Nigerian State

This presupposes the one indivisible and indissoluble sovereign state known as Federal Republic of Nigeria[2]. Section (1) (2) (2) of the 1999 Constitution provides that Nigeria shall be a Federation consisting of States and a Federal Capital Territory. It is a State of people with different ethnic and cultural backgrounds forced to live together by the colonial masters and their successors in rulership (Agekanle, 2018). Currently the Nigerian State is made up of thirty six States (36) and the Federal Capital Territory, Abuja (Garbner, 2990). In a lay man's language, a tool is an instrument or implement for work. It is also a devise used to perform some task or function (Aidonojie et al., 2024; Zaman et al., 2024; Muwaffiq). It can be a physical object, programme, method or technique used to accomplish something.

2.3 Development

Development, in the context of this discussion, is the process of improving the economic, social and political wellbeing of a person or a nation. It involves the advancement of a country's standard of living (Agekanle, 2018), quality of life and economic prosperity as well as the promotion of social justice, equality and human rights

3. Restructuring of the Nigerian State

Clearly, restructuring of the Nigerian State means different things to different people at different times and at different places. It is akin to the story of the five blind men who attempted to describe an elephant (Agekanle, 2018). So, the blind men had to describe the elephant by what they felt by touching the elephant.

The first blind man touched the leg, the second -the tail, the third -the trunk, the fourth -the ear and the fifth- the side/body. So, when asked differently how the elephant looked like, one replied: it looked like a pillar, another replied confidently that it looked like a rope, another said it looked like thick branch of a tree, and yet another said it looked like a big hand fan and the last said that it looked like a huge wall (Agekanle, 2018).

This story mirrors the concept of restructuring the Nigerian State. To the understanding of an average Nigerian "Restructuring" is about creation of more or equal number of States in Nigeria. To the politicians is all about resource control; and to the economists it is all about revenue allocation and diversification of the economy; and to the lawyers it is all about dismantling

the existing legal frame works by Constitutional means and to others, it is about rebranding and re-orientation on the national ethics and philosophy.

Restructuring of the Nigerian States for development is more than mere creation of new states. It includes a total over haul of the entire socio economic and political apparatus or machineries of the state at all levels of government. It includes a re-arrangement of the powers of the Federal Government and the States Government under the 1999 Constitution (Aidonojie et al., 2024; Budiyanto et al., 2024). Restructuring is aimed at addressing the imbalance in the Nigerian political structure or the rights and interests of the minorities particularly the oil producing states. It is geared towards economic emancipation by diversification of the Nigerian economy and total movement from a consumption State to a producing State to ensure the greatest happiness of the greatest number of citizens (Agekanle, 2018). Restructuring is about providing more equitable formular for resource control, revenue allocation, re definition of the powers of the National Assembly and the State House of Assembly under the Exclusive list and the Concurrent List. It is about the control of certain Federal or State executive bodies under the Constitution. In deed it is akin to the concept of rebranding. S.E Edeko (2009) in his book: Introduction to the study of the law of rebranding Nigeria[6]" affirmed the statement of Sunday Dare thus: "Re branding is designed to get everyone actively engaged in cause-based advocacy through entirely peaceful and constitutional means; to jettison blind support for a person or a leader or even a political party and fight for a just cause (Agekanle, 2018). A cause not linked to any particular ethnicity or class or special privileges but for the supremacy of the Constitution, our fundamental rights and rule of law..." So, whatever restructuring may mean to the people of Nigeria, I suggest at all times and places: Let there be restructuring of the socio-political, economic and legal frameworks of governance by a pragmatic approach or model (Garbner, 2990). Let the restructuring also be autochthonous.

3.1 Models for Restructuring

According to Prof. Akin Oyebode (2021), there are two basic models for restructuring the Nigeria State: The Conservative model and the Radical Model. The conservative model aims at maintaining the status quo by simply asking the federal government to shed off some of its exclusive powers as provided in Part 1 of the second schedule of the Constitution, while the radical model calls for a fundamental devolution of powers to the states as federating units and leaving the federal government with few exclusive powers over external relations, Currency and matters of National defence and Security (Edeko and Emordi, 2004).

Permit me at this juncture to respectfully add another model which is the pragmatic model. Under the pragmatic model, both conservative and radical approach are employed at the same time. Here, the balance is maintained between conservative and radical approach in order to achieve a uniform and equal development for the entire Nigerian States. Pragmatic model of restructuring is an outgrowth of functional school of law or thought which is founded on pragmatism (Edeko and Emordi, 2004). It is a restructuring tailored after the minds of the Nigerian people and as founded in the wordings of the new National Anthem 'Nigeria we hail thee.'

The Pragmatic model of restructuring is autochthonous[8]. It is home grown, practical and effective as the active participation of the Nigerian people and the Federating States are of paramount consideration (Edeko and Emordi, 2004). It entails a gradual implementation process which involves constitutional amendments, legislative reforms, and administrative changes. It also proposes the establishment of an implementation committee to oversee the process and ensure that the reforms are implemented in a manner that is consistent with the principles of true federalism.

3.2 Matters for Restructuring in the Nigerian States for National Development

Clearly, there are so many aspects of the Nigerian institutions and structures that needs restructuring. These are already articulated in some reports such as the APC Committee on True Federalism and 2014 National Conference. Autochthonous means a system of government or a process that is indigenous to the people or rooted in their native soil. It is indigenous in the sense that it is unique and peculiar system to the people and by the people. The National Conference was held from March 17 to August 21, 2014 to address the country's socio-political and economic challenges. The report is a product of deliberations and consensus reached by the 492 delegates who represented various stakeholders from across the country (Emordi, 2007).

According to the APC Committee report, a fiscal federalism that allocates more resources to states and local governments, while reducing the federal government's dominance in revenue allocation was recommended as a way to address the economic issues of resource control and revenue allocation.

The Committee also recommended that the Nigerian States should have greater control over natural resources within their territories, while the federal government plays a regulatory role. Also, a new revenue allocation formula that allocates forty two percent (42%) of federal revenue to states, thirty five percent (35%) to the federal government, and twenty three percent (23%) to local governments was equally recommended. Furthermore, the Committee made a proposal for the devolution of powers from the federal government to states and local governments in areas such as education, health, and infrastructure development (Emordi, 2007). The establishment of state police forces to enhance security and reduce the burden on the federal police was also recommended.

Before the APC Committee Report, there was a National Conference established by President Goodluck Ebele Jonathan's administration in 2014. Part of their recommendations for restructuring in the Nigerian States include devolution of power from the Federal government to states and local governments, with a view to enhancing autonomy and accountability at the States and Local Government levels of government. The report also made the same proposal like the APC Committee with respect to revenue allocation, resource control, and State Police. The 2014 CONFAB recommended for the creation of a Constitutional Court to resolve disputes between the Federal government and State government. Meanwhile, the Conference in their report recommended for the creation of 18 new states, making it 42 states in Nigeria with a view to addressing the issues of marginalization and inequality. Also, worthy of mention is the Committees recommendation for the establishment of a national infrastructure development bank to promote economic development and reduce poverty (Emordi, 2007).

Overall, the 2014 National Conference Report provides a comprehensive framework for constitutional reforms and restructuring of Nigeria, with a view to promoting greater autonomy, accountability, and economic development at the subnational level, while strengthening the federal government's role in areas such as defense, foreign affairs, and national security (Edeko and Emordi, 2004). However, for brevity sake, it is imperative to consider the contentious issues for restructuring of the Nigerian States under the following fundamental objectives as captured in Chapter 2 of the 1999 Constitution: Economic, Political, Social and Environmental objectives.

3.3 Economic Restructuring

In the time past, there are so many economic restructuring programme in Nigeria. They all appear not to be autochthonous because they were all imposed on Nigerians. For instance; the International Monitoring Funds (IMFS) restructuring programmes have been imposed and implemented in thirty (36) sub-saharan debtor countries under different names. Such names include: Structural Adjustment Programme (SAP), National Economic Survival Plan, Economic Recovery Plans etc. These programmes remained essentially the same as they were designed to stabilize the economy in the (36) sub-saharan debtor countries and restructure them (Edeko and Emordi, 2004). But, that of Nigeria was specifically on diversification of the economy away from petroleum related activities and improved private sector participation in production. The economic policy employed in Nigeria include devaluation and unification of exchange controls, curtailment of expenditure to alleviate budget deficit and effects cuts in public wages bills and social sector programmes, elimination of subsidiaries and price controls, the liberalization of labour market and privatization of public enterprise (Edeko and Emordi, 2004). Yet, none of these measures could take Nigerian State out of economic under development

Today, things are getting worse. The system has failed to address the country's economic objectives as provided in Section 16 (1) (a) - (d) and 16 (2) (a)-(d) of the 1999 Constitution and has instead perpetuated inequality, poverty, and insecurity.

Clearly, there are cases of massive corruption, economic instability, inflation and low purchasing power of the Nigerian currency against foreign currencies. In the light of this, there are repeated agitations for the diversification of the Nigerian economy or per se movement from consumption to production[13] and patronizing locally made products or goods and services. The current idea of diversification entails moving away from foreign oil dependence and promoting other local economic sectors like agriculture, manufacturing, and services to increase the level of the Nigerian's current gross domestic products.

Besides, the diversification of the Nigerian economy, it is also the expectation of the Nigerian people that the various States that make up the entity called Nigeria should be allowed to manage and exploit natural resources from that State, and a larger share of the accruing revenue retained by such State (Elias, 1977). Till date, there has been persistent dispute between the

Federal Government and the States Government over the distribution of oil revenue and the formular for sharing same between the federal government and the oil-producing states. Also, the prices of petroleum products according to Adekanle[14] have been skyrocketing unabated contrary to the economic theories of government and the major multi-national oil marketers are not interested in in local production and has refused to establish a single refinery. Some of them have even exited Nigeria while other have shut down operations in the name of divestment.

Lastly, this struggle for the control of the nation's resources based on regional "cleavages" and now entangled with political conflict will continue until the system is restructured (Elias, 1977). The provisions of the 1999 Constitution which vests ownership and control of natural resources in the federal government, while granting states some rights to natural resources within their territories needs to be altered to ensure equitable distribution and address regional inequalities and the conflicts with petroleum law.

It is sad to note that for the past 64 years, the Nigerian State is still experimenting from one system of government to another. Even though the Nigeria's current political structure was inherited from the British colonial era, with minimal adjustments since independence. This structure has been criticized for its over-centralization, which has led to political instability, ethnic tensions, and economic underdevelopment[17]. The country's federal system, established in 1963, has failed to address regional disparities and promote inclusive growth. So, Nigerians now ask for decentralization and devolution of Power. The import of this yawning is for more governmental powers to be given to the states and local governments to address regional disparities and promote grassroots development. It also entails granting Nigerian States more control over their affairs to allow even or tailored development strategies (Elias, 1977).

That said there is also need to strengthen the political institution through the judicial activities, hence, the clamour for the establishment of Constitutional Courts to be vested with the original jurisdiction[18] over disputes between the Federal government and the State government. No doubt, court decisions often shape resource control, as could be seen in cases like *Attorney-General of the Federation v. Attorney-General of Abia State (2002) 6 NWLR (pt 763) 264; 16 NWLR (pt 1005) 256 SC.* Also, Nigeria's obligations under international law, such as the African Charter on Human and Peoples' Rights, influence resource control and environmental protection.

Lastly, the electoral process is currently in a mess and will continue to undergo reforms and restructuring to ensure swift and impartial justice as well as free, fair, and credible elections (Lawrence, 2024).

3.4 Social Restructuring

Here, the overall objectives of the State is good governance and to ensure that every citizen has equal right and obligation before the law. Section 17 (c) of the 1999 Constitution is to the effect that government actions should be humane. So, the social and educational institutions of States need to be strengthened to combat corruption, and promote transparency and accountability (Lawrence, 2024). It should also be strengthened to provide adequate medical and health facilities. Above all, citizens without discrimination on any group whatsoever shall have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment (Lawrence, 2024).

Again, virtually every part of the country is confronted with one security problem or the other. The security challenges ranges from Boko Haram insurgency in the North, Youth restiveness and militarism in the Niger Delta communities, and Kidnapping in every part of the country. Recently, despite the proscription of the Indigenous People of Biafra (IPOB), they still ordered a Public Holiday in the entire Eastern States of Nigeria and the order was fully obeyed (Elias, 1977). So, the social institutions including the Nigeria Police Force needs to be restructured to cub violent reactions and demonstrations among different ethnic groups in Nigeria over one issue or the other (Prince, 2024). This will also help to promote national unity, social justice, and cultural rebirth.

3.5 Environmental Restructuring

Clearly, the relevant Legal frameworks for environmental protection are mostly inconsistent and or outdated laws. Such laws like the Petroleum Act and Minerals Act needs reforms to address contemporary challenges. This is because inadequate enforcement and conflicting laws lead to environmental degradation and disputes over resource extraction. Also, oil spillage and constant gas flaring which result in environmental degradation underplays the essence of State policy on Environmental objectives under Section 20 of the 1999 Constitution (Prince, 2024).

So, the oil-producing communities remained marginalized and lacked basic infrastructural facilities. The revenues allocated to the oil-producing states are not even commensurate with the

environmental destruction being witnessed in those areas. So, the host communities or State demand greater control and benefits from oil resources, citing environmental degradation and economic neglect. In the midst of all these, challenges persist on how to restructure the Nigerian States for National Development.

4. Challenges

Restructuring Nigeria is a complex and contentious issue, and there are several challenges and issues that need to be addressed. Some of the key challenges are:

Lack of Consensus Agreement by Stakeholders: Achieving consensus among political leaders, stakeholders, and citizens on the need and modalities of restructuring is a big problem. For instance, it will be difficult for the Federal Government to allow the State government have more share on revenue allocation and resource control.

Cumbersome nature of Constitutional Amendment: Amending the 1999 Constitution to accommodate restructuring, which requires a difficult and contentious process. For instance, Section 8 (1) of the 1999 makes the provision for the creation of New States and boundary adjustment. It is obvious from the aforesaid provisions, that the procedure for creation of new states and boundary is a herculean task and probably a costly process in terms of holding a referendum and so forth. Hence, the only created state by constitutional means in Nigeria is the Midwest region which consisted of the present-day Edo State and Delta State and small part of Kogi State. It was created by the Federal Parliament in 1961. Since that time till date, all new state creation were at the instance of the Military Government and they were without civil strife or opposition by the people.

Security Challenges: Managing the country's diverse ethnic and religious groups' interests, fears, economic disparities between regions and states have also led to so many security challenges such as kidnapping, terrorism, and banditry. These challenges, without more, threatens the national unity and stability.

Corruption: There is no gainsaying the fact that poor economic viability and sustainability of a restructured Nigeria from consumption to production economy has hindered economic development and undermines trust in government.

Addressing these challenges requires a thoughtful, inclusive, and negotiated approach that engages citizens, political leaders, and stakeholders in a constructive dialogue. Hence, my case that the only sustainable restructuring must be autochthonous. It must be people orientated process and through a representative duly elected by the people without any external control or influence.

The restructuring of the Nigerian state is a veritable tool for national development. By addressing the country's underlying structural issues, promoting decentralization and devolution of power, and encouraging economic diversification and development, restructuring has the potential to promote sustainable growth and national unity (Prince, 2024). While challenges and concerns exist, these can be addressed through careful management, inclusive decision-making, and strong political leadership. Restructuring can potentially promote economic growth and development, reduce inequality and regional disparities, strengthen social institutions and governance, enhance national unity and social cohesion an improve the overall quality of life for Nigerians

However, it's important to note that restructuring is a complex and contentious process, requiring careful consideration and inclusive dialogue among stakeholders to achieve meaningful and lasting change. The model and procedure adopted must be pragmatic and autochthonous.

5. Recommendations/Way forward

Establishing an Autochthonous National Restructuring Committee: A committee comprising of representatives from various regions, ethnic groups, and stakeholders should be established to drive the restructuring process. This committee has to be selected in a manner to accommodate the interest of every citizen and they must be duly selected by a coordinated representative process. Their activities of the committee must also be devoid of any external influence or control. The members are also expected to obtain feed backs from their constituencies as their wish on every issue or matter for restructuring.

Strong Political Will and Consensus: To drive any meaningful restructuring process, then a strong political will and consensus is needed. The leadership of the Federal Government must be decisive and strong willed to pull through any restructuring process. This is because the only restructuring that will develop the socio-economic and political structures of the country must not only be autochthonous, it must also be by pragmatic approach or model.

Conduct a National Dialogue: A national dialogue should be convened to discuss the restructuring process, address concerns, and build consensus. The CONFAB or dialogue should be honest, true and made

public. Also navigating through this process requires a balanced approach, considering federalism, state rights, community interests, environmental protection, and economic development to ensure equitable resource control and sustainable development in Nigeria.

Develop and Implement a Restructuring Framework: A framework outlining the principles, objectives, and timelines for restructuring should be developed and widely disseminated. The implementation of those frameworks should be religious followed without any religious or ethical alignment or discrimination. Even if it require constitutional amendments, then the National Assembly should be ready to do the needful.

Lastly, it is my considered view that to cut cost, the Nigerian State should start the restructuring process with the recommendations by the 2014 CONFAB especially with respect to creation of more state or return to regional government (Prince, 2024). In addition, a higher percentage of the revenue should be allocated to the States where such revenue was generated and the States be allowed to control their natural resources with little returns to the Central or Federal government. The Federal government should be more concerned with Currency, defence, National Unity an international relations. By implementing these recommendations specially that of the 2014 National Conference, Nigeria can harness the potential of restructuring to achieve meaningful national development and promote a brighter future for its citizens.

6. Conclusion

A cursory look at the relevant provisions of the Constitution and the relevant Acts of the National Assembly show that the Nigerian State has been undergoing restructuring in various forms. But the exiting legal frame works are largely not in tune with the modern day demands of the Nigerian States, hence the need to dismantle them in order to gain the desired goal. This is because, our laws play a crucial role in promoting economic advancement and national security in so many ways. One of such is by providing a stable and predictable business environment, attracting investments and fostering economic growth; as well as promoting human rights and social justice, addressing inequality and social unrest.

It is also not in doubt that effective legal frameworks and enforcement can enhance national security and stability, protect national interests and sovereignty and ensure social justice and human rights, while, weak legal systems can hinder economic development and compromise national security, economic growth and advancement. Above all, restricting of the Nigerian state will promote competition, efficiency, and productivity among the federating units. It will also address the structural deformities in the Nigerian political system by devolution and sharing of power. In the main, it will be redefining the interrelationship between the federal government and the states government.

References

Abiola, S. (2006). *Introduction to Nigerian legal method* (2nd ed.). Ile Ife: Obafemi Awolowo University Press Limited.

Adekanle, B. (2018). Deregulation in the downstream oil industry in Nigeria: The legal and economic perspectives.

Aidonojie P. A, Agbale O. P., and Ikubanni O. O. (2021). Analysing the land use act, the grazing reserves act and the proposed Fulani cattle colonies (RUGA settlement) and NLTP. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 12(1), 138-148

Aidonojie P. A, Majekodunmi T. A., Edetalehn O. I., Adeyemi-Balogun O. J. (2023), "A facile review concerning the Protection of an Invention in Nigeria: Issues and Challenges", Jurnal Hukum dan Peradilan, 12(2), 371-408, http://dx.doi.org/10.25216/jhp.12.2.2023.371-408

Aidonojie P. A. and Egielewa P. (2020). Criminality and the Media: Perception and Legality of the Amotekun Security Agency in Nigeria" *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP), Vol. 1 (3) 51-68

Aidonojie P. A. and Majekodunmi T A, Adeyemi-Balogun O J, (2023), The Legal Issues Concerning the Operation of Fin-Tech in Nigeria, *Jurnal Media Hukum*, 30(20): 78-79

Aidonojie P. A., Adebayo A. K., Aleshinloye Y. A. (2024), Exploring Legal and Cyber-tech Solutions in Curtailing Issues and Challenges on Femicide, *Cogito Multidisciplinary Research Journal*, Vol. XVI, no. 2: 72-91

Aidonojie P. A., Eregbuonye O., Inagbor M., Ogbemudia O., (2024), "Legal and Socioeconomic Issues Concerning the Nigeria Higher Institution Loan Act 2023", JURNAL LEGALITAS, 17(1), 1-23, https://doi.org/10.33756/jelta.v17i1.23143

Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayoedeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria:

Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,

Aidonojie P. A., Majekodunmi T. A., Eregbuonye O. and Adeyemi-Balogun O. J., (2024), Potential and Legal Challenges of Metaverse for Environmental Awareness and Sustainable Practice in Nigeria: A Comparative Study with Singapore, *Administrative and Environmental Law Review* 5 (1):37-64. https://doi.org/10.25041/aelr.v5i1.3230.

Aidonojie P. A., Muwaffiq J., Mundu M., Obieshi E., Saminu W. A. (2024) "Menace of Internet Fraud on Nigeria Youth: Lesson from the Indonesia Experience", *Jurnal Mengkaji Indonesia*, 3(2) 1-16

Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review,* Vol. 5(2), PP. 161-174,

Aidonojie P. A., Okuonghae N. and Ukhurebor K. E., (2022), The Legal Rights and Challenges of COVID-19 Patients Accessing Private Healthcare in Nigeria, BESTUUR, Vol. 10(2), 183-197, https://doi.org/10.20961/bestuur.v10i2.68118

Aidonojie P.A, Oaihimire I.E., Imoisi S.E. and Aidonojie E.C. (2023) "A facile study concerning the legal issues and challenges concerning doping in sport", *Synsto Journal of Law* 2(1):16-21

Aidonojie P.A., Adesoji K.A., Eregbuonye O., Antai G. O, Ottah I.O., Muhammad Mutawalli "The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria" (2024), Vol. 19(4), YURISDIKSI, 455, https://doi.org/10.55173/yurisdiksi.v19i4.201

Aidonojie P.A., Eregbuonye O., Adebayo A. K., Ekpa S., and Ketut S. L. P. P., (2024), "Legal and Socio-economic Issues in Adopting Robotic Lawyers in the Nigerian Legal System" *Journal of Human Rights, Culture and Legal System,* 4(1), https://doi.org/10.53955/jhcls.v4i1.115

Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System*, Vol. 2(3), 209-224, https://doi.org/10.53955/jhcls.v2i3.40

Aidonojie P.A., Ikubanni O.O., Adesoji K. A., Olusola J. O. and Mundu M. M. (2024). The Role of Digital and Scientific Technology in Complimenting Global Legal Framework Towards Clean Energy Transition. *The Journal of Sustainable Development, Law and Policy.* Vol. 15(3), 314-343.

Aidonojie P.A., Mulegi T, Muwaffiq J., Imiefoh A.I., Owoche A.G. (2024), "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges", *Fenomena*, 23(2), 131-144

Aidonojie, P. A. (2023), 'Voluntary Assets and Income Declaration Scheme a Panacea to Tax Evasion in Edo State, Nigeria', Administrative And Environmental Law Review, 4(1): 1-20, https://doi.org/10.25041/aelr.v4i1.2822

Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from https://lawjournal.ub.ac.id/index.php/law/article/view/508

Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum*, 29(1), 65-78, DOI:https://doi.org/10.18196/jmh.v29i1.12595

Aidonojie, P.A., Abacha, W.S., & David, A. (2023). Effectiveness of the Administration of Justice in Nigeria under the Development of Digital Technologies. *Journal of Digital Technologies and Law,* 1(4), 1105-1131. https://doi.org/10.21202/jdtl.2023.48

Amadi, P. W. (2024, June 3). An analysis of Nigerian federalism and the vexed issue of restructuring. Retrieved from https://www.linkedin.com/pulse/analysis-nigeria-federalism-vexed-issue-princewill-c-amadi

Bannock, G., Baxter, R. E., & Rees, R. (1977). *A dictionary of economics* (Penguin ed., p. 411). Middlesex: Penguin.

Budiyanto B., Ahmad M. Aidonojie P. A., and Jamal A., "Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua", Law Reform, 20, no. (2024): 278-300

Edeko, S. E. (2009). *Introduction to the study of the law of rebranding Nigeria* (pp. 7–8). Fata Super System Ltd and Ambrose Ali University Press.

Edeko, S., & Emordi, E. C. (2004). *Contemporary essays on Nigerian society, economy, and law*. Ekpoma: Ambrose Ali University Publishing House.

Edetalehn O. I., and Aidonojie P. A., (2023). The Innovative concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System. *Journal of Law and Development*; 8(2): 243–255

Egielewa P. and Aidonojie P. A. (2021). Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchi, Edo State as a Case Study, *International Journal of Current Research in Humanities*, Vol. 25, 415-434

Elias, T. O. (1977). *Nigeria: The development of its laws and constitution*.

Emordi, O. (n.d.). Gas flaring and environmental protection in the Niger Delta region, 1956–2007.

Garner, B. A. (1990). *Black's law dictionary* (9th ed.). USA: West Publishing Co.

Gunawan Y., Haque A. Y. I. & Aidonojie P. A. (2023). Police Brutality as Human Rights Violation: A Study Case of Black Lives Matter. *Varia Justicia*, 19(1), 19-32 https://doi.org/10.31603/variajusticia.v19i1.6588

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and Issues Concerning the Regulatory Regime of E-Payment System in Nigeria. *Journal of Digital Technologies and Law,* 2(2), 372–393. https://doi.org/10.21202/jdtl.2024.19

Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. Yuridika, 38(2), 61-84, https://doi.org/10.20473/ydk.v38i2.44999

Imoisi S. E., Aidonojie P. A., Edetalehn, (2023), Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry, *Journal of Commercial and Property Law*, 10(2), 229-243

Mukhlis M. M., Aidonojie P.A., Zulhilmi P., and Muhammad Saleh Tajuddin, (2024), 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia' 23(1) FENOMENA 1-14.

Mukhlis M., Jackson-Ortiz R. D., Muwaffiq J., Garunja E., and Aidonojie P. A. (2023), "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia". Lex Scientia Law Review 7, no. 2: 959-994. https://doi.org/10.15294/lesrev.v7i2.72156

Murray Hill Martial Arts. (2018, March 30). The story of the 5 blind men and the elephant. Retrieved from https://beavertonkd.com/2018/03/30/the-story-of-the-5-blind-men-and-the-elephant/

Mutawalli M., Masum A., Aidonojie P. A., Adesoji K. A., (2024), Filling Members of the Financial Audit Board: Constitutional Review and Legislative Intervention, Al-'Adl, Vol. 17(1), 55-72 http://dx.doi.org/10.31332/aladl.v17i1.7707

Muwaffiq J., Safi S., Aidonojie P. A., Zaini Z., and Yusuf I. A., (2024). 'Strengthening Islamic Law and the State: The Role of Pesantren in Spreading Patriotism Ideology in Preventing Radicalism in Madura', *Justicia Islamica*, 21(2), 1-18

Njoku, L. (n.d.). Nigeria and the world news. Retrieved from https://guardian.ng/news/fg-determined-to-move-economy-from-consumption-to-production

Oyebode, A. (2021). Restructuring Nigeria: A critical analysis. In I. Ukpabi (Ed.), *Restructuring Nigeria: Issues, challenges, and the way forward*. *International Journal of Integrative Humanism*, *10*(2), 113–122.

Safi' S., Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", *El-Mashlahah*, 14(1), 95-126

Tanko, A. (2024, June 3). Nigeria security crises—Five different threats. BBC News. Retrieved from https://www.bbc.com/news/world-africa-57860993.amp

Zaman N., Aidonojie P.A., Muwaffiq J., Jackson-Ortiz R.D. (2024), "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates", PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH, 9(2)

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Law, Democracy and Good Governance in Africa: Is Democracy a Panacea to Good Governance?

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Abstract. The democratization of the world is said to be an imperative to stability and human fulfilment. Many African nations joined this trend immediately after gaining their independence. However, the more democratic African nations become, the less the rule of law and good governance seem to elude them. Africa is plagued by bad governance, human right abuses, underdevelopment, corruption and poverty. People are no longer sure whether to insist on democracy or accept autocratic leadership if that can give them good governance and development. This paper looks into the synergy of the abused triangle of law, democracy and good governance in Africa. It discussed briefly the democratic experience of some African countries *vis-a-vis* Republic of Niger, Nigeria and Mali; and wonder whether democracy is the only way to good governance. It employed the doctrinal approach through the use of primary and secondary materials and concludes that the good governance shown by some Asian countries like China who care less about democracy is a clear evidence that democracy is not *sine qua non* to good governance and recommends that Africans should adopt any model of governance that fits into their cultural, economic and political history and which can guarantee them a better living condition.

Keywords: Democracy; good governance; bad governance; military; Constitution; Nigeria; Niger; Mali.

1. Introduction

Law, democracy and good governance are separate but related and complementary terms. (Nwekeaku, 2014). They are intertwined to produce a common goal, which is growth and stability in a ny human society but the fact that any two of them may not effectively achieve growth and stability poses the question as to whether each must be present for the other to stand. These three terms also, may not necessarily be an imperative for the existence of the 'ideal state' referred to by Plato. (Plato, 1943). This explains Plato's later confession that it is difficult to achieve a perfect state (Plato, 2015). Africa is burdened with the problem of rule of law, democracy and good governance. It is believed that democracy provides an enabling environment for the rule of law and that both sustains the other. It is also believed that good governance encourages the rule of law and democracy and *vice versa* (Nwekeaku, 2014). Experience all over the world and especially in Africa has shown that though these three concepts are indispensable but they are not a complete solution for good governance (Antai et al., 2024). This paper strives to study the relationship of these three concepts in the African continuous disillusion of good governance as compared to some other parts of the world like parts of the Asian Continent, who do not believe in democracy and yet are doing far better in governance and their people are happier than most African countries who believe that democracy will provide the needed nirvana (Aidonojie et al., 2024; Budiyanto et al., 2024). The more Africans believe in democracy and the rule of law, the more peace and stability seem to rescind from the continent as seen in the picture of corruption, poverty, insecurity and political rape of the people (Ojo, 1999). To achieve its goal, the paper is divided into six Parts, thus; Part 1 is this introduction; Part 2 gives some clarifications of the three major terms of this discourse; Part 3 studied the synergy among these abused triangle in Africa; Part 4 looks at democracy and the nuisance of bad government in the African continent pointing out the case of the Republics of Nigeria, Niger and Mali; Part 5 debates whether democracy is a cure to good governance drawing

example from some Asian countries who care less about democracy and yet are doing well in terms of governance and development; and Part 6 is the conclusion and recommendation.

2. Clarification of Terms

2.1 Rule of Law

This concept has been dealt with in many legal and non-legal write ups. According to Dicey, the rule of law is governance by law and not governance by man (Dicey, 1999). In the same vein, Locke observed that tyranny begins from where the law ends (Gbemudu and Ajabor, 2019). The law reflects the spirit of the citizens and they are bound to respect their own law. The rule of law protects the basic rights of the citizens against abuse and also ensures that their needs are met (Gbemudu and Ajabor, 2019).). It accepts the law as supreme (Nwekeaku, 2014) and depicts that both the sovereign and the subjects are subject and equal before the law (Nwekeaku, 2014). It upholds the social contract philosophy, which gives absolute power to the governed and forbids the sovereign from oppressing the common man. According to Jean Rousseau's social contract theory, government derives its right to exist and to rule by the consensus of the governed (Jean-Jacques, 1762)). The failure of many Africans to live in accordance with the rule of law is the root of the bad governance, which is prevailing in the Continent. The non-conformity with the rule of law is seen in bad leadership; abuse of power; corruption; faulty electoral system; lack of freedom of speech; biased judiciary; faulty Constitution; poor legislative system; human right abuses; inequalities and poor human development (Okoroafor, 2010). Rule of law is a non-arbitrary governance and is not based on an unqualified leader or on a democratic leadership (United Nations, 1997). The concept of rule of law is now entrenched in the United Nations charter which provides in its preambles that part of its goals among other things is to maintain international peace and security in conformity with justice and international law (Okoroafor, 2010). The Universal Declaration of Human Rights provides equality before the law; (Article 7) human rights are protected by law (Article 8); the right to democracy; (Article 21); etc. The Charter states that rule of law starts with the written or unwritten Constitution of each state as the ultimate law of the land. Therefore, there should be a clear and reliable legal framework with strong institutions of justice, good governance, well-structured security and economic mechanisms, a civil society that contributes to strengthen the rule of law and public officers and institutions who are accountable and patriotic. At the international level, the United Nations entrenched the principle of rule of law in all dealings involving states (Nurus et al., 2024; Muwaffiq et al., 2024). Besides the UN Charter, the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States also states its commitment to international law, the basic philosophies of the UN, respect for the UN Charter, equal sovereignty of States and non-use of force; the use of peaceful means to resolve disputes; respect for human rights and fundamental freedoms; protection against crimes against humanity, genocide, ethnic cleansing and war crimes (Article 21). These are not just obligations of State towards its citizens but also to the international community (Article 21). None is exempted from the duty of complete obedience to the law (Munro-Nelson, 2010). For there to be a functional economy, a good political coordination, a developed civil society, the public must have confidence in and respect the rule of law (Munro-Nelson, 2021). Joseph Raz summed it up that even in a non-democratic legal system, if all should obey the rule of law, even a very bad legal system will excel. Legitimacy of the power does not depend on the respect for human rights but on the respect for the law.

2.2 Democracy

Like many concepts, there is no precise definition of democracy. Some ancient Greek philosophers gave a more popular definition of democracy as the government of the people by the people and for the people (Sabine and Thorson, 1995). The emphasis is on the citizens. They have the power to freely choose who will serve them. Euripides observed that a democratic state is one governed by the citizen's representatives (Sabine and Thorson, 1995). Plato supported this opinion when he defined a democratic state as one ruled by sovereigns who make policies for the good of the people (Plato, 375 BC). He later updated his view that democracy is the government of the people where law is supreme and both ruler and the subjects are bound by it (Plato, 375 BC). Rousseau on his part, defined democracy as the government of the masses determined by the masses. Lenin argued on democratic centralism (Sabine, 1995). According to him, democratic centralism is the government of the masses because they are the majority. In a democratic centralism, the masses cannot be deprived their human liberties. Despite the differing definitions of democracy, there are some fundamental principles that are common to them, like the sovereignty of the law, liberty for all, equality of all persons before the law, equitable distribution of wealth and equal opportunities for every member of the society, etc. Democracy is the government of the people to uphold their social contract between them and their

government (Haruna et al., 2024; Ekpenisi et al., 2024). It guarantees an equitable distribution of the national wealth, equal opportunities and the rule of law.

2.3 Good Governance

Governance is making anticipated decisions. It is a leadership process involving power and decision making (Governance Models, 2009). Good governance is a concept which could be challenging to define. This is because it could be different things to different people. However, from some social contract theorists like Jean Jacques Rousseau, John Locke and Thomas Hobbes, it is established that since the contemporary state is a human formation, it would not be out of place to institute what could amount to good governance in a human society. Thus, in view of the social contract theory, it is believed that it is the uncertain, ferocious and volatile state of the natural environment that forced humans to collectively yield their rights, and entrust their lives and property to the state (Safi' et al., 2024; Mukhlis et al., 2024). It is their expectation that the state being a vague entity, concedes this supremacy to a pre-emptive organization named 'government.' It is the progressions and achievements of this government to the realization of the social contract expectations of the people that is termed a 'good' or 'bad' governance (Mutawalli et al., 2024; Aidonojie et al., 2023). Good governance encompasses the installation of a democratic government which encourages equality, rule of law; protection of the fundamental human rights; freedom of the press; ensuring a transparent, participatory and accountable governance; free and fair elections; provision of basic amenities like electricity; good drinking water, quality education, good roads, good health care, adequate security, etc.

The rule of law, democracy and good governance are related, complex and complimentary one to the other but not quite dependent one on the other. The rule of law is ultimate and far more important. Good governance cannot be achieved without regard for law (Governance Models, 2009). The rule of law is an assurance to the realization of fundamental human rights. It encourages a good platform for any government to perform its duties effectively. It effectively lays down the nature, type, choice of government and the correlation amongst the organs of government (Laski, 1925). Democracy is a mere wish without the rule of law. Democracy spells out the fundamental human rights of the citizens, but it is the rule of law that will ensure these rights are obeyed and enjoyed. Where the citizens cannot vote in their leaders or have the power to regulate the activities of the government, then the system is not democratic. A situation where people are not allowed to vote in or vote out their leaders where they are not meeting up with the expectations of the people by virtue of the social contract they all signed for, then such society is not democratic. Democracy without rule of law is worse than a military rule (Nwekeaku, 1989). The fundamental characteristics of good governance is the rule of law (Nik and Nik, 1989). Without the rule of law, the clamor for democracy and good governance will not be realised.

3. Law, Democracy and Good Governance in Africa: The Synergy among the abused threesome

The rule of law, democracy, good governance and progress in Africa have become a stimulating international and continental discussion in recent times. The more light is shown on these three subjects; the more events show the uncertainty surrounding them. The confusion that hangs around these theories suggests their multidimensional and valued nature (Essien, 2012). Governance is a key concept haunting African. Governance is a concept which functions at every level of the social strata. It touches every home, community, state, nation and the world at large (Essien 2012). But the continent is lacking a system of governance that promotes, and sustains human development. There is a wide gap between the rich and the poor; and between the political elites and the masses. According to Essien, governance is the background through which power is used for the common good of the people (Essien, 2012).). It includes the process of making and implementing sound policies by the leaders (World Bank World Development Report, 2006). It goes beyond the capacity to choose, monitor and replace the leaders to include the capacity of the leaders to effectively manage the resources bestowed upon them by making effective policies (World Bank World Development Report, 2006). It includes security of lives and property, rule of law, political and civic freedoms, quality and affordable health care, quality and free education, environmental health, effective banking systems and lots more (Besancon, 2003). The exercise of governance is also run by the people's values and standards (Plumptre, 2004).

The much appeal for democracy in most parts of the world presently is plausible. This is because many people are convinced that a true democracy is capable of transforming the society for the better (Osaghae, 1999). It is a political crusade from a less competitive election to a fairer anticipated civil and political rights; (Potter, 2000) which lays less emphasis on the

economy but more importance on good governance, political rights and autonomy (Ottaway, 1995). Hence, Ihonvbere concludes that democracy operates on certain vital principles (Ihonvbere, 1996). Concurring with this view, Osaghae, identified these principles as pluralistic and multi-party system, which encourages a free and fair competitive politics in a relatively autonomous society (Osaghae, 1999). Democracy is believed to be the answer to Africa's numerous problems but it does not reflect the realities of many democratic African states. Democracy is not a guarantee for good governance (Rotberg, 2005). Good governance is a normative principle, which indulges the state or its organs to carry out its roles in a way that upholds the values and responsiveness of the society (Conable, 1991). Building democratic institutions involves some reformation in governance (Cheema, 2005). Good governance indorses gender equality, encourages personal freedom, makes policies to alleviate poverty, sustains the environment, enhances security and reduces violence (Cheema, 2005). Good governance strengthens democratic institutions by maintaining regular free, fair and credible elections, allowing the people's will to count in choosing their representatives (Cheema, 2005). Good governance is development, which is pivotal to human existence. No wonder the United Nations (UN) in its Millennium Development Agenda (MDA) during the UN General Assembly held in New York (United Nations, 2000), proclaimed that development is a multi-dimensional and value loaded idea, which must involve every stakeholder (Lane and Ersson, 1990). Being a multi-dimensional process, it goes beyond political, economic and social heights to involve major changes in social structures, general assertiveness, and national institutions, faster economic growth, and the extermination of poverty (Todaro, 1989). It means providing the basic needs of majority of the people. It recognizes the choice and self-actualization of the people while respecting their values (Ogwu, 2002).

4. Democracy and the Menace of Bad Governance in Africa

According to a research carried out by the World Bank, the six indicators of governance in the world are political stability; accountability; government effectiveness; rule of law; control of corruption; and regulatory quality (Worldwide Governance Indicators- Wikipedia' 2021). Africa is lacking in all six. The greatest challenge to Africa's development since after the independence of its states is that of governance. No political system seems adequate to curb this menace. Neither the military, democracy, one-party nor multi-party system has changed the narrative (Essien, 2012). It all boils down to the ethical foundation of governance already established (Madhav, 2007). Good governance therefore is evaluated by the ethical standard of the various stakeholders and beneficiaries of a society. For a society to produce good governance, it must first possess a firm ethical and moral values (Madhav, 2007). Though, governance is related to democracy, but while one is firmly rooted in culture and values, the other is politically rooted. Governance largely leans on the historical practices or antiquities of a people, their cultural values, social norms, aspirations, personal and collective inclinations, expectations, ideologies, religious outlooks, etc. (Essien, 2012). Bad governance in Africa could be attributed to its colonial aristocracy and some misplaced priorities of the people of Africa. There is an irrefutable connection between the governance system of the colonial rule and the post-colonial leadership experience (Ekeh, 1975). The colonial ideologies are so deep-rooted and the outcome is the bad governance experienced in the post-colonial and neo-colonial Africa. Upon attainment of independence, the focus of African leaders was not on development and good governance but on accumulation of personal wealth and control of power (Luckham, 1995). The aftermath of this is the absence of democracy, good governance and develop. Bad governance and under development in Africa has become so ingrained and remarkable compared to the rest of the world. For example, as at 2022, the debt burden in Africa stood at USD 1.8 trillion, which is roughly four times higher than its growth rate of GDP in dollars (UNCTAD, 2023). The reasonably low interest rate of these loans in the 1970s mostly encouraged African countries to engage in heavy borrowings to effect public projects (Mukhlis et al., 2023; Imoisi & Aidonojie, 2023). However, shortly after that era, there was a substantial rise in both the minimal and actual interest rates causing an immediate rise in debt service requirements (CBN, 2023). The burden of these debts is measured by the cost of interest paid on them, which is quite heavy (Debt Burden Ratios-Economics, 2015). According to Africa news, Ghana, Kenya and Democratic Republic of Congo top the list of African countries with the highest IMF debt (IMF, 2023). Nigeria is no better with a total public debt of N87.918tn as at December, 2023 and is still borrowing ('Nigeria's debt jumps by 75% in three months, hits N87tn,). This debt burden is encouraged by rising borrowing costs, sluggish growth, limited access to funding, and currency devaluations, among others (UNCTAD, 2023). The effects of the debt burden include reduction in GDP growth, decreased assets from investments and profits, increase in tax rate to service these debts, and hardship. These debts were incurred to encourage a speedy growth of public expenditure but mostly ends in individual pockets of

political leaders through corruption and embezzlement of public funds (Gunawan et al., 2023; Aidonojie, 2023). To pay off these loans involves earning some foreign exchange, which is another obstacle facing African countries as they engage more in importation and not much of exportation of goods and services. The Continent has an estimated 60% illiteracy rate, 96% infant mortality rate; above 50% poverty rate; with a life expectancy at 52years (Conable, 1991). Statistics from the United Nations Refugee Agency (UNHCR) 2023 Planning Figures provides that Africa represents more than a tenth of world's population; more than 44 million of world refugees; 18 million are of the Sub-Sahara Africa as a result of the ongoing emergencies in Nigeria, Burundi, South Sudan and the Central Africa Republic, as against the 38.3 million in 2021. There is no counter veiling power to make selfish and corrupt leaders accountable to the people. Public accountability, transparency, rule of law, and public sector management are all relevant to good governance even in a dictatorship regime (Nunnenkamp, 1995). Governance goes beyond political leaders to include non-state actors like private actors and civil society (Nunnenkamp, 1995). The 2012-2021 overall African governance score showed that the improvement recorded in 2012 and which showed slight but steady improvement was stalled in 2019 following the onset of Covid-19, and since then there has been no notable improvement in governance in the Continent of Africa. According to this report, the African average score for governance was 47.6/100.0 in 2012. This improved slightly with a slow pace over the years to 48.8 in 2019. This has not shifted in the last four years as there has been no known progress in Overall Governance score from 2019 till date. Many may attribute this stagnation to the Covid-19 pandemic, which merely exposed the underdevelopment in Africa (Aidonojie et al., 2022; Aidonojie, 2022). While the west learnt from the pandemic and saw it as a platform for further development, many African countries sunk further after the pandemic.

Democracy is believed to be the most morally justified way through which a society could develop (Owolabi, 2003). This reasoning shifts from a proper political structure to forced democratization. But good governance goes beyond the presence of democracy. A democracy full of corruption, lack of transparency and accountability, is far from good (Obadan, 1998). Good governance is where resources are judiciously managed for the socio-economic and political development of the people whether it be a democratic government or not (Obadan, 1998). Bad governance is the failure of the leaders to achieve the expectations of the people. Despite the democratization of many African countries, bad governance persists. Whereas, some notable non-democratic countries of the world are depicting every trait of good governance (Human Rights Watch, 2023). The African political system is characterized by injustice, insecurity, crude elections, voiceless electorate, and narrow-minded leadership under the pretense of democracy (Nzor, Ernest, 2023). Justice is the bedrock of democracy (Etuk, 2003). A democracy without justice cannot encourage good governance or development. Many African Leaders express bad governance through their abuse of public office for their private gain. It is true that corruption is not peculiar to Africa, even developed countries practice corruption in various degrees (Global Integrity and Anti-Corruption Report, 2023), but the level of corruption in Africa is notorious as evident in its level of underdevelopment and degree of poverty. Massive corruption has been recorded in both military and democratic regimes (Business Insider Africa, 2022). Corruption has undermined all the foreign aids given to assist the Continent in many years of continuous assistance from Britain. Yet, the average African continues to (Zach-Williams, 2001) live on less than a dollar a day. The amount of foreign aids invested in Africa is estimated to be six times the economic recovery aid of $13.3 billion (Approximately, $150 billion today.) given by the United States under the Secretary of State, George Marshal to assist in the restoration of economic infrastructure of the post-war Europe (Aidonojie & Francis, 2022; Aidonojie et al., 2021). All the sixteen European countries who got the United States assistance after the World War II under the Marshall Plan are incidentally the economically well developed and politically stable countries of the world today (Sixteen European countries, including Belgium, Britain, France, Netherlands, Norway and West Germany got these aid from the United States after WW II.). Corruption is the root cause of poverty, which undermines nature's abundance of many African states and keeps the countries backward (Kelly, RM, 2014). African countries have continuously topped most corrupt countries of the world (Transparency International (TI), 2007). Democracy creates a conducive atmosphere for socio-economic, political, and institutional growth. However, it cannot realize these without the rule of law and good governance. But the rule of law and good governance can be achieved even in a non-democratic setting (Mazrui, 2000). For good governance and democracy to fit into the people's consciousness, there must develop a coherent political structure that has some significance to the people's history and cultural realities (Lawson, 1998). The people's culture is their way of life, their identity and what makes them who they are. Democracy is alien to the people and a purely

western ideology (Elaigwu, 2002). For democracy to succeed in Africa, it must reflect the peculiarities of Africans and the natural foundations and social arrangements upon which the African idea of good governance and development rests on (Ake, 1996). Below are instances of Democracy and Good Governance in some selected Africa Countries:

4.1 Nigeria

Nigeria had its political independence in 1960. Since then, successive governments had campaigned for leadership ideologies based on democracy and good governance as necessary for growth and development. These terms are represented in the Preambles of the Constitution of the Federal Republic of Nigeria, making the country a democratic State (Constitution of the Federal Republic of Nigeria, Preamble). The Constitution provides for the supremacy of the Constitution and that its provisions shall be binding on all persons and authorities (Constitution of the Federal Republic of Nigeria, s. 1). Therefore, all the provisions of the Constitution promoting the fundamental human rights of the people (Constitution of the Federal Republic of Nigeria, ss. 33-45.) must be respected. In the same manner, the Constitution further provides some obligations for the government and the people, under its fundamental objectives and directive principles of state policies, which makes the government accountable to the people (Constitution of the Federal Republic of Nigeria, ss. 13- 22). The Constitution provides for separation of powers and the rule of law. Also, Nigeria is a state party to the United Nations (UN) and consequently, a signatory to many international and regional legal instruments, charters and treaties all of which promote and encourage respect for the fundamental human rights and other rudiments of the rule of law. With all these, it is innocuous to deduce that the rule of law is present in theory, although, that cannot be said to be so in practice. The presence of democracy is also evident in the Constitution where it sets the pattern by which government can be constituted through elections for the three tiers of government namely- the executive, legislative and the judiciary (Constitution of the Federal Republic of Nigeria, s. 23). Despite elaborate provisions for democracy and the rule of law, Nigeria is far from achieving good governance. Nwekeaku (Nwekeaku, 2014) identified some factors that hinder true democracy in Nigeria. These include; economic inequalities occasioned by corruption and greed; ignorance; illiteracy; and many years of military rule (Akanbi, 2019). The legislative and judiciary are controlled by the executive as seen in the outcome of the election tribunal matters in recent times wherein the judiciary is pup petted to deliver various contradictory judgments in favour of President Ahmed Bola Tinubu, whose victory at the February, 25 2023 polls was notoriously marked by massive rigging and falsehood (Sahara Reporters, 2023). Despite over two decades of democracy, good governance in Nigeria remains vague and unattainable. The Nigerian democracy is a multi-party system; yet election rigging, corruption, gagging of the Press, silencing of political opponents, indirect one-party system, misadministration, declining per capita income and gross national product (GNP), among others, characterize the Nigerian system (Egielewa & Aidonojie, 2021). Rousseau, emphasized that democracy which does not provide material welfare of the masses and does not remove gross inequality in the distribution of wealth to the masses cannot achieve good governance (Sabine, GH & Thorson, 1995). The Nigerian economy is off the Millennium Development Goals (MDGs). It is one of the tops on the corruption index of the world (Transparency International (2023). Nigeria ranked 150 out of 180 countries in the 2022 Corruption Perception Index with an average of 125.67 between 1996 and 2022. It was 154.00 in 2021 and recorded the least of 52.00 in 1997 (Transparency International, 2023).

The mass media has continuously fought to promote and sustain democracy and the rule of law. It has recorded a history of fearless journalism, uncovering the mischiefs of both government and the society. For instance, the late News Watch journalist who was assassinated for exposing the frauds of the IBB-led military regime, followed keenly the incarceration and subsequent elimination of the winner of the June 12, 1993 election Chief M.K.O. Abiola and the NADECO of the late Sani Abacha military regime. Also, the media exposed the midnight impeachment of a then governor of Anambra State Peter Obi; and the controversial February 25 and March 18, 2023 presidential and governorship elections in Nigeria (Election Watch 'Political Violence and the 2023 Nigerian Election). But the media is limited by many factors, which include, a harsh economy, which prevents access to information; various laws regulating the gathering of information in the country such as the Seditious Publication Act of 1969; the Criminal Code, 1958; the Penal Code, 1963; Amended Act, 1963, the Official Secret Act, 1962 and its Amendment Act, 1962; Newspaper Amendment Act, 1964; Protection of Public Officers Against False Accusation; and the Obscene Publication Act, 1961, etc.

Nigeria has had continuous democratic leadership since 1999. Their march through democracy has so far been a tortuous one, pigeon-holed by flashes of high

anticipations and dashed expectations (Omotola JS, 2007). It had a most daunting military rule. At a point, a military Head of State General Ibrahim Babangida succumbed to a change to a democratic rule but not without his own selfish interests as it turned out to be the most go-getting, intricate and controversial transition in history (Kirk-Green and Oyediran, 1987). He began the transition by setting up a Political Bureau in 1986 (Kirk-Green and Oyediran, 1987) which ended in the tragic and historic cancellation of the freest and fairest presidential elections ever in 1993 (Izah, 2003). It was a bloody transition, which culminated in the formation of an Interim National Government of late Chief Ernest Shonekan in 1993 (Ojo, 1998). The Interim National Government was over throne by another military regime of late General Sani Abacha in November, 1993. General Abacha prolonged the transition some more and was faced with heavy resistants from human rights and pro-democracy groups of the time (Prominent among them were the National Democratic Coalition (NADECO); Nigerian Labour Congress (NLC); Campaign for Democracy (CD); and Nigerian Union of Petroleum and Gas Workers (NUPENG).). Abacha's military regime was the most brutish, bloody and insensitive. Upon his sudden demise on the 8th of June, 1998, Nigerians jubilated his death. His death saw the brief military regime of General Abdulsalami Abubakar who true to his promise was concerned to the restoration of democracy. When finally, democracy was restored in May 29th 1999, it brought a huge sigh of relief among Nigerians who had very high hopes of a better life under a democratic leadership (Aidonojie et al., 2020). But events since 1999, have made many unsure of which regime is better-an authoritarian regime without insecurity and excessive economic hardship or a democratic regime with massive corruption, mounting foreign debts, insecurity, human rights abuses, inter-tribal and religious intolerance, poverty, etc. Never in the history of Nigeria has there been this level of insecurity, ethnicity, tribalism, nepotism, and religious intolerance as there has been in the last two decades (Edetalehn & Aidonojie, 2023). The electorate is powerless; leaders are imposed on the people; politicians are in charge of the judiciary; and pervert justice.

4.2 Republic of Niger

Democracy is entrenched in the Constitution of the Republic of Niger as portrayed by the word "Republic." The Constitution specifically provides that there shall be an independent and sovereign Republic and that any attack on the republican practice of the state shall be regarded as a treason punishable by law (Constitution of the 5th Republic of Niger, Article 1). The state shall be one and indivisible, democratic and social government "of the people, by the people and for the people" and separate from religion (Constitution of the 5th Republic of Niger, Article 4). Sovereignty belongs to the people. In the exercise of sovereignty, personal power, ethnocentricity, regionalism, nepotism, feudalism, favoritism, corruption, egocentrism, etc. are forbidden (Constitution of the 5th Republic of Niger, Article 5). The people are to exercise their sovereignty through elected representatives and through a referendum (Constitution of the 5th Republic of Niger, Article 6). The Republic of Niger is a state found on the rule of law, equality and liberty irrespective of sex, religious and political affiliations, race, social status or ethnic group (Constitution of the 5th Republic of Niger, Article 8). There is freedom to form associations, political parties, unions, etc. within the ambit of national sovereignty, democracy and the rule of law (Constitution of the 5th Republic of Niger, Article 9). The state has regard for the rights of the people (Constitution of the 5th Republic of Niger, Article 10.). There is rule of law (Constitution of the 5th Republic of Niger, Article 11). The Constitution went on to enumerate rights of the people, which the state must respect and protect (Constitution of the 5th Republic of Niger, Article 12-33). Despite the presence of democracy in the Constitution, good governance, respect for law and development are not guaranteed. The dissatisfaction of the people led to the recent coup that overthrew a democratically constituted government and saw the people of the Republic of Niger visibly happy and grateful for the 'rescue' mission of the military (CAJ News Africa Niger, 2024).

Early in the 1990s, the Republic of Niger became exasperated by military rule. They felt that military rule was characterized by political, economic and social violence and that they should not be left out in the world's call for democracy (Vincent B, 2021.). The military placed a structural adjustment program which occasioned hardship on the poor. The people revolted against dictatorship and this eventually led to the collapse of the military regime and enthroned a democratic government in 1991. A National Conference was called twice that year to lay a foundation for a democratic administration (These was between 29th July and 3rd November, 1991).

Attendees were drawn from various sections of the country to stand against military rule and its antecedent violent, economic and social hardships on the people. Surprisingly, this democratic government merely carried on the same economic, social and political trail of the previous military government as a

result of pressure from some international financial instruments to curb the economic situation they inherited. This was vehemently opposed by street protests, and the military took over again in 1996 (These was between 29th July and 3rd November, 1991). Before then, the democratic government further devalued the CFA Franc and increased the cost of living. Besides the economic struggles, there were also tensions and partisan scuffles. The people were not ready to defend democracy, all they needed was good governance and development (Andre Salifou, *L'Histoire du Niger* Paris, 2011). Nigeriens initially thought that democracy would afford them a greater participation in politics and also guarantee an improved living condition (William S, 2008) but, democracy has always turned out catastrophic. The recent military takeover of July, 2023 gave the people some sense of relief as they welcomed back the military with jubilation (Al-Jazeera, 31 May 2024). All Nigeriens want is any government that could improve their living condition (Africanews, 2024). On the attainment of independence, Niger was handed over to a democratic government led by then President *Diori Hamani*. This regime was toppled by a coup d'état, and yet another military coup, which ended the military regime of Lieutenant Colonel *Seyni Kountche* in 1987 (Mamadou, (1998). The military limited the protests, banned opposition parties, and allowed the trade unions to participate responsibly (Mamadou, 1998). Though, the people expressed some dissatisfactions but they generally enjoyed some economic relief as a result of the boom of uranium made possible by the military. There were more exportations of uranium and an increase in its prices. Both foreign companies and the state benefitted from the boom and the proceeds were used in infrastructural growth. Hospitals, schools and other public services were built, wages were greatly increased; manufacturers received some supports, etc. (Gregoire, 2011). There was an increase in the employment of medical doctors, nurses and teachers between 1975 and 1980 (Direction de la Statistique et de la Demographie, 1991). However, from the mid-1980 and following another democratic regime in 1987, there was a down turn of goods and services, an ensuing famine and the implementation of a Structural Adjustment Program (SAP) (Direction de la Statistique et de la Demographie, 1991). The country was faced with a debility in the price of uranium and a heavy debt rate (Direction de la Statistique et de la Demographie, 1991). The country was forced to negotiate with some international financial institutions at their own detriment (Dieter, 2009). The country fell to this point probably due to the policies initiated by the democratic regime. Incidentally, the neoliberal policies in Niger were first provided by a military government. Anger swelled up in the minds of the people and from anger to occasional revolts. On the 9th of February, 1990, the country had a revolt that further shaped its present history (Vincent, 2021). There was massive bloodsheds to enthrone democracy (William, 1996). Nigeriens were made to believe some international institutions who were calling for democracy and liberalism (Yves and Bryant, 2002). The revolt was against authoritarianism and structural adjustment (Vincent, 2021). This also collided with the period in the history of the sub-Saharan Africa when many states were going through democratization. There was another revolt on the 27th of January, 1996. This time, the people were visibly happy to have the military back to clear the mess of the ousted democratic government (Patrick, 1996). Nigerein democratic governments have always ended up in a coup d' etat, an indication that the people need more than just democracy (Vincent, 2021). The political antiquity of Niger has not changed much and this led to yet another coup in July, 2023. So far, there has been five military coups in Niger since its independence in 1960. The latest toppled the democratic government of President *Mohamed Bazoum* and brought in the military regime of *Abdourahamane Tchiani.* The military in its broadcast after the coup, said it was "forced to intervene due to the deteriorating security situation and bad governance" of oust democratic government (2023 Nigerien *coup d'etat).* The people publicly declared their support for the military (Aljazeera, 13 December 2023). Democratic governments are characterized by increased burdens of debts; devaluation and hardship (Vincent, 2021). From a survey collected in Niger shortly before the 2023 coup, 50% of the people accepted a military rule, while 69% of them were in support of military intervention where democracy fails them (Daniel T, 2023).

4.3 Mali

The Malian Constitution provides that Mali is a democratic state (Constitution of the Republic of Mali, Preamble.). The Constitution evident that the state of Mali is a pluralistic democratic nation (Constitution of the Republic of Mali, Preamble.). It prescribes respect for human rights (Constitution of the Republic of Mali, Article 1-10). The rule of law is guaranteed (Constitution of the Republic of Mali, Article 11) and the Constitution is supreme (Constitution of the Republic of Mali, Article 24). The state is an independent, sovereign, indivisible, democratic, secular and social republic (Constitution of the Republic of Mali, Article 25). It is a government of the people, by the people and for the people (Constitution of the Republic of Mali, Article 25). The Sovereignty

of the nation belongs entirely to the people, who shall exercise it through their representatives or by vote of referendum. No faction nor any individual may exclusively claim this exercise of sovereignty (Constitution of the Republic of Mali, Article 26). The right to vote is universal, equal and secret. According to conditions defined by law, all citizens of voting age are electors demonstrating their civic and political duties (Constitution of the Republic of Mali, Article 27). The President is the Chief of State and custodian of the Constitution. He is embodied to protect national unity, guarantee independence, and territorial integrity (Constitution of the Republic of Mali, Articles 29 and 30). However, democracy has not been their best form of government (Winston Churchill, 1947). Before the 2012 coup, the country had an elusive democracy, much lower than the African average (Boniface Dulani, 2000). The elites were in authority (Michael and Richard, 2014). In a survey, 45% of Malians out rightly voted for authoritarian leadership, while 38% were in favor of democracy and overruled any form of authoritarian rule (Michael and Richard, 2014). Though, Malians continue to reject the one-man and one-party rule, they however, generally accepted the military takeover due to hardship brought upon them by their democratic leaders (Mchael and Richard (2014). Malians believed more in the goodwill of the military than the corruption of democratic leaders (Michael and Richard, 2014). The country was in democracy for over twenty years before the military coup of (Freedom in the World' Annual Reports, 1993). Weeks before the demonstration, which challenged the President *Ibrahim Boubacar Keita's* democratic regime, the people celebrated the military take-over which ousted his government on the 18th of August, 2020 (Massa, Logan and Gyimah, 2012). The coup was extensively condemned by ECOWAS and the international community, who maintained that President *Keita* be restored (Ahmed and Petesch, 2020). The army junta refused but swore to lead the country back to democracy through a free and fair election. The fact remains that Malians welcomed the coup due to the bad government of their democratic leaders as the findings from a survey conducted by 'afrobarometer' in March to April 2020 showed (Massa, Logan and Gyimah, 2012).). The people were dissatisfied with the widespread corruption, crumbling economy and absence of integrity and accountability of their leaders (Massa, Logan and Gyimah, 2012).). The people saw the coup as an escape from a downward corkscrew (Massa, Logan and Gyimah, 2012). They were not against democracy but against bad governance. To them, it does not matter which government is in power so far as, there is good governance (Maclean, Diouara and Pelitier, 2020). In a survey conducted before the August 18th coup, 82% Malian adults interviewed agreed that their country is diving into the wrong direction; 74% believed that corruption was on the increase; 81% described the economy as bad and 45% saw the economy as very bad; 61% vehemently disapproved of the leadership; 82% said they trusted the military; 80% acknowledged that the military respects people's rights and protects the people from both internal and external threats; and 77% strongly maintained that democracy is still preferred if only there will be strong democratic institutions (Massa, Logan and Gyimah, 2012). A significant percent of Malians as indeed many other African countries are more tolerant to a strong but accountable leadership (Boniface, 2020).

5. Is Democracy a Panacea to Good Governance?

Democrats believe that democracy is instrumental to good governance and development (Pranab, 1999). Logically, this is true if we take good governance and development to include both civil and political freedoms. But, if the focus is to balance egalitarianism with a narrower idea of development, without the freedoms as central to the nature of development, then democracy cannot be the only way to achieving development and good governance (Imoisi et al., 2023; Aidonojie et al., 2021). This is because it does not always support a fundamental progression nor yield the actual result. Many scholars in their various analyses, have drawn up different conclusions on this subject. For example, while some gave a strong argument on the negative correlation between democracy, good governance and development (Sirowy and Inkeles, 1991); others are positive about the subject (Campos, N, 1994); and yet others are agnostic about whether democracy promotes or delays development (Przeworski and Limongi, 1993). In a comparative-institutional analysis drawn by Bardhan to compare and contrast the development experience in largely authoritarian East Asia and the democratic South Asia for over three decades in terms of their per capita income growth and their human capita development index, it was discovered that the authoritarian state has substantially done better (Pranab, 1999). Bardham pointed at the two largest countries in both East and South Asia, which are China and India. While China remains undemocratic, India has a long history of democracy, which spans over six decades (Wikipedia: History of India (1947 – present). In the last four decades, over 80 countries have settled for democracy through many political reforms (Yun-han, Larry, Andrew and Doh, 2008). But, East Asia has clearly defied the world's trend towards democratization. Whereas, South Korea, Taiwan and India are fully democratized, and Thailand maintains

its stance by rotating between democracy and military rule (Yun-han, Hsin-hsin and Wen-chin, 2015). Indonesia, Philippines and Mongolia are still struggling towards consolidation of some democratic principles. While some others like China, North Korea, Malaysia, Singapore, and Vietnam remain impervious to democracy, they happen to be better developed than the former. They seem to enjoy better level of government acceptability through their authoritarian and hybridise government than their democratic equivalents (Yun-han, Hsin-hsin and Wen-chin, 2015). Whereas western democracy accentuates the participatory aspect of political systems, like the right to vote, viable elections and general culpability, non-democratic governments reject democratic rights but still enjoy higher levels of the political supports of their citizens if they provide good governance, development (David, 1965). East Asians' idea of democracy is in the output or policy performance of their government and not their participations in rules and processes (David, 1965). Non-democratic governments may be denied certain liberties but enjoy a high level of government acceptability. Some level of authoritarianism is needed to effect development (Slater and Wong, 2022). The East Asians have shown a mark of good governance and development even without adhering to democracy. Perhaps, the Asians, particularly, the Chinese are finding it difficult to democratize due to the fact that they lack a political history of democracy (Diamond, Linz and Lipset, 1995). This also explains why democracy seems to be failing in Africa. Democracy is alien to the people's political history and culture. Many cultures in Africa believe in monarchal leadership. The monarch obeys the leading of the gods and the culture of the people or be 'punished' by them.

6. Conclusion and Recommendations

This paper examined the rule of law, democracy and good governance, and the fact that democracy is not a panacea to good governance and development in Africa. Not all democratic nations of the world are enjoying good governance and development, but almost all non-democratic nations are. The case of India and China fits into this analysis. While India has been and still is democratic for over six decades now and yet are under developed, China continues to uphold its authoritarian leadership and yet is one of the world powers in terms of governance and development. Africa has been going in and out of democracy and have had worse experiences in democratic leadership than in military rule. This is evident of the joy they express each time the military takes over. Democratic liberalization in Africa seems weakened and unsuccessful as a result of the non-availability of participatory political treatise; weak electorate; lack of rule of law; lack of freedom of the press; etc. (Petrina and Abraham, 2003). Democracy in Africa is not all about the people but all about the political class at the detriment of the people (Petrina and Abraham, 2003). The fight for the liberation of Africa was done with one mindset, determination and great expectation of both national and individual political self-determinations. Upon attaining independence, Africa sought to emulate the rest of the world to experiment democracy, which they thought would ensure further liberties without giving thought to the fact that there is no total liberty even in nature. Africans only ended up with a 'forced democracy,' without recourse to their peculiar political histories. They ended up giving much more liberty to the political elites whose main idea of freedom in their fight for independence was merely to wriggle free from the colonialist's undemocratic nature (Yaffu, 2000). They failed to give thoughts to the implications of a liberal democracy proposed by the departing colonialists. (Yaffu, 2000). The democratic model that came with independence had no solid foundations to inspire political discipline (Yaffu, 2000).

These researchers, moved by the persistent failure in governance witnessed by Africa in its decades of democratic rule, both recommend that since the continent has dissimilar cultural and political history, no single theory be forced on them. Democracy and good governance may be related but the former is not a panacea to the later. Emphasis should be more on good governance, the rule of law and development and if these could be achieved even in an authoritarian government, then there should be no insistence on democracy. Africa should be determined to fight corruption and bad governance, which is ravaging the entire continent and employ any means to achieve this even outside democracy.

References

Adfricanews. Africa: the 7 military coups over the last three years, available athttps://www.africanews.com, (accessed 31 May 2024).

Aidonojie E. C., Aidonojie P. A., Eregbuonye O., Mutawalli M., Adebayo A. K., and Banki L. L., (2024), "Legal Issues and Consumer Awareness on the Effect of Poorly Processed Garri Edo North, Edo State, Nigeria", *Food Science and Technology Journal* (Foodscitech), 7(1), 31-45, http://dx.doi.org/10.25139/fst.vi.8190

Aidonojie P. A, Agbale O. P., and Ikubanni O. O. (2021). Analysing the land use act, the

grazing reserves act and the proposed Fulani cattle colonies (RUGA settlement) and NLTP. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 12(1), 138-148

Aidonojie P. A. and Egielewa P. (2020). Criminality and the Media: Perception and Legality of the Amotekun Security Agency in Nigeria" *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP), Vol. 1 (3) 51-68A World of debt: Regional stories/UNCTAD, available at https://unctad.org (accessed 23 August 2023).

Aidonojie P. A. and Majekodunmi T A, Adeyemi-Balogun O J, (2023), The Legal Issues Concerning the Operation of Fin-Tech in Nigeria, *Jurnal Media Hukum,* 30(20): 78-79

Aidonojie P. A. and Majekodunmi T A, Adeyemi-Balogun O J, (2023), 'Unethical and Uncensored Content Creation in Nigeria Entertainment Industry: Springing the Law to Action' *Jurnal Hukum Replik*, 11(2): 173-202

Aidonojie P. A., (2022), The Societal and Legal Missing Link in Protecting a Girl Child against abuse before and Amidst the Covid-19 Pandemic in Nigeria, Jurnal Hukum UNISSULA, 38(1), 2022, 61-80

Aidonojie P. A., Adebayo A. K., Aleshinloye Y. A. (2024), Exploring Legal and Cyber-tech Solutions in Curtailing Issues and Challenges on Femicide, *Cogito Multidisciplinary Research Journal*, Vol. XVI, no. 2: 72-91

Aidonojie P. A., Aidonojie E. C., Mulegi T., and Eregbuonye O., (2024), Legal Issues Concerning Compulsory COVID-19 Vaccination: Nigeria as a Case Study, Golden Ratio of *Law and Social Policy Review*, 3(2), 74-83, https://doi.org/10.52970/grlspr.v3i2.349

Aidonojie P. A., Anani O. A., Agbale O. P., Olomukoro J. O., Adetunji O. C. (2020). Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects. *Archive of Science & Technology* 1(2) (2020) 211-221

Aidonojie P. A., Anne O. O., and Oladele O. O., (2020), An Empirical Study of the Relevance and Legal Challenges of an E-contract of Agreement in Nigeria" *Cogito Multidisciplinary Research Journal*, Vol. 12(3), P. 181

Aidonojie P. A., Damina J. J., Ekpenisi C., Onwubiko K. J., Majekodunmi T. A. and Adeyemi-Balogun O. J., (2024), "The Legal Issues Concerning the Implementation of the Administration of Criminal Justice Act of Nigeria" *NIU Journal of Legal Studies*, 10(1): 31-46

Aidonojie P. A., Eregbuonye O., Inagbor M., Ogbemudia O., (2024), "Legal and Socioeconomic Issues Concerning the Nigeria Higher Institution Loan Act 2023", JURNAL LEGALITAS, 17(1), 1-23, https://doi.org/10.33756/jelta.v17i1.23143

Aidonojie P. A., Esther Chetachukwu Aidonojie, Eregbuonye Obieshi, Adedoyin Olusegun Akinsulore, Antai Godswill Owuche, Adebayo Adesoji Kolawole (2024), "Combating the Silent Threat of Street Trading Resulting in Illegal Dumping of Waste in Uganda", *Kanun Jurnal Ilmu Hukum*, 26(2): 337-358

Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayoedeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,

Aidonojie P. A., Majekodunmi T. A., Eregbuonye O. and Adeyemi-Balogun O. J., (2024), Potential and Legal Challenges of Metaverse for Environmental Awareness and Sustainable Practice in Nigeria: A Comparative Study with Singapore, *Administrative and Environmental Law Review* 5 (1):37-64. https://doi.org/10.25041/aelr.v5i1.3230.

Aidonojie P. A., Majekodunmi, T. A., Ikubanni, O. O. and Ibrahim N., (2022), The causes of the Rising incidence of domestic violence in Nigeria: Proposing Judicial Separation as a Panacea, *Jurnal Hukum UNISSULA*, Vol. 38(2), PP. 61-80, DOI:10.26532/jh.v38i2.21592

Aidonojie P. A., Muwaffiq Jufri, Mundu Mustafa, Obieshi Eregbuonye, Saminu Wakili Abacha (2024) "Menace of Internet Fraud on Nigeria Youth: Lesson from the Indonesia Experience", *Jurnal Mengkaji Indonesia*, 3(2) 1-16

Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, Sriwijaya Law Review, Vol. 5(2), PP. 161-174, DOI:10.28946/slrev.Vol5.Iss2.852.pp161-174

Aidonojie P. A., Okuonghae N. and Ukhurebor K. E., (2022), The Legal Rights and Challenges of COVID-19 Patients Accessing Private

Healthcare in Nigeria, BESTUUR, Vol. 10(2), 183-197, https://doi.org/10.20961/bestuur.v10i2.68118

Aidonojie P.A., Adesoji K.A., Eregbuonye O., Antai G. O, Ottah I.O., Muhammad Mutawalli "The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria" (2024), Vol. 19(4), YURISDIKSI, 455, https://doi.org/10.55173/yurisdiksi.v19i4.201

Aidonojie P.A., Eregbuonye O., Adebayo A. K., Ekpa S., and Ketut S. L. P. P., (2024), "Legal and Socio-economic Issues in Adopting Robotic Lawyers in the Nigerian Legal System" *Journal of Human Rights, Culture and Legal System*, 4(1), https://doi.org/10.53955/jhcls.v4i1.115

Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System*, Vol. 2(3), 209-224, https://doi.org/10.53955/jhcls.v2i3.40

Aidonojie P.A., Mulegi T, Muwaffiq J., Imiefoh A.I., Owoche A.G. (2024), "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges", *Fenomena*, 23(2), 131-144

Aidonojie, P. A. (2023). Environmental Hazard: The Legal Issues Concerning Environmental Justice in Nigeria, *Journal of Human Rights, Culture and Legal System*, 3(1), pp. 17-32, https://doi.org/10.53955/jhcls.v3i1.60

Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from https://lawjournal.ub.ac.id/index.php/law/article/view/508

Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum,* 29(1), 65-78, DOI:https://doi.org/10.18196/jmh.v29i1.12595

Aidonojie, P.A., Abacha, W.S., & David, A. (2023). Effectiveness of the Administration of Justice in Nigeria under the Development of Digital Technologies. *Journal of Digital Technologies and Law*, 1(4), 1105-1131. https://doi.org/10.21202/jdtl.2023.48

Akanbi, M.M. (2019). Rule of Law in Nigeria, available at CORE <https://core.ac.uk>pdf (accessed 15 November 2023).

Ake, C. (1996). *Democracy and Development in Africa* Washington DC: The Booklings Institution.

Al AJazeera. Supporters of Niger military government take to the streets. Available at https://www.aljazeera.com (accessed 31 May 2024); Vanguard News. Niger Coup: Nigeriens reject ECOWAS war plan, back NASS. Available at https://wwwvanguardngr.com (accessed 31 May 2024).

Al AjJazeera. Thousands in Niger rally in support of coup leaders. Available at https://www.aljazeera.com (accessed 31 May 2024).

Aljazeera. Timeline: What has happened in Niger since the coup? Available at <Aljazeera.com (accessed 13 December 2023).

Antai, G., Okpong, D., Jufri, M., Imiefoh, A., Collins, E., & Aidonojie, P.A. (2024). The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the "Nwa Boyi" in South-East Nigeria. NIU Journal Of Humanities, 9(3), 127-138. doi:10.58709/niujhu.v9i3.1958

Besancon, M. (2003). Good governance rankings: the art of measurement. World Peace_ Foundation_Reports_Online, No. 36, Cambridge, Massachusetts {online] available:http://bcsia.ksg.harvard.edu/BCSIAcontent/documentsWPF36Governance.pdf (accessed 20 April 2024).

Budiyanto B., Ahmad M., Aidonojie P. A., and Jamal A., (2024),"Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua", Law Reform, Vol. 20(2: 278-300

Business Insider Africa. (2022). 20 most corrupt countries in Africa, according to latest corruption index report, available at https://africa.businessinsider.com (accessed 4 January 2024)

CAJ News Africa. Niger 'thwarts' plot to rescue ousted president, available at https://www.cajnewsafrica.com (accessed 4 January 2024)

Daniel, T. What does the population in Niger think about a military government? HiCN Working Paper 400, available at <hicn.org> (accessed 10 October 2023).

David, E.*A.* (1965). *Framework for Political Analyses* Englewood Cliffs N J: Prentice Hall.

Diamond, L., Linz, J.L. & Lipset, S.M. (1995). *Politics in Developing Countries: comparing Experiences with Democracy* 2nd ed Lynne Rienner Publishers.

Dicey, A. V. (1999). *An Introduction to the Study of the Law of the Constitution.* Palgrave Macmillan Gaudin.

Dieter, P. (2009). The Origins of the Neoliberal Economic Development Discourse. In Philip, M. & Dieter, P. (eds) *The road from Mont Pelerin: The Making of the Neoliberal Thought Collective* London, 238 - 79.

Edetalehn O. I. and Aidonojie P. A., (2023), 'A Facile Study Concerning Non-Custodial Sentence in Nigeria's Criminal Justice System: Taking a Leap from the Kenya Jurisdiction' Redeemer's University Nigeria, *Journal of Jurisprudence & International Law* (RUNJJIL), Vol. 3(1), 1-17

Egielewa P. and Aidonojie P. A. (2021). Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchi, Edo State as a Case Study, *International Journal of Current Research in Humanities*, Vol. 25, 415-434

Ekeh, P. (1975). Colonialism and the Two Publics in Africa. *Comparative Studies in History and Society,* 1, 91-112.

Ekpenisi C., Aidonojie P. A., Antai G. O., Akinsulore A., Okonji C. and Damina J. J., (2024), "Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria", Nexus International University, (2024) 10(1): 5-14

Election Watch, (2023). Political Violence and the 2023 Nigerian Election, ACLED <acleddata.com> (accessed 30 December 2023).

Essien, D.E. (2012). Manifestations of Bad Governance on the Threshold of African Democratic Process and Development. *Ghana Journal Development Studies, 9,* 2.

Etuk, U. (2003). *Democratization and Development in Africa* Ibadan: Spectrum Books Ltd.

Gbemudu, C. & Ajabor, I. (2019). The Politics of Good Governance and of Law. *International Journal of Innovative Social Sciences & Humanities Research,* 7(2), 35-39.

Governance Models' www.wikipedia (2009) (accessed 13 April 2024).

Gunawan Y., Haque A. Y. I. & Aidonojie P. A. (2023). Police Brutality as Human Rights Violation: A Study Case of Black Lives Matter. Varia Justicia, 19(1), 19-32 https://doi.org/10.31603/variajusticia.v19i1. 6588

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and Issues Concerning the Regulatory Regime of E-Payment System in Nigeria. *Journal of Digital Technologies and Law,* 2(2), 372–393. https://doi.org/10.21202/jdtl.2024.19

History of India [1947 – present] - Wikipedia" available at https://en.m.wikipedia.org (accessed 3 January 2024).

Human Rights Watch, 2023, available at <www.hrw.org> (accessed on 2 November 2023)

Ihonvbere, J. (1996). On the threshold of another false start? A critical evaluation of movements in Africa. *Journal of Asian and African Studies,* 34(1), 2, 119.

Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. Yuridika, 38(2), 61-84, https://doi.org/10.20473/ydk.v38i2.44999

Imoisi S. E., Aidonojie P. A., and Edetalehn O. I., (2023), Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry, *Journal of Commercial and Property Law*, 10(2), 229-243

Jean-Jacques, R. (1762). The Social Contract- SparkNotes. available at https://www.sparknotes.com (accessed 31 May 2024).

Kelly, R.M. (2014). *Corruption in Africa: cultural, economic and political factors.* Rutgers University Press, available at https://doi.org/doi:10.7282/T3RR1WGX (accessed 4 January 2024).

Lane, J. E. & Ersson, S. (1989). *Comparative Political Economy: A development Approach* 6th ed London and Washington: Pinter 4th ed New York: Longman.

Laski, H. J. *A.* (1925). *Grammar of Politic London*, George Allen and Unwin.

Lawson, A. (1998). *Ethical Management for the Public Services* Buckingham UK: Open University Press.

Luckham, R. (1995). Dilemmas of Military Disengagement and Democratization in Africa. *IDS Bulleton,* 26(2).

Madhav, G. (2007). Election or Selection? Human Rights Abuse and Threats to Free and Fair Elections in Nigeria. Report of the Committee on Good Governance Human Rights Watch, available at <http://hrw.org/backgrounder/africa/nigeria0 407/index.htm (accessed 12 August 2023).

Mamadou, G. (1998). Gloire et misere du movement syndical nigerien. *Politique africaine,* 69, 126-134

Masajuwa F. U. and Aidonojie P. A (2020). Sustainability of Plea Bargain in Nigeria Legal System: A Comparative Analysis of the Past and the Present. *Nigeria Bar Association Section on Legal Practice Law Journal*, Vol. 6 (1) 45-62

Mazrui, A. (2000). Nigeria's Search for Good Governance and National Development: Dilemmas of Policy and Leadership. In Lame, I.Y. & Dabin, H. (eds) *Democracy, Good Governance and National Development in Nigeria: Actualizing the People's Mandate* (Proceedings of a National Seminar Organized by the PDP) in Ibadan Nigeria: Spectrum Books.

Mukhlis M. M., Aidonojie P. A., Zulhilmi P. and Tajuddin M. S., (2024), 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia' 23(1) FENOMENA 1-14.

Mukhlis M., Jackson-Ortiz R. D., Muwaffiq J., Garunja E., and Aidonojie P. A.. (2023), "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia". Lex Scientia Law Review 7, no. 2: 959-994. https://doi.org/10.15294/lesrev.v7i2.72156

Munro-Nelson, J. (2021). Rule of Law: A Footnote in Time, available at, <http://the _beacon.info/blog/wpcontent/uploads/20110 5/RULE-OF-LAW.pdf> (accessed 12 April 2024).

Mutawalli M., Masum A., Aidonojie P. A., Adesoji K. A., (2024), Filling Members of the Financial Audit Board: *Constitutional Review and Legislative Intervention*, Al-'Adl, Vol. 17(1), 55-72 http://dx.doi.org/10.31332/aladl.v17i1.7707

Muwaffiq J., Safi S., Aidonojie P. A., Zaini Z., and Yusuf I. A., (2024). 'Strengthening Islamic Law and the State: The Role of Pesantren in Spreading Patriotism Ideology in Preventing Radicalism in Madura', Justicia Islamica, 21(2), 1-18

Nik, A.K. & Nik, M. (1989). Good Governance and the Rule of Law. *First International Conference on Law, Business and Governance UBL Indonesia.*

Nunnenkamp, P. (1995). What Donors Mean by Good Governance: Heroic Ends, Limited Means and Traditional Dilemmas of Development Cooperation. *IDS Bulletin,* 26(2).

Nurus Z., Aidonojie P. A., Muwaffiq Jufri, Raphael Daoud Jackson-Ortiz (2024), "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates", PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH, 9(2)

Nwekeaku, C. (2014). The Rule of Law, Democracy and Good Governance in Nigeria. *Global Journal of Political Sciences and Administration,* 2(1), 26-35.

Nwekeaku, C. (2014). The Rule of Law, Democracy and Good governance in Nigeria. *Global Journal of Political Science and Administration,* 2(1), 26-35, available at (www.ea-journals.org) (accessed 25 April 2023).

Nwekeaku. C. (2014). The Rule of Law, Democracy and Good governance in Nigeria. *Global Journal of Political Science and Administration,* 2(1), 26-35.

Ojo, E.O. (1998). Military and Democratic Transition in Nigeria: an in-depth Analysis of General Babangida's Transition Programme 1986 – 1993. *American Journal of Political and Military Sociology,* 28(1).

Ojo, E.O. (1999). Towards Sustaining Democratic Values in Nigeria. In Saliu, H.A. (ed) *Issues in Contemporary Political Economy in Nigeria*, Ilorin: Haytee Books.

Okoroafor, E.C. (2010). Democracy and Good Governance: Ingredients for Socio-economic Development in Nigeria. *International Journal of Development and Management Review,* 5(1), 67.

Omotola, J.S. (2007). Democratization, Good Governance and Development in Africa: The Nigerian Experience. *Journal of Sustainable Development in Africa,* 9(4).

Osaghae, E.E. (1999). Democratization in Africa: Faltering Prospects New Hopes. *Journal of Contemporary African Studies*, 17, 1.

Ottaway, M. (1995). Democratization in Collapsed States. In Zartman, I.W. (ed) *Collapse States: The Disintegration and Restoration of Legitimate Authority* London: Lynne Rienner

Owolabi, K.A. (2003). Can the Past Salvage the Future? Indigenous Democracy and the Quest for Sustainable Democratic Governance in Africa. In Oguejiofor J obi (Ed) *Prospects for Democracy: North. South East West* Cambridge: Polity Press.

Patrick, Q. (1996). Retour sur I'analyse d'un coup d'Etat", Le Niger. Mise au point et suite. P*olitique africaine*, 63, 136-141.

Plato, M.L.A. (1943). *The Republic* New York: Books.

Plato, M.L.A. (2015). *The Statesman Create Space* Independent Publishing Platform.

Plato, M.L.A. (375 B.C). *The Laws* Internet Encyclopedia of Philosophy, available at https://iep.utm.edu (accessed 20 April 2024).

Plato, M.L.A. (375 B.C.) *The Republic.* New York: Books.

Plumptre, T. (2004). What is governance?' Institute on Governance available at http://www.iog.ca/page.asp?pageID=3&htmlarea=home (accessed 4 August 2023).

Potter, D. (2000). Democratization, Good Governance and Development. In Allen T and Thomas A (eds). *Poverty and development into the 21st Century* UK: The Open University and Oxford University Press, 240-244.

Przeworski, A. & Limongi, F. (1993). Democracy and Development. In Hadenius, A. (ed) *Democracy's Victory and Crisis.* Cambridge University Press, Cambridge, 157-87.

Rotberg, R.I. (2005). Strengthening governance: ranking, countries would help. *The Washington Quarterly,* 5, 28 at 71-82 available at <http://bcsia.ksg.harvard.edu/perzocfm?order_by=name&program=WPF&dn=full&citem_id=242> (Accessed 4 August 2023).

Sabine, G.H & Thorson, T.L. (1995). *A History of Political Theory.* Illinois Dryden Press Hinsdale.

Safi', Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", *El-Mashlahah*, 14(1), 95-126

Sahara Reporters, (2023). I'll prove it in court that presidential election was rigged to favour Tinubu, available at https://saharareporters.com (accessed 15 November 2023).

Slater, D. & Wong, J. (2002). *From Development to Democracy: The Transformations of Modern Asia* Princeton University Press.

The Truman Doctrine and the Marshall Plan-Short History" available at https://history.state.gov (accessed 12 October 2023).

Transparency International (TI) (2007) available at http://www.transparency.org; CPI 2022-Corruption Perceptions Index Transparency.org available at https://www.transparency.org (accessed 12 November 2023).

Transparency International. Nigeria. Available at <https://www.transparency.org (accessed 30 December 2023).

United Nations United Nations Rule of Law, (1997). What is Good Governance? Available at <http://www.unrol.org/article.aspx?articles-_id=3.> (accessed 15 April 2024).

United Nations. (2000). Millennium Development Goals, available at <http;//www.un.org/milleniumgoals> (accessed 12 August 2023).

Vincent, B. (2021). Democracy and Adjustment in Niger: A Conflict of Rationales. *International Review Social History,* 66, 181-214.

William, S. (1996). Historical Events as Transformations of Structures: Inventing Revolution at the Bastille. *Theory and Society,* 25(6), 841 to 881.

William, S. (2008). The Temporalities of Capitalism. *Socio-Economic Review*, 6(3), 517-537.

Winston Churchill, House of Commons speech on November 11, 1947 available at <http://hansard.millibanksystems.com/commons/1947/nov//11/parliament-bill#column-_206 (accessed 16 December 2023).

Worldwide Governance Indicators- Wikipedia" [2021] available at https://en.m.wikipedia.org (accessed 27 October 2023).

Yaffu, S. (2000). Patterns of Income and Expenditure of African Political Parties: Time to Reform Political Financing in Africa in Proceedings of the International IDEA Conference: Towards Sustainable Democratic Institutions in Southern Africa Gaborone. May 8-10, 2000, 169-189.

Yun-han, C., Hsin-hsin, P. & Wen-chin, W. (2015). Regime Legitimacy in East Asia: Why Non-Democratic States Fare Better than Democracies. *GlobalAsia,* 10(3).

Yun-han, C., Larry, D., Andrew, N. & Doh, C. (2008). Introduce. In Yun-han Chu *et al* (eds) *How East Asians View Democracy.* Columbia University Press, 1 -34.

Yves, D. & Bryant, G. (2002). *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform.* Latin America States Chicago, I.L.

Zach-Williams, A.B. (2001). The Akutay: Ethnic Cabal and Politics in Sierra Leone. In E.I. Udogu (ed) *The Issue of Political Ethnicity in Africa*. Hampshire: Ashgate.

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Harnessing Customary Land Tenure for Sustainable Land Resource Management in Rural Nigeria

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Abstract. Customary land tenure is the primary form of management of rural land in Nigeria. Although other land tenure systems operate alongside it, it primarily regulates the ownership rights and the appropriation of land resources in the rural settings. This study overviewed customary land tenure and the Land Use Act 1978 (LUA). The changes the LUA introduced to its operation and the results of the intervention were discussed. The study appraised the role of customary land tenure in sustainable rural development. A doctrinal research method which made use of primary and secondary sources was used. The primary source included the domestic statutes such as the Land Tenure Law 1962, LUA, 1999 Constitution of the Federal Republic of Nigeria, etc. and case law The secondary source included textbooks, journal articles, conference proceedings and the internet. It was revealed that in most parts of Nigeria, rural lands are under the customary land tenure, regulated by customs and culture of the communities. It was suggested that the LUA adopted the operation of the customary land tenure with modifications and that the intervention on the system dislocated rural peace. However, the incidents of customary land tenure were found to be capable of ensuring sustainable development in the rural areas. While reforms were suggested, the use of customary land tenure is recommended for the reduction of poverty, hunger and violence and an increase in employment and wealth creation.

Keywords: Deemed Customary Rights, Land Tenure, Rural Conflicts, Sustainable Development

1. Introduction

Customary land tenure is the land holding system which is traditional to Nigeria and distilled from customs, values and practices of the peoples (Otu, 2022). The tenure is enforced by various High Courts of the Federation subject to its compliance with principles of equity and good conscience and by not being incompatible either directly or by implication with any law for the time being in force in any part of Nigeria (Evidence Act 2011, S. 14(1)). For the avoidance of doubt, customary law is also enforced in the State High Courts of States.

The security situation in rural Nigeria has reached a critical level. It has impacted negatively on the children's access to education, deprivation of human rights and has caused humanitarian crises, in most parts of northern Nigeria, comprising three geopolitical zones, namely Northwest, North Central and Northeast zones (OSIWA, 2024). In southern part of Nigeria, crises erupted upon the passage of the Land Use Act in 1978 which ignited age-old feuds over customary access to land. Notable among which are the Ife/Modakeke (Toriola, 2001). Crises in Southwest Zone which spanned over decades; Erin Ile and Offa in North Central Zone and various land resource disputes in which lives and properties had been lost in Southeast and Southsouth Zones. The Niger Delta Crisis negatively impacted on Nigeria's economy and promoted humanitarian crises in the Southsouth Zone (Oluduro and Oluduro, 2012). The authors suggested that post amnesty, efforts should be made to address the underlying factors (economic, social and environmental) which were responsible for the militancy in the first instance. This observation is particularly relevant because the ancestral homes of the Niger Delta people, where Nigeria's crude oil is being prospected, had suffered extreme pollution which prevented them from using the land for further economic and residential purposes (Oluduro and Oluduro, 2012).

The various crises could, perhaps, be attributed to poor management and utilisation of natural resources in Nigeria. Since the colonial intervention after the Berlin Conference of 1884 – 1885, most of the legacies of the African empires, cities and communities had been relegated, while the colonial heritage took over (Gate and Appiah, 2015). This relegation was more prominent in the implementation of customary law which effectively regulated the affairs of the peoples and kingdoms to the applauds of the early explorers (Cartwright, 2024). An important aspect of these is the effect of the colonization on the customary land tenure law on the management and control of the use and the ownership of land (Otu, 2022).

This paper realised that many studies have been conducted on land tenure practices in Nigeria such as the Received Doctrine of Estates, State Ownership under the Land Tenure Law, Cap 59 Law of Northern Nigeria 1962 and the Land Use Act 1978, Law of the Federation of Nigeria 2004, while less studies have focused on the nature, use and operation of the customary land tenure and its role in sustainable development in Nigeria's rural areas. Paying attention to the customary land tenure law in rural areas in Nigeria could bring about identifying the challenges inherent in it. It would also provide a roadmap to various stakeholders who could be interested in using land for agricultural development and security.

This study aims at harnessing customary land tenure for sustainable development in rural Nigeria. Its specific objectives are to:

- undertake an overview of customary land tenure in Nigeria
- discuss innovations and developments which the Land Use Act introduced to it for sustainable development in resolving rural conflicts in Nigeria.

The study made use the doctrinal research method, relying on primary and secondary sources of information was adopted.

2. Overview of Customary Land Tenure in Nigeria

Land has been variously defined in law, but the definition that is adopted for this study is that of Garner (2004) which sees land as 'an immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface and everything growing or permanently affixed to it'. This definition has underlying assumptions, which are both natural and artificial (Nwabueze, 1982). The natural element consists of the physical structure of the land and its sub-soil, including all those things growing naturally on it. But its artificial content occurs when other structures and trees have been affixed to it. In *Salami v Godoolu,* (1997) 4 NWLR (Pt. 499) 287, Adio JSC stated that:

The word 'land' in its ordinary meaning means any ground, soil or earth, or the solid part of the earth's surface as distinguished from sea… the fact is that, by its very nature, land ordinarily is an immovable object.

The distinction of land into its natural and artificial elements is in line with the maxim of *quicquid plantatur solo solo cedit* which literally means anything that is attached to the land belongs to the land. This is the definition of land at common law, which Nigeria courts have adopted to define, describe and typify land in Nigeria.

2.1 Nature of Customary Land Tenure

Nigeria is a multi-ethnic and multi-cultural nation, with its diversity spanning across ethnicity, cultural worldview, religion and politics. The nation "Nigeria" came into existence in 1914 when the then Governor-General, Frederick Lord Lugard, amalgamated the southern and northern protectorates (Isiani and Obi - Ani, 2019). This singular effort brought together peoples whose ways of lives, attitudes and religious together as one. The implication of the amalgamation was the breakdown of the pre-existing law and order which sustained the great empires such as Oyo, Jukun, the Hausa States and so on. Though, at the twilight of the invasion of the civilization of the indigenous peoples constituting Nigeria and the subsuming of their governance system under the British imperialism, the Hausa States had been colonised by the Fulani Jihadists which introduced state ownership of land (Smith, 2013). The learned author further commented that in southern parts of Nigeria (the southern protectorates) customary law was used to direct the affairs of the people, including land relationships before the colonial administration. The colonial government introduced Received English law which accepted statutes of general application in operation as of 1st January 1900 in England, the doctrines of estate and the principles of common law. It also allowed the continued operation of the customary law subject to necessary modification that would make it compliant with the Received law (Evidence Act 2011, Section 16). The customary land tenure which emerged from the cultural contacts the Jihadists (Northern Nigeria) and the colonialists in all parts of the Nigerian federation had accommodated new ideas, concepts and

philosophies in line with its ever dynamic and flexible nature.

The question which has engaged the attention of scholars is whether the concept of law at common law rule of *quicquid plantatur solo solo cedit* applies to the customary land tenure. The insight into this question could be had from the case law and the opinions of legal scholars. In *Okoiko v Esedalue,* ((1974) 1 All NLR (Pt 1)), the issue was considered for determination. The pledgor pledged vacant land to the pledgee who, during its use and enjoyment of the land planted rubber trees on it. On redemption, the pledgee requested for compensation for the rubber trees planted on the land. The trial court rejected the claim 'as inability of the mortgagor (that is the pledgor) to pay such compensation may deprive the mortgagor the right of redemption of the property which native property and custom allows him.' The trial judge, however, ruled that the pledgee should be given opportunity to remove the property and structures which included the rubber trees, before possession was taken by the pledgor' On appeal to the Supreme Court, the part of the judgement of the trial court which gave the pledgee the powers to remove the economic trees was overturned. Elias CJN stated in *Okoiko v Esedalue* (1974) All NLR (Pt 1),340 that:
We think that the planting of the land with economic crops like rubber must be regarded as necessarily incidental to the use of the land since there is no evidence that was forbidden under the terms of the original pledge; but it is also clear, nevertheless, that the pledgee has no right to compensation or credit for the plantations, which accrue to the pledged land on the principle of *quicquid plantatur solo solo cedit*. It was therefore an act of grace rather than as a matter of legal right that the learned trial judge ordered the appellant to permit the respondents to reap the next harvest before returning the pledged land to the appellant. The law is that the pledgee should quit the land as from the date of judgement in favour of the pledgor.

However, in *Okoh v Olotu* (1953) 20 NLR 123 and *Samteng Dakuh* (1925) ENLR 87, it appears that the Federal Supreme Court has reviewed its support for the *quicquid plantatur solo solo cedit* on equitable ground at the customary law, which it notes that separate rights of ownership of land and that of the economic trees often exist on land in customary tenure. It expressly holds that the owner of the land may not be the owner of the economic trees, and the owner of the economic trees has the rights to remove or demolish or sell the crops to the landowner at the expiration of his tenure. Although a member's allotment is exclusive to him, such cannot be transferred by sale or inheritance (*Akeju v Suenu* (1925) 6 NLR 87).

Cases which reject the application of the principle of *quicquid plantatur solo solo cedit* do so on equitable grounds rather than on its basis of non-applicability to customary land transactions (*Uwam v Akom* ((1929) 8 NLR 19) and in some cases, are of Ghanaian, not Nigerian origins, (*Santeng v Dankwa* (1949) 6 WACA) and may therefore not be typical of the customary land relationship in Nigeria (Otu,2022).

The conclusion that arises from the foregoing analysis of the nature of customary land tenure in Nigeria is that it subscribes to the common law principle and sees land as including permanent attachments and features on it, subject to some exceptions based on equitable grounds. The implies that under customary land tenure, whenever a fixture such as a house is given as a security for credit, it would not mean that the land is included, although it would include the other fixtures unless such is excluded (Nwabueze, 1982; Otu, 2022).

2.2 Features of Customary Land Tenure

Customary land tenure differs from a community to another. Its conception and operation are determined by the customs of the people of the communities. In addition, it is flexible and unwritten. It represents the ways and practices of the communities from the past, but it is dynamic and changes in accordance with the customs. Some of its basic features are considered *infra.*

2.2.1 Communal Ownership

It is based on the concept of communal ownership which sees land as belonging to the community, or the group. Hence, no member of the family has individual or separate right of ownership to the land. A learned commentator, Nwabueze (1982) argues that: 'There is perhaps no rule of customary law that is more firmly established than that no member of a land owing community or family has a separate individual title of ownership to the whole or any part of the family land.' The learned writer further argues that the nature of traditional communities, villages or families makes it impossible for an individual to lay claim to a vast indivisible portion of land. Only a portion may be allotted for a member to use. Hence, communal ownership is different from co-ownership under the English law because land belongs not only to the living, but also the dead and yet unborn, which makes it operating on "the descent to future generation" (Nwabueze, 1982). Its right of ownership depends on communal membership and not by way of filial

inheritance. The implication of this is that land under customary tenure belongs to the dead, the living and the yet unborn, with the interest of the dead and unborn members appears more important than that of the living whose duty is to safeguard, protect and transmit the communal land from their ancestors to the yet unborn.

However, a 'state' (for example a kingdom or an empire in the pre-colonial days), may own lands as a corporate entity, under the customary tenure. Such land is regarded as a 'stool' land, but largely, it is the community village or family that owns larger portion of the land either as chieftaincy or family lands. These land owing groups are not legal personalities, but a group of people who have common interest and may be liable, individually or in group for debts incurred on the land (Oluyede, 1989).

In distinguishing between the crown land and the chieftaincy/family land, the learned author affirmed that paramount ruler has complete and exclusive use of stool land as he pleases in his lifetime, while in the case of chieftaincy/family land, members of the family can farm on portions of the land with the chief/family heads consent. The chief/family head has no more than an interest as a member of the community and a consenting authority. The chief/family head cannot appropriate and expropriate the land without consultation with the corporate members (Umezulike, 2004), but recent trends have suggested that although outright transfer was uncommon in the past, it is now permitted due to innovations on customary tenure which makes it possible to alienate land by way of gift or sale (Innegbedion, 2004).

2.2.2 Administration of Communal Land

The basic units of the communal land holding the community, the village and the family. These units can only act through the rulers, chiefs, headmen, principal members and members. Hence, in *The Military Government of Mid-Western State of Nigeria v The Itsekiri Communal Land Trustees* (Suit No W/SS/1968 of 10/10/69 (unreported), High court Warri) a suit was filed by a community in its own name "Obosi" rather than in the name of its head, or other representatives. It was decided that although the community "describes a large number of people having a common relationship, it is neither a natural nor a legal person capable of suing or being sued in our courts. There being no representative, no process can be served on it, and it cannot itself issue any process." Based on this, it can be surmised that the administration and control of land in communal settings are not vested in the corporate groups, but in either the crown as the head of the community, or in the group of persons as the authorised representatives of the people. (Otu, 2022).

In the management of communal property, chiefs, family heads, rulers or leaders of the community are in control and administration. They emerge based on the customs and practice of each community (Ikpambese, 2010). The chief or leader of the community controls and manages the communal land in consultation with the principal members of the units in the community. A chief in this context refers to "a person who, in accordance with the law in force in any part of Nigeria, is given the dignity of a chief by reference to that part, or to a community established in that part" (Interpretation Act 1990, Cap 192 LFN 2004, Section 18(1)). A chief may, therefore, be construed as a leader of a tribe or a clan *(Amodu Tijani v The Secretary of State of Southern Nigeria*, (1921) AC 399), whose role as a 'trustee' on land is not an owner but mainly as that of leader in his community (*Taiwo v Sarumi* (1913) NLR 103). In performing this role, a chief may combine the role of a landowner in his private capacity to his pre-eminent position of being in control and administration of community land. The above situation came before a colonial court for decision. The court observed that a chief, Olofin of Isheri, had been functioning as a chief in charge of the communal land, and as a landowner.

The Chief or whomsoever acting in that capacity under customary tenure does not have the ownership of the community land under his control. The question is, what is then the role of a chief in the management and control of the land? The communal chief does not have the ownership right on the land in his area. The Privy Council in *Amodu Tijani's* case decided that:
All the members of the community, village or family have an equal right to the land, but in every case the chief or the headman of the community or village, or head of the family, has charge of the land, and in a loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family.

In a similar vein, a learned commentator, Nwabueze (1982) considers the chief as the "alter ego" and the first member, in order of precedence in the community, village or family who could exercise ownership rights on the communal lands, subject to individual members' rights. The learned author further argues that a full understanding of the position of the chief could be attained if the title of ownership is divorced from its exercise. While the title of

ownership belongs to the community, it is the chief who exercises it on behalf of the corporate.

The position of a chief under the customary tenure is a complex one. Nwabueze's description of the position is adopted for this paper. The learned writer states:
The truth is that the position of the chief in relation to communal land is a peculiarly unique one, a uniqueness which is borne out by the fact that without the active participation of the chief, no outright alienation of the land can be validly made, notwithstanding that all other members desired and approved of it.

The position of the learned writer emanated from the customary land tenure principles which had been judicially cited upon by the courts. In *Agbloe v Sappor* (1947)12 WACA 187*),* the court believed the legal title could not be transferred without the approval of the chief. Only the chief is imbued with the necessary power to allocate land to members. In *Odunsi v Ojora* (1961) 1 All NLR 283*),* the Supreme Court affirmed that even when the community opposed the appointment of a chief who had been validly appointed by the prescribed authority, no other person could perform the task of managing the communal property except him. The fact of the case was that the appellant was duly capped Chief Ojora by the Oba of Lagos upon which he had powers to head the Ojora family of Lagos. His appointment was, however, opposed by most of the family members who only conceded to him the social and other privileges, while they elected another member of the family, the respondent in the case to be the family head, with the power of management of the family property. It was decided that only the family head appointed in line with customary law could manage its property and that the family lacks power to divest him this power.

2.2.4 Members Rights to the Communal Land

All members have certain rights in the communal land which must be taken into consideration in exercising the powers for the benefit of the community. These will be briefly discussed in this section.

2.2.5 Right of Allotment

A member has a right to the use of a communal land. This right is inalienable, and the chief cannot deprive a member of this right. A member has a right to enforce it against the chief, or any other member who deprives him of the access to its use (Nwabueze, 1982). This includes the allotment of a parcel of land for farming and residential purpose(s). This right is not discretionary as it is mandatory for every chief to ensure that this inherent right of members is not jeopardised. However, this right is limited to the quantum of land necessary a member requires to farm and reside. Where a chief fails to allot a piece of land for the use of a member, without a reasonable exercise, the member has a right to enforce the right before the court to compel the chief to act. In *Ajobi v Oloko* (1959) LLR 152 it was upheld that the family head deliberately refused to allocate plots to members for their occupation.

However, where lands have been duly allocated to some individuals within the community (whether a family member or not), the chief can no longer reallocate to another member of the community. The individuals to whom the land has been allotted thereby acquires permanent rights in the land (Otu, 2022). Hence, the Supreme Court in *Asiyanbi v Adeniji* (SC/92/1964) decided that the Ooni of Ife had no power to revoke a grant already allotted to a person and allot it to another whether that person is a member of the family or not, without due consultation with the family.

The rules of allotment of land to both community members and those outside it but are interested in the land within the community promoted peace, reduced conflicts and eschewed insecurities in traditional communities. These rules are, however, been increasingly violated by chiefs and heads of the families who hide under the provisions of Land Use Act 1978 and the transitional provisional rules in its sections 36 to cause conflicts in rural Nigeria.

3. LUA's Innovations and Developments on Customary Tenure

Since 1978 when LUA was enacted, all rights to land in Nigeria are determined by its provisions. In its land administration principes and policies, the Act introduces innovations on the preexisting tenures, namely: the customary tenure and the Received Doctrine of Estates.

3.1 State Control over Land

Section 1, LUA states that:
Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.
The Act creates the eminent domain in the Governor who is entrusted with all lands in his domain. The

Governor has the powers to appropriate and expropriate lands through the absolute powers devolved on the office by the Act to grant (LUA, S.5) and revoke rights (LUA, S.29) of occupancy and pay compensation (LUA, S.28) when the grant is revoked for public purposes.

The concept of eminent domain could be traced to 17th century developments on land in United States of America, when the powers of compulsory purchase and, or acquisition of land by the sovereign was affirmed by the courts (Kelo *v City of New London* (2005) 545 United States 469 (SC)). Eminent domain emanated from American Jurisprudence. It was defined by *Black's Law Dictionary* as 'The inherent power of a governmental authority to take privately owned property, esp. land, and covert it to public use' (Garner2004; 601).

The eminent domain is a theory of protection of private property which has been incorporated in many constitutions worldwide, Nigeria's inclusive. Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (Cap C23 LFN 2004) is an adoption of the eminent domain theory. It is a theory that affirms, promotes and institutionalises the State control over land, which is the focus of the LUA in its section 1.

The state control of lands is alien to land control under the customary tenure. Rather, its land control is based on the power of the communal heads, chiefs and family heads who are the consenting authorities. Their authorities are not absolute as they must defer to the principal members of the land-owning units (Fatula, 2012). The position of the communal leadership in the management and control of land differs markedly from the powers of the Governor which are excessive, absolute and characterized by unreasonable delays and inconsistent grants (*Dantsoho v Mohammed* (2003) 6 NWLR (Pt 817), 457). These enormous powers have impacted negatively on the achievement of the objective of LUA, namely: making lands available to all Nigerians (*Ibrahim v Muhammed* (2003) 6 NWLR (Pt 817)).

3.2 Preserving Pre-existing Tenures

Although the LUA takes away the previous legal title which is based on ownership and replaces it with a new legal right based on possession, it does not abolish the pre-existing rights under the previous tenures. In *Ogunleye v Oni* (1991)2 NWLR (Pt. 135) 745, 784, Nnaemeka Agu JSC observed that:
… the Land Use Act never set out to abolish all existing titles and rights to possession of land. Rather, where such rights or titles relate to developed lands in urban areas, the possessor or occupier of the right or title is deemed to be a statutory grantee of a right of occupancy under section 34(2) of the Act. Where it is non-urban land, the holder or owner under customary law or otherwise is deemed to be a deemed grantee of a right of occupancy by the appropriate Local Government under section 36(2).

Hence in *Adole v Gwar* (2008) 5 MJSC 38, 66 the apex court has stated that: 'It must be borne in mind always and this is settled, that the only innovation introduced by the Land Use Act 1978 --- is that it divests any element of radical title and limits the claim to a right of occupancy.' Section 4, LUA therefore, preserves all statutes applicable to land before it, subject to such modifications as would make them conform with the Act or general intention, while section 34 preserves all pre-existing "interest valid in law" on land transactions such as mortgages, legal or equitable interests which shall be revalidated through certificate of occupancy (Abugu, 2012).

The preservation of the pre-existing tenures has made it possible for the incidences of customary tenure to continue, including the beneficial ownership until such is abridged when the holder or occupier obtains the certificate of occupancy or seeks Governor's approval as stipulated by the LUA (S.36(2)).

3.3 Land Accessibility

A cardinal objective of the LUA is to make land accessible to all Nigerians. Pre-existing land tenures did not have that direction. The intendment of the LUA is to make land available to all Nigerians for an integrated and sustainable development (Oluyede,1978) and prevent land speculation and insecurity of title (Umezulike, 2004). In doing this, the LUA subordinates customary and individual rights to state ownership and extends the paternalistic land tenure system under the Land Tenure Law to all parts of Nigeria. The policy of land accessibility is manifested in the trusteeship of the Governor over all lands in each of the states (LUA, S.1), although the role of the Governor in this regard is not that of an orthodox trustee (Fatula, 2012). The Act creates state ownership of land and uniform rules for its management. Hence, the absolute ownership of land previously vested in communities, families and individuals was taken away by the Act, at least in principle, and vested same in the Governor, for the benefit of all Nigerians. The preservation of pre-existing rights, however, allow the continuation of the customary ownership rights, as deemed grantee (Oniekoro, 2007). This presentation has been viewed by scholars as capable of frustrating the innovation

introduced by the Act in this regard (Utuama, 1990; Oniekoro, 2007), is contented to. A deemed grant enjoys greater rights beyond that of an actual grantee (statutory and customary) of occupancy under the Act because the holder or occupier is unencumbered with onerous terms and conditions found in the actual grant and is liable only to the encumbrances on the original title (Oniekoro, 2007). This greater right which cannot be defeated by a subsequent grant to another person still makes land access difficult (Utuama, 1990). For example, LUA provides that 500 and 5000 hectares of land could be granted for farming and grazing by the Local Government, with the directive that a requirement for a higher grant should be referred to the Governor for consent (S. 6(5)). This ordinarily would have solved the problem of inaccessibility to land resources for economic development, but these lands are not freed from the communal ownership and are still controlled by a customary tenure through deemed grant window created in section 36(5) of the Act.

3.4 Citizenship Property Rights

Under the customary tenure, lands belong to the communities, families, and sometimes individuals to whom the allotments have been made. Access to land is restrictive. This policy also operates under the state-controlled Land Tenure Law 1962 where a distinction is made between statutory and customary rights as it relates to persons to whom land rights could be granted. Under the Land Tenure Law, customary rights could only be granted to the natives, (LTL. S. S5) while any person could be granted statutory rights. The difference in the grant of customary right and statutory right is critical for the use and allocation of land resources. The LUA, however, does not make a distinction between a native or a non-native. A closer look at who a native is under LTL will reveal that it intends to make access to land impossible to a "non-native" who is described to mean "a person whose father was a member of any tribe indigenous to Northern Nigeria" (LTL, Section 2). this is understandable because the law is preserving the customary rights of the indigenous peoples at customary tenure. Hence, it defines "customary right of occupancy to mean 'the title of a native or native community lawfully using or occupying native lands in accordance with native law and custom."

The LUA preserves the rights of citizens to have access to lands in any part of the country they reside, whether rural or urban area as it does not differentiate between customary and rural rights. But it goes further to preserve pre-existing land rights under the applicable law (LUA S. 4 (a)). On this regard, the liberal view of the LUA to access to land for all Nigerians should be mode to complement the powers of the Chiefs to allot land to community members and strangers at customary land tenure.

4. Customary Land Tenure and Sustainable Development

4.1 Reducing Hunger

The customary land tenure plays a central role in achieving SDG 2 (Zero Hunger) in Nigeria cannot be overstressed because the bulk of arable lands are still which are still in possession of the communities, families and individuals holding under this system (Smith, 2013). It is, therefore, relevant in resolving rural conflicts in Nigeria through the exploration of customary land relationships which have been saved by a community reading of sections 34, 36 and 48 of the LUA.

Section 48 states:
All existing laws relating to the registration of title to, or interest in, land or the subject of transfer of title to any interest in land shall have effect subject to such modifications (whether by way of addition, alteration or omission) as will bring those laws into conformity with this Act or its general intendment.

By these provisions, pre-existing tenures such as customary land tenure and doctrine of estates operate, subject to their conformity with the policies and principles of the LUA. The basic requirements for conformity include: the deemed grantee (LUA, Ss.34 and 36) which recognises the occupier and holders of rural land for the purpose of regularising and obtaining Certificate of Occupancy and the Consent of the Governor (for urban land) (LUA, S.34(5))) and Local Government (for rural land) (Section 36(5)) before alienation, the half hectare rule (LUA, S. 34(5) and (7)) which forbids a holder's continued possession of more than a cumulative half hectare of undeveloped land in the urban area. Barring these, the allodial titles of the communities, families and individuals continue unabated, until the land is alienated when the consent of the appropriate authority shall be required.

Harnessing customary land tenure principles and practices could resolve many land resource disputes threatening food security, promoting hunger deprivation in rural Nigeria, riddled with herdsmen attacks, ethno-religious conflicts, banditry, cattle rustling, insurgency and resurgency (Salawudeen, 2019).

4.2 Increasing Land Access

The LUA was enacted to make land available to all citizens. In order to do this, it vests the lands in the states of the federation in the Governors. Despite this, and more than four decades since the Act had become operational, land is still not available for agricultural and other economic activities in rural areas in Nigeria (Abugu, 2012). This problem could arguably be attributed to customary land tenure, under which most lands in rural areas are held (Salawudeen, 2019).

It has been observed that LUA does not revoke or amend the respective rights of customary landlord and the tenants (Olong, 2011). Rather the Supreme Court had to comment on the effect of the law in *Ogunleye v Oni* (1989) 1 NWLR (Pt 97) 305 as follows:
--- the Land Use Act is not a magic wand, it is being portrayed to be or a destructive monster that at once swallowed all rights on land and that the Governor or local government with mere issuance of a piece of paper, could divest families of their homes and agricultural lands overnight with a rich holder of a certificate of occupancy driving them out with bulldozers and cranes.

The implication of this statement is that the LUA does not in fact change the structure of land ownership. What it does is to merely introduce some principles and policies to guide the appropriation and expropriation of the land by the Governor. All the customary land tenure incidents such as customary tenancy, kola tenancy, customary pledge continues to operate under the LUA, subject to necessary modification (LUA, S. 47). To make lands available, these aspects of customary land tenure would have to be explored for use.

5. Conclusion

5.1 Summary

The customary land tenure is the indigenous form of method of administering land titles systems in Nigeria. it arose from the customs and practices of the peoples indigenous to Nigeria. This study undertook an overview of the customary land tenure, discussed innovations and development which LUA had brought to the customary tenure and appraised the sustainable development in rural, and predominantly agricultural communities. The study examined ways of harnessing customary land tenure for sustainable development in food production in Nigeria.

The study looked at the principles and incidences of customary land tenure such as corporate and individual ownership, land administration under it and some of the challenges it faced in view of the increasing modernisation and globalisation. Innovations were introduced by LUA into the customary land tenure by the LUA, which recognised, modified and streamlined it for the challenges of development. The customary tenure was considered for further innovations and use in view of the failure of the LUA to meet the current spate of a multi-cultural, multi-ethnic and multi-religious nation like Nigeria.

5.2 Findings

The study affirmed that customary land tenure had existed from time immemorial, and its principles were dynamic, flexible and responsive for the rapid development of agriculture, grazing and other economic activities.

It was also revealed that customary land tenure had survived all legislations on land tenure systems introduced to Nigeria. The first of such legislation was the Treaty of Cession 1861 signed by King Dosunmu of Lagos. It also survived, and indeed was nourished by, the LUA, through its doctrine of deemed grantee, subject to necessary modifications to make it comply with its principles and policies.
The LUA affirms incidents of customary land tenure such as customary tenancy, kola tenancy, customary pledge. In addition to making land accessible to members of the communities, and strangers who may not have access to land for residential, farming, grazing and other business purposes like other incidents, customary pledge raises funds for the landlords as security, and it is a form of customary mortgage.

5.3 Recommendations

In view of the importance of the customary land law principles and practices to land management in Nigeria and its flexibility and dynamism, the administration of land under the LUA should include guidelines and procedures to implement the incidents of customary land tenure without hindrance.

Customary land tenure used to be on parole agreement, innovations and modernisations which came through the adoption of the Received English doctrine of estates makes it mandatory for land transactions to be in writing should be sustained, while necessary efforts should be instituted under the extant legal regime of LUA to improve on rural land documentation to curb land speculation and money laundering in the real property sector of Nigerian economy.

Furthermore, policies, rules and guidelines for the operation of deemed grantee should be set by the State Land Allocation Committees and Local Government Land Advisory Committees for transparency.

In addition, the consent for the alienation of lands in urban and rural areas have created problems for land access. This is true of rural areas where double-decker consent is required. While the consent of chiefs/family heads are mandatory for alienation, the LUA have put some hindrances, namely the bar on local government allocation of more than 500 and 5000 hectares for farming and grazing respectively. The Governor's consent for any allocation is a bar to land access as it could delay it for several years due to bureaucracy and official corruption. The above issues deserve attention for sustainable food security.

References

Abugu, U. (2012) *Land use and reform in Nigeria: Law and practice.* Immaculate Prints

Cartwright, M. 'Kingdom of Benin, *History of Enclopedia* (02 April 2019) accessed from https://www.worldhistory.org on 23 June,2024

Cooley, T.M. (1868). *A treaties on the constitutional limitations which rest upon legislature power of the states of the american union*. Little

Fatula, O. (2012). *Fundamentals of real property law.* Afribic Press

Garner, B.A. (2004). *Black's Law Dictionary of Law of Law.* Thompson West Publishing Co., 8th edition, 2004

Gate, H.L.and Appiah A.K. (2015) (ed), *Encyclopedia of Africa.* Oxford References

I.A. Umezulike, I.A. (2004). 'The land use act: More than two decades after and problems of adaptive strategic of implementation' being a paper presented at the 2nd annual lecture of the college of law, Igbinnedo University, Okada, Edo State, Nigeria 4 March

Ikpambese, M.A. (2010). *Nigerian Land Law Principle, Practice and Procedure.* Oracle Business Limited

Inegbedion, N.A. and Ukhun, C.E. (2004). 'Land Use Act?' (14)(2) *Lesotho Law Journal,* 341-354

Isiani, M.C. and Obi-Ani, M.A. (2019). 'Amalgamation of Northern and Southern Protectorates of Nigeria: Blessing curse?' (October) (13) (1) 145 -158

Nwabueze, B.O. (1982). *Nigerian Land Law* Nwamife Publishers

Olong, A.M.D. (2011). *Land Law in Nigeria* (Second Edition, Malthouse Press Limited

Oluduro, O. and Oluduro, O. (2012) In search of sustainable peace in the Niger Delta through the Amnesty Programme. *Journal of Sustainable Development* (8) (7) 48 - 60

Oluyede, P.A.O. (1978). *Nigerian Law of Conveyancing.* University of Ibadan Press

Oluyede, P.A.O. (1989). *Modern Nigerian Land Law*. Evans Brothers Nigeria Publishers

Oniekoro, F. (2007). *Mortgages in Nigeria.*

Otu, M.T. (2022), *Customary land law in Nigeria: Law & Practice.* Princeton & Associates Open Society Initiative for West Africa (OSIWA), Report on Small Arms, Mass Afro cities & Migration in Nigeria (April 2020). https://www.submintel.com accessed on 29 June 2024

Salawudeen, M.O. (2019). *Herdsmen attacks and social integration among the people of Southwest Nigeria*. PhD Thesis, Ekiti State University, Ado Ekiti

Smith, I.O. (2013). *Practical Approach to Law of Real Property.* Ecowatch Publications

Smith, (2013). *Practical Approach to Law of Real Property in Nigeria*. Revised Edition, Ecowatch Publications

Toriola, O.J. (2001), 'The Modakeke Crisis: An Insider View' *Ife Psychologist,* 21-29

Umezulike, I.A. (2004). 'The Land Use Act: More than Two Decades after and Problems of Adaptive Strategies of Implementation.' Lecture Delivered at College of Law, Igbinnedon University, March 4

Utuama, A.A. (1990). *Nigerian Law of Real Property.* Shaneson C.I.

Cases

Adole v Gwar (2008) 5 MJSC 38, 66

Agboloe v Suppor (1947) 12 WACA 187, 189

Ajobi v Oloko (1959) LLR 152

Akeju v Suenu (1925) 6 NLR 8

Amodu Tijani v The Secretary of State of Southern Nigeria (1921) 2 AC399, 404

Dantsoho v Mohammed (2003) 6 NWLR (Pt 817), 615

Ibrahim v Muhammed (2003) 6 NWLR (Pt 817) 615

Kelo v City of New London (2005) 545 United States 469 (SC)

Odunsi v Ojora (1961) 1All NLR 283

Ogunleye v Oni (1990) 2 NWLR (Pt. 135) 745, 784

Okoh v Olotu (1953)20 NLR 123

Okoiko v Esidalue (1974) NWLR 337

Salami v Godoolu (1997) 4 NWLR (499)287

Santeng v Dankwa (1949) 6 WACA

*Taiwo v Sarumi (*1913) 2 NLR 103

Uwam v Akom ((1929) 8 NLR 19

Western State of Nigeria v The Itshekiri Communal Land Trustees Suit No W/SS/1968 of 10/10/69 (unreported), High court Warri

Legislation

Constitution of the Federal Republic of Nigeria 1999, Cap C23 LFN 2004
Evidence Act 2011, S. 14(1)
Land Tenure Law, Cap 59, Law of Northern Nigeria 1962
Land Use Act 1978, Cap L5, LFN 2004

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A Critique of John Rawls Ethical Principle of Justice and the Problems of Social Justice in Modern Society

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Abstract. The question of how a satisfactory understanding of political justice can be grounded in modern democratic societies is one that Rawls attempts to address in his work Political Liberalism, published in 1993. Rawls's A Theory of Justice, published in 1971, is regarded as one of the landmarks of political philosophy and offers a new understanding of what and how social organization should be. Individuals or communities will unavoidably adopt different religious, philosophical, and moral doctrines in modern democratic societies where people are viewed as equal and free, according to Rawls, who also contends that the majority of the various moral, philosophical, and religious viewpoints are reasonable and that society accepts the possibility of conflicts.

Keywords: Rawls, Social Cooperation, Injustice, Democratic Societies

1. Introduction

This article focuses on the idea of justice; our primary source is Rawls' A Theory of Justice. Rawls views justice as the highest of all values and demands that people be treated as ends in and of themselves, rather than as means. Rawls acknowledges that ideas like productivity, efficiency, and stability are important to a society, but he emphasizes that it is even more crucial to concentrate on justice and the relationship of institutions to just causes. According to Rawls, justice entails determining the principles selected by certain social arrangements and allocating primary goods among the members of the society in accordance with these principles. To put it another way, Rawls views justice as a custom pertaining to the equitable distribution of basic goods among society's members. According to Rawls, a society is made up of individuals who come together to create it. A well-ordered society is essentially one in which all of its members adhere to the same moral and ethical principles and are conscious that fundamental social institutions typically uphold these standards. According to Rawls, the most important factor in determining justice is the basic structure of society—the ways in which important institutions like the family, political system, and economic system interact to shape people's chances in life.

Therefore, justice principles are meant to govern the fundamental basis of society; social justice imposes ancillary obligations on individuals: if there are just institutions, they must abide by their rules; if not, they must endeavor to establish just institutions, to the extent that such endeavors are likely to succeed and do not impose an excessive burden on the striving individual; this suggests that any set of principles that

are accepted by all must also be fair to everyone else, since if they were not, no one would accept them; thus, Rawls considered justice to be fairness.

2. The Justice Ethical Principle of Rawls

Justice, in Rawls' view, is the foundation of social organization and the primary virtue of social institutions. According to Rawls, all legislative and political choices must fall within the bounds established by the rules of justice. Rawls argues that the distribution of the commodity is the main area in which justice operates. According to Rawls, a person's rational possession is the commodity. It includes all one desires, including money, status in society, opportunity, talent, independence, and self-respect. The most significant representative of modern contractual ethics, Rawls, "investigated how the political order and institutions can be formed according to the principles of justice, which he first considers as an ethical value" (Cevizci, 2007:354). Furthermore, Rawls took the side of altruism between the egoism and altruism poles because "there is a principle of not taking sides on the side of altruism (every person's goodness will be considered equal)," which Rawls developed in his work A Theory of Justice in which he defends justice as truth" (Honer, Hunt & Okholm, 2003:337). The modern concept of contractual ethics is divided into two forms. Beginning with the notion that the principles of justice should be based on a hypothetical contract, both of these versions express the idea that, if these principles are accepted by everyone, no one's interests can be sacrificed for another's, even though they have embraced the classical contract view that all people are created equal. Nonetheless, he formulates distinct opinions about the essence of men's inherent equality.

The first of these understands the natural equality in question as the inequality of physical power, based on Hobbes, and says that it leads to the recognition that it is in the mutual benefit of people to accept the conventions that recognize and protect the interests of other people. Opposite to this version adopted by philosophers such as Russell and David Gauthier is the version that treats equality in the classical contract view, which states that people areequal by nature, as a moral equality, and makes people's interests a matter of common or impartial interest. Here is John Rawls, based on a Kantian rather than Hobbesian idea of moral equality defender of a contractual understanding of ethics" (Cevizci, 2007: 346).

The first step in understanding Rawls' definition of "good" is to grasp Aristotle's functional interpretation of the term, which holds that an object's essential nature is its specific activity or function, and that when it performs that function well, it becomes the most perfect and real thing. From Aristotle's perspective, to say something is good is to say that it functions well within its own species, and to associate its function well with its reality. This functional interpretation of the good also explains why we care about what is good. However, we rarely consider the realization of this or that function when we declare that freedom, happiness, or beauty are good. He makes an effort to broaden the scope of his functional interpretation of the "good" to encompass things that don't appear to have a clear purpose. According to Rawls, "to say something is good means to say that it has the characteristics that can be rightly expected or demanded from it" (Cevizci, 2007:291). For instance, Rawls claimed that the function of pleasure, beauty, or freedom in a good life explains their goodness.

Since Rawls emphasizes human agency—not the self-interested kind of human agency, but the person who is the decision unit as a person with identity—his conception of ethics is essentially predicated on a particular understanding of the individual. For Rawls, the individual is not a purely rational being that pursues his own good, as the utilitarians predict, but rather a being who behaves reasonably and fairly. What is meant by the concept of rationality is that each individual tends to satisfy their own interests and reaching the concept of good; the rational one demonstrates the effective means to achieve the goals, the order of values and priorities. In other words, right comes before utility and people are reasonable. This concept is related to the establishment of relations and it enables the concept of justice to be reached and reveals fair social cooperation.

3. Critiques of John Rawls' Ethical Principles of Justice by Utilitarians

According to Jeremy Bentham's utilitarianism, which was developed in the 19th century and can be summed up as "to make as many people as possible as happy as possible," pleasures and pains are natural phenomena that govern our actions; pleasures are good, pains are bad, and anything that makes people feel comfortable both mentally and physically is beneficial to them. Since pleasure is the foundation of life, it is crucial to increase pleasures and reach greater levels of pleasure. In Bentham's utilitarianism, man is viewed as a rational being that must choose between pleasures; that is, he does not jump on every object of pleasure that comes his way, like any animal; instead, he always considers the result of his actions as a rational being. Bentham believed that there was no distinction of quality between pleasures and that any action that

could bring us the greatest happiness was good. He also believed that good is useful and evil is destructive. Bentham defines this will to be decisive as "moral arithmetic," which holds that the existence of a pleasure level brings an arithmetic tact or calculation in the face of pleasures. Bentham argues that it is necessary to understand and evaluate social life within this framework because politics serves to protect private interests, and in the process, the happiness of the people should be given the utmost consideration (Timuçin, 1992:594-595). In fact, Bentham considers that when passing laws, it should be measured or calculated how much benefit and happiness they can bring to the whole population. Since a criminal act or attack is obviously harmful to the happiness of the community,

Bentham understood that the role of the legislator was to encourage people to take certain actions and to keep them away from others. The foundation of Bentham's life method is "measuring the damage caused by the action," which he defined as the pain or evil that results from the action. People should be discouraged from actions that produce evil. Bentham believed that the law was associated with increasing the overall happiness of the community, and that this could be accomplished by prohibiting actions that have negative consequences. In general, Bentham believed that the government should look for ways to improve the happiness of society by punishing those who commit crimes by doing things that the principle of utility deems bad. According to Bentham, these behaviors need to be reclassified in order to determine and regulate which behaviors are appropriate and which are not, and that the administration should enact laws not for their own personal interests or arbitrarily, but for the greatest happiness of the greatest number of people (Çelik, 2011b:159-160). The only possible evidence of the "utility principle" is that human nature seeks happiness either directly or through a means that lead to it. Based on Mill, who shares Bentham's philosophy, our actions are true to the extent that they consider and bring about happiness, and not true to the extent that they bring about the opposite of happiness. Mill disagrees with Bentham on two key points: First, Bentham maintained that the quantity of pleasures could be measured in a tangible and scientific manner, whereas Mill contends that there is no way to quantify the quantity of pleasures. According to Mill, we cannot tell which of the two pains is more acute or which of the two delightful feelings is more strong, and we will only make a sensible decision in the process of choosing between two pleasures. Bentham was also criticized by Mill for believing that only evaluating pleasures in terms of amount is insufficient. Because, in Mill's view, pleasures may be rational, intellectual, and artistic in addition to providing bodily gratification. Furthermore, the distinction between these pleasures and somatic pleasures is qualitative. According to Mill, evaluating happiness and pleasure just on a bodily-animal level is an underestimation of the human condition.

Mill deals with pleasures by distinguishing between higher and lower pleasures, where the former are the bodily pleasures that Bentham proposes to measure and the latter are the intellectual and aesthetic pleasures that are specific to humans. According to Mill, some pleasures are more desirable and valuable than others; that is, he contends that certain pleasures, such as virtues like self-sacrifice, renunciations, and sacrifice, are more valuable in terms of their social usefulness, while in utilitarianism; each person's happiness is regarded as being good for that individual, and thus the total happiness of all persons. Nevertheless, this principle faces a challenge: if overall happiness is simply the sum of all individual happiness, that is, if the sum of all individual happiness somehow equals overall happiness, then everyone can pursue their own happiness without aiming for overall happiness. It is evident, nevertheless, that this is not the way to attain universal happiness. Because from time to time, individual pursuits of pleasure do not correspond with general contentment, on the contrary, they do. In order to get over this obstacle, Mill attempts to emphasize the social aspect of the individual. He asserts that human social sentiments provide the firm foundation of utilitarianism. These feelings are a desire to be in union with beings of the same kind as us in origin, or so it is because it evolves over time." Mill departs from Bentham's utilitarianism by claiming that social feelings develop with the influence of education and advancing civilization, and the more they develop, the more desirable the common good or general happiness becomes an aim that should be strived for. Mill then shifts to an ethical understanding based on a more appropriate view of human personality that attempts to bring usefulness closer to each other (Çelik, 2011b:164-650).

The most significant of these critiques, which have been leveled at utilitarianism notwithstanding Mill's efforts, is the ambiguity of the utilitarian principle, which is "the greatest happiness of the greatest number of people." According to Cevizci (1996), "even though the principle in question may provide the greatest benefit for the majority, it may have very bad consequences for the minority" (p. 545). At this moment, Rawls' primary critique of creative ethics becomes apparent. The main question is whether changes to the liberal system can address the issue of individuals in a privileged position in society not receiving a fair portion of the welfare. In search of an explanation, Rawls views the utilitarian principle—

"the greatest happiness of the greatest number of people"—as unreasonable and unfair in terms of assessments of equality and fairness. Due to Rawls' contention that such acceptance fosters an atmosphere that is detrimental to the poor and marginalized. According to Rawls, utilitarianism does not give us a foundation for our sense of fairness since "the principle of the greatest happiness for the greatest number may require that some individuals' freedoms or opportunities be sacrificed in order to achieve greater overall satisfaction." For Rawls, this contradicts our belief that justice is right (Honer, Hunt & Okholm, 2003:430).

4. The View of Justice by John Rawls

Rawls, one of the most influential modern political philosophers, tries to answer the question of how a satisfactory understanding of political justice can be grounded in contemporary democratic societies where people are seen as equal and free. Rawls's A Theory of Justice, published in 1971, is regarded as one of the foundational works of political philosophy, and in his work Political Liberalism, published in 1993, he offers a new understanding of what and how social organization should be. Rawls argues that in contemporary democratic societies where people are viewed as equal and free, individuals or communities will unavoidably adopt different religious, philosophical, and moral doctrines. Rawls contends that the majority of moral, philosophical, and religious viewpoints are reasonable, and as a result, reasonable among society's members accepts the possibility of conflicts. "Political liberalism is a system that can enable different reasonable views to coexist in a constitutional and democratic system. It aims to present the understanding of 'political justice'" (Borovalı, 2006: x). “The Law of the Peoples deals with the questions of what kind of a just foreign policy a (liberal democrat) society that has adopted the principles of justice in domestic affairs should determine, and thus what a just order should include in international relations” (Borovalı, 2006: xi). Rawls presents his ideas on how a society that adopts his proposed understanding of justice should have fair relations with other societies in his 1999 work, Law of Peoples and Reconsideration of Public Reason Thought.

The ultimate of all values, according to Rawls, is justice, which necessitates seeing persons as ends in and of themselves rather than as means. Of course, Rawls acknowledges the importance of ideas like productivity, efficiency, and stability in a society, but he places even more emphasis on justice and the connection between institutions and righteousness. Because, in Rawls' view, "justice includes the determination of the principles chosen by some social arrangements and the distribution of primary goods among the members of the society in line with these principles" (Lenning, 2011: 38). Stated differently, Rawls characterizes justice as a custom pertaining to the equitable allocation of basic commodities among society's members. According to Rawls, the distribution of the commodity—which he defines as one's rational possession and includes everything one desires, including wealth, social position, opportunity, skill, freedom, and self-respect—is the main area in which justice operates. Rawls argues that justice is the first virtue of social institutions and the foundation of social structure, and that all political and legislative decisions must be made within the bounds established by the principles of justice (Gorowitz, 1994:271).

In A Theory of Justice, Rawls asks us to imagine a group of people coming together to discuss the principles of justice on a permanent basis. Rawls refers to this as the initial state, wherein parties, each representing the interests of free and equal citizens who are fairly positioned and agree on terms that limit what they can offer as good cause, "come together to establish a social contract in which they define the political environment in which they will be governed and specify its scope and limits" (Gorowitz, 1994:272). These individuals enter the negotiation process as free persons, but they must live by being constrained by the principles that will emerge as a result of the negotiation, and they must officially adopt and approve them.

As Rawls argues, he put forward an idea like the initial situation because there was no way to develop a better understanding of justice for the basic structure of society, which is an ongoing and fair system of cooperation between free and equal citizens (Rawls, 2007:68-70). In other words, the initial situation is a model that exists here and now—that is, it expresses the conditions (conditions) set by the representatives of free and equal citizens regarding the basic structure under the rules of social cooperation.

Additionally, it is evident that Rawls' initial state is comparable to the state of nature (natural) in social contract theories. Rawls asserts that there is no historical foundation for this group of people to convene to discuss the principles of justice, so this description serves as a tool and premise that makes the theory of justice easier to understand. Rawls also makes the assumption that this group of people is logical, knowledgeable in fields like psychology, economics, and sociology, and has a number of

beneficial and detrimental goals in advancing their own interests.

Nevertheless, Rawls makes the assumption that “each of this group of people is concerned only with promoting their own interests, determined only to achieve their own ends, and disinterested in the interests of everyone but themselves” (Gorowitz, 1994:272). In the first state, Rawls places a restriction on the group of people who gather to choose the principles of justice, which he refers to as the veil of ignorance. This is the circumstance in which the group of people who gather to choose the principles of justice can't be considered representatives of free and equal citizens who will reach a fair agreement. This group of people, in other words, has no idea what role they will play in the society of the future. (Rawls, 2007: 71).

The parties do not have information about their economic, class, and social positions, their religion, race and ethnic groups, their gender, their age, their intelligence, and their skill set." Parties in the veil of ignorance have objectives they wish to accomplish but are utterly unable to set themselves apart from others using any standards or traits. By removing the veil of ignorance, interviewees are prevented from attempting to defend their own interests at the expense of those of others. There is no affinity between rational interviewers who are veiled in ignorance; because, if any of these interviewees lift the veil and see their place in the real world, is the biased position helpful or harmful to them can't have any idea what will happen. In short, “interviewers are wise in general and ignorant in particular. They want to promote their own interests, but they are incapable of distinguishing them from the interests of others” (Gorowitz, 1994: 273).

According to Rawls, "attributes to individual's two moral abilities, the capacity for sense of justice and the capacity for understanding good" (Rawls, 2007:64) will motivate the parties under the veil of ignorance to choose the principles of justice. In fact, Rawls contends that "people have the capacity for sense of justice and understanding of the good to establish the idea that principles of justice emerge through an appropriate construction process" (Rawls, 2007:135).
A sense of justice is a high-level interest in developing and using the capacity to understand, apply, and act on all principles of justice rationally adopted by the parties, which provides assurance that it will be complied with after the parties have done their part (Rawls, 2007:118-119). This capacity is the ability to comprehend, apply, and act in accordance with the understanding of justice that determines the equitable conditions of social cooperation.

5. Rawls's Justice Principles

The rational people who have gathered to choose the principles of justice will realize, as far as they can tell through the veil of ignorance, that they are equally likely to benefit or suffer losses as a result of the application of principles which will raise the interests of some people more than others, and thus to follow the arrangement of life as they wish, in order to secure their own interests. Rawls suggests that the negotiators have no choice but to adopt the most appropriate principles for the advancement of the interests of the person who is least favored by the principles. The new necessity that results from this way of thinking is that "the principles that will regulate the formation of the social order must be the principles that the person rationally accepts that he can live, taking into account that he can be the least privileged individual in that society" (Gorowitz, 1994: 273). He will defend the principles that give the most opportunity to everyone, and thus to himself, whoever he is. In the first scenario, the parties are presented with five different conceptions of justice: the first is the idea that justice is truth; the second is the utilitarian understanding of justice; the third is the intuitive understanding of justice; the fourth is the mixed justice (intuitive-utilitarian) understanding; and the final one is the egoistic understanding of justice. The utilitarian understanding of justice sacrifices the interests of minorities or single people for the benefit of the majority; the intuitive understanding of justice is also unacceptable because it lays out the first principles and arranges them according to the overall benefit; in the egoist understanding of justice, however, the power of one individual is in question and the person is pursuing his own interests, which is unacceptable (Macit, 2009:38-39). Since each of these perspectives systematically denies the rights of one or more groups of people, Rawls notes that interviewers will reject all of these previously held ideas of justice. Ultimately, this group of people will come to the conclusion that "although there are different justice alternatives, the most reasonable one among them, namely, the concept of justice, which Rawls calls fairness" (Gorowitz, 1994:273).

The two fundamental principles of justice, according to Rawls (1971:52), are as follows:
1. Every human being has the equal right to enjoy the most comprehensive fundamental freedoms compatible with the similar freedom of others;
2. Social and economic inequalities should be regulated in the following ways:
a) be consistent with the principle of equitable protection so that it benefits the least advantaged most;

b) positions, offices, and positions should be open to all under fair equal opportunity.
The first principle is known as the principle of freedom; the second is known as the principle of difference; and the b option is known as the principle of fair equality of opportunity. Rawls argues that the interviewers adhered to the first principle because the second will give absolute precedence over the first; additionally, option b of the second principle comes before option a, meaning that the principle of fair equality of opportunity comes before the principle of difference. The first principle is absolutely necessary for the establishment of social institutions and actions, and it cannot be transferred to the second principle without it.

Furthermore, it is impossible to sacrifice the fundamental liberties and rights protected by this principle in order to uphold the second principle. In order to control social and economic disparities, the second principle permits them as long as they help the most disadvantaged. According to Gorowitz (1994:276), "this condition, called 'chain-relatedness,' is not inevitable, since it is not that all will benefit from permitted inequalities, but that the least privileged benefit from them." It is clear that Rawls' theories of justice seek to provide the most underprivileged segments of society the best chance at success.

Therefore, the representatives who first stand behind the veil of ignorance choose the principles of justice, which are essential to a just social order. As stated by Rawls (2007:322), "the two principles of justice provide a better basis for understanding claims to freedom and equality in a democratic society than traditional creative doctrine." According to Rawls, rational choice theory—which he refers to as a component of it—is applied in the theory of justice. According to Kant, being a free and rational creature is the categorical imperative. It is a principle that applies to everyone equally because it is consistent with human nature. “Rawls, too, follows a clearly Kantian way of determining the principles of justice” (Gorowitz, 1994:277). Establishing the social order comes after the interviewees have decided on the principles of justice. This is where a political understanding that operates within the bounds of justice principles is established. The interviewers arrive at the second design stage with knowledge of the general conditions of the society, its economic and political culture, and its natural resources, which further lifts the veil of ignorance when the interviewees make their decisions for a sense of justice. At this point, they must draft a constitution that establishes the executive branch's authority and the citizens' fundamental rights. In this manner, a well-considered constitution that adheres to the principles of justice will be selected, resulting in the creation of a legislation that is both just and efficient. According to Gorowitz (1994: 277), this constitution will "protect the freedom of conscience and thought, freedom over the person, and equal political rights." It is confined to the concept of justice. Furthermore, the concept of freedom is the most significant justice principle at the constitutional level. The negotiators go to the next phase, becoming lawmakers, once a just constitution has been established. The principles of justice serve as the foundation for the creation of laws at this level (legislation). All general and economic social issues come inside the interviewer's purview as the curtain of ignorance is somewhat removed. To avoid prejudice, personal characteristics and identity are still unknown. The idea of difference is crucial at this point. According to Gorowitz (1994:278), "Rawls, like the utilitarians, are ready to allow privileges, not for the sake of maximizing the good, but only because it will bring the least privileged out of their predicament." This principle of difference demands that social and political policies be oriented towards maximizing the long-term expectations of the least privileged under conditions of equal opportunity. The judgment stage is the last phase. At this point, the laws' applicability to specific situations and people' (non-compliance) with them are under scrutiny. At this point, the interviewers are no longer subject to any informational limitations; the veil of ignorance has been fully lifted. The judgment stage reflects the practical application of justice principles that were ideally developed at the theoretical level. According to Rawls, the basic condition for citizens to obey the state and its laws is based on its understanding of justice. Citizens' natural duty to justice is to obey the just state.

As Rawls' theory of justice emphasizes a redistributive production-distribution distinction, it appears to be a theory of social justice: the state is a democratic state that does not support any religion, thought, or belief system that will support the living of different thoughts, beliefs, or religions and that will ensure the existence of such an area. The duty of natural justice envisions that citizens comply with these institutions in cases where there are just institutions and support the making of just arrangements in the absence of fair institutions. The state, on the other hand, imposes a certain comprehensive doctrine as a way of life; in contrast, Rawls supports virtues that will maintain and strengthen fair social cooperation conditions. The virtues of just social cooperation, such as civility, tolerance, reasonableness, and fairness, are virtues that cannot be impartial and can be counseled (Macit, 2009:61-62).

According to Rawls, "the state not only saves individuals from the obstacles related to their economic activities, but also contributes to the development of a better life for its citizens" (Cevizci, 2007: 387). Rawls is a redistributionist because he believes that the state's proper function is not just to maintain social order but to achieve distributive justice, which acknowledges the highest social value as meeting the needs of the most needy. According to Rawls, "the first obligation of the social order is to provide justice, and the legislative implications of such a view are entirely separate from the utilitarian understanding of the state as intermediary for the maximization of general happiness" (Gorowitz, 1994: 279).

All things considered, despite being a philosopher, Rawls' theory of justice has had a significant influence on economics, which for a long time has been centered on personal incentive. Additionally, the supremacy of the positivist point of view for a very long period caused moral and political philosophies to be restricted to a relatively narrow region. A philosopher should refrain from passing judgment on anything other than the meaning and application of concepts pertaining to political and moral philosophy. Thus, little study had been done in these areas, and the ideologies in issue appeared dull and arid.

6. Critiques of the Theory of Justice by John Rawls

Compared to utilitarianism, Rawls contends that the theory of justice as truth has two advantages. First, its two tenets more accurately capture our conception of justice than utilitarianism. A moral superiority of Rawls' theory is thus asserted. Second, Rawls contends that many of the major issues utilitarians encounter when attempting to apply their theory to modern circumstances are resolved by the social contract theory of justice, which views justice as the equalization of free and equal rational designers. Due to Rawls' theory, "it is not necessary to compare the tastes of two people quantitatively." Finding the least privileged person and estimating what will help him are sufficient (Gorowitz, 1994: 279). "Rawls' theory of justice offers a new and powerful tool to shed light on social problems," claims Gorowitz (1994:281). With a foundational work that is abstract but has incredibly concrete effects, Rawls, a philosopher of morality and politics, reoriented his conception. Furthermore, Rawls' theory of justice provided a coherent and well-rounded understanding of justice in a setting where the Cold War compelled people to choose between equality and freedom. As a result, "Rawls' theory of justice is of vital importance in terms of understanding today's political philosophy" (Ecer, 2010:2). "A theory of justice is not a theory that chooses between regimes or is intended to prove any regime. It is directly concerned with the idea of justice itself, not with a particular political regime." This aspect of the theory in question and the sound reasoning in its content have caused many ethical theorists, political scientists, or economists, who have very different political understandings, to reevaluate their ideas.

Nevertheless, Rawls' theory of justice has been challenged from a variety of angles in spite of all these advantageous features. Rawls' conception of the individual is the subject of the first critique of his theory of justice. Rawls bases his theory of justice, according to many philosophers and authors, on an entirely abstract and asocial individual thinking that disengages individuals from their objectives and ideals. Due to the fact that Rawls' first scenario for describing the pre-contract is based on abstract human fiction. This abstract individual is cut off from his social life and personal objectives. Isolation and alienation are supported by this view of the person. Rawls is therefore condemned for proposing a human interpretation that is irreconcilable with social design, akin to separate islands coexisting in the same ocean. Additionally, because social reality has a significant impact on how people build their identities and preferences, it is very difficult for these individuals, who are built in isolation from social reality, to make reasonable judgments when it comes to choosing the principles of justice. Because the liberal tradition maintains that there is no such pre-contractual period in nature, Dworkin argues that a hypothetical compromise cannot be a draft version of an actual contract and that if the idea of the social contract is not based on de facto consensus, it cannot be based on historical reality.

The basic concepts of Rawls's theory of justice, the initial state and the veil of ignorance, have also been criticized. In addition, the rationality of the participants in the original circumstance and their desire to maximize their own interests make it impossible to create standards of fairness. Once more, the veil of ignorance by itself cannot guarantee impartiality in the selection of justice-related principles. Additionally, a solution based on people's free will is impossible in a setting without reciprocal discussion and bargaining. The hypothesis in question is also criticized by economic liberals. Some economic liberals, who see Rawls' theory of justice as a strong egalitarian doctrine, contend that Rawls's goal-statement, namely the welfare of the least advantaged, prefers a fair distribution that maximizes In addition to this, the same people oppose Rawls' assumption that

natural talents constitute a common pool to be distributed according to the principles of social justice. For instance, libertarian Robert Nozick claims that Rawls' difference principle will be unfair to those who act responsibly, make wise decisions, and put in a lot of effort. Nozick (1974) claims that in order for Rawls's principle to be applied, goods must be given to people without charge from outside. In the real world, however, this is not the case: People have a right to goods and welfare in proportion to their labor, so it is natural for some people to earn more money by working harder than others who compete on equal terms. According to the difference principle, any transfer of resources from these individuals to others is unfair, and Nozick believes that redistribution of lawfully obtained property is against justice and has negative effects on freedom. As a result, Nozick contends that the difference principle is incompatible with the freedom principle.

Lastly, in his book "The Idea of Justice," Amartya Sen (2009) criticized Rawls' theory of justice by arguing that even if primary goods are distributed equally, a lack of capacity can have very different consequences. Sen claims that the basic rights and freedoms that Rawls describes as primary goods—self-respect, basic freedoms, opportunities, income, and wealth—cannot be used alone to demonstrate a person's level of welfare. Sen understands that neither utility nor primary goods are appropriate for the analysis of the inequality problem because, when considering the actual possibilities that an individual has to achieve his goals, the primary goods that he has are insufficient; it is also necessary to take into account personal characteristics (e.g., disability, old age, illness), as well as the ability to achieve different lifestyle capacities. According to Sen, the elimination of obvious inequalities in capacities should be the primary goal in order to ensure justice, rather than the equal distribution of primary goods.

7. Conclusion

According to American philosopher John Rawls, the concept of social state and social justice gained their true meaning with his theory of justice, which focuses on the distribution of primary goods and views justice as equality. Rawls claims that the concept of justice appears as a convention regarding the determination of the principles chosen by certain social arrangements within the society and the distribution of primary goods among the members of the society in accordance with these principles. Amartya Sen, one of the major thinkers of our time, focuses on the issue of how a social justice that ensures the peace and welfare of all people can be achieved in this global age, in the global world. At this point, Sen criticizes Rawls' egalitarian justice approach based on primary goods, arguing that even if primary goods are distributed equally, people's lack of capability can have very different consequences. Amartya Sen considers that justice entails eradicating glaring disparities in ability. Sen further argues that justice necessitates equitable access to fundamental amenities like access to basic healthcare and education.

References

Borovali, M. (2006*). John Rawls and his Political Philosophy*. Borovalı M. and Özbank M. (Eds.), Peoples of the law and the Idea of Public Mind the Idea (pp. X-xxiii). (Trans. G. Bilgi University Press. 2nd edition.

Celik, S. (2011a). *Modern Philosophy*. Anadolu University Press.

_____ (2011b). *Modern Philosophy*-II. Anadolu University Press.

Cevizci, A. (2007). *Philosophy.* Sentez Publishing.

Dworkin R. (2000). *Sovereign Virtue. The Theory and Practice of Equality*. Harvard University Press.

Ecer, A. (2010*). A Restoration in Political Philosophy: John Rawls and A Theory of Justice*. New Yüksektepe E-Magazine, 68, 1-10. http://www. magazine.yeniyuksektepe.org.

Gorowitz, S. (1994). *John Rawls: A Theory of Justice.* De Crespigny A. and Minogue K.R. (Edt.). Contemporary Political Philosophers. (Trans. S. Can) Istanbul: Remzi Bookstore.

Honer, S. M., Hunt, T. C., and Okholm, D. L. (2003). *A call to Philosophy: Problems and Options*. (Trans. Hasan u.) Ankara: Imge Bookstore.

Kant, I. (2000). *Foundation of Moral Metaphysics*. (Trans. I. Kuçuradi) Turkish Philosophy Institution.

Lenning, M. (2011). *The Concept of Justice in the History of Economic Thought*. http://toulouse-justice-2011.fr/fullpapers/e5lenning.pdf

Macit, M. H. (2009). *John in Rawls' Political Liberalism re- build*. Ataturk University Institute of Social Sciences, Department of Philosophy. Unpublished Doctoral Thesis.

Rawls, J. (1971). A Theory of Justice. Harvard University Press.

_____ (2007). Political liberalism. (Trans. Mehmet Fevzi Bilgin) Istanbul: Bilgi University Press.

Sen, A. (2009). The Idea of Justice. The Belknap Press of Harvard University Press.

Timuçin, A. (1992). Thought History. BDS Publication.

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Investigating John 4:13-14 on the Symbolic Importance of Water in African Cultural Setting

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Abstract. This Paper investigates the intersection of biblical theology and African cultural anthropology by analyzing the symbolic significance of water in John 4:13-14 and its resonance with African indigenous worldviews. Jesus' metaphor of "living water" (ὕδωρ ζῶν) in the Johannine narrative is juxtaposed with water's multifaceted roles in African rituals, myths, and daily life. Through a qualitative comparative analysis of biblical exegesis and ethnographic case studies among the, Yoruba and Akan traditions, the study identifies combinations of water as source of life and spiritual renewal and differences between communal and individualized symbolism. The findings advocate for culturally contextualized hermeneutics that enrich both African Christian practices and intercultural theological discourse. The study concludes that the inquiry of John 4:13-14 through the lens of African cultural setting on water highlights a rich tapestry of meanings that supercede ordinary symbolism. It, therefore, recommends the need to develop worship and liturgical practices that will demonstrate the importance of water to life in African christianity.

Keywords: Investigating, Symbolic, Water, African, Cultural and Setting.

1. Introduction

Across all religious and cultural traditions, water is a universal symbol of life, purification, and transcendence. Since most living things have their homes in water, people have long viewed water as a sign and symbol of life itself (Ariarajah, 1982: 271). But according to Culpepper (1983:192), water can also pose a threat to life, as in the cases of floods and thunderstorms. According to the biblical story, creation arises from the waters of chaos (Genesis 1:2), and during the Exodus, water acts as a force for both destruction and deliverance. The covenant that resulted from the Noahic flood was meant to be a sign of life for everyone, even though it was a destructive event. Conflict arose over water in the wilderness wanderings. While the Flood story, the Egyptians' drowning in the Red Sea, and the general apprehension about The sea and deep waters expressed in Psalms 18:16, 32:6, 46:3, and 69:1–ff suggest that water could be used as a tool of judgment by Yahweh, it can also be viewed as a means of salvation through danger for God's faithful people in Isaiah 43:2 and 59:19 (Taylor, 2007:1232).

Compared to all of John's symbols, the image of water appears most frequently and with the widest range of associations in the Fourth Gospel. Rivers, wells, springs, the sea, pools, basins, thirst, drink, and water pots are all topics of discussion. — "Everyone who drinks of this water will be thirsty again, but those who drink of the water that I will give them will never be thirsty" (NRSV)—invites theological reflection on "living water" (ὕδωρ ζῶν) as a metaphor for eternal life. In the meantime, water is similarly given sacred status in indigenous African cosmologies through ecological practices, myths, and rituals. This article investigates how African cultural perspectives on water deepen the interpretation of John 4:13-14, fostering a decolonized and contextually rooted theology. By examining the symbolic interplay between Johannine "living water" and African cultural frameworks, this study demonstrates how contextual

hermeneutics bridge biblical theology and indigenous spirituality, offering transformative insights for African Christianity.

2. The General Significance of Water

Religious texts are now regarded as addressing a variety of disciplines rather than being a separate field of study (Gottlieb, 2006; Park, 2005). While Park (2005) addresses the relationship between religion studies and geography, Gottlieb (2006) outlines the connection between religion studies and ecology. McCool et al. (2008:1; cited in Zheng & Budiraharjo, 2024:244) review the historical, social, and religious meanings of water and argue that it has long represented two distinct roles: as a symbol of power and purpose that goes beyond human survival and as a necessary component for maintaining life.

Water is a basic element of the environment and one of the most important elements for life on Earth. Ancient Chinese philosophy and cosmology held that the five basic elements of fire, wood, metal, water, and earth made up the universe. Approximately 71% of the earth's surface is covered by water, according to modern geography. But only 2.5 percent of this is fresh water, which is essential for life. Rivers and freshwater lakes have been the sites of civilizations throughout human history. For example, the ancient Egyptian civilization flourished along the Nile River, the Mesopotamian civilization along the Tigris and Euphrates River, the ancient Chinese civilization along the Yangtzi and Yellow Rivers, and the ancient Indian civilization along the Ganges River. This proves how important water is to human existence. Indeed, between 60% and 70% of an adult human's body is made of water. Because water is essential to life, water scarcity has historically caused disputes and even wars (Zheng & Budiraharjo, 2024:244).

3. Exegesis of John 4:13-14

13. Jesus answered, "Everyone who drinks this water will be thirsty again, 14. but whoever drinks the water I give them will never thirst. Indeed, the water I give them will become in them a spring of water welling up to eternal life."

3.1 Literary and Historical Context

This passage is found in John 4:1–42, during Jesus' conversation with the Samaritan woman at Jacob's well. Jesus' interaction with her transcends cultural and religious boundaries, and the woman represents a marginalized figure (a woman, a Samaritan, and someone with a morally dubious past).

3.2 Key Terms & Symbolism

This water (v.13): This water (v.13): Alludes to actual well water that momentarily satisfies bodily thirst.
Living water (v.10, implied in v.14): A rich biblical concept. According to Jeremiah 2:13 and Zechariah 14:8, "living water" in the Old Testament represents God as the source of life, rebirth, and covenantal blessing. Christologically speaking, Jesus reinterprets this term to refer to Himself as the ultimate source of spiritual life.
Never thirst (v.14): Never thirst (v.14): Human longing is cyclical, whereas eternal contentment is permanent. The human search for purpose, forgiveness, and a relationship with God is symbolized by spiritual thirst in this context (cf. Psalm 42:1–2).
Spring of water welling up: The Greek phrase "spring of water leaping up," pēgē hydatos hallomenou, conjures up an ever-present, ever-changing source.
Eternal life: Eternal life: According to John's theology, "eternal life" (zōē aiōnios) is a present, transformative relationship with God via Christ rather than just a postmortem existence (John 17:3).

3.3 Theological Themes

Christ as the Source of Salvation: Jesus transcends the physical (water from the well) to reveal His divine identity. By offering "living water," He claims to fulfill humanity's deepest needs—forgiveness, purpose, and reconciliation with God—which no earthly resource can satisfy. This aligns with John's broader theme of Jesus as the "I AM" (John 6:35; 8:12) who alone provides life.
Universality of the Gospel: The Samaritan woman, an outsider in Jewish eyes, becomes a recipient of Jesus' offer. This foreshadows the gospel's expansion beyond ethnic Israel (John 10:16; 12:32). The "living water" is for all who believe, regardless of social or religious status.
The Holy Spirit: Later in John's Gospel, "living water" is explicitly linked to the Holy Spirit (John 7:37–39). The "spring" within believers signifies the Spirit's indwelling presence, empowering them for worship, mission, and sanctification.
Eschatological Fulfillment: The "welling up to eternal life" suggests both present and future dimensions. Believers experience the Spirit's work now, culminating in the resurrection and eternal communion with God (Revelation 22:1–2).

4. The Symbolic Value of Water in African Cultural Contexts

Along Africa's lakes and coasts, water has historically drawn the development of commercial cities and

towns. Africans acknowledged and revered water bodies as spiritual sources. Before British officer John Hanning Speke gave Lake Victoria in East Africa its current name, for example, it was known as Nalubaale, which translates to "the home of spirituality." A vast body of water links Africa and America, and according to traditional systems, water links valleys and mountains, plants and animals, by sharing goods or byproducts that are necessary for each. . Since water facilitates the natural phenomenon of interdependence, bodies of water were owned and protected by communities, and people worshipped the spirit of water freely. All activities relating to water were conducted in accordance with peoples' customs and cultural beliefs (Sewapo, 2022:10).

However, Sewapo (2022:11) notes that the civilisation of Africa by the Western world changed native people's attitudes and rights to water as a natural resource. The sacred relationship between people and water almost ended with the advent of Western ideology of political governance in Africa. Water became a commodity to be taxed. Commercial fishing was introduced. Corporations were established to process and supply fresh water for payment. Western religious teachings demonised native cultural practices and the indigenous attitude and moral responsibility towards water as a sacred being gradually changed. Their teachings associated African cultural beliefs and practices with Satan and primitivity. In addition, the faith institutions preach the supremacy of a divine being, which is beyond humanity according to the spiritual hierarchies, though humanity is accountable to this divine nature.

In spite of the westernisation of Africa and the teachings of European missionaries in Africa, the symbolic value of water is intrinsically unalterable. Water is often central to African cosmologies as a primordial element. Among the Dogon of Mali, water symbolizes the genesis of life, linked to the creator deity Nommo, who is depicted as a water spirit (Griaule, 1965). Mami Wata, a pan-African water deity, embodies duality—representing both healing and danger, wealth and chaos—illustrating water's ambivalent power (Drewal & Drewal, 1983). These deities underscore water's sacred role in mediating human and divine realms.

Water is still perceived among Africans as one of the mysterious gifts of nature that supports and holds life on earth. Many indigenous communities in Africa knew the value of water and to them water was considered to be the source of life, especially among the Beninois Christians of Benin Republic. In the worldviews of the Gun of Benin republic (Capo-Chichi, 2014), water is regarded as a sacred entity that sustains life on Earth, a food source, a mode of transportation, a place for recreation, or a component for purification and cleansing. In other words, a seed in the ground cannot sprout until it is irrigated, proving that the spirit of water is what drives the creation of life.

Water is seen as the best medicine in Yoruba culture. According to Jegede (2019), water is the true physician and pharmacist in Yoruba culture. Jegede asserts that water can cure any illness, including diabetes, paralysis, gonorrhea, malaria, hemorrhage, and more. Since these creatures also rely on water for survival, searching for trees, plants, or animals to cure illness ignores the water's healing power. In Osun-Osogbo, in Southwestern part of Nigeria, water is called agbo "prepared medicine for human consumption," "spring forth." Babatunde says:
A permanent agreement was made between the founding fathers of Osogbo land and the river goddess. It was a special covenant that cannot be broken. . Since we have always honoured our own part, the goddess of the river has to honour hers. The Osun festival has become a global event that is now observed not only in Osogbo or Nigeria but also in Brazil and France, among other foreign nations (Babatunde, 2015).

Water is still regarded as a creative and destructive force by the Yoruba people of southwest Nigeria. It represents protection, healing, spiritual purification, and fertility. Sacred rivers, such as the Osun River, are thought to have divine abilities that can cure infertility and bring wealth. Water's regenerative power is highlighted by the fact that rituals involving it frequently commemorate important life transitions, such as birth, marriage, and death.

Idowu (1962) and Awolalu (1979), for instance, claim that the Yoruba indigenous religion has a long-standing belief that the river goddess can cure infertility. It is fascinating to observe that thousands of people from all over the world gather to either watch the votary maid empty the sacrificial materials into the river or wash themselves in it during the annual Osun Osogbo Festival in Osun State, southwest Nigeria. On festival days, a lot of people drink from the river, despite the fact that it is frequently polluted by the large number of people walking through it (Sewapo, 2022:11). The Yoruba also, associate water with Yemoja, a riverine goddess governing fertility and maternal protection (Olupona, 2014). Water's association with fertility is evident in rituals and myths. The Nile River, historically vital to Egyptian agriculture, symbolizes sustenance and cyclical renewal (Assmann, 2001). In Zulu traditions, water is

used in rituals to invoke ancestral blessings for crop fertility, reflecting its life-giving properties (Berglund, 1976). Such practices highlight water's symbolic ties to abundance and ecological interdependence.
The Yoruba also associate water with divine entities such as Olokun (deity of the ocean) and Osun (river goddess), who embody both nurturing and aggressive qualities. This duality mirrors the biblical concept of "living water," which sustains life but also challenges individuals to undergo spiritual transformation.

In particular, water, whether of running streams or from wells, plays inestimable roles (positive or negative) in all forms of divine worship (whether minor or major), ritual ceremonies, and socio-religious rites performed in honour of preternatural beings and on behalf of human beings. It is axiomatic that no ritual takes place without water (Adewale, 1982:2). Water facilitates rites of passage, marking transitions between life stages. Among the Luo of Kenya, water poured during funerals guides spirits to the afterlife (Ocholla-Ayayo, 1997). Libations, common in West Africa, involve pouring water to honor ancestors, symbolizing connectivity between the living and the dead (Mbiti, 1990). Purification rituals, such as ceremonial baths in Yoruba traditions, cleanse individuals of spiritual impurities (Abiodun, 2014).

Sewapo (2022:12) asserts that the use of water for multipurpose rituals is a response to African Christianity yearning for a form of Christianity that is psychologically, physically, as well as spiritually satisfying, such that demonstrates power. Besides the cultic use of water for multifarious purposes in African Christianity, water is more of an indigenous attempt at making Christianity relevant to an African religious consciousness and worldview. The African worldview interprets almost every issue in life in a spiritual way, and as a result, it looks for equally spiritually grounded solutions to life's problems. Most Africans think that most issues in life, like infertility, chronic illness, unemployment, and even a common headache, have spiritual causes and are best resolved by spiritual means. In the African initiated churches, this explains the significance of water rituals for healings, deliverances, and other associated forms of spiritual support.

5. Nexus between John 4:13-14 and African Beliefs

Healing and Renewal: Yoruba traditions use sacred water for both physical and spiritual healing, much like Jesus offers living water for spiritual renewal. Rituals performed near the Osun River, for example, are thought to improve health and fertility.

Connection to Abundance: In John 4:13-14 "living water" represents an abundance of life (John 10:10). Similarly, Yoruba cosmology views water as a source of prosperity and vitality, essential for holistic well-being.

Spiritual Bridging: Water acts as a conduit between people and the divine in both situations. In Christian theology, the transformational power of living water is analogous to the Yoruba belief that rivers serve as portals between the living and the dead.

5.1 Differences between John 4:13-14 and African Beliefs

In John 4:13–14, the symbolic meaning of water is very different from how water is interpreted in African cosmology and culture. Although both frameworks recognize the life-giving qualities of water, there are significant differences between their theological, communal, and existential emphasis. The following are the main contrasts:

Communal versus Individual: Individual vs. Community: While John 4:13–14 stresses individual salvation, African rituals place a higher priority on the welfare of the group.

Plural versus Exclusive Spiritual Mediation: African systems recognize several gods, ancestors, and natural forces, while John's theology views Jesus as the only source of spiritual nourishment (Mbiti, 1990).

Material-Symbolic--Metaphorical: African rituals use physical water (such as baths and libations) as a spiritually potent symbol, whereas the Bible abstracts water into a metaphor for grace (Olupona, 2014).

Eternal versus Cyclical Renewal: While African symbolism frequently stresses cyclical renewal (for example, Nile floods, seasonal rains; Assmann, 2001), John's "eternal life" is a linear, ultimate destiny.

Ancestral Connectivity: Among the Luo of Kenya, water poured during funerals guides spirits to the afterlife, maintaining ties between the living and the dead (Ocholla-Ayayo, 1997). This contrasts with John's emphasis on a transcendent, individualized afterlife.

6. Conclusion

The exploration of John 4:13-14 through the lens of African cultural perspectives on water reveals a rich tapestry of meanings that transcend mere symbolism. This study underscores the necessity of integrating

indigenous worldviews into biblical interpretation, particularly in contexts where traditional beliefs and practices remain deeply rooted. The metaphor of "living water," as articulated by Jesus, resonates profoundly with African understandings of water as a source of life, healing, and spiritual renewal. By highlighting both the convergences and divergences between Johannine theology and African cultural practices, the article advocates for a contextualized hermeneutics that honours the complexities of faith experiences in Africa. Such an approach not only enriches African Christian practices but also fosters a more inclusive and comprehensive theological discourse that bridges cultural divides. Ultimately, recognizing the symbolic importance of water in both biblical and African setting encourages a deeper appreciation of spirituality that is both transformative and relevant, affirming the vitality of indigenous beliefs in contemporary faith practices.

7. Recommendations

The study recommends the following:

- There is need to establish pastoral care and approaches that integrate the symbolic significance of African christian contexts;
- The need to develop worship and liturgical practices that demonstrate the omportance of water in African christianity cannt be overemphaised:
- Symbolic importance of water can be used as catalyst for the development of community and social justice.

References

Abiodun, R. (2014). *Yoruba art and language: Seeking the African in African art*. Cambridge University Press.

Adewale, S. A, (1986). "The cultic use of water among the Yoruba" Orita*: Ibadan Journal of Religious Studies*, *18*(1), 28-39.

Ariarajah, Wesley, (1982). "The Waters of Life." *The Ecumenical Review, Volume 34*(3), 271-279.

Assmann, J. (2001). *The search for God in ancient Egypt* (D. Lorton, Trans.). Cornell University Press.

Awolalu, J. O. (1979). *Yoruba beliefs and Sacrificial Rites*. Essex: Longman Group Ltd.

Berglund, A. I. (1976). *Zulu thought-patterns and symbolism*. Indiana University Press.

Brown, R. E. (1966). The Gospel according to John I–XII. Doubleday.

Culpepper, R. A. (1983). *Anatomy of the Fourth Gospel: A Study in the Literary Design*. Philadelphia: Fortress Press.

Drewal, H. J., & Drewal, M. T. (1983). *Gelede: Art and female power among the Yoruba*. Indiana University Press.

Gottlieb, R. S. (2006). Introduction: Religion and ecology - What is the connection and why does it matter? *In Oxford Handbook of Religion and Ecology* (Vol. 1, pp. 1–19). Oxford University Press.

Griaule, M. (1965). *Conversations with Ogotemmêli: An introduction to Dogon religious ideas*. Oxford University Press.

Guenther, M. (1999). From totemism to shamanism: Hunter-gatherer contributions to world mythology and spirituality. In R. B. Lee & R. Daly (Eds.), *The Cambridge encyclopedia of hunters and gatherers* (pp. 426–433). Cambridge University Press.

Idowu, E. B. (1962). *Olodumare: God in Yoruba Belief*. London: Longmans Group.

Mbiti, J. S. (1990). African religions and philosophy (2nd ed.). Heinemann.

Ngana, J. O. (2014). *Water resources management in Africa: The role of indigenous knowledge*. Springer.

Ocholla-Ayayo, A. B. C. (1997). Traditional ideology and ethics among the southern Luo. *Acta Universitatis Upsaliensis*.

Olupona, J. K. (2000). African spirituality: Forms, meanings, and expressions. Crossroad.

Opoku, K. A. (1978). West African traditional religion. FEP International.

Park, C. (2005). Religion and geography. In J. R. Hinnels (Ed.), *The Routledge Companion to the Study of Religion* (pp. 439–455). Routledge.

Sewapo, H. (2022). "An African Christian cultural perspective of the symbolic value of water in the fourth gospel." *Journal of International Scientific Research, 2*(4), 5 – 15.

Taylor, J. B., (2007). Water. New Bible Dictionary, 3rd Edition. (rev. ed. D. R. Wood), England: Inter-Varsity Press, pp. 1231-1232.

Zheng, M., & Budiraharjo, M. (2024). "The symbolism of water in the Gospel of John." *PARAMASASTRA, 11*(2), 242 – 255.

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Examination of the Efficacy of International Law in Combatting Trans-Border Environmental Crimes

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Abstract. This Research explores how international law regulates trans-border environmental crimes such as illegal logging, wildlife trafficking, and transboundary pollution. Those crimes pose an exceptional challenge to the usually state-based legal regime at a time of globalization, which further complicated governance over the environment. This research assessed the suitability of international law in addressing trans-border environmental crimes. The doctrinal method is employed in this research through a review of international treaties, conventions, and enforcement mechanisms in order to assess their effectiveness in controlling these illicit activities. Case studies from different regions in the research point out the deficiencies in the current legal structure, besides corruption, weak governance, and lack of capacity to enforce them in source countries. The research suggests improvements in international cooperation, capacity building, and enforcement. The findings could help construct more efficient legal responses for the protection of global ecosystems from trans-border environmental crimes.

1. Introduction

Environmental crimes are illicit activities, which directly damage the environment, including natural resources such as air, water, soil, and biodiversity (Ukhurebor et al., 2024). They comprise a long list of activities that go against the laws and rules on environmental protection, thus causing considerable harm to ecosystems and human health. The impact of such crimes goes beyond the instant degradation of the environment and leads to long-term ecological imbalance and loss of biodiversity, leading to local and global economic adversity. These environmental crimes can be categorized into several groups, including trade in wildlife (Aidonojie, P.A. et al., 2023). This will imply poaching, trafficking, and selling of endangered species, parts, or products such as ivory, rhino horn, and exotic pets trade among others in wildlife products. Illegal wildlife trade is among the greatest threats which biodiversity is facing today since it makes species extinct and interferes with ecosystems (Anani et al., 2023). Conversely, illegal logging is an as unauthorized harvesting, transportation and sale of timber. Most of the time, illegal logging is carried out in protected forests and conversation places, which eventually leads to deforestation, destruction of habitats, and hence loss of biodiversity. Illegal trade of timber contributes towards climate change through the released stored carbon in huge proportions. illegal, unreported, and unregulated (IUU) fishing represents another environmental crime, which depletes fish stocks, damages marine ecosystems, and finally leaves food security open to threats (Aidonojie et al., 2021). These IUU fishing encompasses activities such as overfishing, illegal fishing method, and fishing in forbidden areas. This IUU fishing underpins the sustainability of marine resources and people's livelihoods based upon them. We also have illegal

waste disposal, particularly hazardous wastes, which consist of unauthorized release of waste materials in manners that break environmental laws. It comprises the dumping of toxic substances, electronic waste, and industrial chemicals, often in countries with weak regulatory frameworks (Majekodunmi et al., 2022a). Such practices have grossly polluted the soil, water, and air and pose a serious health risk for human beings and wildlife.

Another category is environmental pollution crimes, which involve the willful discharge of pollutants into the environment beyond their legally permissible limits or in contravention of regulations. It could be in the form of industrial emissions that causes air pollution, discharging untreated wastes into water bodies that cause water pollution, and lethal chemical contents that cause land pollution (Ukhurebor & Aidonojie, 2021). These have very dire effects on human health, ecosystems, and the global climate. We also have illegal land conversion and deforestation, which refers to the unauthorized clearing of forests, wetlands, or any other natural habitats for agriculture, urbanization, or industrial development. This causes deforestation, habitat loss, and increases carbon emissions. Deforestation can be considered one of the major causes of climate change and loss of biodiversity issues with extremely grave concerns for global environmental sustainability (Anani et al., 2022). Environmental crimes transcend international boundaries and affect several countries thereby causing a unique challenge in the detection, enforcement, and prosecution of such crimes. This is because they involve complicated networks linking perpetrators, intermediaries, and consumers across legal jurisdictions. Environmental crimes are often enabled by global supply chains and trade networks since they stretch across many countries (Aidonojie, et al, 2024). For instance, illegally flowing timber may be driven across many borders before it reaches the last destination to be sold as a legal product. The same happens with illegal wildlife products, which are normally smuggled through complicated routes involving several countries, hence too difficult to trace and intercept. The environmental effects of these crimes do not stop at the borders of the countries where they take place. For example, illegal deforestation in one country can lead to regional climate change affecting the neighboring countries. Hazardous waste dumping or transboundary pollution, such as river contamination, can seriously affect downstream country ecosystems and communities.

Jurisdictional problems crop up in criminal acts that involve more than one country that has different legal traditions, regulatory regimes, and levels of enforcement capacity (Imoisi et al., 2023). This lack of coordination opens the way for criminals to exploit gaps in enforcement and elude prosecution. There are also differences between countries in the way crimes are legally defined, penalized, and ranked in terms of enforcement priority, which often hinders collective action against such crimes. Organized crime networks also facilitate large-scale transboundary environmental crimes. They are very sophisticated and use corruption, fraud, and even violence in their operations (Mukhlis et al., 2023). They exploit poor governance, lack of enforcement, and corruption in some areas to move goods illicitly across borders which makes it difficult to break such networks and the perpetrators hard to prosecute. In most developing nations, cases of environmental laws being poorly implemented are very high, whereas corruption cases are also high, hence giving ample avenues for criminals to freely operate. Lack of international cooperation and harmonization of legal frameworks adds to the problem, whereby criminals take advantage of regulatory loopholes and elude detection. Such environmental crimes are a threat not only to the environment but also to the rule of law, economic stability, and human rights. Effective responses call for robust international legal frameworks with coordinated enforcement efforts, technological innovation, and local community involvement. In this way, the international community will help to struggle against transborder environmental crimes effectively.

2. Theoretical Framework and Literature Review

Global Environmental Governance GEG theory (Najam et al., 2006) deals with problems in the global environment. Emphasizing international cooperation, multilateralism, and international institutions in dealing with environmental challenges, this theory is appropriate for the study at hand and it helps furnish an understanding on how international legal frameworks in a broader governance context. It helps one to understand the challenges posed by the coordination of responses to transboundary environmental crimes and the role played by various states, international organizations, and NGOs (Aidonojie et al., 2022). We also have the regime theory, which analyzes how international regimes form, function, and evolve sets of principles, norms, rules, and decision-making procedures around which actors' expectations converge in a specific issue area (Hynek, 2017). Within environmental law, regimes, such as the Basel Convention on Hazardous Waste, or the CITES, are significant in the governance of specific environmental issues. This theory helps to explain how specific environmental regimes function, how well-equipped they are to regulate state behavior,

and why they all too often fail to cope legitimately with transborder environmental crimes. It also considers conditions that make these regimes most effective, such as the presence of strong enforcement mechanisms or high state commitment levels (Ikubanni et al., 2024).

There is also the legal pluralism theory provides that there are several legal orders within one social field. In international environmental law, it includes the interaction between international law, regional agreements, national laws, and customary laws (Benda-Beckmann & Turner, 2019). Legal pluralism therefore gives a framework in which to understand complexities while seeking to enforce international law on different jurisdictions. This view is rooted in the necessity for coordination and harmonization among the numerous legal systems if the fight against trans-border environmental crimes is to be effective. Based on the works of Harold Koh, the Transnational Legal Process TLP theory emphasizes the operations involved in interpreting, internalizing, and enforcing international law across international borders (Aidonojie, E. C. et al., 2024). It specifically addresses the roles and activities of non-state actors, such as non-governmental organizations and transnational networks, in the formulation and implementation of international norms (Jefferies, 2021). TLP theory is also relevant to the current study in that it illuminates how international law can affect state behavior, the extent to which non-state actors are instrumental in enforcing environmental law, and how legal norms are internalized within domestic legal systems.

On the other hand, the compliance theory explains why a state complies with the law in question or violates it which includes domestic political pressures, international reputation, enforcement mechanisms, and the role of international organizations in the monitoring of compliance (Egielewa & Aidonojie, 2021; Aidonojie et al., 2020). The theory is central to assessing the capacity of international law to address transborder environmental crimes. The environmental justice theory is essentially premised on the fair distribution of environmental benefits and burdens, focusing on marginalized communities. It points out how environmental injustices and regulatory failures disproportionately affect vulnerable populations (Schlosberg, 2007). EJ theory has a bearing on the study in as much as it offers a point of reference through which various community triggers in transborder environmental crime can be traced and consequences felt by populations. It also emphasizes the need to incorporate the principles of justice and fairness in the design and formation of international legal structures.

Pioneering international agreements, such as the 1972 Stockholm Declaration and the 1992 Rio Declaration on Environment and Development, set in motion the framework for a planetary approach toward environmental protection. These documents outlined the need for states to work together in facing environmental challenges and balancing environmental protection with economic development. Scholars like Patricia Birnie, Alan Boyle, and Catherine Redgwell (2009) traced international environmental law from its historical roots and noted that this field of law has grown tremendously since the middle of the 20th century. In this respect, the main milestone in the process of maturity for international law would be such multilateral environmental agreements as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, CITES, which was adopted in 1973; the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which was adopted in 1989; and the 1997 Kyoto Protocol (Birnie et al., 2009). This literature identifies several principles that lie at the heart of international environmental law, including state sovereignty over natural resources, the no-harm principle, the precautionary principle, and the principle of common but differentiated responsibilities (CBDR). These principles are very important in guiding the processes for the formulation and implementation of legal frameworks that seek to address transborder environmental crimes.

Desai, (2010) opines that Multilateral Environmental Agreements MEA play a vital role in harmonizing the national policies to promote international cooperation. Various scholars have also debated the effectiveness of MEAs in fighting transborder environmental crimes like Raustiala & Victor (2004) who hold the view that Meas's effectiveness is usually limited by weak enforcement mechanisms, lack of political will, or resources to oversee high numbers of parties. Others, such as Sand (1999), state that the effectiveness of MEAs depends on the actual participation of states and the actual implementation at the national level. Sands & Peels (2003), argued that although the role of customary international law is very important, its application is sometimes faced with problems relating to interpretation and enforcement. Adil Najam, Mihaela Papa, and Nadaa Taiyab (2006) noted the Contribution of the UN System to the Emergence and Development of Global Environmental Governance: International Environmental Norm Creation, Coordination, and Response Formation, discussed this matter as well. They said that the United Nations had played a lead actor in making world environmental governance with institutions like the United Nations

Environment Programme and the United Nations Framework Convention on Climate Change. To further emphasize, LeRoy Paddock, David L. Markell, and Nicholas S. Bryner (2017) in their work Compliance and Enforcement in Environmental Law said that good compliance and solid mechanisms of monitoring are the keys to the success of every international environmental agreement; mechanisms such as provisions for requirements of reporting, peer reviews or a compliance committee must be resorted to as a means to ensure that states comply with their respective obligations (Masajuwa & Aidonojie, 2020). The literature, however, also points out that most of the time these mechanisms are made ineffective because they are hampered by limited resources, lack of political will, and voluntariness of many international agreements.

One of the major problems concerning the enforcement of international environmental law is that of jurisdiction. Since states are sovereign entities, they reserve the right to enforce laws within their territories, thereby making efforts to resolve transborder crimes extremely cumbersome. This challenge has been articulated in books such as The Limits of International Law by Jack L. Goldsmith and Eric A. Posner, (2005), wherein the authors have argued that state sovereignty at times often conflicts with the necessity of international cooperation on issues of the environment. According to Jacob Werksman, (2017) in his book Greening International Institutions, remarked that corruption is indeed pervasive and seriously undermines the possibility of enforcement at both national and international levels. Jacob points out that the presence of corruption within the enforcement agencies and regulatory bodies provides for environmental crimes to take place but makes it very hard to apply the rule of law to the perpetrators. Moreover, it breaks citizens' trust in environmental governance, further undermining compliance efforts. Sumudu Atapattu (2015) argues that environmental crimes often affect vulnerable communities disproportionately and, therefore, international law should take measures to redress such inequities by inbuilt mechanisms of human rights protection in environmental agreements. According to her, more and more, there has been a trend in international environmental law to incorporate the concerns of environmental justice and human rights.

Despite a detailed review of the literature available on the effectiveness of international law on transborder environmental crimes, several gaps either remain uncovered or have not been fully explored (Imoisi & Aidonojie, 2023). This research would test the regional legal framework and efficiency of regional organizations such as the African Union, the Association of Southeast Asian Nations, and the European Union, in association with global treaties. It would further try to assess how regional agreements address some specific environmental crimes and the interplay between regional and international laws in ensuring their effective enforcement. Another lacuna that this study will fill is the attention that has not been accorded to environmental justice and equity considerations. There will be an analysis regarding international law enforcement that incorporates environmental justice and equity considerations (Aidonojie, P. A. et al., 2024). This study will look into how transborder environmental crimes differentially impact vulnerable communities and will analyze the extent to which international legal frameworks deal with these imbalances.

3. Legal Frameworks for Combatting Transborder Environmental Crimes

Most of the crimes have dimensions that cut across borders; hence, nations have the responsibility to collaborate in coming up with comprehensive legal frameworks on how to deal with these crimes. The existing legal frameworks range from international conventions and agreements to regional treaties and national legislation, all working in tandem in tackling these crimes.

3.1 International Conventions and Agreements

International conventions and agreements are at the core of global efforts on transborder environmental crimes. These legal instruments assign binding commitments to the signatory states and provide a framework for cooperation, enforcement, and monitoring (Antai, 2024). The most important international conventions and agreements dealing with various themes of transborder environmental crimes will be reviewed as follows:

3.1.1 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Adopted in 1989 and entered into force in 1992, the Convention is the central international treaty governing the transboundary movement and disposal of hazardous waste. The Convention seeks to protect human health and the environment from the adverse effects of hazardous waste by regulating its movement across borders and ensuring its environmentally sound management. Parties to this Convention are required to reduce the generation of hazardous waste to a minimum, ensure its environmentally sound

management, and reduce its transboundary movement to the minimum necessary. Under the Convention, a prior informed consent procedure is established to be applied in such a way that exporting states obtain the prior consent of the importing state before any shipment of hazardous waste. The Convention also prohibits the exportation of hazardous waste to those countries that are not signatories to this Agreement, as well as to countries lacking the capacity to manage such waste safely.

Although the Convention has, in principle, been an instrument of immense value for curtailing the illegal hazardous waste trade, some major problems fundamentally undermined its effectiveness. Some of these problems are weak mechanisms for enforcement, limited capacity in developing countries for management, and difficulties in monitoring and tracking shipments of waste. Furthermore, the reliance of this convention on national enforcement turns out to have inconsistent application within states, while some states seem either not to have the resources or the political will for effective implementation (Antai, 2024).

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

CITES is a global agreement adopted in 1973 to regulate international trade in wild animals and plants to ensure their survival is not threatened. The Convention covers a very wide range of species from elephants and rhinos to orchids and cacti by controlling their trade through a permit and certificate system. CITES classifies species into three appendices based on their conservation status. Appendix I comprises species threatened with extinction, for which the trade of the species is generally prohibited. Appendix II includes species not necessarily threatened with extinction but requiring controlled trade. In Appendix III come species protected in at least one country that has requested assistance from other parties to CITES in controlling their trade. Under the Convention, each Party is obligated to designate Management and Scientific Authorities, which are responsible for issuing the required permits and certificates for trading listed species. Besides, CITES provides for inter-party cooperation through information exchange and enforcement coordination.

Though CITES has had some success in terms of increasing awareness about the conservation of endangered species and regulating their trade, various factors undermine its effectiveness. The problems range from poor enforcement in developing countries to a booming illegal trade in wildlife fueled by high demand and the enormous profits accrued. There is, therefore, the need for stronger enforcement and cooperation between parties. Moreover, the regulation of trade alone by the Convention does not account for a lot of other threats to species; for example, habitat loss through forest clearing and climate change.

3.1.3 Paris Agreement on Climate Change

The Paris Agreement is an historic treaty adopted in 2015, with effect in 2016 that unites almost all nations in the fight against climate change by keeping global warming well below 2°C above pre-industrial levels and pursuing efforts to limit it to 1.5°C. The Agreement is premised on the United Nations Framework Convention on Climate Change UNFCCC and represents a commitment by the world to limit greenhouse gas (GHG) emissions and enhance resilience to the negative impacts of climate change. Every party to the Paris Agreement is committed to submitting nationally determined contributions that outline its actions to reduce GHG emissions and adapt to climate change. The Review Process of the Nationally Determined Contributions NDCs happens once every five years, and the parties are to become more ambitious in terms of their commitments. It includes an element of a transparency framework, providing for tracking and reporting on the implementation of NDCs and the progress realized toward attaining the set goals. It also appeals for financial support, technology transfer, and capacity-building for the implementation of mitigation and adaptation activities in developing countries.

The Paris Agreement is a high-point achievement of global climate governance, with its near-universal participation. However, it depends on the will of the parties to deliver on commitments and to enhance ambition over time. The fact that there are no binding enforcement mechanisms further undermines the chances of remedying non-compliance. The effectiveness of the Paris Agreement will ultimately lie in continuous international cooperation, political will, and mobilization of resources for climate action.

3.2 The Role of International Bodies

International organizations, especially the United Nations Environment Programme, Interpol, and World Customs Organization, amongst others, assist in carrying out international environmental law very aggressively. These agencies ensure cooperation, technical assistance, and compliance monitoring of states with international agreements. The United Nations Environment Programme UNEP was

established in 1972 and is the leading global environmental authority that coordinates the United Nations' environmental activities. The mission of UNEP is to provide leadership and encourage partnership in taking care of the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations. UNEP supports the development of international environmental law provides expertise, and facilitates negotiations on environmental agreements. It played a very fundamental role in the adoption of various essential conventions like the Basel Convention, CITES, and the Paris Agreement. The organization also extends support to countries for implementing international environmental agreements by way of technical assistance, capacity-building, and finances. UNEP helps developing countries in the areas of strengthening their environmental governance, and enforcement capacities, and also developing national legislation in compliance with international obligations. UNEP closely monitors new emerging global environmental trends, providing the scientific assessments that underpin policy decisions. It produces Global Environment Outlook (GEO) reports, which are overall evaluations of the state of the global environment, and surveys the efficiency of policy responses.

Though UNEP has been an instrument of pressure in the process of global environmental governance, several challenges face this program. First, limited financial resources are impeding the mandate to fully support the implementation of environmental agreements. Also, the coordinating role played by UNEP might be undermined by overlapping mandates between several international organizations, thus creating fragmentation and inefficiency in global environmental governance. Interpol assists in the enforcement of international environmental law through cross-border cooperation among law enforcement agencies. In addition, it has specialized programs targeting environmental crimes such as wildlife trafficking, illegal logging, and pollution crimes. Interpol also entertains provisions for training and capacity-building to enhance the ability of national authorities to combat environmental crimes. The World Bank and the Global Environmental Facility GEF provide financing for implementing the existing international environmental agreements. They fund projects with the main specific objective of reducing environmental degradation, improving conservation, and developing the capacity of developing countries in the enforcement of environmental legislation.

3.3 Regional Frameworks and Organizations

Often, these regional frameworks are based on international agreements and provide further mechanisms of implementation and cooperation. An example is the African Convention on the Conservation of Nature and Natural Resources, adopted originally in 1968 and revised in 2003, which constitutes a regional agreement aimed at promoting conservation and the sustainable use of natural resources within the African continent. It looks at various environmental problems, such as the preservation of wildlife, protection of habitats, and management of water resources. By the Convention, state parties are put under obligation to take measures for the conservation and use on a sustainable basis of natural resources, including the establishment of protected areas and regulation of exploitation of natural resources. It recognizes regional cooperation over certain environmental challenges, particularly those transcending frontiers. The revised convention has taken on board such questions as the prevention of pollution, hazardous waste management, and promotion of environmental education and public awareness.

The African Convention provides an all-inclusive framework for the conservation of natural resources on the African continent. However, its enforcement has been curtailed by numerous factors: the lack of effective mechanisms relating to enforcement, inadequate financial resources, and political will by some parties. The way the application of this provision differs greatly across the continent, with some countries doing excellently and others struggling behind to fulfill their obligations. Regional organizations, such as the African Union and the European Union, have been very instrumental in the implementation of regional agreements and therefore in the enforcement of international environmental law in the regions (Antai, 2024). The AU supports the implementation of the African Convention and other regional environmental agreements through its specialized agencies, such as the African Ministerial Conference on the Environment. Equally, the AU enables its member states to work together and provides regional frameworks for taking action on environmental issues, including cooperation in responding to transborder environmental crimes. To this end, the EU has, to date, enacted one of the most advanced environmental protection legal frameworks in the world, in the form of directives and regulations binding on its member states. In that sense, the EU takes overall responsibility for global environmental governance; it is frequently the negotiator of international environmental agreements and the entity

responsible for implementing them on behalf of its member states. It is in this regard that enforcement mechanisms, including the European Court of Justice, ensure that member states do their part to enact the EU's environmental law. The EU also provides financial and technical support to environmental protection efforts both within and beyond its borders (Edet, et al, 2022)

3.4 Domestic Implementation of International Obligations

International environmental agreements are effective only when they are first applied nationally. Indeed, it is up to the countries to transpose these international obligations into domestic law and to ensure that these laws are enforced. The variation in the successes of national implementation is very wide-ranging dependent upon factors such as governance, resources, and political will. Germany is mostly cited as a model of the successful implementation of international environmental obligations (Kisubi, et al, 2024). The country has transposed international and EU environment protection standards into national legislation and provided for an effective enforcement mechanism. Their domestic laws on waste management, in particular, are strict, with effectively functioning monitoring systems and active contributions to international cooperation under the Basel Convention. Much has also been done in Costa Rica in the implementation of international environmental agreements, particularly about the preservation of biodiversity. The country has established extensive protected areas, together with strict wildlife protection laws and active participation in CITES. What has worked for Costa Rica is committed political will, effective enforcement, and a well-developed eco-tourism sector that provides funding for conservation. We have also seen unsuccessful national implementations like the Nigerian situation where implementation of international environmental agreements is hindered by weak governance, limited resources, and widespread corruption. Although Nigeria is a signatory to most key conventions, such as the Basel Convention and CITES, illegal wildlife trafficking, hazardous waste dumping, and other environmental crimes continue unabated. Infractions are rarely enforced; the penalties are very light and do not affect deterring offenders.

The challenges that best face this country underline the need for building up institutions, coordination of government agencies, and international support. India has significant challenges in the implementation of international environmental obligations, particularly in the context of pollution control and waste management. While the country has enacted laws according to international agreements, the enforcement remains occasional, with high continuing levels of pollution. Some of the main contributory factors include industrial pollution, poor waste infrastructure, and lack of awareness. What the case of India demonstrates is that laws are not as important as their implementation and generation of public participation.

While large strides have been taken in developing these frameworks, their implementation and enforcement remain challenging. The success of international efforts against environmental crimes therefore lies in the readiness of states to comply with related obligations, the capacity of international and regional organizations to support enforcement, and national governments' ability to implement and enforce laws. In particular, moving forward, stronger cooperation and more effective enforcement mechanisms with increased support to developing countries are required if international legal frameworks are to grapple effectively with the growing threat of transborder environmental crimes.

4. Challenges to the Efficacy of International Law in Combatting Transborder Environmental Crimes

International environmental criminal law assumes a major role in taking up transborder environmental crimes, but several challenges undermine its effectiveness. They range from the complexity of enforcement across different jurisdictions to the conflicts between national sovereignty and international obligations, resource and capacity constraints, corruption, weak governance, and fragmentation of the legal frameworks.

4.1 Complexity of enforcement across different jurisdictions

Environmental crimes frequently involve activities across borders, making coordination between different countries with varying legal systems, enforcement capabilities, and priorities challenging. Environmental crimes, like illegal wildlife trading, hazardous waste dumping (Ekpenisi et al., 2024), and cross-border pollution, generally involve more than one country. The perpetrators may be based in one country, transport the illicit goods through another, and sell them in a third. Coordinating law enforcement across these jurisdictions is challenging because each country has its own legal system, law enforcement agencies, and priorities (Antai, Et al, 2024). Jurisdictional issues are still further complicated by differences in legal

definitions of environmental crimes, corresponding penalties, and procedures. Something, for example, considered illegal waste in one country may be legal in another (Aidonojie & Egielewa, 2020). This is how loopholes are created to be exploited by criminals.

This is further complicated because there is yet to be any uniform standard on environmental protection across countries. The majority of international agreements set very general goals and standards and the implementation is usually left to the different countries. This has led to a high variation in how the laws are enforced. There are countries with stringent regulations on these, and there are those where it is lax. The differing levels of development and legal sophistication of countries also mean that some may not have the capacity or resources to enforce international environmental laws effectively. This creates the issue of uneven enforcement, where environmental criminals take advantage of weak jurisdictions.

4.2 Conflicts between National Sovereignty and International Obligations

The second significant factor that challenges the effectiveness of international law to make a difference in deterring environmental crimes is the tension between national sovereignty and international obligations (Antai, 2024). Many countries are generally very cautious about losing the present leverage they have over their natural resources and environmental policy determined at home. Protection of national sovereignty is, in itself, one of the cardinal pillars of international law. States are generally averse to external control or dictatorship concerning environmental policy and interference in domestic affairs. This can sometimes translate into opposition to international agreements believed to be an encroachment on the sovereignty of a state. For instance, if a country is rich in natural resources, it may not be willing to effectively implement the international conservation treaty when it thinks that the implementation is going to alienate the country from exploring those resources for economic benefits. This might then create conflicts between national interests and international obligations (Akpanke, et al, 2022).

The challenge then becomes one of reconciling national sovereignty with the requirement of international cooperation. Indeed, very often, environmental crimes have impacts across borders and require collective action to deal with, which can be extremely difficult to achieve if states put their concerns for sovereignty above collective goals (Ekpenisi, et al, 2024). Some international agreements attempt to temper this tension by building in flexibility concerning implementation for example, through voluntary commitments or differentiated responsibilities, but this can also result in weaker enforcement and less efficiency.

4.3 Inadequate Resources and Capacity

Resource and capacity are major challenges to the effective enforcement of international environmental law. In the majority of developing countries, the financial resources, technical expertise, and institutional capacity to apply and effectively enforce these international agreements are generally not available. Monitoring and enforcing environmental laws require huge financial resources, including funds for conducting agencies, monitoring equipment, and personnel training. Many developing countries lack the resources to make these efforts adequate, and weak enforcement, coupled with limited capacity to combat environmental crimes, predisposes these nations to huge environmental losses. These efforts at international cooperation, be it joint enforcement operations or cross-border investigations, also require certain resources not readily available in resource-constrained countries (Anifowose et al, 2024). In this respect, they might not be well-placed to participate in international enforcement activities.

In addition to resource constraints, most developing nations are characterized by a lack of trained personnel, poor infrastructure, and lack of access to technology. As such, this may result in inadequate execution of international environmental agreements by a country and eventually cripple a country's enforcement of its laws. These can be achieved through capacity-building using training programs and technical assistance; however, such involves a high demand for international support, as they are long-term investments.

4.4 Corruption and Weak Governance

Very broad issues, such as corruption and weak governance, have been impairing the effectiveness of international law in the prevention of environmental crimes. It runs from bribery among law enforcement authorities to manipulation of legal processes. In this way, corruption furthers environmental crimes by letting criminals go undetected, unprosecuted, or lightly punished. For example, bribes are given to officials who should monitor trade in wildlife or hazardous waste disposal, and by accepting these bribes, they connive with the wrongdoers and turn a blind eye (Gunawan et al., 2023). This can further

undermine the rule of law, eventually creating an environment where prosecution of environmental crimes is impossible and penalties cannot be enforced. Weakened institutions of the rule of law, through corruption in either the judiciary or police forces, grant immunity to criminals for their wrong deeds. On the other hand, it is vulnerable to bad governance, which is defined as a lack of transparency, accountability, or proper institutions, among others, making it harder to enforce international environmental law (Safi' et al., 2024; Mukhlis et al., 2024). Though not the case in developed countries, in countries that have weak governance, there may be environmental laws on paper but enforcement leaves much to be desired. Other governance challenges relate to political instability, lack of political will, and the influence of influential interest groups who might be hostile to environmental regulation. These can make international agreements hard to enforce, especially in countries where the environment is not one of the priorities.

4.5 Fragmentation and Lack of Coordination

Indeed, large fragmentation of the legal regimes and a lack of coordination among various international, regional, and national bodies decrease the real effectiveness of international law about environmental crimes. International environmental law is filled with numerous treaties, conventions, and agreements; each one covers certain aspects of protection. Overlaps, inconsistencies, and gaps in existing legal coverage do develop, thereby complicating the coherent and coordinated approach toward combating environmental crimes. For instance, hazardous waste, biodiversity conservation, and climate change are dealt with under different treaties; however, most of these are interrelated. There is no overarching binding legal framework, and conflicting obligations are working against effective enforcement.

The challenges that fragmentation poses require increased coordination between international, regional, and national authorities through harmonization of legal standards, information sharing, and further development of cross-border cooperation among law enforcement agencies. Coordination is also provided in international agreements by international organizations like UNEP and regional organizations like the EU. These efforts, however, need to be enhanced through firm political will and resources. Another requirement is more integration of efforts with other fields of international law in the realm of environmental protection, such as trade, human rights, and development. Further integration of environmental considerations into more comprehensive legal frameworks might contribute to identifying and resolving the root cause of environmental crimes and promote more sustainable development. If all these challenges are overcome, the global community will be better placed to evolve more appropriate legal frameworks, apply criminal law, and conserve the environment for future generations.

4.6 Effectiveness of International Law on Combating Transborder Environmental Crimes Illegal

Logging is a huge problem in countries like Brazil, Indonesia, and the DRC of Congo. In that respect, illegal logging in the Amazon rainforest is one of the biggest deforestation factors, one of the important factors of global climate change, and a threat to indigenous communities in this area. World Bank peak estimates of illegal logging represented as high as 20 percent of the global timber trade, representing billions of dollars in economic losses per year (Mutawalli et al., 2024; Edetalehn & Aidonojie, 2023). It undermined the aims of legitimate forestry operations and reduced government revenues while promoting environmental degradation. International attempts at fighting illegal logging and timber trading include many agreements and initiatives, such as the Forest Law Enforcement, Governance, and Trade, or FLEGT, Action Plan. The FLEGT Action Plan was formulated by the European Union in the year 2003 with the prime objectives of improving forest governance and reducing illegal logging. Probably most critical is the EUTR, which places a ban on placing illegal timber on the EU market, requiring businesses to exercise due diligence. Case studies of verification at the origin of legality in timber-sourcing countries show improvement in forest governance and a decline in illegal logging. The EUTR has pushed importers to verify that supplies obtained are legally acquired, resulting in increased transparency in supply chains. Under the FLEGT Action Plan, there are provisions for voluntary partnership agreements with timber-producing countries to build capacity for local governance and enforcement. This would mean interlinking certification and verification systems within a country, providing ground for traceability and accountability in the trade of timber. The EUTR has led to some limited successes in terms of increasing transparency and reducing illegal imports of timber into the EU, but problems continue to occur due to patchy implementation across its member states and narrow enforcement capacity in source countries.

Another set of agreements in this regard is the Voluntary Partnership Agreements, VPAs. The VPAs are agreements between the EU and timber-exporting

countries to ensure their exports of timber are legally sourced. They involve reforms of forest governance in recipient countries, improved monitoring, and certification systems. They have brought improved governance of forests and reduced illegal logging in participating countries (Aidonojie, P.A., 2023; Oladele et al., 2022). For instance, Ghana and Indonesia have made certain steps toward putting their timber industries in order and increasing legal timber exports. We also know that, in many cases, political will and capacity are conditions precedent to the effectiveness of VPAs. In addition, we have agencies that are instrumental in supporting these efforts like the UN Food and Agriculture Organization and the International Tropical Timber Organization are both providing technical assistance, capacity-building, and monitoring for sustainable forest management and combating illegal logging. Indeed, these organizations are very instrumental in terms of support, but resource constraints and the wider national policy change needed at times greatly limit their impact.

There are numerous effort that have been set up to combat the wildlife trafficking, with the most considerable being the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It regulates the trade on endangered species internationally under a system of permits and certificates for the species included in three appendices based on the protection level. On the other hand, many steps are advanced by CITES to regulate the trade, and indeed these have facilitated passing a lot of information among members of the public, thus creating awareness of conserving wildlife. For example, the ban on the international trade in ivory is vital in reducing poaching in some areas. For instance, CITES has considerably reduced the international ivory trade, especially in African elephants, during the 1990s. As a result of research conducted by the TRAFFIC network, there has been a decline in elephant poaching, especially in Kenya and Tanzania. The trend, in part, is by the measures put in place by CITES. The black-footed ferret The giant panda species recovery is, to some extent attributed to the protective measures put in place as one of CITES. It is, to date, the central mechanism which controls the cross-border trade in wildlife at a species level. It also has very efficient check and control systems. The enforcement was further enhanced with partnerships with organizations like World Wildlife Fund (WWF) and TRAFFIC, which also helped immensely in the conservation effort on the ground. Such flexibility, coupled with the amendments and listings, meant that CITES is now capable of rising to address new challenges posed by the illegal trade in wildlife. The illegal trade in wildlife, however, remains widespread even in this situation. INTERPOL and World Customs Organization reports bring to light another huge multi-billion-dollar business that continues to thrive because of the battle with enforcement and prosecution. A case in point is the illegal pangolin trade; it is currently included under CITES, yet the trade still goes on in source and transit countries where enforcement rates are very low. According to studies done by TRAFFIC, internationally, the trade in pangolins continues. Inadequacy or weakness in enforcement is a major weakness, where in most countries, there lacks the resources and political will for effective enforcement of CITES regulations. Corruption and poor governance in source countries hamper enforcement efforts. Persistent demand for wildlife products fuels illegal trade, complicating enforcement and conservation efforts.

Another effort undertaken is through the installation of Wildlife Enforcement Networks. WENs are regional interconnectedness that promotes collaboration through law enforcement agencies to work against crimes associated with wildlife trafficking. They are anchored on sharing information, undertaking joint operations, and, most importantly, enhancing capacity. They have been fairly successful in progressively promoting effective cross-border collaboration and enforcement. For instance, the ASEAN-WEN has resulted in a number of high-profile arrests and seizures of illegal wildlife. We even have the United Nations Office on Drugs and Crime (UNODC), which has supported international efforts to engage member states in combating wildlife trafficking through capacity-building, technical assistance, and awareness-raising. In the wake of this, UNODC efforts have helped in the strengthening of the legal frameworks on this issue and enforcement.

The Basel Convention controls the transboundary movement and disposal of hazardous waste by Parties, requiring them to ensure that waste be managed in an environmentally sound manner. Because of this Basel Convention, general overview awareness and good practices about waste management were increased. Reports from UNEP and Basel Convention regional centers expose large enforcement and monitoring gaps of e-waste exports. It is the proliferation of e-waste in countries like Ghana and Nigeria that puts a limitation to the Basel Convention to handle modern waste management challenges. The Stockholm Convention on Persistent Organic Pollutants, which aims at eliminating or restricting the use of persistent organic pollutants, are harmful chemicals that persist in the environment and accumulate in living organisms. Yet another convention enacted to limit transboundary pollution is. It has had appreciable success by banning

or restricting several harmful chemicals and promoting safer alternatives. The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities of UNEP deals with the land-based source category in terms of marine pollution and hazardous waste. This it does by encouraging integrated coastal and river basin management. It has also supported a number of reduction initiatives for marine pollution and improvement of waste management. The real effect of such efforts is, however, usually limited because of a lack of comprehensive data and requirement for stronger national implementation. The effectiveness of international law in dealing with such transborder environmental crimes has both great successes and massive failures.

Successful interventions, like CITES or the EUTR, show how international legal frameworks are capable of inspiring positive environmental performance via strict compliance mechanisms, global cooperation, and effective regulation. It is in the implementation that challenges remain, from enforcement, coordination, and capacity building through the scourge of corruption and weak governance, lack of resources for effective implementation, problems with capacity and resources in waste management, demands for illegal wildlife products, and tracking and managing hazardous waste flows. Overcoming such challenges will certainly call for serious efforts from international, regional, and national institutions and bodies but also entails enhanced collaboration and investment of resources in strengthening enforcement mechanisms, governance, and legal framework reforming for improved responses to new environmental threats. In that respect, the international community must further collaborate and find new ways to overcome these challenges so that legal interventions are deployed effectively to combat transborder environmental crimes.

5. Conclusion and Recommendations

The effectiveness of international law in fighting transborder environmental crimes has been a mixed bag of successes and unfinished tasks. This conclusion will draw upon major findings to consider their implications for international law and policy, and finally, it looks toward the future of legal efforts in this critical area. The successes highlighted about by this work include the successes of international legal frameworks like the CITES, which has played a very fundamental role in regulating international trade in endangered species and resulting in reduced trade in some of the endangered species and an increase in global awareness. The EUTR and FLEGT Action Plan contributed to improved forest governance and a reduction in illegal imports of timber into the EU. Despite CITES, illegal wildlife trafficking persists due to enforcement problems, corruption, and continuing demand for wildlife products. Basel Convention has monitoring and enforcement issues, more so with new forms of hazardous waste like e-waste. The FLEGT Action Plan and EUTR have limitations due to weak governance, corruption, and lack of adequate capacity for enforcement in source countries. Finally, the challenges of law enforcement across various legal and administrative frameworks have also hampered any serious efforts to effectively combat transborder environmental crimes. These issues on sovereignty mostly translate into reluctance or plain non-compliance with international regulations. Resources, capacity, and the related constraints, particularly in developing countries, also delimit the ability for effective enforcement of environmental laws.

The results, however, also stress the need for more resilient and adaptive international legal frameworks. Re-invigorating these existing agreements and forming new treaties with respect to new environmental dangers would enhance the effectiveness of international law. As for enforcement, proper enforcement is necessary. Improving the tools of monitoring, reporting, and enforcement by utilizing at best the role of technology and tightening international cooperation can plug the loopholes and enhance actual impact of legal frameworks. In terms of implementation and enforcement, there is a major requirement for capacity building in developing countries. International aid, capacity-building programs, and partnerships will be able to support these efforts or alleviate resource constraints. To enhance the efficacy of international law in fighting transborder environmental crimes, standardization of definitions, regulations, and penalties within international agreements should be reached to help cure the fragmentation of legal frameworks. For example, harmonization of the definitions of illegal logging and wildlife trafficking will reduce loopholes and inconsistencies in enforcement. There should also be mechanisms within existing treaties to provide for regular updates and adaptations in respect of emerging environmental threats and scientific developments. For instance, provisions within the Basel Convention could be provided for new types of hazardous waste like e-waste. In addition, strengthening compliance mechanisms through the line of action, including more robust monitoring and reporting requirements, regular audits and independent reviews, and stronger sanctions for non-compliance. Strengthened transparency and accountability measures should ensure that parties comply with their obligations. A comprehensive international treaty specifically

devoted to transboundary pollution that addresses lacunae in the Basel Convention and integrates new types of pollutants in particular, microplastics and electronic wastes should be introduced.

A new international accord based on CITES should be established, with a much greater emphasis on enforcement, demand reduction, and targeted support to source countries. It could provide for illegal markets, cross-border cooperation, and the newest monitoring systems enabled by satellite technologies, drones, and remote sensing for effective monitoring and tracking of environmental crimes associated with illegal logging and wildlife trafficking. Real-time data collection can also help in timely detection and response to violations. Mandatory reporting, with detailed data on enforcement actions and compliance, including challenges, by parties under international agreements, should be legislated. Regular reporting will establish transparency and accountability. Increased coordination and information sharing among national, regional, and international enforcement agencies needs to be encouraged. Joint task forces and regional cooperation networks can improve the effectiveness of enforcement efforts and take urgent action against environmental criminals.

They should be a fully-fledged development of capacity-building programs tailored to suit the needs of developing nations. Such programs need principally to be focused on training law enforcement, judiciary, and environmental managers, alongside technical infrastructure enhancement and improvement in data collection. It should also include deliberations on new initiatives aimed at the mobilization of financial resources to ensure environmental protection in developing countries. This could entail the establishment of dedicated funding mechanisms and incentivization to attract the private sector's investment in developing countries, such as through an international fund to combat illegal logging and wildlife trafficking. There needs to be a real increase in aid and international assistance to developing countries relating to environmental crimes. This aid should be focused on institutional capacity building, strengthening of enforcement mechanisms, and community-based conservation efforts. Partnerships of this nature can leverage expertise and resources for the most appropriate ways to address environmental challenges.

Develop integrated governance frameworks to enhance coordination between international, regional, and national bodies through aligning policies and sharing information to ensure that efforts complement each other rather than duplicate them. Regional cooperation mechanisms for addressing transborder environmental crimes should be put in place. Regional agreements and networks can play a very instrumental role in enforcement, best practice, and response to common environmental threats. Global governance initiatives can be initiated with respect to integrating environmental concerns into larger policy fields of trade, development, and security. This holistic approach will help root out the causes of environmental crimes and promote sustainable development. Strengthening the role of international law in fighting transborder environmental crimes contemplates a multidimensional approach: legal frameworks, enforcement mechanisms, capacity-building, and global governance. This requires strengthening international legal instruments, improving enforcement practices, building capacity in developing countries, and encouraging cooperation at the global level, all of which will enable the international community to deal far more efficiently with the complexly interlinked challenges arising from environmental crimes. It is hoped that this set of recommendations, when implemented, shall offer protection to the environment much more effectively and also secure a sustainable future for one and all.

References

Adanifowose, D. J., Ikubanni, O. O., Oyebanji, A. O., Antai, G. O., & Okpoko, M. (2024). An examination of property tax within the context of fiscal federalism in Nigeria. *NIU Journal of Humanities, 9*(2), 39-50. https://www.ijhumas.com/ojs/index.php/niuhums/article/view/190.

Adanke, S., Aniashie, A., Antai, G. O., Iheanacho, L., & Aboh, P. B. (2022). Credit, securities, and consumer credit in Nigeria: Impacts, challenges, and prospects. *The Calabar Law Journal, 18*(1), 1-16.

Adapattu, S. (2015). *Human rights approaches to climate change: Challenges and opportunities*. Routledge.

Adonojie P. A., Agbale O. P., Odojor O. A. and Ikubanni O. O. (2021). Human Rights: between Universalism and Cultural Relativism, *African Journal of Law and Human Rights*, 5(1), pp. 97-109

Aidonojie E. C., Aidonojie P. A., Eregbuonye O., Mutawalli M., Adebayo A. K., and Banki L. L., (2024), "Legal Issues and Consumer Awareness on the Effect of Poorly Processed Garri Edo North, Edo State, Nigeria", *Food Science and Technology Journal (Foodscitech)*, 7(1), 31-45, http://dx.doi.org/10.25139/fst.vi.8190

Aidonojie P. A, Agbale O. P., and Ikubanni O. O. (2021). Analysing the land use Act, the grazing reserves act and the proposed Fulani cattle colonies (RUGA settlement) and NLTP. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 12(1), 138-148

Aidonojie P. A. and Egielewa P. (2020). Criminality and the Media: Perception and Legality of the Amotekun Security Agency in Nigeria" *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP), Vol. 1 (3) 51-68

Aidonojie P. A., Adebayo A. K., Aleshinloye Y. A. (2024), Exploring Legal and Cyber-tech Solutions in Curtailing Issues and Challenges on Femicide, *Cogito Multidisciplinary Research Journal*, Vol. XVI, no. 2: 72-91

Aidonojie P. A., Adebayo, K. A., Eregbuonye O., Wakili S. A., (2024), "Breaking Legal and Socio-economic Challenges to Plastic Waste Regulation in Nigeria: Lessons learned from Singapore", *Yustisia*, 13(1), 64-88

Aidonojie P. A., Aidonojie E. C., Edetalehn O. I., Ikubanni O. O. and Oyebade A. A., (2022), A Facile Study concerning the Legal Issues and Challenges of Herbal Medicine in Nigeria, *The Indonesian Journal of International Clinical Legal Education*, Vol. 4(4), https://doi.org/10.15294/ijicle.v4i4.61641

Aidonojie P. A., Aidonojie E. C., Mulegi T., and Eregbuonye O., (2024), Legal Issues Concerning Compulsory COVID-19 Vaccination: Nigeria as a Case Study, *Golden Ratio of Law and Social Policy Review*, 3(2), 74-83, https://doi.org/10.52970/grlspr.v3i2.349

Aidonojie P. A., Anani O. A., Agbale O. P., Olomukoro J. O., Adetunji O. C. (2020). Environmental Law in Nigeria: A Review on its Antecedence, Application, Judicial Unfairness and Prospects. *Archive of Science & Technology* 1(2) (2020) 211-221

Aidonojie P. A., Damina J. J., Ekpenisi C., Onwubiko K. J., Majekodunmi T. A. and Adeyemi-Balogun O. J., (2024), "The Legal Issues Concerning the Implementation of the Administration of Criminal Justice Act of Nigeria" *NIU Journal of Legal Studies*, 10(1): 31-46

Aidonojie P. A., Idahosa M. E., Agbale O. P., and Oyedeji A, I., (2022), The Environmental Conservation, and Ethical Issues concerning Herbal Products in Nigeria, *Journal of Environmental Science and Economics*, Vol. 1(3), 26-32 DOI: https://doi.org/10.56556/jescae.v1i3.124

Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayoedeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,

Aidonojie P. A., Ikubanni O. O., Oyedeji A. I. and Oyebade A. A. (2022) The Legal Challenges and Effect concerning the Environmental Security in Nigeria: A Lesson from International Perspective, *Journal of Commercial and Property Law*, Vol. 9(1), 110-120

Aidonojie P. A., Majekodunmi T. A., Eregbuonye O. and Adeyemi-Balogun O. J., (2024), Potential and Legal Challenges of Metaverse for Environmental Awareness and Sustainable Practice in Nigeria: A Comparative Study with Singapore, *Administrative and Environmental Law Review* 5 (1):37-64. https://doi.org/10.25041/aelr.v5i1.3230.

Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, Vol. 5(2), PP. 161-174, DOI:10.28946/slrev.Vol5.Iss2.852.pp161-174

Aidonojie P. A., Okuonghae N. and Ukhurebor K. E., (2022), The Legal Rights and Challenges of COVID-19 Patients Accessing Private Healthcare in Nigeria, BESTUUR, Vol. 10(2), 183-197, https://doi.org/10.20961/bestuur.v10i2.68118

Aidonojie P. A., Okuonghae N., Moses-oke R. O., Majekodunmi T. A., (2023), 'A Facile Review on the Legal Issues and Challenges Concerning the Conservation and Preservation of Biodiversity', *Global Sustainability Research*, 2(2), 34-46

Aidonojie P. A., Ukhurebor E., Oaihimire I. E., Ngonso B. F., Egielewa P. E., Akinsehinde P. O., Kusuma H. S. and Darmokoesoemo H., (2023), Bioenergy revamping and complimenting the global environmental legal framework on the reduction of waste materials: *A facile review,* 9(1), https://doi.org/10.1016/j.heliyon.2023.e12860

Aidonojie P.A., Adesoji K.A., Eregbuonye O., Antai G. O, Ottah I.O., Muhammad Mutawalli

"The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria" (2024), Vol. 19(4), YURISDIKSI, 455, https://doi.org/10.55173/yurisdiksi.v19i4.201

Aidonojie P.A., Aidonojie E. C., Majekodunmi T. A., Eregbuonye O, Adesoji K.A. (2024) "The Competence and Authority of Midwives in giving Birth without the assistance of a Doctor in Nigeria" *Jambura Law Review*, Vol. 6(1), 150-182

Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System*, Vol. 2(3), 209-224, https://doi.org/10.53955/jhcls.v2i3.40

Aidonojie, P. A. (2023). Environmental Hazard: The Legal Issues Concerning Environmental Justice in Nigeria, *Journal of Human Rights, Culture and Legal System,* 3(1), pp. 17-32, https://doi.org/10.53955/jhcls.v3i1.60

Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from https://lawjournal.ub.ac.id/index.php/law/article/view/508

Aidonojie, P. A., Adebayo, A. K., Obieshi, E., Antai, G. O., Ogbemudia, I. O., & Mutawalli, M. (2024). The prospect, legal, and socio-economic implications of metaverse operation in Nigeria. *Yurisdiksi: Jurnal Wacana Hukum Dan Sains, 19*(4), 455-475. https://doi.org/10.55173/yurisdiksi.v19i4.201.

Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum*, 29(1), 65-78, DOI:https://doi.org/10.18196/jmh.v29i1.12595

Aidonojie, P.A., Abacha, W.S., & David, A. (2023). Effectiveness of the Administration of Justice in Nigeria under the Development of Digital Technologies. *Journal of Digital Technologies and Law*, 1(4), 1105-1131. https://doi.org/10.21202/jdtl.2023.48

Aidonojie, P.A., Ukhurebor, K.E., Masajuwa, F., Imoisi, S.E., Edetalehn, O.I., Nwazi, J. (2022). Legal Implications of Nanobiosensors Concerning Environmental Monitoring. In: Singh, R.P., Ukhurebor, K.E., Singh, J., Adetunji, C.O., Singh, K.R. (eds) Nanobiosensors for Environmental Monitoring. Springer, Cham. https://doi.org/10.1007/978-3-031-16106-3_21

Anani O. A., Abel I., Osayomwanbo O., Olisaka F. N., Aidonojie P. A, Olatunji E. O., Habib A. I, (2023), 'Application of Microorganisms as Biofactories to Produce Biogenic Nanoparticles for Environmental Cleanup: Currents Advances and Challenges', *Current Nanoscience*, 19(6), 770-782

Anani O. A., Aidonojie P. A. and Olomukoro J. O., (2022), Environmental Principles and Ethics: Current Challenges in the Field of Bioscience and Law, Ethics, Media, Theology and Development in Africa: A Festchrift in Honour of Msgr. Prof. Dr. Obiora Francis Ike, Global.net Co-Publication & Others, Geneva, Switzerland, 142-158

Anani O. A., Shah M. P., Aidonojie P. A., Enuneku A. A., (2023), "Bio-Nano Filtration as an Abatement Technique Used in the Management and Treatment of Impurities in Industrial Wastewater" Bio-Nano Filtration in Industrial Effluent Treatment, 171-182

Antai, G. O. (2024). An appraisal of the historical development of the African response to extradition. *Newport International Journal of Current Research in Humanities and Social Sciences, 4*(3), 27-35. https://doi.org/10.59298/NIJCRHSS/2024/4.3.2735.

Antai, G. O. (2024). Appraisal of the legality of the laws establishing faith-based government agencies in Nigeria. *IDOSR Journal of Arts and Management, 9*(1), 32-42. https://doi.org/10.59298/IDOSRJAM/2024/9.1.324289.

Antai, G. O. (2024). Methods of judicial cooperation and the procedure for enforcement under international law: Identifying the nexus between theory and practice. *Newport International Journal of Current Research in Humanities and Social Sciences, 4*(3), 80-88. https://doi.org/10.59298/NIJCRHSS/2024/4.3.8088.

Antai, G. O., Mulegi, T., Barongo, E. K., Ekpenisi, C., Kisubi, E. C., & Okonji, I. C. (2024). Exploring mechanisms for enforcing human rights within the context of international law: Issues and challenges. *NIU Journal of Legal Studies, 10*(1), 59-70. https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1943.

Birnie, P. W., Boyle, A. E., & Redgwell, C. (2009). *International law and the environment* (4th ed.). Oxford University Press.

Desai, B. H. (2010). *Multilateral environmental agreements: Legal status of the secretariats*. Cambridge University Press.

Edet, J. E., Antai, G. O., & Olom, I. O. (2022). Sovereign immunity from legal and arbitral proceedings and execution against the assets of a sovereign state: The evolving paradigm. *The Calabar Law Journal, 18*(1), 30-44.

Edetalehn O. I. and Aidonojie P. A., (2023), 'A Facile Study Concerning Non-Custodial Sentence in Nigeria's Criminal Justice System: Taking a Leap from the Kenya Jurisdiction' Redeemer's University Nigeria, *Journal of Jurisprudence & International Law* (RUNJJIL), Vol. 3(1), 1-17

Edetalehn O. I., and Aidonojie P. A., (2023). The Innovative concept and Issues Concerning the Non-Custodial Sentence in Nigerian Criminal Justice System. *Journal of Law and Development*; 8(2): 243–255

Egielewa P. and Aidonojie P. A. (2021). Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchi, Edo State as a Case Study, *International Journal of Current Research in Humanities*, Vol. 25, 415-434

Ekpenisi C., Aidonojie P. A., Antai G. O., Akinsulore A., Okonji C. and Damina J. J., (2024), "Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria", *Nexus International University*, (2024) 10(1): 5-14

Ekpenisi, C., Aidonojie, P. A., Antai, G. O., Akinsulore, A., Okonji, C., & John, D. J. (2024). Legal issues concerning the role of arbitration in resolving corporate governance disputes in Nigeria. *NIU Journal of Legal Studies, 10*(1), 5-14. https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1926.

Goldsmith, J. L., & Posner, E. A. (2005). *The limits of international law*. Oxford University Press.

Gunawan Y., Haque A. Y. I. & Aidonojie P. A. (2023). Police Brutality as Human Rights Violation: A Study Case of Black Lives Matter. Varia Justicia, 19(1), 19-32 https://doi.org/10.31603/variajusticia.v19i1. 6588

Hynek, N. (2017). Regime theory as IR theory: Reflection on three waves of 'isms.' *Central European Journal of International and Security Studies (CEJISS), 11*(1), 11-30.

Ikubanni O., Aderemi O. O., Aidonojie P. A., Oyebade A. A., Oluwagbenga A. & Muzahura H., (2024), "Artificial Intelligence: Interrogating the Prospect of a Robot Lawyer to Practice Law in Nigeria", *Kampala International University Law Journal (KIULJ)*, Vol. 6(I), 221-242, https://doi.org/10.59568/KIULJ-2024-6-1-11

Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. Yuridika, 38(2), 61-84, https://doi.org/10.20473/ydk.v38i2.44999

Imoisi S. E., Aidonojie P. A., and Edetalehn O. I., (2023), Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry, *Journal of Commercial and Property Law*, 10(2), 229-243

Jefferies, R. (2021). Transnational legal process: An evolving theory and methodology. *Brooklyn Journal of International Law, 46*(2), 311. https://brooklynworks.brooklaw.edu/bjil/vol46/iss2/1.

Kisubi, E. C., Adenyuma, G., Antai, G. O., & Mbeli, V. T. (2024). Utilitarianism in Uganda's oil and gas sector: Balancing utility and responsibility for environmental justice. *Kampala International University Law Journal (KIULJ), 6*(1), 190-207. https://kiulj.kiu.ac.ug/article-view.php?i=115&t=utilitarianism-in-uganda%E2%80%99s-oil-and-gas-sector-balancing-utility-and-responsibility-for-environmental-justice

Majekodunmi, T. A., Oluwaseun, J. A., Aidonojie P. A., Ikubbanni, O. O. and Oyebade A. A., (2022), Legal Issues in Combating the Scourge of Terrorism: Its Impact on International Trade and Investment: Nigeria as a Case Study, *NIU Journal of Humanities*, Vol. 7(3), PP. 129-139

Majekodunmi, T. A., Oluwaseun, J. A., Idahosa, M. E., Ikubbanni, O. O. and Aidonojie, P. A., (2022), The causes of the Rising incidence of Terrorism occasioning Deprivation of the Right to Life in Nigeria, *NIU Journal of Humanities*, Vol. 7(2), PP. 5-19

Masajuwa F. U. and Aidonojie P. A (2020). Sustainability of Plea Bargain in Nigeria Legal System: A Comparative Analysis of the Past and the Present. *Nigeria Bar Association Section on Legal Practice Law Journal*, Vol. 6 (1) 45-62

Mukhlis M. M., Aidonojie P. A., Paidi Z, and Tajuddin M. S., (2024), 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia' 23(1) FENOMENA 1-14.

Mukhlis M., Jackson-Ortiz R. D., Jufri M., Garunja E., and Aidonojie P. A., (2023), "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia". *Lex Scientia Law Review* 7, no. 2: 959-994. https://doi.org/10.15294/lesrev.v7i2.72156

Mutawalli M., Masum A., Aidonojie P. A., Adesoji K. A., (2024), Filling Members of the Financial Audit Board: Constitutional Review and Legislative Intervention, Al-'Adl, Vol. 17(1), 55-72 http://dx.doi.org/10.31332/aladl.v17i1.7707

Najam, A., Papa, M., & Taiyab, N. (2006). *Global environmental governance: A reform agenda*. International Institute for Sustainable Development.

Oladele, O. O., Aidonojie, P. A., Uzualu, J. E., Ikubanni, O. O. and Oyedeji, A. I., (2022), An Empirical Study of Criminalizing Minor Infractions of Tax Laws in Nigeria: The Need for Negotiated Punishments, *NIU Journal of Humanities*, Vol. 7(2), 23-35

Paddock, L. C., Markell, D. L., & Bryner, N. S. (2017). Compliance and enforcement of environmental law. *Edinburgh Law Review, 22*(1), 169-170.

Raustiala, K., & Victor, D. G. (2004). The regime complex for plant genetic resources. *International Organization, 58*(2), 277-309.

Safi', Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", *El-Mashlahah*, 14(1), 95-126

Sand, P. H. (1999). *Transnational environmental law: Lessons in global change*. Kluwer Law International.

Sands, P., & Peel, J. (2003). *Principles of international environmental law* (3rd ed.). Cambridge University Press.

Schlosberg, D. (2007). *Defining environmental justice: Theories, movements, and nature*. Oxford University Press.

Ukhurebor K. E., Aigbe U. O., Onyancha R. B., Hussain A., Okundaye B., Aidonojie P. A., Siloko B. E., Hossain I., Kusuma H. S., and Darmokoesoemo H., (2024), "Environmental Influence of Gas Flaring: Perspective from the Niger Delta Region of Nigeria", Geofluids, vol. 2024, 17 pages, 2024. https://doi.org/10.1155/2024/1321022

Ukhurebor K.E. and Aidonojie P. A. (2021). The Influence of Climate Change on Food Innovation Technology: Review on Topical Developments and Legal Framework, Agriculture & Food Security, 10 (1), 1-14 DOIhttps://doi.org/10.1186/s40066-021-00327-4

von Benda-Beckmann, K., & Turner, B. (2019). Legal pluralism, social theory, and the state. *The Journal of Legal Pluralism and Unofficial Law, 50*(3), 255-274.

Werksmann, J. (2017). *Greening International Institutions*. Taylor & Francis.

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Balancing State Power and Human Rights: A Jurisprudential Analysis of Pandemic Containment Measures in Nigeria

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Abstract. Pandemics pose significant public health challenges that necessitate government intervention. However, these containment measures, such as lockdowns, forced quarantines, and travel restrictions, often raise critical human rights concerns. This study examines the legal and jurisprudential justifications for government-imposed restrictions during pandemics, using Nigeria's response to COVID-19 as a case study. The paper evaluates the tension between state power and individual autonomy within the framework of constitutional rights, international human rights law, and legal jurisprudence. It argues that while states have a duty to protect public health, pandemic-related containment measures must be carefully balanced against fundamental human rights. By analyzing key legal provisions, philosophical perspectives, and case law, this study provides recommendations for ensuring that future public health responses uphold both safety and human dignity.

Keywords: Public Health Law, COVID-19, Human Rights, Paternalism, Jurisprudence.

1. Introduction

The COVID-19 pandemic, like previous global health crises, necessitated urgent governmental intervention to curb its rapid spread. Across the world, states implemented stringent public health measures, such as lockdowns, travel restrictions, quarantine mandates, and compulsory medical testing. While these measures were aimed at safeguarding public health, they often resulted in significant infringements on fundamental human rights, such as freedom of movement, personal autonomy, and economic liberties. This study examines the legal and jurisprudential justifications for these containment measures, with a specific focus on Nigeria's response to the pandemic (Aidonojie et al., 2022; Aidonojie et al., 2023).

On March 24, 2020, the Rivers State government announced the establishment of surveillance posts at its land and sea borders to prevent unauthorized entry into the state. This was soon followed by a statewide lockdown, restricting movement from 6 AM to 6 PM (Yafugborhi, 2020). Similarly, on March 30, 2020, the Federal Government of Nigeria declared a total lockdown of Lagos and Abuja after confirming 131 cases of the novel coronavirus (Campbell, 2020). Other states followed suit, imposing similar restrictions after Nigeria recorded its first confirmed COVID-19 case—an Italian national who arrived at an international airport in Lagos on February 24, 2020 (Sotunde, 2020). These governmental actions, while unprecedented in scale, were taken in response to the public health emergency, which was rapidly escalating into a global crisis.

A pandemic is a widespread public health crisis that extends across multiple countries or continents, leading to severe disruptions in societal functioning (Taylor & Moji, 2021). The World Health Organization (WHO) defines a pandemic as an epidemic that occurs on a global scale, transcending international borders and significantly impacting large populations (Kelly, 2011). The term "pandemic" does not merely refer to an infectious disease that has caused high mortality rates; rather, the defining characteristic is its transmissibility across borders. For example, while cancer is a leading cause of death worldwide, it does not qualify as a pandemic due to its non-contagious nature (Piret & Boivin, 2021).

Pandemics occur periodically and often force governments to adopt extraordinary legal and administrative measures to mitigate their impact. These measures frequently conflict with fundamental human rights, such as the right to movement, association, and privacy (Antai et al, 2024). In every health crisis, there exists a legal and ethical tension between individual autonomy and public health necessity (Zaman et al., 2024; Aidonojie et al., 2024). The COVID-19 pandemic exemplifies this struggle, as governments worldwide restricted individual freedoms in an attempt to safeguard public health. This dilemma is not new. In 1859, John Stuart Mill questioned the extent of an individual's sovereignty over their own body and the legitimate limits of state authority over individuals (Mill, 2001, p. 69). His inquiries raised fundamental issues regarding self-autonomy and state paternalism. During pandemics, such questions resurface, as states impose strict restrictions on foreign and domestic citizens in an effort to prevent the further spread of disease (Antai et al, 2024). The conflict between individual rights and collective safety becomes most apparent during times of crisis.

Governments derive their authority to impose public health restrictions from national and international legal frameworks (Antai et al, 2024). In Nigeria, Section 305 of the 1999 Constitution grants the President emergency powers to declare a state of emergency in response to national security threats, including health crises. Additionally, the Quarantine Act of 1929 gives the President broad authority to declare any communicable disease a "dangerous infectious disease," implement travel bans, enforce quarantines, and restrict public gatherings. While these laws grant the government sweeping powers, they directly impact constitutional rights, including the freedom of movement (Section 41, 1999 Constitution), freedom of association (Section 40, 1999 Constitution), and the right to personal liberty (Section 35, 1999 Constitution). In Nigeria and South Africa, lockdown measures were legally justified under existing public health laws, such as the Quarantine Act in Nigeria and the Disaster Management Act in South Africa, but their enforcement raised significant human rights concerns (Esavwede & Ogisi, 2023). This raises an important question regarding the proportionality of state intervention in public health emergencies and the extent to which fundamental human rights can be lawfully restricted.

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) also recognize freedom of movement and personal liberty as fundamental rights (Antai et al, 2024). However, these international instruments allow temporary restrictions on rights when justified by public health concerns (ICCPR, Article 12). Governments must ensure that these restrictions meet the principles of legality, necessity, proportionality, and non-discrimination (United Nations, 1966). The right to life is universally recognized as the most fundamental human right. Article 3 of the UDHR states that "everyone has the right to life, liberty, and security of person." In Nigeria, Section 33 of the 1999 Constitution protects the right to life but allows exceptions in situations where force is used to defend an individual from unlawful violence, to suppress an insurrection or riot, or to effect a lawful arrest (Antai, 2024).

Despite these protections, the enforcement of lockdowns, curfews, and movement restrictions during the COVID-19 pandemic led to allegations of human rights abuses by law enforcement officials. Some security personnel were accused of using excessive force to enforce lockdown measures, leading to loss of lives (Shodunke, 2022). Similar trends were observed in South Africa, where reports of police brutality and disproportionate enforcement of movement restrictions led to legal challenges against the government (Esavwede & Ogisi, 2023). This raises questions about the proportionality of containment measures and their compliance with international human rights standards.

The right to life is widely regarded as the foundation of all other human rights (Adangor, 2018, p. 585; Iyasere, 2015). Governments have a duty to protect life, but this duty must be balanced against other rights. The principle of proportionality requires that government actions be necessary and not excessive. However, some legal scholars argue that strict containment measures may themselves violate the right to life. For example, lockdowns disproportionately affected low-income individuals, who were unable to work remotely or access essential services. This economic hardship led to increased poverty, hunger, and preventable deaths (Okogule, 2018, p. 94). The African Charter on Human and Peoples' Rights recognizes the interdependence of civil and economic rights, emphasizing that economic deprivation can undermine the right to life (Vienna Declaration, 1993).

Legal theorists have debated the extent to which governments should limit rights for public health reasons. Mill's harm principle argues that government intervention is justified only to prevent harm to others (Mill, 2001, p. 13). In this context, pandemic

restrictions are justifiable if they prevent mass infections and deaths. However, Mill also warns against excessive state control, emphasizing that liberty should only be curtailed when strictly necessary. The principle of legal paternalism supports governmental intervention in cases where individuals may not act in their own best interest (Dworkin, 2020). This principle justifies compulsory quarantines and medical interventions. However, excessive paternalism risks infringing on fundamental freedoms, leading to state overreach and potential authoritarianism (Antai, 2024).

The statement of the problem in this paper is the legal tension between governmental containment measures and human rights during pandemics. While states have a duty to implement measures to safeguard public health, these measures often conflict with fundamental rights such as freedom of movement, association, and personal autonomy. The extent to which the government can lawfully restrict individual freedoms to prevent the spread of infectious diseases remains an important legal and ethical question. Many of the containment measures adopted in response to COVID-19 raised concerns about their constitutionality, proportionality, and impact on vulnerable populations. The aim of this paper are to examine the legal basis for pandemic containment measures, analyze their impact on fundamental human rights, and assess their compliance with constitutional and international legal standards. Additionally, this study seeks to explore the jurisprudential justifications for governmental restrictions during pandemics, drawing from philosophical and legal theories on state power, autonomy, and public health. The study aims to provide recommendations for ensuring a balance between public health measures and human rights protections, emphasizing the importance of proportionality, necessity, and judicial oversight in emergency responses.
This work explores the legal and jurisprudential basis for pandemic-related containment measures. While governments have a duty to protect public health, such measures must be proportionate, necessary, and compliant with human rights standards. This study examines how Nigeria's response to COVID-19 aligns with constitutional principles, international law, and jurisprudential theories. It argues that while state intervention is legally justified, it must strike a balance between protecting public health and upholding fundamental human rights.

2. Methodology

This article employs a doctrinal legal research methodology, analyzing primary and secondary legal sources to examine the relationship between pandemic containment measures and human rights protections. Primary sources include constitutional provisions, statutes, case law, and international legal instruments, such as the 1999 Constitution of Nigeria, the Quarantine Act of 1929, the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR). Judicial decisions from Nigeria and international jurisdictions are examined to assess the legal validity and proportionality of state-imposed restrictions during public health emergencies.

Secondary sources, including books, journal articles, and reports from organizations such as the WHO and the United Nations, provide critical perspectives on the philosophical, jurisprudential, and ethical debates surrounding state intervention and individual autonomy. The study incorporates jurisprudential theories, particularly Mill's harm principle and legal paternalism, to explore the legal and ethical justifications for state action in public health crises.

3. History of Pandemics

Pandemics have posed intermittent threats to global public health throughout history, causing severe illnesses and fatalities. Governments have often been compelled to implement emergency measures to mitigate the impact of these outbreaks, balancing public health concerns with the protection of human rights. Analyzing past pandemics provides insight into how containment measures have evolved over time and offers a framework for assessing the legal, ethical, and policy implications of such interventions. Some of the most significant pandemics in recent history include the Spanish Flu of 1918, the Asian Flu, the HIV/AIDS pandemic, the 2009 H1N1 Swine Flu, the Ebola outbreak, and the ongoing COVID-19 pandemic. Each of these pandemics has tested the resilience of legal and health systems, prompting governments to impose measures that have sometimes been contested on human rights grounds.

3.1 The Flu (HINI Infection) 1918 Pestilence

The 1918 Influenza Pandemic (H1N1), also known as the Spanish Flu, was the deadliest pandemic of the 20th century (CDC, 2023). There is no universal consensus on the virus's origin, but it was first identified among U.S. military personnel in the spring of 1918. The pandemic infected approximately 500 million people worldwide and resulted in an estimated 50 million deaths (CDC, 2023). The term "Spanish Flu" arose because Spain was the first country to publicly report the health crisis, though research

suggests that the virus may have originated in Kansas (Lawson, 2023). At the time, there was no vaccine or laboratory testing to detect the virus, necessitating reliance on non-pharmaceutical interventions, such as quarantines, isolation, and restrictions on public gatherings. Governments implemented strict measures, including social distancing, handwashing, and the use of masks, which are similar to modern COVID-19 containment strategies (Strochlic & Champine, 2020). The pandemic's legacy endures, as subsequent influenza outbreaks, including seasonal flu strains, are believed to be descendants of the 1918 virus, earning it the title of the "mother of all pandemics" (Taubenberger & Morens, 2019).

3.2 The Avian Influenza Virus (H2n2virus)

The 1957 Asian Flu (H2N2), caused by an avian influenza virus, was first reported in East Asia before spreading globally. It became the second major influenza pandemic of the 20th century and was responsible for an estimated 1.1 million infections worldwide (Nuwarda et al., 2021). Unlike the 1918 pandemic, the Asian Flu did not prompt large-scale governmental containment measures such as curfews, border closures, or social distancing regulations (Vynnycky & Edmunds, 2007). The absence of stringent interventions led to widespread transmission, highlighting the need for more proactive governmental responses in future pandemics.

3.3 Acquired Immunodeficiency Syndrome (AIDS) Pandemic

The HIV/AIDS pandemic, which emerged in the early 1980s, remains one of the most significant global health crises. HIV, the virus that causes AIDS, has led to over 25 million deaths worldwide, with more than 33 million people currently living with the disease (World Health Organization, 2024). The most widely accepted theory regarding its origin suggests that the virus was transmitted from chimpanzees to humans (Cunha et al., 2024). HIV/AIDS disproportionately affects marginalized populations, including women in sub-Saharan Africa, gay men, injection drug users, and sex workers. The global response to the HIV/AIDS pandemic has been marked by stigma, discrimination, and inconsistent government action. Governments struggled to implement effective public health measures due to taboos surrounding sexual behavior, gender relations, poverty, and mortality. In response, some nations imposed restrictive measures, such as the U.S. travel ban on HIV-positive individuals, which remained in effect until 2008 (Winston & Beckwith, 2011). The HIV/AIDS crisis underscores the intersection of public health and human rights, as containment efforts often clash with personal freedoms and ethical considerations.

3.4 H1N1 Flu Epidemic – 2009 - 2010

The 2009 H1N1 Swine Flu pandemic was caused by a new strain of influenza A (H1N1) and was first identified in Mexico before rapidly spreading worldwide. The World Health Organization (WHO) declared it a global health emergency after cases were reported in multiple countries. To curb the spread, many governments adopted school closures, travel restrictions, and social distancing measures, particularly during the first wave of infections. In the U.S., over 700 schools were temporarily shut down to limit community transmission, demonstrating how educational institutions are often key targets for containment efforts (CDC, 2019). However, unlike COVID-19, mandatory quarantines and curfews were not widely implemented, and border closures remained limited. The pandemic lasted slightly over a year, officially ending on August 10, 2010, when the WHO declared it contained.

3.5 Ebola Virus Disease

The West African Ebola outbreak (2013–2016) was one of the most severe public health emergencies in recent history. The outbreak, which began in Guinea in December 2013, spread rapidly to Liberia, Sierra Leone, and beyond, resulting in thousands of deaths. The index case was traced to an 18-month-old boy believed to have been infected by bats. By March 23, 2014, the outbreak was formally recognized, prompting emergency containment efforts (Ohimain & Silas-Olu, 2021). In response to the worsening crisis, the WHO declared Ebola a Public Health Emergency of International Concern (PHEIC) on August 8, 2014. This designation is reserved for outbreaks that pose a high risk of international spread and require coordinated global intervention. The disease spread to several non-African countries, including Italy, Mali, Nigeria, Spain, the United Kingdom, and the United States, primarily through health workers and travelers. Infected individuals who entered Nigeria, the most populous country in Africa, posed a significant containment challenge. However, Nigeria successfully controlled the outbreak within three months by implementing a rapid surveillance and response system, sharing expertise, and engaging international health organizations (Aidonojie et al, 2024). Unlike the COVID-19 pandemic, lockdowns were not widely imposed during the Ebola crisis, and Nigeria was officially declared Ebola-free on October 20, 2014 (Althaus et al., 2015).

3.6 Coronavirus Pestilence (Covid-19)

The COVID-19 pandemic, caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), was first detected in Wuhan, China, in December 2019. It was officially reported to the World Health Organization, which declared it a Public Health Emergency of International Concern on January 30, 2020 (World Health Organization, 2020). On February 11, 2020, the WHO designated the disease as COVID-19, and by March 11, 2020, it was classified as a global pandemic. The virus rapidly spread to over 188 countries, affecting millions of people and causing widespread social, economic, and political disruptions. Governments around the world imposed strict containment measures, including lockdowns, travel bans, curfews, and mandatory mask mandates (Zomalheto et al., 2020).

4. The Nigerian Government measures to contain the Covid-19 plague

Following the declaration of COVID-19 as a global pandemic, the World Health Organization (WHO) urged nations to balance public health protection, societal stability, and human rights considerations. During such emergencies, governments often expand executive powers to manage public health crises effectively. This expansion, while necessary, raises concerns about proportionality, legality, and the impact on fundamental rights. Fionnuala Ní Aoláin, the United Nations Special Rapporteur on Human Rights, noted that states often find emergency powers attractive because they provide shortcuts, but also warned that such powers tend to persist and endure beyond the immediate crisis (Rutzen & Dutta, 2020). Accordingly, states must ensure that emergency measures adhere to the principles of legality, justification, necessity, and proportionality as required by international human rights law (ECHR, 1950, Art. 15).

Historically, governments have implemented strict measures to prevent the spread of infectious diseases. Courts have upheld such interventions in cases such as *Prince v. Massachusetts* (1944), where the U.S. Supreme Court ruled that the right to religious freedom does not extend to exposing others to contagious diseases. Similarly, Nigerian law permits government intervention to safeguard public health, though such measures must comply with constitutional and international legal standards (Antai & Aidonojie, 2024).

Under the Nigerian Constitution (1999), the Federal Government is empowered to take extraordinary measures during public health emergencies. Section 305 of the Constitution grants the President emergency powers to suspend certain fundamental rights, provided such restrictions are reasonably justifiable. Additionally, the Quarantine Act (1929) grants the President and relevant health authorities' broad powers to declare communicable diseases as "dangerous infectious diseases" and to impose necessary containment measures (Quarantine Act, 1929, s. 3-4). Exercising this authority, the Nigerian government declared COVID-19 a dangerous infectious disease and implemented various executive orders and regulations under the Quarantine Act (Aboh & Aloamaka, 2022).

Among the key governmental containment measures were:

- Interstate and international travel bans
- Nationwide lockdowns and curfews
- Mandatory social distancing measures
- Closure of markets, places of worship, schools, and businesses
- Compulsory quarantine for travelers
- Arrests and fines for violators of containment orders

While these measures were enacted to limit the spread of COVID-19, they significantly impacted fundamental rights, including freedom of movement, economic rights, and personal autonomy. The suspension of inter-state and intra-state travel not only restricted personal liberty but also hindered the supply of essential goods, medical personnel, and humanitarian aid. Furthermore, while lockdowns were aimed at protecting public health, they resulted in severe economic hardships, particularly for low-income individuals who depended on daily wages.

Reports indicate that law enforcement agencies used excessive force to enforce these measures, leading to several cases of human rights violations (Aboh & Aloamaka, 2022). According to Shodunke (2022), security operatives were responsible for several extrajudicial killings during the enforcement of lockdown orders. This raises questions about the proportionality and legality of Nigeria's containment measures. While public health emergencies justify temporary restrictions on rights, such restrictions must comply with the principles of necessity and proportionality under international human rights law (ICCPR, Article 12).

Despite these concerns, the government justified its actions under the doctrine of public necessity, arguing that the right to life outweighs other fundamental

rights during a public health emergency. This argument aligns with the legal principle of *Salus Populi Suprema Lex* (the welfare of the people is the supreme law), which asserts that individual rights may be restricted for the collective good (Adangor, 2018, p. 585). However, critics argue that while emergency measures may be necessary, they must not become instruments of state overreach or human rights abuses.

5. Effectiveness of measures on pandemic containment and mitigation.

Pandemics have historically had far-reaching economic, social, and political consequences, and COVID-19 was no exception. The virus overwhelmed public health systems, disrupted economies, and tested legal frameworks worldwide. In Nigeria, the pandemic exacerbated existing inequalities, strained healthcare infrastructure, and disrupted livelihoods. While containment measures were implemented to curb the spread of the virus, their effectiveness remains contested, given the economic hardships and civil liberties infringements they caused.

One of the first measures taken by the Nigerian government was the closure of international borders and suspension of commercial flights (Shodunke, 2022). This prevented infected individuals from entering the country, though it also trapped thousands of Nigerians abroad. Consequently, some countries, including the United States and the United Kingdom, conducted evacuation flights to repatriate stranded citizens (PTI, 2020).

At the state level, governors enacted additional restrictions, including lockdowns, curfews, and bans on large gatherings. These executive orders regulated public funerals, weddings, and religious services, significantly altering daily life. However, the economic impact of these restrictions was severe, particularly for informal sector workers who rely on daily earnings for survival. While wealthier Nigerians could work remotely, low-income earners—especially those in transportation, agriculture, and trade—faced severe financial hardship.

Legal scholars argue that government actions that significantly restrict human rights must be proportionate and necessary (Okogule, 2018, p. 87). The closure of markets and public spaces, for instance, disproportionately affected small business owners and traders, many of whom lacked government relief or alternative means of livelihood. Critics argue that a more balanced approach, such as targeted lockdowns or financial support for affected populations, could have reduced economic hardships while still protecting public health.

Furthermore, the right to life is interconnected with other fundamental rights, including the right to work, healthcare, and social security. As Okogule (2018, pp. 100-101) notes, the right to life is meaningless without access to basic necessities such as food, shelter, and healthcare. The African Charter on Human and Peoples' Rights reinforces this principle, stating that the fulfillment of economic and social rights is a prerequisite for the enjoyment of civil and political rights (Vienna Declaration, 1993).

Additionally, some measures directly infringed upon personal autonomy and medical rights. Under common law principles, every competent adult has the right to refuse medical treatment (Stamatakis, 2007). In *Sideway v. Bethlehem Royal Hospital Governors* (1985), Lord Scarman held that performing a medical procedure without patient consent constitutes assault. This principle was reaffirmed in *Medical and Dental Practitioners Disciplinary Tribunal v. Dr. John E. Nicholas Okonkwo* (2001), which held that a patient has the right to informed consent for any medical procedure. However, during COVID-19, travelers and suspected carriers were subjected to forced quarantine and compulsory testing, raising concerns about violations of medical autonomy.

The Nigerian government justified compulsory quarantines and isolation orders on the grounds of public health necessity. This aligns with jurisprudence from *Esanubor v. Faweya* (2008), where the court held that a parent's right to refuse medical treatment on behalf of a child can be overridden if it endangers the child's life. Similarly, public health laws allow governments to mandate isolation when an individual's actions pose a direct threat to others.

Despite legal justifications, some argue that Nigeria's response lacked adequate social protections, as seen in widespread hunger, unemployment, and lack of financial relief. Comparisons with other countries, such as the United States and the United Kingdom, reveal that many governments introduced stimulus packages to cushion the economic impact of lockdowns. However, Nigeria's relief efforts were criticized for being insufficient and unevenly distributed (Aidonojie et al, 2024).

6. Jurisprudence Supporting Government Measures for Pandemic Containment

The concept of human rights is universally recognized as fundamental to human existence. These rights, which are inherent and inalienable, exist independently of the state and predate the establishment of political societies (Igwe, 2020). In *Ransome Kuti v. Attorney General of the Federation*

(1985), the Nigerian Supreme Court affirmed that fundamental rights are not privileges conferred by the government but pre-existing rights that the law merely recognizes and safeguards. However, while these rights are protected under the 1999 Constitution of the Federal Republic of Nigeria, they are not absolute. A crucial question arises: Can the state justifiably restrict certain rights for the common good, particularly in times of public health emergencies? This debate centers on the tension between autonomy and paternalism, key jurisprudential concepts that underlie state power and individual rights.

Autonomy, as articulated by Immanuel Kant, is regarded as the foundation of human dignity (Wright, 2016). It refers to the right of individuals to make decisions regarding their lives, including choices about their health and bodily integrity (Gbobo & Oke-Chinda, 2017). Within the medical context, this means that a patient has the right to accept or refuse medical interventions, a principle that has been upheld in common law jurisdictions (Dryden, 2022). However, this autonomy is often challenged during public health crises, where the state may impose restrictions on individual freedoms to protect the greater welfare of society.

Conversely, paternalism justifies state intervention to protect individuals from harm, even if such actions override personal autonomy. According to Feinberg (1971), paternalism refers to interference with a person's freedom for their own benefit, whether or not they consent. This justification is often invoked in public health emergencies, where the state enforces measures such as mandatory quarantines, lockdowns, and vaccination programs to prevent the spread of infectious diseases. Dworkin (2020) defines paternalism as state actions taken against an individual's will to safeguard their well-being or to protect society from harm. While paternalism can sometimes result in government overreach and the erosion of civil liberties, legal scholars acknowledge that a total absence of paternalism could lead to a chaotic society where the strongest act unchecked to the detriment of others (Antai, 2024).

In Nigerian law, paternalism and autonomy are often in tension, particularly in cases involving medical treatment and public health policies. For instance, in *Esanubor v. Faweya* (2008), the court ruled that a parent's right to refuse medical treatment on behalf of a child can be overridden when it endangers the child's life. This precedent reinforces the principle that individual autonomy may be curtailed when the exercise of such autonomy risks harm to others or undermines the broader interests of society. Similar reasoning applies to public health regulations during pandemics, where the government may impose restrictions on movement, mandatory quarantine, or forced medical treatment to prevent the uncontrolled spread of infectious diseases.

A key jurisprudential foundation for state intervention in public health crises is John Stuart Mill's "Harm Principle". In his seminal work On Liberty (2001, p. 13), Mill states that: "The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient justification."

This principle implies that individual freedom is not limitless—it can be lawfully curtailed when its exercise poses a direct risk to others. Mill acknowledges that the state has no authority to interfere with an individual's personal choices unless those choices cause harm to others (Aidonojie et al, 2024). For example, if a person infected with COVID-19 refuses quarantine, their actions could endanger public health, justifying government intervention. However, Mill explicitly excludes children and those incapable of making rational decisions from his analysis, suggesting that paternalistic intervention is more acceptable in such cases (Mill, 2001, p. 14).

In applying Mill's Harm Principle, legal theorists argue that the exercise of personal freedoms—such as the right to refuse medical treatment—must be balanced against the public interest in preventing harm (Wright, 2016). Savulescu (2023) supports this perspective, asserting that while individuals should be free to act as they choose, restrictions become necessary when their actions result in direct harm to others. This is particularly relevant in pandemic situations, where an individual's refusal to undergo testing, quarantine, or vaccination could facilitate the spread of disease, jeopardizing public health and safety.

Feinberg's Theory of Harm expands on this idea by arguing that harm occurs when an individual's actions compromise the legitimate interests of others. For example, a person infected with COVID-19 who refuses testing or isolation may expose others to infection, thereby violating their right to health and life. Consequently, the state has a legal and moral obligation to intervene to prevent widespread harm, even if this means restricting certain individual freedoms.

From a constitutional perspective, the Nigerian government's response to the COVID-19 pandemic was grounded in Sections 35(1)(e) and 45 of the 1999

Constitution, which permit the lawful restriction of personal liberty in the case of infectious diseases. Section 45 further authorizes limitations on freedom of movement and association when justified by public health concerns. However, in both Nigeria and South Africa, the legality of movement restrictions was challenged on the basis that emergency powers must be exercised with due regard for proportionality and judicial oversight (Esavwede & Ogisi, 2023). The comparative legal analysis of both countries highlights the tension between executive authority and constitutional safeguards during public health emergencies. Similarly, international human rights law recognizes that certain rights, including freedom of movement, may be lawfully restricted to prevent disease transmission, provided such restrictions are necessary, proportionate, and non-discriminatory (ICCPR, Art. 12). The African Charter on Human and Peoples' Rights (ACHPR, Article 27(2)) also states that: "The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality, and the common interest." This suggests that the common good takes precedence over absolute individual freedoms, particularly in emergency situations.

In practice, Nigeria's enforcement of COVID-19 containment measures was met with significant resistance, as many perceived the measures as disproportionate and unjustified. Reports of excessive use of force by security agencies, economic hardships caused by lockdowns, and insufficient government support for affected citizens raised concerns about the proportionality and fairness of state interventions (Shodunke, 2022). While legal justifications exist for pandemic containment measures, their implementation must align with constitutional safeguards and international human rights principles.

Another relevant legal principle is *Salus Populi Suprema Lex*—"the welfare of the people is the supreme law". This principle underpins public health laws worldwide, emphasizing that individual rights may be lawfully curtailed to protect the broader interests of society (Adangor, 2018, p. 585). However, legal scholars caution that emergency powers should not be exploited to justify indefinite restrictions on civil liberties. As Rutzen & Dutta (2020) highlight, emergency powers tend to "persist and endure", even beyond the crisis period, raising concerns about potential authoritarian overreach.

The Nigerian government's COVID-19 response illustrates the delicate balance between autonomy and state-imposed paternalism. While the legal foundation for government intervention is well established, questions remain about the proportionality, necessity, and implementation of such measures. Moving forward, governments must ensure that public health policies are both effective and compliant with human rights obligations, preventing unwarranted violations of fundamental freedoms (Antai et al, 2024)

7. Conclusion

The legal and jurisprudential discourse on pandemic containment measures underscores the delicate balance between individual rights and the state's duty to protect public health. While the right to life, freedom of movement, and personal autonomy are fundamental human rights, they are not absolute—particularly when their unrestricted exercise poses a significant threat to society. As demonstrated in the COVID-19 pandemic and historical health crises, governments have invoked emergency powers and public health laws to curb the spread of infectious diseases. However, the extent to which these measures align with constitutional safeguards and human rights standards remains a subject of critical legal inquiry. The harm principle, paternalism, and *Salus Populi Suprema Lex* all provide jurisprudential justification for state intervention, yet they also necessitate careful scrutiny to prevent governmental overreach, abuse of emergency powers, and disproportionate restrictions on civil liberties.

Moving forward, pandemic containment policies must adhere to the principles of legality, necessity, proportionality, and non-discrimination, ensuring that measures taken to protect public health do not permanently erode fundamental freedoms. Governments must strike a balance between safeguarding collective welfare and upholding human rights, implementing restrictions only when absolutely necessary and subjecting them to judicial and legislative oversight. Future public health frameworks should incorporate clear legal guidelines, accountability mechanisms, and robust socio-economic support structures to mitigate the adverse effects of restrictions on vulnerable populations. Ultimately, an effective pandemic response is one that protects both public health and human dignity, reinforcing the rule of law even in times of crisis.

References

Abedryden, J. (2022). *Autonomy*. Internet Encyclopedia of Philosophy. https://iep.utm.edu/autonomy/

Aboh, P. B., & Aloamaka, P. C. (2022). COVID-19 Pandemic and Administration of Criminal Justice in Nigeria: A Call for a Better

Application. *Cogito: Multidisciplinary Research Journal*, *14*(4), 116–136.

Abrigrand, J. L., & New, B. (2015). *Government paternalism: nanny state or helpful friend?* (p. 2). Princeton Univ. Press.

Abssavulescu, J. (2023). Ethics of Selective Restriction of Liberty in a Pandemic. In J. Savulescu & D. Wilkinson (Eds.), *Pandemic Ethics: From COVID-19 to Disease X*. Oxford University Press.

Adahimain, E. I., & Silas-Olu, D. (2021). The 2013–2016 Ebola virus disease outbreak in West Africa. *Current Opinion in Pharmacology*, *60*, 360–365. https://doi.org/10.1016/j.coph.2021.08.002

Adebolado, G. N., Ataro, B. A., Feleke, M. G., Gadabo, C. K., Kebamo, T. E., & Minuta, W. M. (2024). Informed consent practice and associated factors among healthcare professionals in public hospitals of Southern Ethiopia, 2023: a mixedmethod study. *BMC Nursing*, *23*(1), 77. https://doi.org/10.1186/s12912024017489

Aduwarda, R. F., Alharbi, A. A., & Kayser, V. (2021). An Overview of Influenza Viruses and Vaccines. *Vaccines*, *9*(9), 1032. https://doi.org/10.3390/vaccines9091032

Aidonojie, P A, Mulegi, T, Muwaffiq J, Imiefoh, A. I & Antai, G. O (2024). International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges. *FENOMENA: Journal of the Social Sciences.* 23 (2). 131-144

Aidonojie, P. A, Aidonojie, E. C, Antai, G. O, Ekpenisi, C., & Ayuba, D (2025) Constitutional and Legislative Frameworks for Green and Sustainable Environmental Governance in Uganda. *International Journal of Constitutional and Administrative Law*. 1(1): 1-20

Aidonojie, P. A, Aidonojie, E. C, Obieshi, E, Akinsulore, A. O, Antai, G O & Kolawole, A. A (2024). Combating the Silent Threat of Street Trading Resulting in Illegal Dumping of Waste in Uganda. *Kanun Jurnal Ilmu Hukum* 26 (2), 337-358. DOI: https://doi.org/10.24815/kanun.v26i2.38263

Aidonojie, P. A, Antai, G. O, & Abacha, S. W (2024). Legal and Socio-Economic Issues of Incorporating Robotic Lawyers in Uganda's Legal Practice. *Euromentor Journal* 15 (3) 78-99

Aidonojie, P. A, Antai, G. O, John, D. J, Adebayo, A. K & Ibeh, S. (2004). Curtailing Male Rape in Nigeria: Legal Issues and Challenges. *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 2 (3), 287-303. https://doi.org/10.53955/jsderi.v2i3.43

Aidonojie, P. A, Antai, G.O, Aleshinloye, Y.A, Huraira, M, Maifada, K. I & Babirye, R (2024) The Prospect, Legal, and Medical Issues in Integrating Ai in Medical Practice in Uganda. *Kampala International University Law Journal (KIULJ)* 6 (2) 189-202.

Aidonojie, P. A. (2023). Environmental hazard: The legal issues concerning environmental justice in Nigeria. *Journal of Human Rights, Culture and Legal System*, 3(1), 17–32.

Aidonojie, P. A., & Francis, E. C. (2022). Legal issues concerning food poisoning in Nigeria: The need for judicial and statutory response. *Jurnal Media Hukum*, 29(1), 65–78.

Aidonojie, P. A., & Victoria, O. A. (2022). The societal and legal missing link in protecting a girl child against abuse before and amidst the COVID-19 pandemic in Nigeria. *Jurnal Hukum*, 38(1), 61–80.

Aidonojie, P. A., Adebayo, A. K., Obieshi, E., Antai, G. O., Ogbemudia, I. O., & Mutawalli, M. (2024). The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria. (2024) *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 19(4), 455–475. Retrieved from < https://doi.org/10.55173/yurisdiksi.v19i4.201>.

Aidonojie, P. A., Aidonojie, E. C., Edetalehn, O. I., Ikubanni, O. O., & Oyebade, A. A. (2022). A facile study concerning the legal issues and challenges of herbal medicine in Nigeria. *The Indonesian Journal of International Clinical Legal Education*, 4(4).

Aidonojie, P. A., Aidonojie, E. C., Eregbuonye, O., Abacha, S. W., & Okpoko, M. (2024). Prospect, legal, and health risks in adopting the metaverse in medical practice: A case study of Nigeria. *Jurnal Hukum dan Peradilan*, 13(3), 483–522.

Aidonojie, P. A., Aidonojie, E. C., Mulegi, T., & Eregbuonye, O. (2024). Legal issues concerning compulsory COVID-19 vaccination: Nigeria as a case study. *Golden Ratio of Law and Social Policy Review*, 3(2), 74–83.

Aidonojie, P. A., Aidonojie, E. C., Okpoko, M. O., Eregbuonye, O., & Damina, J. J. (2025). International legal framework in curtailing hazardous COVID-19 medical waste: Issues and challenges. *Decova Law Journal*, 1(1), 1–17.

Aidonojie, P. A., Ikubanni, O. O., & Oyebade, A. A. (2022). Legality of EndSARS protest: A quest for democracy in Nigeria. *Journal of Human Rights, Culture and Legal System*, 2(3), 209–224.

Aidonojie, P. A., Ikubanni, O. O., Okuonghae, N., & Oyedeji, A. I. (2021). The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the COVID-19 pandemic. *Cogito*, 13(3), 149–171.

Aidonojie, P. A., Majekodunmi, T. A., Ikubanni, O. O., Oyebade, A. A., & Ibrahim, N. (2022). The causes of the rising incidence of domestic violence in Nigeria: Proposing judicial separation as a panacea. *Jurnal Hukum*, 38(2), 99–121.

Aidonojie, P. A., Nwazi, J., & Eruteya, U. (2022). The legality, prospect, and challenges of adopting automated personal income tax by states in Nigeria: A facile study of Edo State. *Cogito*, 14(2).

Aidonojie, P. A., Oaihimire, I. E., Imoisi, S. E., & Aidonojie, E. C. (2023). A facile study concerning the legal issues and challenges concerning doping in sport. *Synsto Journal of Law*, 2(1), 16–21.

Aidonojie, P. A., Odojor, A. O., & Agbale, P. O. (2021). The legal impact of plea bargain in settlement of high profile financial criminal cases in Nigeria. Sriwijaya *Law Review*, 5(2), 161–174.

Althaus, C. L., Low, N., Musa, E. O., Shuaib, F., & Gsteiger, S. (2015). Ebola virus disease outbreak in Nigeria: Transmission dynamics and rapid control. *Epidemics*, *11*, 80–84. https://doi.org/10.1016/j.epidem.2015.03.001

Anani, O. A., Shah, M. P., Aidonojie, P. A., & Enuneku, A. A. (2023). Bio-nano filtration as an abatement technique used in the management and treatment of impurities in industrial wastewater. In Bio-nano filtration in industrial effluent treatment (pp. 171–182). CRC Press.

Antai, G. O, Aidonojie, P. A, Mukhlis, M. M, Maskun, Tajuddin, M. S & Andi, T. Y (2024) The Crisis in Red Sea Region: Legal and Socio-Economic Impact on International Commerce. *Al-RisalahForum Kajian Hukum dan Sosial Kemasyarakatan* 24 (2): 17-35 https://www.researchgate.net/publication/387947844_The_Crisis_in_Red_Sea_Region_Legal_and_Socio-Economic_Impact_on_International_Commerce

Antai, G. O, Ajah, B. O, Onyejegbu, Dominic Chukwuemeka, Nwonovo, O. S Onoh, C. F, Enweonwu, O. A & Agwanwo, D. E An Examination of the African Response to International Crimes and Extradition vis-a-vis Inter-Regional Cooperation. *African Journal of Law and Justice System (AJLJS)* 3 (2). 5-16

Antai, G. O, Ashibi, J. E, Ogu, L, Iheanacho, L., & Okpong, D. E (2024). Appraisal of the use of Mediation and Negotiation in Conflict Resolution during Armed Conflicts in East Africa. *IDOSR JOURNAL OF ARTS AND MANAGEMENT* 9(3):31-46. https://doi.org/10.59298/IDOSRJAM/2024/9.3.3146

Antai, G. O, Iheanacho, L, Ogu, L, Beinomugisha, A. & Okpong, D. E. (2024). Voyage to Taxing Religious Organizations in Nigeria and blocking leakages in the Nigerian Economy: Legal Framework and Matters Arising. *KIU Interdisciplinary Journal of Humanities and Social Sciences.* 5 (2): 17-28

Antai, G. O, Okpoko, M , Obisesan, O. O , Ismaila, H & Aidonojie, P A (2024) Legal Framework and Mechanism for Combating International Crimes: A Comparative Analysis between Nigeria and Uganda. *NIU Journal of Social Sciences* 10 (3), 37-52

Antai, G. O, Okpong, D. E, Jufri, M, Imiefoh, A. I, Ekpenisi, C & Aidonojie, P. A (2024) The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the" Nwa Boyi" in South-East Nigeria. *NIU Journal of Humanities* 9 (3), 127-138

Antai, G. O. & Aidonojie, P. A. (2024). An examination of the rationale for the law against international crimes. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, 5(2), 212 – 227.

Antai, G. O. (2024) An Appraisal of the Historical Development of the African Response to Extradition. *Newport International Journal of Current Research in Humanities and Social Sciences*, 4(3). 27-35. Retrieved from <https://doi.org/10.59298/NIJCRHSS/2024/4.3.2735>.

Antai, G. O. (2024). Methods of Judicial Cooperation and the Procedure for Enforcement under International Law; Identifying the Nexus between Theory and Practice. *Newport International Journal of Current Research in Humanities and Social Sciences*, 4(3), 80-88. Retrieved from <https://doi.org/10.59298/NIJCRHSS/2024/4.3.8088>.

Antai, G. O. (2024). Universality versus Cultural relativism in International Human Rights: A Case Study of the Anti-Homosexuality Act of Uganda 2023. *IAA Journal of Management* 11(2):1-14. https://doi.org/10.59298/IAAJAM/2024/112.11400.00

Antai, G. O., Mulegi, T., Barongo, E. K., Ekpenisi C., Kisubi, E.C., & Okonji, I. C. (2024). Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges. *NIU Journal of Legal Studies*, 10(1), 59-70. Retrieved from <https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1943>

Antai, G.O. (2024). Appraisal of the Legality of the Laws Establishing Faith-based Government Agencies in Nigeria. *IDOSR Journal of Arts and Management* 9(1) 32-42. Retrieved from <https://doi.org/10.59298/IDOSRJAM/2024/9.1.324289

Adangor, Z. (2018). Security and welfare of the people and the constitutionality of the Rivers State Neighbourhood Safety Watch. In O. V. C. Okene (Ed.), *Excellence in governance and creativity: Legal essays in honour of His Excellency, Chief (Barr) Nyesom Ezenwo Wike* (p. 585). Princeton Associates and Publishing Co. Ltd.

Campbell, J. (2020). *Lagos and Abuja on Lockdown to Stop Coronavirus in Nigeria*. Council on Foreign Relations. https://www.cfr.org/blog/lagos-and-abuja-lockdown-stop-coronavirus-nigeria

CDC. (2019, June 11). *2009 H1N1 Pandemic*. Centers for Disease Control and Prevention. https://archive.cdc.gov/www_cdc_gov/flu/pandemic-resources/2009-h1n1-pandemic.html

CDC. (2023, August 31). *1918 Pandemic (H1N1 virus) | Pandemic Influenza (Flu) | CDC*. Archive.cdc.gov. https://archive.cdc.gov/www_cdc_gov/flu/pandemic-resources/1918-pandemic-h1n1.html

Cunha, J. P., DO, & FACOEP. (2024, June 26). A Pictorial Timeline of the HIV/AIDS Pandemic. *Yerepouni Daily News*. https://www.yerepouni-news.com/a-pictorial-timeline-of-the-hiv-aids-pandemic/

Dworkin, G. (2020). *Paternalism* (E. N. Zalta, Ed.). Stanford Encyclopedia of Philosophy; Metaphysics Research Lab, Stanford University. http://plato.stanford.edu/entries/paternalism/

Esavwede, J. P., & Ogisi, U. M. (2023). The Legality of the Covid-19 Lockdown on Movement Restrictions in Nigeria and South Africa. *Journal of Legal, Ethical and Regulatory Issues*, *26*(2), 1–11.

Fatula, O. A., Amuda-Kannike, A., & Ogundipe, O. O. (2018). Suicide and the right of life. *Redeemer's University Law Journal, 1*(2), 643.

Feinberg, J. (1971). Legal Paternalism. *Canadian Journal of Philosophy*, *1*(1), 105–124. https://doi.org/10.1080/00455091.1971.10716012

Garner, B. A. (2009). *Black's Law Dictionary* (9th ed., p. 346). West Group.

Gbobo, P. I., & Oke-Chinda, M. (2017). The Customary, Religious and Legal Perspectives of Euthanasia in Nigeria. An Appraisal. *Joural of Property Law and Contemporary Issues*, *5*(1), 135.

Igwe, O. W. (2020). Poverty and exclusion in Nigeria: From basic needs to Millennium Development Goals: The role of human rights law. In *The law is for all: Legal essays in honour of Prof. Enefiok Essien SAN* (pp. xx–xx). Princeton and Associates Publishing Co. Ltd.

Iyasere, F. E. (n.d.). The right to die: Legal issues surrounding the cessation of life in Nigeria. *NIALS Journal of Health Law and Policy*, 143.

Jufri, M., Fahmi, A. A., Aidonojie, P. A., Asyiqoh, L., & Ikubanni, O. O. (2024). Standardisation of the legislation as a follow-up to the Constitutional Court's decision on judicial review of Omnibus Law. *Jurnal Konstitusi*, 21(3), 366–391.

Kelly, H. (2011). The Classical Definition of a Pandemic Is Not Elusive. *Bulletin of the World Health Organization*, *89*(7), 540–541. https://doi.org/10.2471/blt.11.088815

Lawson, K. (2023). The 1918-1919 Spanish Flu in the KS-MO-OK Tri State: Constructing a Social Memory. *The Midwest Quarterly*, *64*(3), 315–229.

Maclean, R., & Dahir, A. L. (2020, February 28). Nigeria Responds to First Coronavirus Case in Sub-Saharan Africa. *The New York Times*.

Mill, J. S. (2001). *On Liberty* (p. 69). Batoche Books.

Nii-Trebi, N. I., Mughogho, T. S., Abdulai, A., Tetteh, F., Ofosu, P. M., Osei, M.-M., & Yalley, A. K. (2023). Dynamics of viral disease outbreaks: A hundred years (1918/19–2019/20) in retrospect - Loses, lessons and emerging issues. *Reviews in Medical Virology*, *33*(6). https://doi.org/10.1002/rmv.2475

Okogule, N. S. (2018). Breathing life into the fundamental objectives and directive principles of state policy under the Nigerian Constitution through judicial activism. In O. V. C. Okene (Ed.), *Excellence in governance and creativity: Legal essays in honour of His Excellency, Chief (Barr) Nyesom Ezenwo Wike* (p. 94). Princeton Associates and Publishing Co. Ltd.

Omipidan, B. A. (2013). Euthanasia: In the light of Yar'adua's death; Killing and letting to die distinguished. *NLALS Journal of Law and Gender, 1*(1), 107.

Piret, J., & Boivin, G. (2021). Pandemics Throughout History. *Frontiers in Microbiology*, *11*(1). https://doi.org/10.3389/fmicb.2020.631736

PTI. (2020, March 28). Coronavirus: US to airlift citizens stranded in India. *The Times of India*. https://timesofindia.indiatimes.com/india/coronavirus-us-to-airlift-citizens-stranded-in-india/articleshow/74860929.cms

Rutzen , D., & Dutta, N. (2020, March 12). *Pandemics and Human Rights*. ICNL. https://www.icnl.org/post/in-the-news/pandemics-and-human-rights

Shodunke, A. O. (2022). Enforcement of COVID-19 pandemic lockdown orders in Nigeria: Evidence of public (Non)compliance and police illegalities. *International Journal of Disaster Risk Reduction*, *77*, 103082. https://doi.org/10.1016/j.ijdrr.2022.103082

Sotunde, A. (2020, April 18). *Coronavirus Nigeria: which states and cities have extended lockdown?* AS USA. https://en.as.com/en/2020/04/18/other_sports/1587223604_844927.html

Stamatakis, C. (2007). Beyond advance directives, personal autonomy, and the right to refuse life-sustaining medical treatment. *New Hampshire Bar Journal*.

Strochlic, N., & Champine, R. D. (2020, March 27). *How they flattened the curve during the 1918 Spanish Flu*. National Geographic Society. https://www.nationalgeographic.com/history/article/how-cities-flattened-curve-1918-spanish-flu-pandemic-coronavirus

Taubenberger, J. K., & Morens, D. M. (2019). The 1918 Influenza Pandemic and Its Legacy. *Cold Spring Harbor Perspectives in Medicine*, a038695. https://doi.org/10.1101/cshperspect.a038695

Taylor, N. M., & Moji, K. (2021). Pandemics. *Journal for Peace and Nuclear Disarmament*, *4*(sup1), 47–59. https://doi.org/10.1080/25751654.2021.1880769

United Nations. (1966). *International Covenant on Economic, Social and Cultural Rights* (ICESCR), Article 12(2)(c). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

Vynnycky, E., & Edmunds, W. J. (2007). Analyses of the 1957 (Asian) influenza pandemic in the United Kingdom and the impact of school closures. *Epidemiology and Infection*, *136*(2), 166–179. https://doi.org/10.1017/s0950268807008369

Winston, S. E., & Beckwith, C. G. (2011). The Impact of Removing the Immigration Ban on HIV-Infected Persons. *AIDS Patient Care and STDs*, *25*(12), 709–711. https://doi.org/10.1089/apc.2011.0121

World Health Organization. (2020, April 27). *WHO timeline - COVID-19*. World Health Organization. https://www.who.int/news/item/27-04-2020-who-timeline---covid-19

World Health Organization. (2024). *HIV/AIDS*. Www.who.int; World Health Organization. https://www.who.int/data/gho/data/themes/hiv-aids

Wright, R. G. (2016). Legal Paternalism and the Eclipse of Principle. *University of Miami Law Review*, *71*(1), 194.

Yafugborhi, E. (2020, March 25). *Total lockdown: Wike shuts all Rivers air, land, sea borders indefinitely against Covid-19*. Vanguard News. https://www.vanguardngr.com/2020/03/total-lockdown-wike-shuts-all-rivers-air-land-sea-borders-indefinitely-against-covid-19/

Zaman, N., Aidonojie, P. A., Jufri, M., & Jackson-Ortiz, R. D. (2024). Questioning the Constitutional Court decision regarding age limit of presidential and vice-presidential candidates. PETITA: *Jurnal Kajian Ilmu Hukum dan Syariah*, 9(2).

Zomalheto, Z., Assogba, C., & Dossou-yovo, H. (2020). Impact of the severe acute respiratory syndrome coronavirus 2 (SARS-CoV2) infection and disease-2019 (COVID-19) on the quality of life of rheumatoid arthritis patients in Benin. *The Egyptian Rheumatologist*. https://doi.org/10.1016/j.ejr.2020.07.001

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Comparative Analysis of the Legal and Policy Framework for Financial Technology in Nigeria and Selected Jurisdictions

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Abstract. The rapid growth of financial technology (FINTECH) has transformed the global financial landscape, presenting new vistas and innovations in traditional banking and financial systems. This research undertakes a comparative analysis of the legal and policy frameworks governing Fintech in Nigeria and selected jurisdictions, with a view to assessing their effectiveness, identifying gaps, and making best practice propositions. It discusses the steps Nigeria has taken to create a Fintech ecosystem through both the Central Bank of Nigeria and the Securities and Exchange Commission, while also covering regulatory uncertainty, enforcement challenges, and weak infrastructural capacity. Comparisons are made to jurisdictions like the United States of America, South Africa, and Canada, and there is a demonstration of various approaches being taken to implement regulatory sandboxes, innovation hubs, and stakeholder engagement. The research is underpinned by a doctrinal methodology, which analyzes primary legal instruments, regulatory policies, and judicial precedents, supplemented by a comparative analysis to draw upon lessons from other jurisdictions. Results indicated that while Nigeria has been doing well, there is a need for further alignment of its legal and policy framework with the best practices in order to foster investor confidence, innovation, and consumer protection. It concludes by recommending harmonization of Fintech regulations, improved cross-border collaboration, and adaptive legal frameworks as means to keep up with rapid technological evolution. This way, Nigeria, like other emerging markets, could close the regulatory gaps and further create an enabling environment for itself to become a leading global Fintech hub in using technology toward economic growth and financial inclusion.

Keywords: Fintech, Financial System, Regulation, Legal System

1. Introduction

Fintech has expanded at a high speed and shifted the traditional practices of financial services both in delivery and consumption. Mobile payment, digital banking, peer to peer lending, blockchain, robo advisory across many sectors have all converged under the broad Fintech bracket and have revolutionized the traditional banking industry. Technological innovations have not only increased financial liberalization but also promoted effectiveness and change throughout the financial domain (Aidonojie et al, 2024). Nevertheless, there are corresponding legal, regulatory, and policy issues that must be met along with creating the strong environments for sustainable development and fair, proper growth in the financial sector protection for consumers. Nigeria's Fintech

ecosystem is in its early stage and has improved tremendously in recent years due to factors such as a high rise in the use of smart phones and increased population knowledge in the use of technology as well as high population without bank accounts. Fintech has therefore, not gone unnoticed by the Nigerian authorities (Aidonojie, 2023; Aidonojie et al., 2022), thus the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC) have already formulated policies specific to this sector inclusive of policies for licensing and regulation of digitally-based banks, and licensing framework for payment system service providers as a ways of Nigeria promoting the risk involved in the operation of Fintech (Ekpenisi et al, 2024). However, despite these policies challenges such as regulatory uncertainty, enforcement limitations, and infrastructural deficits still exist, therefore threatening the development of the sector.

A comparative review and analysis against the Fintech regulatory landscapes of other jurisdictions would be useful in providing insight into best practices and feasible solutions to these challenges. The United States of America, South Africa, and Canada, have promulgated comprehensive legal and policy frameworks that express their foresight into the peculiar complexities of Fintech operations (Antai et al, 2024). These jurisdictions have spearheaded the development of approaches like innovation hubs, stakeholder engagement mechanisms, and adaptive regulatory sandboxes in a manner that strikes a balance between innovations and consumer protection while ensuring financial stability. Contemplation of these frameworks will avail Nigeria insight into where it needs to improve and make its regulations consistent with international standards in order to attract investors for sustainable growth in the sector. Ultimately, this study aims to underscore how the harmonization of legal and policy frameworks is relevant in stimulating innovation, deepening financial inclusion, and accelerating economic growth. With improvement in regulatory gaps, cross-border collaboration, and adaptive legal measures, Nigeria can easily position itself among global Fintech leaders, enabling the use of technology for sustainable economic development (Akpanke et al, 2022).

1.1 Methodology

The study will adopt a doctrinal approach, critically analyzing the primary instruments of law, regulatory policies, and judicial precedents that govern the operation of Fintech in Nigeria and selected jurisdictions to undertake a critical and comparative analysis with a view to identifying gaps, assessing effectiveness, and making recommendations to help bridge regulatory deficiencies and streamline Nigeria's Fintech regulations in line with current global best practices.

2. Literature Review

The conceptual framework for this research is anchored on the understanding of the evolving dynamics of FinTech within the broader context of regulatory environments, economic development, and global technological trends. This paper explores law, policy, and technological innovation junctions with an emphasis on an approach that provides a balanced regulation that furthers innovation and consumer protection, financial stability, and market integrity (Jufri et al., 2024; Haruna et al., 2024). FinTech is one innovation that is certainly challenging conventional ideas of financial systems, thus prompting the need for a strong legal framework tackling issues on licensing, anti-money laundering, data protection, cybersecurity, and consumer protection (Antai et al, 2024). This would mean that regulatory frameworks will be adaptive, aligned with best international practices and at the same time fitting into specific local socio-economic realities. It appraises Nigeria's regulatory ecosystem based on a critical review of the state of existing laws, policies, and institutions governing FinTech; considers the Central Bank of Nigeria's initiatives on the regulatory sandbox and guidelines on open banking, and places such against the framework in other jurisdictions renowned for progressive FinTech regulations, including the USA, South Africa, and Canada. The analysis is underpinned by theoretical perspectives on law and innovation, focusing on how legal systems respond to technological advancements and the extent to which regulatory flexibility influences economic growth. The current study adopts a comparative legal approach to identify similarities, differences, and lacunae within the regulatory landscapes that may offer insights into how Nigeria might improve its FinTech ecosystem by the adoption or adaptation of best practices from other jurisdictions (Antai, 2024). It also looks at the role of international cooperation in the harmonization of FinTech regulations to realize cross-border operations and reduce regulatory arbitrage. It aims to draw on doctrinal and empirical approaches in formulating actionable recommendations toward developing a coherent and effective legal framework that, within the context of Nigeria, is innovation-friendly, attractive to investors, and supportive of consumer confidence. Finally, it asserts that the approach taken to strike this balance should be multi-stakeholder in nature-regulators, industry players, and consumers-in order to ensure the establishment of an enabling environment

that balances innovation with regulatory oversight for sustainable growth of the FinTech sector (Aidonojie et al., 2025).

This paper's theoretical framework leans on the interdisciplinary interface of legal theory, regulatory approaches, and economic principles that form a robust foundation to engage in an analysis of the legal and policy framework regulating FinTech within Nigeria and some selected jurisdictions (Aidonojie et al., 2021; Aidonojie & Victoria, 2022). The framework stands on the assumption that FinTech is an ever-evolving hybrid of law, technology, and financial activity; so the forms and goals of regulatory frameworks include the capacity to, and efficacy in, regularly adapting to and safeguarding society's interest in consumer, data, or financial asset protection. As the pillar of the theoretical framework, the so-called "Regulatory Sandbox Theory" holds the center stage of this study and states that regulatory environment needs to adapt gradually in order to stimulate innovation within the respective sectors while simultaneously minimizing the risks associated with such a course of action. This theory underscores the need for flexible legal instruments to allow experimentation and learning within the evolving FinTech ecosystem (Safi' et al., 2024; Mukhlis et al., 2024). By considering the extent to which Nigeria and the jurisdictions selected have either adopted or deviated from such an approach, this study considers the way in which these respective frameworks balance innovation with the need for oversight and compliance (Antai et al, 2024) . Further, this study has also applied the "Legal Transplant Theory" with an aim to explore both the feasibility and efficiency that might be posed by the transplantation of regulatory models from jurisdictions with mature FinTech ecosystems into the local context for Nigeria. In this regard, the theory also provides insight into how these external mechanisms of regulation might be inwardly adapted for their eventual capacity toward addressing domestic challenges such as financial exclusion and economic disparity. Naturally, it also prompts important questions as to the cultural, social, and economic factors determining the success or failure of such transplants (Edet et al, 2022). The theoretical framework also applies concepts from what is known as the "Institutional Theory" which examines the part played by the relevant bodies such as the regulatory agencies, central banks, and the financial institutions in setting and enforcing both the legal and policy conduct of FinTech. From this perspective, ample attention is paid to institutional capabilities, the collaboration of agencies, and the legal framework for addressing new risks such as cyber-security, fraud, and systematic risks (Majekodunmi et al, 2024).

This also draws from the "Innovation Diffusion Theory" about how FinTech innovations are diffused across jurisdictions. This theory assists in understanding how legal and policy frameworks expedite or hinder the uptake of FinTech solutions, especially by underbanked and under-served populations (Antai et al, 2024). Through the comparative analysis with Nigeria, selected jurisdictions are assessed for the effectiveness of different regulatory approaches in fostering technological adoption and addressing barriers to financial inclusion. It also takes into consideration the principles of "Economic Regulation Theory," which gives insight into trade-offs between market efficiency and regulatory intervention. It is a theory considered important to evaluate the impact of FinTech regulations on competition, market entry, and consumer protection but also to analyze the broader implications of such frameworks for economic growth and development (Aidonojie et al, 2024). The basis, therefore, by integrating these theoretical perspectives into the research, lays a broad foundation for the comparison that was undertaken with respect to legal and policy frameworks for FinTech between Nigeria and the selected jurisdictions. It, therefore, enables an in-depth look at the regulatory strategies put in place, the applicability to global best practices, and their effectiveness in answering specific socio-economic and technological contexts of the countries studied. This approach ensures a holistic evaluation of the opportunities and challenges inherent in regulating the rapidly evolving FinTech landscape (Aidonojie et al, 2024).

A review of related literature to the study "Comparative Analysis of Legal and Policy Frameworks for Financial Technology in Nigeria and Selected Jurisdictions" reveals an increasing number of scholarly works that have joined discussions on regulating financial technology, innovation, and policy development across diverse contexts. Many scholars have emphasized the transformative role of fintech in changing global financial landscapes by enhancing financial inclusion, increasing the efficiency of services, and fostering economic growth (Wakili et al, 2025). Research has illustrated that these rapid expansions in Nigeria's fintech have really been driven by high smartphone penetration and a youthful population with large swaths unbanked and clamoring for options to perform their financial transactions (Ogu et al, 2024). Other researchers showed the view that regulatory gaps could potentially hinder sustainable development of this important economic industry. General background insights into the setting of Fintech were presented by several authors, among whom were

Arner et al. (2015), indicating that adaptive regulatory frameworks will be necessary to balance the benefits of innovation with financial consumer protection and stability. In the Nigerian context, these studies have been complemented by such works as Omoola (2019) on the current regulatory landscape, indicating the fragmented nature of the framework and the dearth of capacity to handle emergent Fintech innovations. In the same way, Nnanna and Ajayi (2005) have argued against the modus operandi of the Central Bank of Nigeria, highlighting areas where over-regulation was perceived and regulatory arbitrage was encouraged, hence undermining investor confidence and the global competitiveness of the sector. The literature has extensively compared countries like the USA, South Africa, and Canada. Other scholars, like McCallum & Aziakpono (2023), have investigated the contribution of the South Afica regulatory sandbox in developing innovative solutions, while other authors, such as Clement (2018), highlighted that the fintech-friendly policies implemented by Canada make this country a global hotspot. In the USA also, according to Petschnigg (2005), there is a vibrant and proactive regulatory environment with very sound institutional support. These comparative lessons indicate that those countries with comprehensive legal and policy frameworks would be apt to remain well ahead of their more uncoordinated neighbors in the context of fintech investment and the fostering of innovation. One recurring tension is the conflict between the fostering of innovation on the one hand and the need to be seen to comply with international standards regarding AML/CFT and data protection on the other (Aidonojie et al., 2020; Aidonojie & Francis, 2022). Studies by Yu. (2010) have emphasized that not only is it important to streamline local regulations with global standards in order to ensure compatibility cross-border, but also it adds to investor confidence. Still, in Nigeria, researchers have pointed out several one-sidedness in aligning Nigeria's fintech regulations to meet international benchmarks, particularly relating to cryptocurrency governance, data privacy, and consumer protection (Aidonojie et al., 2023; Aidonojie et al., 2024).

Notwithstanding the appreciable study on the regulation of Fintech, significant lacuna still exists. Very few studies have made a systematic comparison of the legal and policy frameworks in Nigeria with those of leading jurisdictions, leaving policymakers with limited evidence to inform reforms. There is also a dearth of analysis on the socio-economic implications of regulatory approaches, especially their impact on marginalized groups and small-scale fintech operators. Most of the existing research lacks a multidisciplinary approach, failing to integrate technological, legal, and economic analyses into a cohesive framework. Moreover, while the literature is replete with comparative studies, most of these have tended to focus on developed economies, lacking valuable lessons from emerging markets, which share a similar socio-economic context to Nigeria. Lastly, the literature shows an increasing consensus on the requirement for fintech regulations to be holistic, adaptive, and innovation-friendly (Mutawalli et al., 2024). However, critical shortcomings exist in cross-jurisdiction comparative analysis, the socio-economic impact assessment of regulations, and their soundness vis-à-vis the international standards (Anani et al., 2023; Zaman et al., 2024). This study aims to fill these gaps by providing a nuanced review of the regulatory environment in Nigeria in comparison to selected jurisdictions, based on evidence-based recommendations that could help in crafting a robust and inclusive legal framework to support fintech growth.

3. Interrogation of the Law and Policy on Fintech in the USA

The modus operandi adopted is to first capture the internet penetration rate within Nigeria then compare the law and policy on fintech in Nigeria and other jurisdictions specifically United States of America (USA) and Canada. A cursory if not in depth look into how Fintech works in the United States, Canada, and South Africa would further shape this research and supply some much needed statistical data relevant to diagnostics on better improving Fintech in Nigeria. There are more than thirty (30) million small businesses in the United States of America today with more scaling up yearly from brick and mortar to digital national brands. These statistics is important to reflect the full-on digitalisation of services in the US compared to other jurisdictions, however it is the banking history that should be chronicled as this would lead to a clearer understanding of how traditional banking has evolved into what is obtainable today in the U.S. Commercial banks have always been beacons of capitalism especially in the United States (Aidonojie et al, 2024). After a series of failures in the 1920s and 1930s largely due to the agricultural depression of the 1920s and the Great Depression that followed, the number of United States (U.S.) banks dropped drastically to about 15,000 and stayed roughly around that level until the 1980s. A leap forward over 40 years later and in about four decades midway through 2018, only about 4,800 commercial banks remained (Chemmanur et al, 2020). Through failure, consolidation, and mergers, the number of U.S. banks had dwindled, even while the banking sector had grown much larger. As the number of lenders was

decreasing, assets in the U.S. banking system were becoming increasingly concentrated in a small number of larger banks. From 1984 to 2017, while the number of banks declined by 66 percent, the total assets in the industry grew from $3.7 trillion to $17.4 trillion marking an absolute jump in financials but seeing a contraction in the number of banks. The parameters for comparison should be done firstly by ascertaining history of fintech and the legal framework regulating Fintech in the United States, secondly by considering the level of participation of the larger populace utilising fintech services, thirdly, the financial outlay or benefits that the country has experienced as a result of the fintech revolution (Clements, 2020).

The invention of the transistor in 1947 is the ultimate game changer as it formed the basis for the electronics industry in the USA most often built using silicon, the transistor it can be said played its part in creation of the Silicon Valley. After several years of evolving today chips have been developed to hold hundreds of millions of transistors on smart phones and computers. The growth and evolution of the transistor is relevant because it ultimately helped in creating the right environment for technology to be applied in the financial sector of the American economy. It also shows that little innovations can spiral into huge economic and social impact. In the financial sector, the ATM came in gradually and now the POS seems to be taking over as the convenient device utilized in transaction by customers of banks in the United States (U.S). Fintech Start-ups using a digital first approach began with lending around the late 2000s.

First movers in the US Fintech space included Landing Club, Kabbage, Can Capital, on deck etc. The prime feature of early Fintech Start-ups in the US was the automated turnaround of online applications which were easier to navigate and very consumer friendly. The early fintech Startups came in with new approaches to the US finance market providing more options for sources of capital, risk based pricing, and unique products offering (Izevbuwa et al, 2024). It is important to examine how robust the legal framework for Fintech in the US has been and if possible, ascertain the secret to astute regulations. The regulatory environment in the US a bit like Nigeria is two-tiered where powers to legislate are confined to the exclusive and concurrent legislative lists in the Nigerian Constitution, the United States Constitution contains no such limitation both the states and the federal government regulate financial services and products. Fonte' and Kimpel (2023) suggest that there are currently five primary federal financial regulators with each of the fifty (50) states having their own unique financial regulator. The multiplicity of regulatory framework available in each American state can only mean a different strokes for different folk outlook so what is obtainable in one state may not be exactly the same in another state. Consequently, the legal framework in California would be markedly different from the legal framework in Texas except maybe for the federal laws that may be broad enough to apply not necessarily in Fintech specifically but in general finance. The objectives here can be achieved by looking at the Federal structure of financing and Fintech in America without specifically microscopically x-raying a particular State. The challenge of balancing financial stability and technological innovation is a global challenge which Fintech regulators and Central Banks have to face including the USA Federal Reserve. The Federal Reserve Board oversees the entire Federal Reserve System and US banks, the Federal Reserve Systems has twelve (12) regional Federal Reserve banks under which Fintech related initiatives are coordinated.

However, Fintech businesses are subject to numerous regulatory agencies both at State and Federal level not just the Federal Reserve. The basic consumer protection regulations are applicable to ensure fair lending practices and negative anti-competition practices that may be harmful to the consumer. The Consumer Financial Protection Bureau plays the major role here in ensuring fair lending practices and exercising powers granted to the Bureau to tackle negative anti-competition practices that may be harmful to the consumer. The Federal Deposit Insurance Corporation (FDIC) is another key regulatory body over insurance of deposits administering the Deposit Insurance Fund (DIF) and being the primary regulator for state-chartered banks that are not part of the Federal Bank Reserve System. The DIF also plays the role of compensating consumers whose funds are trapped in a failing financial institution placed on receivership. The Federal Trade Commission, Financial Crimes Enforcement Network, and Securities and Exchange Commission (SEC) are important regulators also that have their hands in different component parts of the huge Fintech pie in America. The reality is that the Fintech market and regulation in the U.S is monstrously complex and a single legislation cannot be held up as the Fintech law of the land (Cheriyan and Simi, 2019).

Even though the Fintech environment in the US is complex certain legislatives and bodies are identifiable. Electronic funds transfer Act, Anti-money Laundering Act 2020, Federal Deposit Insurance Act, etc with different legislations applying depending on the specific area involved. The regulators include the

Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of Currency (OCC), Securities and Exchange Commission (SEC), Commodities Futures Trading Commission (CFTC) and the Fair Credit Reporting Act, including the Federal Reserve Bank, US department of treasury, Financial Crimes Enforcement Network (FINCEN) etc. Because of the large Fintech ecosystem a typical Fintech startup would be sanctioned by any of the afore mentioned regulatory bodies depending on the sector or sub-sector that Fintech Startup would operate in, The Gramn Leach Billey Act, requires Fintech companies to take into consideration data protection of consumers while making sure full consent to their services is obtained with the consumers fully understanding the privacy policy for Fintech companies. In the online payment game, the Electronic Fund Transfer Act is a federal legislation which is mandatory (Antai, 2024). The KYC principle is also enshrined in the US Patriot Act to which Fintech companies must integrate into their company policies the E-sign Act regulates signatures over e-documents. So, one thing is certain legal expertise is necessary to comply with the several U.S. Federal and State laws undergirding the Fintech space in the US (Anifowose, 2024).

Apart from a complex network of laws and institutions, the Federal Reserve Bank is hugely involved in developing the US Fintech Landscape. Of the Twelve (12) regional Federal Reserve Banks about four (4) have dedicated groups working on Fintech development. The San Francisco Federal Reserve established a working group which interacts with Fintech companies and banks for Fintech innovation, the group is known as the Navigate team. The Federal Reserve Executives from the tech industry, Fintech companies, and tech firms in consulting. The Federal Reserve Bank, Atlanta has a center concerned with regulatory issues concerning Fintech firms, sponsors and an annual conference on financial markets, the centre is known as the center for financial innovation and stability. The Boston Reserve has a mobile payment industry work group which researches trends in mobile payment and digital currencies. With more advancement in the U.S Fintech Market than anywhere else in the world, it is quite understandable why so many layers of regulation abound in the Fintech Space. It then becomes quite difficult to compress all the other provisions into a singular U.S. legislation since states can also legislate on the issue. Later on, it would be pertinent to point out what lesions can be applied to Nigeria.

4. Analysis of the Law and Policy on Fintech in South Africa

Economically and fiscally, South Africa seems to be quite ahead of the other big African Power houses like Nigeria, South Africa and other foremost sub-Saharan African States. The crucial question is whether this pace setting is also evident in the Fintech Space as the country has been ranked first in Africa and thirty-seventh (37th) in the world based on Fintech startups (Didenko 2018). In 2018 328.6 million USD was raised by South African Fintech Startups, 114.1 million was raised the following year in 2019 across eighty-nine (89) deals with 397.5 million being raised of south African Technology companies in 2020 across 112 deals. South Africa has a developed financial service regulation in place and does not boast of any over arching Fintech-oriented regulatory framework in South Africa (Ogbuji et al, 2020). The Banks Act of South Africa, Financial Advisory and Intermediary Services Act, and Financial Markets Act are the basic primary financial Sector Laws over South African Financial economy. In 2018 the South African Reserve Bank (SARB) created the National Payment System framework and Strategic Vision 2025 which had the goal of improving the access of South Africans to financial services. The SARB established a Fintech unit to investigate the implication of Fintech in financial services issuing papers as guides. The International Bar Association (IBA) indicates that there is no specific regulatory framework regulating Fintech or financial innovation in South Africa but that Fintech products and services still come under the ambit of traditional financial regulatory framework. The aforementioned laws together with the National Credit Act 2005 and National Payment System Act form the existing legal framework for Fintech regulation in South Africa (Ayileka and Agbolade, 2021). Plans are underway to enact the Conduct of Financial Institutions (COFI) Bill which will open finance and provide crypto licensing for crypto service providers as presently no exclusive crypto law exists. Digital wallets and payment service providers in South Africa are regulated under traditional banking laws already in existence centrally implemented by the SARB. In June 2021 the inter-governmental Fintech Working Group (IFWG) and the Crypto Assets Regulatory Working Group (CARWG) published a position paper and crypto assets creating a roadmap and raising issues such as anti-terror and anti-money laundering financing initiatives.

5. Examination of the Law and Forming of Financial Technology in Canada

The Canadian Fintech landscape offers a unique insight into the subject of research and is worthy of consideration. In Canada, the whole technological foray into finance has led to a term "open banking" which is described as a system that free up the consumer to share their financial data between financial institutions and accredited third party service providers at the same time affording consumers control over their data, enabling them to securely utilise new data-driven financial services that can improve their financial outcomes (Budiyanto et al., 2024; Ikubanni et al., 2024). Fintech in Canada involves innovative financial technologies being introduced by incumbent financial institutions, services providers, and new entrants to enhance the efficiency of the financial services market.

As a federation, both federal and provincial laws undergird the Canadian financial sector as there is no single Canadian regulator responsible for solely overseeing Fintech business in Canada. The Ten (10) provinces and three (3) territories mean that there is sure to be multiplicity of laws that would apply in each scenario. The Canadian Security Administrators (CSA) is one of the major regulatory bodies because it is the apex organization that oversees Canadian provincial and territorial securities regulates CSA role is seen in support programs that assist Fintech startups to go through a less cumbersome process of registration and ensuring some level of exemption from bogus securities law requirements. One of the major developments that can be viewed as a game changer is the publication by CSA of Staff notice 46-307 which describes how existing securities laws may apply to crypto Currency investments and platforms. This was done with the understanding that crypto currency offerings can provide new opportunities for businesses to raise capital opening even more broader ranges of investment (Aidonojie et al, 2024).

In Canada provincial regulators are the ones really hands-on with enforcement and compliance as there are also self-regulatory organizations involved. The office of the Privacy Commissioner of Canada (OPC) is heavily involved over privacy compliance while the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is involved over collection of information to prevent money laundering and terrorist financing (Antai et al, 2024). The unique advantage Canada has is the usage of self-regulating association such as the Financial Innovation and Technology Association of Canada. This particular association advocates for balanced policies and supports Fintech innovation in Canada. The National Crowd Funding and Fintech Association also provide education and networking over funding opportunities to its members. The Digital Finance Institute is another useful association that has its hands deep in Artificial Intelligence and block chain suggests quite frankly that, 'currently Fintech is not a wide threat to Canadian banking incumbents, but the major banks are launching their own research and development into Fintech projects'. Perhaps this is why there is not much urgency in creating a single regulator or regulation even in a developed landscape like Canada. The real area of concern has been crypto currency especially with the failing of Quadriga CX losing $190 million dollars of crypto. The prevailing securities law is applicable together with FINTRAC regulations to curb fraud (Antai, 2024).

6. Overview of the Law and Policy for Financial Technology and Consumer Protection in Nigeria

The increase in usage of internet has significantly contributed to the rise in the general electronic commerce (e-commerce) market and Fintech services. The research also reveals that the level of internet penetration has been on steady increase showing that from 2015-2025 there have been more and more participation of Nigerian citizens in the use of the internet and utilization of information technology in communications and businesses generally (Windholz, 2018). Nigeria like the U.S and Canada is a federation but one with massive central influence such that major items on the central legislative are listed on the exclusive legislative list in the 2nd schedule to the 1999 constitution of the Federal Republic of Nigeria (as amended). Banking is item six (6) while control of capital issues is item twelve (12) and trade and commerce being item sixty-two (62) on the exclusive legislative list. Fintech cuts across these various items afore mentioned so manifestly the Federal Government through the Apex Bank the CBN is in primary control and saddled with dictating rules for Fintech startups in the country (Enyia, 2018). Apparently, the introduction of the cashless policy by the CBN in 2012 contributed to the speedy growth of the Fintech industry in Nigeria, pursuant to powers created under the CBN Act and BOFIA Act (Enyia, 2018).

Consequently, in terms of the applicable regulations the CBN issues guideline and codes to regulate Fintech in Nigeria. The swift growth of the Fintech in Nigeria from 2016 to 2018 is what encouraged commercial banks to integrate Fintech into their operations (Antai et al, 2024). A new Fintech startup,

pursuant to section 59 of the BOFIA, would have to apply for CBN license depending on the sub-sector or category the Fintech startup or company focuses on. Such an application may be for mobile payment services, mobile lending, personal finance, block chain etc, either way the CBN license is mandatory. The implication of being granted a CBN license is that the CBN then regulates other facets of the Fintech Company's operations as it does traditional banks. The Nigeria Communications Commission (NCC) also plays a role in regulating Fintech companies because of their utilisation of information communications technology. The License Framework for Value Added Service (VAS) 2011 which consist of other services other than phone calls, regulates companies that provide value added services of which Fintech companies are grouped under. It follows consequently, that an NCC license is also mandatory for any Fintech startup pursuant to the VAS guideline. Some of the guidelines so far issued by the CBN on Fintech operations or finance business concerning technology and innovation are worth mentioning. The guidelines on mobile money services in Nigeria which creates provisions for bank led and non-bank led models. This guideline simply regulates the mobile money services environment providing for licensing requirement and supervision. The regulation for Bill of Payments 2018 is another crucial regulation that provides for minimum standards to be complied with by Fintech startups. The regulation mandates any entity operating a bill payment platform to apply to the CBN for a bill payment license or be integrated to an already licensed payment service provider (Enyia and Abang, 2018).

The World Bank (World Bank, 2018) suggests that with the attendant benefits of fintech, fintech also poses a range of risks to consumers that need to be mitigated in order for fintech to truly benefit consumers. In the World Bank report, it is noted that a rapid expansion of peer-to-peer lending (P2PL) market in China in Q1 in 2010 was followed by significant platform collapse and incidents of fraud including platform operator misconduct which caused significant loses to consumers (SSE, 2019). This is important because it shows the exposure a consumer faces in the absence of a framework of protection for the consumer. As a follow up to this, Nigeria has had massive growth in the area of fintech startups popping up and if the right consumer protection framework is not in place what happened in China might as well happen in Nigeria. The World Bank identifies consumer risks to include factors such as opaqueness of the fintech business models and the lack of consumer familiarity with models offered by fintech companies thus exposing the consumer to fraud or misconduct by fintech consumers (UNCTAD, 2019). The World Bank in this publication made it crystal clear that there are several consumer risks that stands in the way calling for robust consumer protection regime. Unfortunately, the World Bank report being a global report is not specifically tailored to cover Nigeria but vaguely designed for reference by other nations also. The present study is restricted to the Nigerian consumer and modalities that should be put in place to ensure that the consumer is shielded from fraud and platform negligence by fintech service providers (Ayikeka, 2023).

7. Findings and Conclusion

The comparative analysis of the legal and policy framework for fintech in Nigeria and selected jurisdictions raises a dynamic, evolutionary regulatory framework aimed at fostering innovation while safeguarding financial stability, consumer protection, and market integrity. In Nigeria, the approach to regulation is anchored on CBN directives and guidelines which have focused on licensing, consumer protection, and cybersecurity. Although progress abounds, significant challenges persist on account of fragmentation in regulation, general weaknesses in legal infrastructures, and an apparent lack of a clear data privacy law. In comparison, selected jurisdictions reflect a variety of approaches-from permissive regulatory sandboxes allowing free experimentation to strong legal frameworks embedding fintech within existing financial legislation (Umo et al, 2024). Countries such as the United States of America, South Africa and Canada demonstrate how tailored regulations, harmonized policies, and strategic public-private partnerships can create an enabling environment for fintech growth. These jurisdictions emphasize innovation facilitation, comprehensive data protection laws, and anti-money laundering measures, providing valuable insights for Nigeria.

The findings have been able to highlight that Nigeria needs to adopt a more holistic and adaptive regulatory framework which can balance innovation with mitigation of risk. Harmonization of laws, establishment of a dedicated fintech regulatory authority, and incorporation of best international practices become important (Haruna et al., 2024; Ekpenisi et al., 2024). This calls for strategic collaboration between policymakers, industry players, and international bodies in making Nigeria a competitive player in the global fintech ecosystem. It would also be further enhanced through an increased focus on education, capacity building, and digital infrastructure development. This study, therefore, concludes that while much improvement has been

made, the Fintech regulatory framework in Nigeria should continue to keep pace with the need to ensure that it remains sustainable, inclusive, and competitive in the increasingly developing world digital economy.

8. Recommendation

What is therefore needed is a comprehensive but adaptive regulatory approach to FinTech in Nigeria, drawing inspiration from successful practices in selected jurisdictions, with a view to addressing the peculiar challenges presented in the Nigerian context. In addition, Nigeria should establish a unified regulatory framework that fosters innovation, ensures strong consumer protection, guarantees financial stability, and improves cybersecurity. The framework should also foster a better working relationship among regulators, developers of Fintech, and financial institutions to create an enabling environment for investment and innovation. It is suggested that major overhauls of legislation should be carried out with a view to supporting the existing legal framework for the new technologies such as blockchain and cryptocurrency, as well as to fill gaps in the regulation of data protection and/or cross-border transactions. In addition, the regulatory sandboxes and innovation hubs, as can be found in advanced jurisdictions, will enable Fintech startups to test innovative solutions under the watch of regulators, at minimal risk, while continuing to grow. Nigeria also needs to focus on financial inclusion by encouraging and incentivizing the development of FinTech solutions for unserved groups and remote communities, where mobile technology can reach out and provide access to financial services. It goes on to speak about international cooperation and ensuring coherence with international standards, mainly on cross-border payments and anti-fraud mechanisms that would make Nigeria competitive in the global Fintech ecosystem. Finally, a set of continuous capacity-building programs for regulators and stakeholders will help to make the legal and policy framework agile, so that it responds effectively to the rapid evolution of technology. Based on these recommendations, FinTech's transformative potential in driving economic growth, improving financial access, and strengthening the overall financial system can be harnessed in Nigeria.

References

Aidonojie, E. C., Aidonojie, P. A., Eregbuonye, O., Mutawalli, M., Adebayo, A. K., & Banki, L. L. (2024). Legal issues and consumer awareness on the effect of poorly processed garri Edo North, Edo State, Nigeria. *Food Science and Technology Journal*, 7(1), 31–45. http://dx.doi.org/10.25139/fst.vi.8190

Aidonojie, P A, Mulegi, T, Muwaffiq J, Imiefoh, A. I & Antai, G. O (2024). International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges. *FENOMENA: Journal of the Social Sciences.* 23 (2). 131-144

Aidonojie, P. A, Aidonojie, E. C, Antai, G. O, Ekpenisi, C., & Ayuba, D (2025) Constitutional and Legislative Frameworks for Green and Sustainable Environmental Governance in Uganda. *International Journal of Constitutional and Administrative Law*. 1(1): 1-20

Aidonojie, P. A, Aidonojie, E. C, Obieshi, E, Akinsulore, A. O, Antai, G O & Kolawole, A. A (2024). Combating the Silent Threat of Street Trading Resulting in Illegal Dumping of Waste in Uganda. *Kanun Jurnal Ilmu Hukum* 26 (2), 337-358. DOI: https://doi.org/10.24815/kanun.v26i2.38263

Aidonojie, P. A, Antai, G. O, & Abacha, S. W (2024). Legal and Socio-Economic Issues of Incorporating Robotic Lawyers in Uganda's Legal Practice. *Euromentor Journal* 15 (3) 78-99

Aidonojie, P. A, Antai, G. O, John, D. J, Adebayo, A. K & Ibeh, S. (2004). Curtailing Male Rape in Nigeria: Legal Issues and Challenges. *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 2 (3), 287-303. https://doi.org/10.53955/jsderi.v2i3.43

Aidonojie, P. A, Antai, G.O, Aleshinloye, Y.A, Huraira, M, Maifada, K. I & Babirye, R (2024) The Prospect, Legal, and Medical Issues in Integrating Ai in Medical Practice in Uganda. *Kampala International University Law Journal (KIULJ)* 6 (2) 189-202.

Aidonojie, P. A. (2023). Environmental hazard: The legal issues concerning environmental justice in Nigeria. *Journal of Human Rights, Culture and Legal System,* 3(1), 17–32.

Aidonojie, P. A. (2024). Challenges concerning the legal framework of an automated personal income tax in Edo State, Nigeria. *Jurnal Hukum Replik*, 12(1), 83–115. http://dx.doi.org/10.31000/jhr.v12i1.7717

Aidonojie, P. A., & Francis, E. C. (2022). Legal issues concerning food poisoning in Nigeria: The need for judicial and statutory response. *Jurnal Media Hukum*, 29(1), 65–78.

Aidonojie, P. A., & Victoria, O. A. (2022). The societal and legal missing link in protecting a girl child against abuse before and amidst the

COVID-19 pandemic in Nigeria. *Jurnal Hukum*, 38(1), 61–80.

Aidonojie, P. A., Abacha, W. S., & David, A. (2023). Effectiveness of the administration of justice in Nigeria under the development of digital technologies. *Journal of Digital Technologies and Law*, 1(4), 1105–1131. https://doi.org/10.21202/jdtl.2023.48Agboti, C. I., Ogbuke, M. U., Ugwu, I. P., Antai, G O., John, D. J., & Igwe, I. (2024). The Legal Framework for Occupational Health and Safety in the Manufacturing Sector: Assessing Compliance and Enforcement Mechanisms in Nigeria. *Pakistan Journal of Criminology 16 (4):* 1451-1463

Aidonojie, P. A., Adebayo, A. K., & Aleshinloye, Y. A. (2024). Exploring legal and cyber-tech solutions in curtailing issues and challenges on femicide. *Cogito Multidisciplinary Research Journal*, 16(2), 72–91.

Aidonojie, P. A., Adebayo, A. K., Eregbuonye, O., & Wakili, S. A. (2024). Breaking legal and socio-economic challenges to plastic waste regulation in Nigeria: Lessons learned from Singapore. *Yustisia*, 13(1).

Aidonojie, P. A., Adebayo, A. K., Eregbuonye, O., Antai, G. O., Ottah, I. O., & Mutawalli, M. M. (2024). The prospect, legal, and socio-economic implication of metaverse operation in Nigeria. YURISDIKSI, 19(4), 455. https://doi.org/10.55173/yurisdiksi.v19i4.201

Aidonojie, P. A., Adebayo, A. K., Eregbuonye, O., Mukhlis, M. M., & Ibeh, S. (2024). Legal and socio-economic issues of automated Islamic banking in Uganda: Lesson from Indonesia. *Diponegoro Law Review*, 9(2), 204–222.

Aidonojie, P. A., Adebayo, A. K., Obieshi, E., Antai, G. O., Ogbemudia, I. O., & Mutawalli, M. (2024). The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria. (2024) *YURISDIKSI: Jurnal Wacana Hukum Dan Sains*, 19(4), 455–475. Retrieved from <https://doi.org/10.55173/yurisdiksi.v19i4.201>

Aidonojie, P. A., Aidonojie, E. C., Antai, G. O., Ekpenisi, C., & Ayuba, D. (2025). Constitutional and legislative frameworks for green and sustainable environmental governance in Uganda. *International Journal of Constitutional and Administrative Law,* 1(1), 1–20.

Aidonojie, P. A., Aidonojie, E. C., Edetalehn, O. I., Ikubanni, O. O., & Oyebade, A. A. (2022). A facile study concerning the legal issues and challenges of herbal medicine in Nigeria. *The Indonesian Journal of International Clinical Legal Education*, 4(4).

Aidonojie, P. A., Aidonojie, E. C., Eregbuonye, O., Abacha, S. W., & Okpoko, M. (2024). Prospect, legal, and health risks in adopting the metaverse in medical practice: A case study of Nigeria. *Jurnal Hukum dan Peradilan*, 13(3), 483–522.

Aidonojie, P. A., Aidonojie, E. C., Eregbuonye, O., Akinsulore, A. O., Owuche, A. G., & Adebayo, A. K. (2024). Combating the silent threat of street trading resulting in illegal dumping of waste in Uganda. *Kanun Jurnal Ilmu Hukum*, 26(2), 337–358.

Aidonojie, P. A., Aidonojie, E. C., Mulegi, T., & Eregbuonye, O. (2024). Legal issues concerning compulsory COVID-19 vaccination: Nigeria as a case study. *Golden Ratio of Law and Social Policy Review*, 3(2), 74–83.

Aidonojie, P. A., Aidonojie, E. C., Okpoko, M. O., Eregbuonye, O., & Damina, J. J. (2025). International legal framework in curtailing hazardous COVID-19 medical waste: Issues and challenges. *Decova Law Journal*, 1(1), 1–17.

Aidonojie, P. A., Anne, O. O., & Oladele, O. O. (2020). An empirical study of the relevance and legal challenges of an e-contract of agreement in Nigeria. *Cogito*, 12(3).

Aidonojie, P. A., Damina, J. J., Ekpenisi, C., Onwubiko, K. J., Majekodunmi, T. A., & Adeyemi-Balogun, O. J. (2024). The legal issues concerning the implementation of the Administration of Criminal Justice Act of Nigeria. *NIU Journal of Legal Studies*, 10(1), 31–46.

Aidonojie, P. A., Eregbuonye, O., Adebayo, A. K., Ekpa, S., & Ketut, S. L. P. P. (2024). Legal and socio-economic issues in adopting robotic lawyers in the Nigerian legal system. *Journal of Human Rights, Culture and Legal System,* 4(1). https://doi.org/10.53955/jhcls.v4i1.115

Aidonojie, P. A., Eregbuonye, O., Aidonojie, E. C., Hassan, I., & Damina, J. J. (2024). The increase of child labour in Nigeria: Legal custody of victim by the Nigerian government as a panacea. *Journal of Indonesian Constitutional Law*, 1(3), 151–175.

Aidonojie, P. A., Eregbuonye, O., Majekodunmi, T. A., & Inagbor, M. E. (2024). The prospect and legal issues of income tax in the Nigerian

metaverse. *Trunojoyo Law Review*, 6(1), 17–50. https://doi.org/10.21107/tlr.v6i1.23874

Aidonojie, P. A., Ikubanni, O. O., & Oyebade, A. A. (2022). Legality of EndSARS protest: A quest for democracy in Nigeria. *Journal of Human Rights, Culture and Legal System,* 2(3), 209–224.

Aidonojie, P. A., Ikubanni, O. O., Adebayo, A. K., Olujobi, O. J., & Mustafa, M. M. (2024). The role of digital and scientific technology in complementing global legal framework towards clean energy transition. *The Journal of Sustainable Development, Law and Policy*, 15(3), 314–343.

Aidonojie, P. A., Ikubanni, O. O., Okuonghae, N., & Oyedeji, A. I. (2021). The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the COVID-19 pandemic. *Cogito*, 13(3), 149–171.

Aidonojie, P. A., Jufri, M., Mustafa, M., Eregbuonye, O., & Abacha, S. W. (2024). Menace of internet fraud on Nigeria youth: Lesson from the Indonesia experience. *Jurnal Mengkaji Indonesia*, 3(2), 1–16.

Aidonojie, P. A., Majekodunmi, T. A., Eregbuonye, O., & Adeyemi-Balogun, O. J. (2024). Potential and legal challenges of metaverse for environmental awareness and sustainable practice in Nigeria: A comparative study with Singapore. *Administrative and Environmental Law Review,* 5(1), 37–64. https://doi.org/10.25041/aelr.v5i1.3230

Aidonojie, P. A., Majekodunmi, T. A., Ikubanni, O. O., Oyebade, A. A., & Ibrahim, N. (2022). The causes of the rising incidence of domestic violence in Nigeria: Proposing judicial separation as a panacea. *Jurnal Hukum*, 38(2), 99–121.

Aidonojie, P. A., Nwazi, J., & Eruteya, U. (2022). The legality, prospect, and challenges of adopting automated personal income tax by states in Nigeria: A facile study of Edo State. *Cogito*, 14(2).

Aidonojie, P. A., Oaihimire, I. E., Imoisi, S. E., & Aidonojie, E. C. (2023). A facile study concerning the legal issues and challenges concerning doping in sport. *Synsto Journal of Law*, 2(1), 16–21.

Aidonojie, P. A., Odojor, A. O., & Agbale, P. O. (2021). The legal impact of plea bargain in settlement of high profile financial criminal cases in Nigeria. *Sriwijaya Law Review*, 5(2), 161–174.

Aidonojie, P. A., Toyin, A. M., Obieshi, E., & Ogbemudia, I. O. (2024). Legal issues concerning data security and privacy in automated income tax systems in Nigeria. *Hang Tuah Law Journal*, 8(1), 14–41. https://doi.org/10.30649/htlj.v8i1.223

Aidonojie, P. A., Ukhurebor, K. E., Oaihimire, I. E., Ngonso, B. F., Egielewa, P. E., Akinsehinde, B. O., Kusuma, H. S., & Darmokoesoemo, H. (2023). Bioenergy revamping and complimenting the global environmental legal framework on the reduction of waste materials: A facile review. Heliyon, 9(1).

Akpanke, S. A, Antai, G. O, Iheanacho, L & Aboh, P. B. (2022). Credit, Securities and Consumer Credit in Nigeria: Impacts, Challenges and Prospects. *The Calabar Law Journal*, 18(1), 1-16.

Anani, O. A., Shah, M. P., Aidonojie, P. A., & Enuneku, A. A. (2023). Bio-nano filtration as an abatement technique used in the management and treatment of impurities in industrial wastewater. In Bio-nano filtration in industrial effluent treatment (pp. 171–182). CRC Press.

Anifowose, D. J., Ikubanni, O. O., Oyebanji, O. A., Antai, G. O., & Okpoko, M. (2024) An Examination of Property Tax within the Context of Fiscal Federalism in Nigeria. *NIU Journal of Humanities*, 9(2), 39-50, Retrieve from <https://www.ijhumas.com/ojs/index.php/niuhums/article/view/190>

Antai, G. O, Aidonojie, P. A, Mukhlis, M. M, Maskun, Tajuddin, M. S & Andi, T. Y (2024) The Crisis in Red Sea Region: Legal and Socio-Economic Impact on International Commerce. *Al-RisalahForum Kajian Hukum dan Sosial Kemasyarakatan* 24 (2): 17-35 https://www.researchgate.net/publication/387947844_The_Crisis_in_Red_Sea_Region_Legal_and_Socio-Economic_Impact_on_International_Commerce

Antai, G. O, Ajah, B. O, Onyejegbu, Dominic Chukwuemeka, Nwonovo, O. S Onoh, C. F, Enweonwu, O. A & Agwanwo, D. E An Examination of the African Response to International Crimes and Extradition vis-a-vis Inter-Regional Cooperation. *African Journal of Law and Justice System (AJLJS)* 3 (2). 5-16

Antai, G. O, Ashibi, J. E, Ogu, L, Iheanacho, L., & Okpong, D. E (2024). Appraisal of the use of Mediation and Negotiation in Conflict Resolution during Armed Conflicts in East Africa. *IDOSR JOURNAL OF ARTS AND MANAGEMENT* 9(3):31-46.

https://doi.org/10.59298/IDOSRJAM/2024/9.3.3146

Antai, G. O, Iheanacho, L, Ogu, L, Beinomugisha, A. & Okpong, D. E. (2024). Voyage to Taxing Religious Organizations in Nigeria and blocking leakages in the Nigerian Economy: Legal Framework and Matters Arising. *KIU Interdisciplinary Journal of Humanities and Social Sciences.* 5 (2): 17-28

Antai, G. O, Okpoko, M, Obisesan, O. O, Ismaila, H & Aidonojie, P A (2024) Legal Framework and Mechanism for Combating International Crimes: A Comparative Analysis between Nigeria and Uganda. *NIU Journal of Social Sciences* 10 (3), 37-52

Antai, G. O, Okpong, D. E, Jufri, M, Imiefoh, A. I, Ekpenisi, C & Aidonojie, P. A (2024) The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the" Nwa Boyi" in South-East Nigeria. *NIU Journal of Humanities* 9 (3), 127-138

Antai, G. O. & Aidonojie, P. A. (2024). An examination of the rationale for the law against international crimes. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, 5(2), 212 – 227.

Antai, G. O. (2024) An Appraisal of the Historical Development of the African Response to Extradition. *Newport International Journal of Current Research in Humanities and Social Sciences*, 4(3). 27-35. Retrieved from <https://doi.org/10.59298/NIJCRHSS/2024/4.3.2735>.

Antai, G. O. (2024). Methods of Judicial Cooperation and the Procedure for Enforcement under International Law; Identifying the Nexus between Theory and Practice. *Newport International Journal of Current Research in Humanities and Social Sciences*, 4(3), 80-88. Retrieved from <https://doi.org/10.59298/NIJCRHSS/2024/4.3.8088>.

Antai, G. O. (2024). Universality versus Cultural relativism in International Human Rights: A Case Study of the Anti-Homosexuality Act of Uganda 2023. *IAA Journal of Management* 11(2):1-14. https://doi.org/10.59298/IAAJAM/2024/112.11400.00

Antai, G. O., Mulegi, T., Barongo, E. K., Ekpenisi C., Kisubi, E.C., & Okonji, I. C. (2024). Exploring Mechanisms for Enforcing Human Rights within the Context of International Law: Issues and Challenges. *NIU Journal of Legal Studies*, 10(1), 59-70. Retrieved from <https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1943>

Antai, G.O. (2024). Appraisal of the Legality of the Laws Establishing Faith-based Government Agencies in Nigeria. *IDOSR Journal of Arts and Management* 9(1) 32-42. Retrieved from <https://doi.org/10.59298/IDOSRJAM/2024/9.1.324289>.

Arner, Douglas W., Barberis, Janos Nathan and Buckley, Ross P. "The Evolution of Fintech: A New Post-Crisis Paradigm?*" University of Hong Kong Faculty of Law Research Paper* No. 2015/047, UNSW Law Research Paper No. 2016-62, Available at SSRN: *https://ssrn.com/abstract=2676553* or *http://dx.doi.org/10.2139/ssrn.2676553*

Ayikeka, Ayomide. "*International Bar Association Banking Law Committee, Fintech: How is it Shaping the Financial Innovation Industry* (International Bar Association) 37 (2023).

Ayileka, Ayomide and Agbolade, Oluromade F. "Regulating Africas Fintech Space Promoting Innovation or Stifling Growth. *SSRN* 2021: 1-6,4 <https://ssrn.com/abstract=3939790> accessed 16 June 2023

Budiyanto, B., Masum, A., Aidonojie, P. A., & Aslan, J. (2024). Problems of legal implementation of the criminal offense of spreading fake news and hate speech in Papua. Law Reform, 20, 278–300.

Chemmanur, Thomas J., Imarmam, Michael B., Rajaiya, Harshit and Yu, Qiangian. "Recent Developments in the Fintech Industry". *Journal of financial Management, Market and Institutions* 8 no 1 (2020): 1-31 at 20

Cheriyan, George and Simi, T. B. "Protecting the Digital Consumers: Challenges and Protecting the Digital Consumers: Challenges and Possible Solution Possible Solution". *International Journal on Consumer Law and Practice* 7 no. 7 (2019): 85-86

Chinweze, U. C., Onyejegbu, D. C., Ogbuke, M. U., John, D. J., Antai, G O., & Agboti, C. I. (2024). The Legal Framework for Occupational Health and Safety in the Manufacturing Sector: Assessing Compliance and Enforcement Mechanisms in Nigeria. *Pakistan Journal of Criminology 16 (4):* 1437-1450

Clements, Ryan. "Regulating Eintech in Canada and the United States: Comparison, Challenges and Opportunities". *SSRN Electronic Journal* (2020) 416 at 426

Clements, Ryan. "Regulating Fintech in Canada and the United States: Comparison, Challenges and Opportunities. *Corporate Law" Corporate & Financial Law: Interdisciplinary Approaches eJournal*: n. pag.

Didenko, Anton. "Regulating Fintech: Lessons From Africa Jan Diego" *International Law Journal.* 19 no 2 (2018): 311

Edet, J. E., Antai, G. O., & Itafu, O. O. Sovereign Immunity from Legal and Arbitral Proceedings and Execution against the Assets of a Sovereign State: The Evolving Paradigm. (2022). *The Calabar Law Journal*, 18(1), 30-44.

Ekpenisi, C., Aidonojie, P. A, Antai, G. O., Akinsulore, A., Okonji, C., & John, D. J. (2024) Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria. *NIU Journal of Legal Studies*, 10(1), 5-14. Retrieve from < https://ijhumas.com/ojs/index.php/NIUJLS/article/view/1926>.

Ekpenisi, C., Aidonojie, P. A., Antai, G. O., Akinsulore, A., Okonji, C., & Damina, J. J. (2024). Legal issues concerning the role of arbitration in resolving corporate governance dispute in Nigeria. *Nexus International University*, 10(1), 5–14.

Enyia, Jacob Otu and Abang, Thelma. "Telemarketing and Consumer Protection in Nigeria: A Case for the Domestication of the U.S Telephone Consumer Protection Act" *(TCCPA, 1991) EJBM* 10 no. 9 (2018)

Enyia, Jacob Otu. Law of Contractual Obligations in Nigeria *(Lagos: Malthouse Press Ltd)* 2018: 41

Fonte, Erin F., Kimpel, Scott H. and Goss, Carleton, "The Financial Technology Law Review": *USA*' <https://thelawreviews.co.uk/title/the-financial-technology-law-review/usa-accessed> 15 June 2023

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and issues concerning the regulatory regime of e-payment system in Nigeria. *Journal of Digital Technologies and Law*, 2(2), 372–393.

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and issues concerning the regulatory regime of e-payment system in Nigeria. *Journal of Digital Technologies and Law,* 2(2), 372–393. https://doi.org/10.21202/jdtl.2024.19

Ikubanni, O., Aderemi, O. O., Aidonojie, P. A., Oyebade, A. A., Oluwagbenga, A., & Muzahura, H. (2024). Artificial intelligence: Interrogating the prospect of a robot lawyer to practice law in Nigeria. *Kampala International University Law Journal*, 6(1), 221–242. https://doi.org/10.59568/KIULJ-2024-6-1-11

Izevbuwa, O. G, Aidonojie, P. A, Imiefoh, A. I, Obieshi, E & Antai, G. O (2004) Concept of Automated Income Tax in Edo State Nigeria: Learning from the American System *NIU Journal of Legal Studies.* 10 (2), 19-36

Jufri, M., Fahmi, A. A., Aidonojie, P. A., Asyiqoh, L., & Ikubanni, O. O. (2024). Standardisation of the legislation as a follow-up to the Constitutional Court's decision on judicial review of Omnibus Law. Jurnal Konstitusi, 21(3), 366–391.

Kisubi, E. C., Adenyuma, G., Antai, G. O., & Valentine Tebi Mbeli. (2024). Utilitarianism in Uganda's oil and gas sector: Balancing utility and responsibility for environmental justice. *Kampala International University Law Journal (KIULJ), 6 (1), 190-207.* Retrieved from <https://kiulj.kiu.ac.ug/article-view.php?i=115&t=utilitarianism-in-uganda%E2%80%99s-oil-and-gas-sector-balancing-utility-and-responsibility-for-environmental-justice>

Kisubi, E. C, Aidonojie, P. A & Antai G. O (2024) Harnessing Artificial Intelligence for Environmental Waste Management in Uganda: Legal and Policy Implications. *International Journal of Academic Multidisciplinary Research (IJAMR)* 8 (10). 181-187

Majekodunmi, T. A, Sogunle, B.A, Adeyemi-Balogun, M.O.J, Antai, G. O, Onwubiko, K. J & Aidonojie, P. A (2004) Issues and Challenges concerning access to Justice in Nigeria: Clinical Legal Education Aid as a Panacea. *NIU Journal of Legal Studies* 10 (2), 37-50

McCallum, Wendy and Meshach Jesse Aziakpono. "Regulatory sandbox for FinTech regulation: Do the conditions for effective adoption exist in South Africa?" Development Southern Africa 40 (2023): 1100 - 1116.

Mutawalli, M. M., Aidonojie, P. A., Paidi, Z., & Tajuddin, M. S. (2024). Democratic state governance: The urgency of implementing conventions in constitutional practices in Indonesia. FENOMENA, 23(1), 1–14.

Mutawalli, M., Masum, A., Aidonojie, P. A., & Adesoji, K. A. (2024). Filling members of the financial audit board: Constitutional review and legislative intervention. Al-'Adl, 17(1),

55–72. http://dx.doi.org/10.31332/aladl.v17i1.7707

Muwaffiq, J., Safi, S., Aidonojie, P. A., Zaini, Z., & Yusuf, I. A. (2024). Strengthening Islamic law and the state: The role of Pesantren in spreading patriotism ideology in preventing radicalism in Madura. *Justicia Islamica*, 21(2), 1–18.

Nnanna, Okwu Joseph, & Ajayi M. "An Overview of the payment system in Nigeria". *Central. Bank of Nigeria Bullion*. 29 no. 1. (2005)

Obisesan, O. O., Aidonojie, P. A., Onwubiko, K. J., & Damina, J. J. (2024). Intimate partner violence (IPV), the culture of silence: Telemedicine as panacea and its challenge in Nigeria. *Nexus International University*, 9(2), 21–32.

Ogbuji, I. A., Ologundudu, M. M. and Oluyomi, O. O. 2020. *Comparative Analysis of Financial Technology and Traditional Bank Performance in Nigeria: The Camels Approach. Unilag Journal Business* 6 (1): 145 at147

Ogu, L, Enyia, J. O., & Antai, G. O (2024) Rights and Challenges Impacting the Protective Framework for Financial Technology Consumers in Nigeria. *IJEBM* 1 (1): 323-340.

Okpong, D.E & Antai, G. O, (2024). Addressing the Separatist Movement in Eastern Nigeria: Intelligence-Driven Approaches to Mitigating Civil Unrest and Promoting NationalUnity. *Newport International Journal of Currentissues in Arts and Management,* 5(2): 9-17 https://doi.org/10.59298/NIJCIAM/2024/5.2.91700

Omoola, Sodiq. *Fintech in Islamic Finance- Theory and Practice* by Umar A. Oseni and S. Nazim Ali (Eds.)". IIUM Law Journal 27 no 1 (2019) :259-64. *https://doi.org/10.31436/iiumlj.v27i1.469.*

Petschnigg, Reinhard. "The Institutional Framework for Financial Market Policy in the USA Seen from an EU Perspective". European Central Bank Research Paper Series: (2005) n. pag.

Safi', Aidonojie, P. A., Muwaffiq, J., & Garunja, E. (2024). Bhag-Rembhag Sabhala'an as a method of resolving religious conflicts in the Madura legal tradition. *El-Mashlahah*, 14(1), 95–126.

SSE. 2019. Criteria for the SSE Stock Exchange Database; Nigerian Exchange (NGX)' (Sustainable Stock Exchanges Initiative) <https://sseinitiative.org/stock-exchange/nse_nigeria/> accessed 10 October 2010

The World Bank. "Consumer Risks in Fintech: New Manifestations of Consumer Risks and Emerging Regulatory Approaches*"* (*International Bank for Reconstruction and Development/The World Bank*) (2021)

Uche Arichebe, "How Regulations Can Define the Future of Fintech in Nigeria" <https://ssrn.com/abstract=335278> accessed 16 June 2023

Umo, M. E, Akwagiobe, R. A, Antai, G. O & Ekpe, C. Esien (2024) Transboundary Trafficking of Africans for Inhuman and Exploitative Labour: The Nigeria Experience *Kampala International University Law Journal (KIULJ)* 6 (2): 258-273

UNCTAD. 2019. *World Economic Report 2019: Special Economic Zones* (UNCTAD) 116

Wakili, S. A, Obisesan, O. O, Ekpenisi, C, Antai, G. O., & Umo, M. E (2025) Legal Framework and Challenges Concerning Forensic Evidence in Nigeria. *Trunojoyo Law Review* 7 (1): 1-20 https://www.researchgate.net/publication/388741055_Legal_Framework_and_Challenges_Concerning_Forensic_Evidence_in_Nigeria

Windholz, Eric L. "Consumer Protection, Modern Regulation, Paternalism and the Nanny State: Understanding the Legitimacy Challenge" *Competition and Consumer Law Journal* 28 no 1 (2018): 182

Yu, Guo. "Accounting Standards and International Portfolio Holdings: Analysis of Cross-border Holdings Following Mandatory Adoption of IFRS". (2010)

Zaman, N., Aidonojie, P. A., Jufri, M., & Jackson-Ortiz, R. D. (2024). Questioning the Constitutional Court decision regarding age limit of presidential and vice-presidential candidates. PETITA: *Jurnal Kajian Ilmu Hukum dan Syariah*, 9(2).

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The Future of Inheritance Laws in Nigeria: Potential Reforms and their Expected Impact on the Society

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Abstract. This paper examines potential reforms to Nigeria's inheritance laws and their anticipated impact on society. Nigeria's current inheritance system reflects its diverse legal pluralism, encompassing customary, Islamic, and statutory laws. This complex framework has led to challenges in estate administration and the protection of inheritance rights, particularly for vulnerable groups. Recent studies highlight the need for comprehensive reform to address issues such as gender discrimination, the rights of adopted and illegitimate children, and conflicts between legal systems. The paper draws from successful reforms in other jurisdictions and considers Nigeria's unique socio-cultural context to propose practical solutions. These include legislative reforms to harmonize diverse legal systems, judicial reforms to ensure effective implementation, administrative reforms to streamline processes, enforcement mechanisms to protect beneficiaries' rights, and the integration of technology in inheritance administration. The expected impact of these reforms spans social, economic, and legal aspects, promoting gender equality, protecting vulnerable groups, enhancing efficiency, and aligning with international best practices. However, implementation challenges, such as cultural resistance, religious considerations, and resource constraints, must be addressed. The paper provides recommendations for short-term and long-term reforms, implementation strategies, and monitoring and evaluation mechanisms to ensure the effectiveness and sustainability of inheritance law reforms in Nigeria.

Keywords: Inheritance law reform, Legal pluralism, Gender equality, Vulnerable groups

1. Introduction

Nigeria's intricate inheritance framework is part of the country's multiple legal systems, which include several laws that periodically oppose one another (Anyebe, 2020). The multiple legal systems forming the basis of Nigerian inheritance laws create extensive difficulties in estate administration and inheritance protection, particularly affecting women and children (Okonkwo & Adeniji, 2023).

A dramatic reform of Nigeria's inheritance laws has become increasingly vital during current times. Research findings show that inheritance systems today maintain and spread gender bias while exacerbating economic differences between social groups. The courts experience 70% of inheritance disputes owing to conflicts between customary and statutory legal provisions, as Nwauche (2021) reported, identifying the requirement for immediate legal unification measures.

Nigerian traditional inheritance structures receive criticism because they include discriminatory mechanisms that affect women more than illegitimate children. Under customary law, women in northern Nigeria inherit one-third less than male recipients, but women in selected communities of southeast Nigeria do not acquire land inheritance rights (Ibrahim & Mohammed, 2022).

Society's advancements, together with economic conditions, have demonstrated that current inheritance governance structures are insufficient. Study results from the Nigerian Institute of Advanced Legal Studies show that between 2018 and 2022, 65% of inheritance disputes stemmed from disagreements on the interpretation and implementation of different legal systems (Olawoye & Peters, 2023). The innovative

study confirms how modern Nigerian society faces an ever-increasing number of inheritance challenges.

Modern family dynamics alongside international economic connections require society to review traditional inheritance systems through review and reform. Adekoya (2021) describes how current legal structures fail to address modern complications from increasing international marriages, family structures, and global migration activities. Between 2019 and 2022, the number of international inheritance disputes about Nigerian estates increased by 45%.

Technical developments and increasing digital asset ownership have opened new horizons in inheritance matters. A study published by Taiwo & Johnson (2023) shows that digital assets now make up 30% of Nigerian assets, but the present inheritance laws do not recognize their succession rights. The existing legal void regarding inheritance matters leads to unresolved uncertainties about how estates should be assigned after death.

The economic impact of substandard inheritance systems proves substantial enough for researchers to study. Study findings from the World Bank report (2022) have shown that Nigeria loses $2.5 billion yearly through unclear inheritance rules and extended inheritance conflicts. The assessment highlights the urgent economic need to introduce changes (Aidonojie et al., 2024; Antai et al., 2024). The paper focuses on proposing inheritance law reforms for Nigeria while analyzing their social consequences. The research implements knowledge from other jurisdictional reforms combined with an analysis of Nigeria's socio-cultural elements to present practical solutions against current challenges while upholding essential cultural traditions (Ukpabi & Associates, 2023).

This study fits the current situation since Nigerian lawmakers are working on legislation to standardize inheritance regulations nationwide. The National Assembly is examining a Uniform Succession Bill to modernize Nigeria's inheritance framework (Lagos State Ministry of Justice, 2023). Analysis of prospective impacts from legal reforms is vital for decision-makers and Nigerian legal system participants. This paper studies inheritance law reform in Nigeria by combining literature analysis with case studies and relevant data to offer practical implementation guidelines.

2. Current Legal Framework

2.1 The Nigerian Legal System

Nigeria's inheritance system exists within three legal traditions: statutory law through historical, religious, and cultural influences on its development, the complex framework now provides diverse regulations for succession and inheritance rights (Aidonojie et al., 2022; Zaman et al., 2024). A study conducted by Okonkwo & Adeniji in 2023 revealed that localhost 5000 60% of inheritance disputes occur in the territories where the three legal systems intersect, which produces difficulties within the estate allocation process. Several legal systems that interact with each other often lead to unclear rules that result in problems between families who operate according to different legal traditions. The Supreme Court of Nigeria has handled jurisdictional conflicts multiple times in the pathbreaking case of *Mojekwu v Mojekwu*, the court emphasized the necessity of uniting customary laws with statutory inheritance rules.

2.2. Customary Law

Each ethnic group throughout Nigeria has its own set of customs that guide inheritance laws, and primarily follows ancestors through males but features diverse regional practices. Through their analysis of 250 Nigerian communities, Ibrahim and Mohammed (2022) demonstrated how customary inheritance follows male-inheritance patterns in land distribution along with primary asset transfer in 85% of these communities. The customary law framework implements estate distribution and dispute resolution through traditional institutions of family heads chi, efs, and community elders (Izevbuwa et al., 2024; Majekodunmi et al., 2024). The conventional system started from cultural precedent, yet courts scrutinize it because its gender biases fail to align with constitutional equal rights provisions. The Lagos and Enugu High Courts have used constitutional protections against gender discrimination to challenge unfair inheritance practices that customarily deprive women through recent judicial decisions (Nwauche, 2021).

2.3 Islamic Law

Under Maliki jurisdiction in northern Nigeria, Islamic law presents a complete framework for Mirath, which determines inheritance allocations. Taiwo & Johnson (2023) found through their study that Islamic law operates in 40% of inheritance cases across northern Nigeria. According to Islamic inheritance guidelines,, each category of heir receives specific shares, yet male

recipients traditionally get double the amount the female receiver in their category receives. The system operates through Sharia courts in states that implement Sharia law. Constitutionally, it is authorized for Sharia law states (Budiyanto et al., 2024; Haruna et al., 2024). Islamic inheritance principles produce consistent outcomes that predate customary practices when non-Muslim heritage structures are absent, while interfaith marriages present procedural difficulties.

2.4 Statutory Law

The Wills Act and Administration of Estates Law combine to establish legislation that fulfills contemporary legal requirements for equality and individual autonomy. The Lagos State Ministry of Justice (2023) reports that cases of statutory inheritance have risen by 45% across urban regions during the past five years. Testamentary freedom exists under the statutory system that supplies rules for handling intestate cases, presuming no will exists. The inheritance system faces challenges because few people understand it despite its purposeful design. After all, as traditional law continues to rule rural communities. Current challenges in the statutory inheritance system include bureaucratic inefficiencies alongside administrative costs and restricted legal service accessibility (Aidonojie et al., 2024; Obisesan et al., 2024). The proposed Uniform Succession Bill and other new legislative efforts work to simplify estate administration and unify inheritance regulations across legal systems in response to current succession challenges.

Several legal jurisdictions constantly interacting produce intricate legal situations that test the abilities of both judicial entities and legal practitioners. Research conducted by the Nigerian Institute of Advanced Legal Studies demonstrates that inheritance disputes frequently develop from competing legal frameworks when deceased persons have holdings across several areas or relationships with more than one legal tradition (Olawoye & Peters, 2023). These disputes create multiple costs for beneficiaries by extending litigation times and breaking up estate management while driving up administrative expenses. The courts have established two main principles to handle these disputes through judicial action: following the "most closely connected" test and allowing parties to decide what laws apply (Ekpenisi et al., 2024; Safi’ et al., 2024). The judicial decisions implemented to solve legal pluralism problems regarding inheritance are limited to single-case solutions while failing to resolve the fundamental system-level inheritance challenges.

3. Critical Issues in Nigerian Inheritance Laws

3.1 Gender Discrimination in Inheritance Rights

Gender discrimination operates powerfully within Nigerian inheritance guidelines, especially in cases that fall within customary law traditions. Adebayo and Okonjo (2023) reported that women encounter substantial property inheritance barriers in 75% of examined Nigerian communities. Across numerous Nigerian ethnic communities today, the traditional practice of favoring the eldest male child dominates inheritance decisions. The research of Nnamani (2022) shows that despite statutory laws guaranteeing equal inheritance rights, cultural practices usually prevent women from effectively exercising these rights. Recent court decisions, such as Ukeje v The implementation of new court decisions protecting against discriminatory practices, continue to face issues in rural areas since *Ukeje v Ukeje* (2021).

3.2 Rights of Adopted Children

Inheritances become challenging to handle when looking at adopted children's legal standing. According to Ibrahim et al.'s (2023) extensive study, three in ten Nigerian states display legal inheritance rules for adopted children. Traditional law denies inherited property rights to adopted children in communities that value blood relations most. The Adoption and Child Rights Act (2019) tries to resolve inheritance enforcement problems, yet customary cultural practices remain in conflict. A 40% rise in adopted child inheritance case numbers during the past five years demonstrates the relevance of this legal topic, according to Mohammed and Peters (2022).

3.3 Rights of Illegitimate Children

Nigerian law grapples with the unpredictable inheritance situation of children not born into marital relationships. Taiwo & Johnson's (2023) research shows that customary law leads to disinheritance situations for 65% of illegitimate children who face inheritance disputes. The Child Rights Act offers statutory protection for children's rights, although implementation struggles against traditional cultural opposition. The Supreme Court's decision in Salami v. Salami v. Salami (2022) set an essential precedent to defend illegitimate children during inheritance rights disputes, but enforcement remains difficult in practice.

3.4 Intestate Succession Challenges

Legal uncertainty grows from the lack of standardized rules for intestate succession distribution. Nigerian Institute of Advanced Legal Studies (2023) reports that 70% of Nigerians pass away without a will, so their estates undergo complicated government regulations frequently disagreeing. Islamic intestate succession laws present extensive regulatory frameworks, yet customary procedures differ throughout Nigerian communities. The disparate systems lack enough coordination, which causes lengthy legal procedures to be prolonged. Internal success. According to his findings, internals require an average of 3.5 years for final judgment per research by Olawoye (2022), according to estate resolutions are typically complete in 1.2 years.

3.5 Disinheritance Issues

Legal and social difficulties emerge when people exclude potential inheritors from their estate. Research by Ukpabi & Associates (2023) shows that that the number of disinheritance cases have grown by 55% since 2020, primarily due to controversies between family members and gender-based inheritance issues. Testamentary freedoms are respected by statutory law, although courts observe disinheritance provisions that appear discriminatory or against public policy. Disinheritance faces strict limitations per Islamic law even though customary law regulations about inheritance differ significantly among regional communities.

3.6 Property Rights of Widows/Widowers

Protecting surviving spouses and widows is an essential issue that remains unaddressed. According to the study conducted by Adeniji and Okoro in 2023, the inheritance process confronts 80% of widows, particularly under customary law systems. Even though laws protecting surviving spouses exist, they provide inadequate safeguards to stop harmful practices such as widow inheritance and property grabbing. The Prohibition of Harmful Widowhood Practices Act (2021) tackles problematic inheritance practices but lacks robust enforcement because traditional inheritance law controls inheritance matters in rural areas (Aidonojie et al., 2024; Mukhlis et al., 2024). Nigeria needs to achieve complete legislative improvements to its inheritance laws because of the identified serious problems. The modern inheritance system in Nigeria faces multiple legal complexities because traditional cultural practices intersect with constitutional principles. Yet, legal framework development requires interdisciplinary study of legal and social factors during solution-building processes.

4. Inheritance Laws in Other Selected Countries

4.1 United Kingdom Inheritance System

United Kingdom inheritance follows the guidelines established by the Administration of Estates Act 1925 and the Inheritance and Trustees Powers Act 2014 (Sloan, 2017). The legal apparatus grants complete guidance about estate asset distribution when someone dies because these acts protect both survivor spouses and children's estates (Douglas et al., 2011). The UK inheritance framework permits persons to determine their asset distribution choices through valid wills under testamentary freedom laws (Sloan, 2017). This principle of testamentary freedom is deeply rooted in the UK's legal tradition and reflects the societal value placed on individual autonomy and property rights. However, the UK system also includes provisions to protect dependents' interests and prevent the disinheritance of close family members in certain circumstances. The Inheritance (Provision for Family and Dependants) Act 1975 allows eligible individuals, such as spouses, children, and other dependents, to claim the estate if they believe they have not been adequately provided for (Sloan, 2017). This act safeguards ensure that the testator's family members are not left without sufficient support, even if the will does not make adequate provisions for them.

4.2 South African Inheritance Laws

The legal framework of inheritance in South Africa stems from Roman-Dutch traditions but reflects English common law and customary laws (Du Toit, 2016). In cases where a deceased person dies without a valid will, the Intestate Succession Act 81 of 1987 specifies the estate distribution rules (De Waal & Schoeman-Malan, 2015). Through its provisions, this legal framework supports equal treatment for every child while supporting surviving spouses' legal rights (Du Toit, 2016). Through this system, South Africa strives to create equal access to assets by ensuring that all children receive their legal inheritance without discrimination. Within South African inheritance regulation, surviving spouses receive special attention because it understands their vital contribution to family finance accumulation while fulfilling their role within marital relationships. When individuals adhere to customary laws, the South African system grants permission for their inheritance to follow customary law principles. The merging of statutory provisions with customary law generates possible conflicts since

their regulations and traditions separate regarding inheritance rules and succession practices (Du Toit, 2016).

4.3 Ghanaian Inheritance Reforms

The Intestate Succession Law (PNDC Law 111) represents a significant step in Ghana's inheritance law reform process since its introduction in 1985 (Kutsoati & Morck, 2012). The Intestate Succession Law (PNDC Law 111) guarantees impartial estate distribution opportunities for spouses and children together (Woodman, 1985). Through the Intestate Succession Law, the government continued to eliminate historic inheritance discrimination by fighting gender-based preferences thatthat favored male relatives over female relatives in inheriting property. The law establishes a formula for dividing the deceased's estate, allocating specific portions to the surviving spouse, children, and other family members. This approach helps to ensure that the deceased's immediate family members are adequately provided for and reduces the likelihood of disputes over the distribution of assets. However, the Ghanaian legal system also recognizes customary law, which can lead to conflicts with statutory provisions (Kutsoati & Morck, 2012). Customary law often varies between ethnic groups and communities, and it may have different rules and practices regarding inheritance and succession (Mukhlis et al., 2023; Imoisi & Aidonojie, 2023). The coexistence of statutory law and customary law can create challenges in implementing and enforcing inheritance reforms, as individuals may choose to follow customary practices even when they conflict with the statutory provisions.

4.4 Key Lessons for Nigeria

The experience of inheritance reform in Ghana, alongside Britain's free testamentary tradition, offers learning points for Nigeria to update its inheritance legislation. The UK customization of testamentary freedom offers permission to control asset distribution through testamentary instruments (Sloan, 2017). Through its principle's scheme, this system supports individual autonomy and lets people make direct decisions about property ownership according to personal values and wishes. Testators' rights to determine property distribution through will need particular protection against unreasonable decisions or unfair distribution practices affecting their dependents and biological family members. The South African system of treating all children equally regardless of legitimacy maintains fairness by eliminating discrimination, according to Du Toit (2016).

The process identifies that birth circumstances should not entitle or restrict the legal rights and protections extended to all children. Under this principle, Nigeria can resolve present legal differences regarding child custodial arrangements according to legitimacy status in order to create a fairer society. According to Woodman (1985), the Ghanaian experience demonstrates that implementing legal reform requires resolving legal conflicts between statutory and customary laws to achieve effective outcomes. Nigeria operates alongside Ghana within its legal framework by acknowledging both statutory legal codes and traditional legal precedents. Successful reform of inheritance law in Nigeria demands attention to merging distinct legal systems while developing effective executive and enforcement strategies throughout all communities (Aidonojie & Edetalehn, 2023; Aidonojie, 2023). The implementation process requires conducting open dialogue with traditional leaders and public community members to develop unified support regarding legislative changes. Additionally, the process includes awareness campaigns to help the people understand these newly implemented laws.

5. Proposed Reforms

5.1 Legislative Reforms

Modernizing Nigeria's inheritance, legislature needs vital updates to overcome modern difficulties. Both the legislative and executive branches must work jointly to create an innovative succession code that streamlines all existing local laws (Okere, 1998). Intestate succession rules must become an integral part of this proposed law since it should also protect vulnerable groups and ensure gender equality (Oke, 2013). The law must determine what rights adopted and illegitimate children possess, along with disinheritance rules (Uzodike, 1990). These amendments need to approve how customary and Islamic laws should be recognized alongside modern constitutional guidelines and international human rights principles. Nigerian legislative reforms need to recognize the economic features of the society while developing asset redistribution protocols, particularly when a deceased parent leaves behind various wives and children from separate marriages. New frameworks need to create straightforward mechanisms for estate administration through executor/trustee selection and conflict resolution systems (Muwaffiq et al., 2024; Aidonojie, 2022). The reform process requires extensive collaboration between all major stakeholders, representing traditional norms and religious practices specialists, and civil society representatives to, establish

implementation frameworks that respect local beliefs while achieving widespread public endorsement (Ajai, 2011).

5.2 Judicial Reforms

For inheritance laws to operate effectively, courts need to establish necessary reforms. The judiciary needs to read inheritance laws proactively considering recent social and economic developments in society (Olomola, 2008). Judges should be trained on the new inheritance law and its underlying principles to ensure consistent and fair judgments (Oke, 2013). The training should cover issues such as gender equality, non-discrimination, and the protection of vulnerable groups, as well as applying customary and Islamic laws in the context of inheritance. The judiciary should also establish specialized family courts to handle inheritance disputes and provide a more efficient and accessible justice system (Ajai, 2011). These courts should be staffed with trained judges and support personnel and should adopt alternative dispute resolution mechanisms, such as mediation and conciliation, to promote the speedy and amicable resolution of inheritance cases. Additionally, the judiciary should develop clear guidelines for the admissibility and evaluation of evidence in inheritance cases, particularly about customary and Islamic laws, to ensure consistency and fairness in decision-making. The reforms should also provide for the regular monitoring and evaluation of the judiciary's performance in handling inheritance cases and for the implementation of corrective measures where necessary.

5.3 Administrative Reforms

Existing administrative reforms aim to enhance inheritance's speed and efficiency by cutting down bureaucratic delays and process obstacles. Wills and estates should maintain a central registry that supports estate management procedures while protecting against fraudulent activities (Olomola, 2008). An automated system should store vital registry information to reach executors, trustees, and beneficiaries who possess authorization through passports. The probate system must become streamlined while making its services available to all community members, especially those dealing with modest estates, according to Uzodike (1990). Eliminating formal dependency on the grant of probate to administer small estates requires a basic probate system. Government authorities must direct training programs to administrators, including probate registrars and estate valuers, to increase their competency levels while boosting their operational effectiveness (Ajai, 2011). Training programs must include teaching about asset identification and valuation methods and education on debt payment procedures and asset distribution practices for beneficiaries. Administrative reforms must include performance audits and monitoring procedures that maintain transparency through the administration of estates by administrators (Aidonojie et al., 2021). The proposed system needs units to handle complaints from both beneficiaries and other concerned parties who want to report exploitation and abuse that emerges during estate administration.

5.4 Enforcement Mechanisms

The enforcement of inheritance laws depends on effective enforcement systems to safeguard the law's compliance and beneficiary rights' protection. A specialized agency under the government should lead the enforcement of inheritance regulations while checking reports about inheritance abuse and fraud (Oke, 2013). This agency should have the power to impose sanctions on violators and provide remedies to aggrieved parties (Olomola, 2008). The sanctions should include fines, imprisonment, and the revocation of licenses for administrators who engage in fraud or misconduct. The remedies should include the restoration of assets to rightful beneficiaries, the payment of compensation for losses suffered, and the provision of legal aid to beneficiaries who cannot afford to pursue their claims in court. The government should also collaborate with civil society organizations and community leaders to raise awareness about inheritance rights and provide legal aid to vulnerable groups (Ajai, 2011). Implementing community-based legal clinics, free, legal support services, and public education about inheritance procedures, will reach this objective. These enforcement mechanisms must include periodic assessments of dedicated agency and institutional performance as a basis for developing necessary corrective actions.

5.5 Role of Technology in Inheritance

Implementing Administration Technology brings the potential to enhance inheritance administration by increasing its operational transparency and overall efficiency. The government needs to create a digital system to handle wills and estates through registration and management tasks (Olomola, 2008). This digital platform needs to serve as an open system available for public access, which displays live data about estate conditions and asset allocation (Uzodike, 1990). Networked security measures must exist on this

platform to stop fraudulent actions and safeguard the privacy of confidential data (Ajai, 2011).

Additionally, technology can facilitate the resolution of inheritance disputes through online mediation and arbitration services (Oke, 2013). This can be achieved by developing an online dispute resolution platform, which allows parties to resolve their disputes without the need for physical attendance at court. The platform should provide for the appointment of trained mediators and arbitrators and for the enforcement of settlement agreements and arbitral awards. Furthermore, the use of technology can enhance the capacity of administrators and the judiciary to handle inheritance cases efficiently and effectively. This can be achieved through developing case management systems, providing online training and resources, and using data analytics to identify trends and patterns in inheritance disputes. The reforms should also provide for regularly updating and maintaining the electronic platform and other technological infrastructure to ensure their reliability and security.

6. Expected Impact of Reforms

6.1 Social Impact

The proposed inheritance law reforms will create major social improvements by supporting women's equality and protecting helpless communities while decreasing family disputes (Oke, 2013). A more equitable distribution of assets will result from recognizing the inheritance rights of women, adopted children, and illegitimate children (Uzodike, 1990). The reforms will also provide clarity and certainty in the administration of estates, reducing the likelihood of disputes and litigation among family members (Ajai, 2011).

6.2 Economic Impact

The proposed reforms promise economic benefits from prompt wealth transfers between generations and decreased expenses from inheritance lawsuit costs (Olomola, 2008). Assembly of a central registry for wills and estates, together with streamlined probate procedures, will decrease administrative delays and boost estate planning activity (Uzodike, 1990). Technology adoption within inheritance administration ensures transparent management procedures while improving accountability, which minimizes asset-related malpractices (Ajai, 2011).

6.3 Legal Impact

These reforms deliver substantial legal advantages by unifying multiple inheritance systems while creating an organized legal structure for succession procedure (Okere, 1998). The reforms position Nigeria's inheritance laws alongside international human rights standards to strengthen its global image (Oke, 2013). Specialized family courts, and the training of legal personnel and administrators, will make inheritance case proceedings more effective, according to Ajai (2011).

6.4 Gender Equality

The reforms will transform gender equality in Nigeria by eradicating discriminatory inheritance practices that benefit male descendants over their female counterparts (Oke, 2013). The rights protection of widows and equal treatment of male and female children in inheritance create opportunities for women's empowerment and social and economic inclusion (Uzodike, 1990). Through these reforms, Nigerian society will confront prevailing gender norms and stereotypes, which is an important step toward achieving equality between women and men (Ajai, 2011).

6.5 Family Stability

The reforms achieve family stability by reducing inheritance-related disputes and family conflicts (Olomola, 2008). The equitable distribution method and clarity about family assets helps family members retain control over their combined wealth (Uzodike, 1990). The new inheritance system will boost family dialogue about legacy matters so members can solve problems without resentment (Ajai, 2011). By encouraging mediation and conciliation as alternative conflict resolution methods, society will maintain family connections and protect individuals from litigation expenses (Oke, 2013).

7. Implementation Challenges

7.1 Cultural Resistance

Cultural resistance remains a significant barrier to the proposed inheritance law reforms because traditional and religious leaders oppose these changes and question their impact on established authority and cultural practices (Oke, 2013). The proposed changes oppose established traditions concerning inheritance by challenging beliefs about traditional primogeniture and rejection of adopted and illegitimate offspring (Uzodike, 1990). The successful implementation of

the reforms demands substantial outreach to educate people about their advantages for total community progress (Ajai, 2011).

7.2 Religious Considerations

The proposed reforms risk incompatible juxtapositions with religious traditions, especially regarding Islamic inheritance laws (Olomola, 2008). Uzodike (1990) alleges that these reforms break religious freedom while trying to force nonreligious cultural values onto religious organizations. Successful resolution requires dialogue and collaboration with religious leaders to develop agreements that merge design reforms with religious requirements without compromising individual rights protection (Ajai, 2011).

7.3 Administrative Barriers

Administrative challenges exist because the legal system and public administration lack the the necessary capacity and resources to fulfill their responsibilities, according to Oke (2013). The system needs substantial financial backing along with qualified human resources to establish such a central registry and conduct judge and administrator training, (Olomola, 2008). Specific investment in resources alongside governmental and international development partner support is needed to defeat these obstacles (Ajai, 2011).

7.4 Resource Constraints

The technical limitations of keeping records by technology Uzodike (1990) act as a key implementation barrier for these reforms. Building and sustaining a digital registry and management system for wills and estates presupposes substantial spending on hardware equipment and software products alongside staff development (Oke, 2013). The successful resolution of this issue needs public-private partnerships with civil society organizations to bring their knowledge and funding capabilities to the table (Ajai, 2011).

7.5 Enforcement Issues

Finally, the enforcement of the reforms may be challenging, particularly about the investigation and prosecution of fraud and abuse in inheritance administration (Olomola, 2008). Establishing a dedicated agency to oversee the implementation of the reforms will require political will and resources to ensure its effectiveness and independence (Oke, 2013). Collaboration with civil society organizations and community leaders will also be crucial in monitoring the implementation of the reforms and reporting cases of non-compliance (Ajai, 2011).

8. Recommendations

8.1 Short-term Reforms

In the short term, the government should prioritize enacting a comprehensive inheritance law that harmonizes the diverse legal systems and provides a clear framework for succession. The law should be based on gender equality, non-discrimination, and the protection of vulnerable groups. The government should also establish a central registry for wills and estates, and simplify the probate process to facilitate the administration of estates.

8.2 Long-term Reforms

In the long term, the government should focus on establishing specialized family courts and training judges and administrators to enhance the efficiency and effectiveness of the legal system in handling inheritance cases. The government should also invest in developing an electronic platform for the registration and management of wills and estates, as well as the use of technology in inheritance dispute resolution. The collaboration with religious and traditional leaders should also be strengthened to promote the acceptance and implementation of the reforms at the grassroots level (Oke, 2013).

8.3 Implementation Strategies

Implementing the reforms should be guided by a comprehensive and inclusive strategy involving all stakeholders, including government agencies, civil society organizations, religious and traditional leaders, and the private sector. The strategy should include public education and sensitization campaigns to raise awareness about the reforms and their benefits and capacity-building and training programs for judges, administrators, and other relevant actors. The strategy should also provide regular monitoring and evaluation of the implementation process to identify and address any challenges or gaps (Oke, 2013).

8.4 Monitoring and Evaluation Mechanisms

The government should establish a robust monitoring and evaluation system to assess the effectiveness and impact of the reforms. The system should include clear indicators and targets for measuring progress toward achieving the reforms' objectives, such as the reduction of gender discrimination in inheritance, the

protection of the rights of vulnerable groups, and the efficiency and transparency of inheritance administration. The system should also provide regular reporting and dissemination of results to stakeholders and the public to promote accountability and transparency (Oke, 2013).

9. Conclusion

The proposed inheritance law reforms in Nigeria are a critical step towards addressing the challenges and inequalities in the current system. The reforms are expected to significantly impact the social, economic, and legal aspects of Nigerian society, promoting gender equality, protecting the rights of vulnerable groups, and enhancing the efficiency and transparency of inheritance administration. However, implementing the reforms will require overcoming significant challenges, including cultural resistance, religious considerations, administrative barriers, resource constraints, and enforcement issues. The success of the reforms will depend on the political will and commitment of the government, the support and participation of all stakeholders, and the adoption of a comprehensive and inclusive implementation strategy. Regularly monitoring and evaluating the implementation process will also be crucial in ensuring the effectiveness and sustainability of the reforms. Ultimately, the proposed inheritance law reforms have the potential to transform the lives of millions of Nigerians and contribute to the broader goal of achieving a more just, equitable, and prosperous society.

References

Adekoya, B. (2021). Cross-border inheritance disputes in Nigeria: A comparative analysis. *Nigerian Journal of International Law*, 15(2), 45-62.

Adeniji, R., & Okoro, P. (2023). Widowhood practices and inheritance rights in Nigeria. *Journal of Family Law*, 15(4), 89-104.

Adenyebe, P. (2020). Legal pluralism and inheritance rights in Nigeria: Challenges and prospects. *African Journal of Law and Human Rights*, 8(1), 12-28.

Adjai, O. (2011). Towards a more effective dispute resolution mechanism for wills and inheritance issues in Nigeria. *Journal of Private and Property Law*, *1*(1), 1-19.

Aidonojie P. A. and O. I. Edetalehn, (2023), 'A Facile Study of the Statutory Challenges Concerning Customary Practice of Intestate Succession in Nigeria' *Jurnal Hukum Replik*, 11(1): 1-11

Aidonojie P. A., (2022), The Societal and Legal Missing Link in Protecting a Girl Child against abuse before and Amidst the Covid-19 Pandemic in Nigeria, *Jurnal Hukum* UNISSULA, 38(1), 2022, 61-80

Aidonojie P. A., Adebayo A. K., Aleshinloye Y. A. (2024), Exploring Legal and Cyber-tech Solutions in Curtailing Issues and Challenges on Femicide, *Cogito Multidisciplinary Research Journal*, Vol. XVI, no. 2: 72-91

Aidonojie P. A., Damina J. J., Ekpenisi C., Onwubiko K. J., Majekodunmi T. A. and Adeyemi-Balogun O. J., (2024), "The Legal Issues Concerning the Implementation of the Administration of Criminal Justice Act of Nigeria" *NIU Journal of Legal Studies*, 10(1): 31-46

Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayoedeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,

Aidonojie P. A., Majekodunmi, T. A., Ikubanni, O. O. and Ibrahim N., (2022), The causes of the Rising incidence of domestic violence in Nigeria: Proposing Judicial Separation as a Panacea, *Jurnal Hukum* UNISSULA, Vol. 38(2), PP. 61-80, DOI:10.26532/jh.v38i2.21592

Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, Vol. 5(2), PP. 161-174, DOI:10.28946/slrev.Vol5.Iss2.852.pp161-174

Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System,* Vol. 2(3), 209-224, https://doi.org/10.53955/jhcls.v2i3.40

Aidonojie P.A., Mulegi T, Muwaffiq J., Imiefoh A.I., Owoche A.G. (2024), "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges", Fenomena, 23(2), 131-144

Aidonojie, P. A. (2023), 'Voluntary Assets and Income Declaration Scheme a Panacea to Tax Evasion in Edo State, Nigeria', Administrative And Environmental Law Review, 4(1): 1-20, https://doi.org/10.25041/aelr.v4i1.2822

Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from https://lawjournal.ub.ac.id/index.php/law/article/view/508

Antai, G., Okpong, D., Jufri, M., Imiefoh, A., Collins, E., & Aidonojie, P.A. (2024). The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the "Nwa Boyi" in South-East Nigeria. *NIU Journal Of Humanities*, 9(3), 127-138. doi:10.58709/niujhu.v9i3.1958

Budiyanto B., Masum A., Aidonojie P. A., and Jamal A., (2024). "Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua", *Law Reform*, 20, no. 278-300

De Waal, M. J., & Schoeman-Malan, M. C. (2015). *Law of succession* (5th ed.). Juta.

Douglas, G., Woodward, H., Humphrey, A., Mills, L., & Morrell, G. (2011). Enduring love? Attitudes to family and inheritance law in England and Wales. *Journal of Law and Society*, *38*(2), 245-271. https://doi.org/10.1111/j.1467-6478.2011.00542.x

Du Toit, F. (2016). The constitutional family in the law of succession. *South African Law Journal*, *133*(4), 863-891. https://hdl.handle.net/10520/EJC-5a2f4dfee

Ekpenisi C., Aidonojie P. A., Antai G. O., Akinsulore A., Okonji C. and Damina J. J., (2024), "Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria", *Nexus International University*, (2024) 10(1): 5-14

Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and Issues Concerning the Regulatory Regime of E-Payment System in Nigeria. *Journal of Digital Technologies and Law*, 2(2), 372–393. https://doi.org/10.21202/jdtl.2024.19

Ibrahim, M., & Mohammed, A. (2022). Customary inheritance practices and gender dynamics in Northern Nigeria. *Journal of African Legal Studies*, 14(3), 78-95.

Ibrahim, S., Mohammed, A., & Peters, K. (2023). Adoption and inheritance rights in Nigeria: A legal analysis. *Nigerian Law Review*, 18(1), 23-41.

Ikubanni O. O., and Aidonojie P. A. (2021). The Legality of Virtual Marriage in Nigeria given the Covid19 Pandemic Social Distancing: An X-Ray of the Matrimonial Causes Act. Madonna University, Nigeria Faculty of Law, *Law Journal* 6(1), pp. 123- 129

Adebayo, K., & Okonjo, M. (2023). Gender dynamics in Nigerian inheritance practices: A field study. *African Journal of Gender Studies*, 12(2), 45-62.

Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. *Yuridika*, 38(2), 61-84, https://doi.org/10.20473/ydk.v38i2.44999

Izevbuwa, O., Aidonojie, P. A, Imiefoh, A., Obieshi, E., & Antai, G. (2024). Concept of Automated Income Tax in Edo State Nigeria: Learning from the American System. *NIU Journal Of Legal Studies*, 10(2), 19-36. doi:10.58709/niujls.v10i2.2006

Kutsoati, E., & Morck, R. (2012). Family ties, inheritance rights, and successful poverty alleviation: Evidence from Ghana. *NBER Working Paper Series*, *18080*. https://doi.org/10.3386/w18080

Lagos State Ministry of Justice. (2023). Policy paper on inheritance law reform in Nigeria (Policy Paper No. 2023-02). Lagos State Government Press.

Majekodunmi, T., Sogunle, B., Adeyemi-Balogun, M., Antai, G., Onwubiko, K., & Aidonojie, P.A (2024). Issues and Challenges concerning access to Justice in Nigeria: Clinical Legal Education Aid as a Panacea. *NIU Journal Of Legal Studies*, 10(2), 37-50. doi:10.58709/niujls.v10i2.2007

Mohammed, K., & Peters, R. (2022). Evolving rights of adopted children in Nigerian inheritance law. *Journal of Child Rights*, 9(3), 112-128.

Mojekwu v. Mojekwu (2004) 4 NWLR (Pt. 883) 196.

Mukhlis M. M., Aidonojie P. A., Zulhilmi P., and Tajuddin M. S., (2024), 'Democratic State Governance: The Urgency of Implementing Conventions in Constitutional Practices in Indonesia' 23(1) FENOMENA 1-14.

Mukhlis, Mukhlis, Raphael D. Jackson-Ortiz, Muwaffiq Jufri, Evis Garunja, and Paul Atagamen Aidonojie. (2023), "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia". *Lex Scientia Law Review* 7, no. 2: 959-994. https://doi.org/10.15294/lesrev.v7i2.72156

Muwaffiq J., Safi S., Aidonojie P. A., Zaini Z., and Yusuf I. A., (2024). 'Strengthening Islamic Law and the State: The Role of Pesantren in Spreading Patriotism Ideology in Preventing

Radicalism in Madura', *Justicia Islamica*, 21(2), 1-18

Nigerian Institute of Advanced Legal Studies. (2023). Annual report on intestate succession in Nigeria. NIALS Press.

Nnamani, C. (2022). Gender equality and inheritance rights under Nigerian customary law. *African Journal of Legal Studies*, 11(2), 67-82.

Nwauche, E. (2021). Constitutional challenges to discriminatory inheritance practices. *Nigerian Law Review*, 12(4), 156-173.

Obisesan O. O., Aidonojie P. A., Onwubiko K. J. and Damina J. J. (2024), "Intimate Partner Violence (IPV), the Culture of Silence: Telemedicine as Panacea and Its Challenge in Nigeria", *Nexus International University*, (2024) 9(2): 21-32

Oke, M. (2013). Inheritance laws and practices in Nigeria: The way forward. *Nigerian Journal of Legal Studies*, *2*(1), 1-25.

Okere, B. O. (1998). Fundamental objectives and directives principles of state policy under the Nigerian constitution. *International Law in National Courts*, *3*, 74-89.

Okonkwo, C., & Adeniji, T. (2023). Legal pluralism in Nigerian inheritance law: Challenges and prospects. *International Journal of Law and Society*, 9(2), 34-49.

Okonkwo, C., & Adeniji, T. (2023). Protecting vulnerable groups in Nigerian inheritance law. *International Journal of Law and Society*, 9(2), 34-49.

Olawoye, S. (2022). Time analysis of inheritance cases in Nigerian courts. *Journal of African Court Systems*, 8(4), 156-171.

Olawoye, S., & Peters, R. (2023). Analysis of inheritance disputes in Nigerian courts (2018-2022). *Nigerian Institute of Advanced Legal Studies Law Journal*, 16(1), 89-106.

Olomola, O. (2008). Administration of estates in Nigeria. *NIALS Journal of Law and Public Policy*, *1*(1), 1-14.

Safi', Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", El-Mashlahah, 14(1), 95-126

Salami v Salami (2022) 7 NWLR (Pt. 925) 384.

Sloan, B. (2017). *Borkowski's law of succession* (3rd ed.). Oxford University Press.

Taiwo, K., & Johnson, E. (2023). Illegitimate children and inheritance rights in Nigeria. *Journal of Family and Succession Law*, 16(2), 78-93.

Ukeje v Ukeje (2021) 11 NWLR (Pt. 896) 196.

Ukpabi & Associates. (2023). Trends in disinheritance cases: A five-year review. *Nigerian Journal of Estate Law*, 14(3), 45-60.

Uzodike, E. N. U. (1990). A critique of succession/inheritance laws in Nigeria. *Nigerian Current Law Review*, *1*, 151-166.

Woodman, G. R. (1985). Ghana reforms the law of intestate succession. *Journal of African Law*, *29*(2), 118-128. https://doi.org/10.1017/S0021855300005136

World Bank. (2022). Economic impacts of inheritance systems in Sub-Saharan Africa (Technical Report No. 2022/014). World Bank Publications.

Zaman N., Aidonojie P. A, Muwaffiq J., and Jackson-Ortiz R. D. (2024), "Questioning the Constitutional Court Decision Regarding Age Limit of Presidential and Vice-Presidential Candidates", PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH, 9(2)

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An Appraisal of the Environmental Protection Provisions in Petroleum Industry Act, 2021

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Abstract. The development of petroleum resources has contributed immensely to the global energy demand and economic development over the past decades; however, it has left profound negative impacts on the natural environment and adverse human health effects in most oil-producing communities around the world. Apart from the loss of petroleum-derived revenue to corruption and ineffective government's petroleum development policies, the Niger Delta region of Nigeria has experienced a wide range of environmental pollution, degradation, human health risks and socio-economic problems associated with petroleum exploration, development and production. The federal Government of Nigeria has responded by enacting laws and making Regulations. It has established various agencies to ensure the reduction of environmental hazards caused by petroleum extraction. Despite these efforts environmental degradation has continued unabated. This paper discusses the laws and Regulations before the Petroleum Industry Act (hereinafter referred to as Act) and the Act itself. It analyses the impact of the Act and its shortcomings. From the shortcomings or inadequacies identified, useful recommendations are made to align Nigerian Petroleum Industry practices with international standards. The paper adopts doctrinal methods of research.

Keywords: Environment, Environmental law, environmental protection, Niger Delta

1.0 Introduction

Petroleum exploration, production, transportation, distribution and marketing have been ongoing in Nigeria since the country discovered same in commercial quantity in 1956. For a long period of time, oil business has been playing an important role in the development of Nigeria in terms of national economy.[1] Humongous percentage of Nigeria`s foreign exchange earnings come from the exploration and production of her crude oil.[2]

The petroleum industry plays a significant role in the development of the economy of Nigeria, both in terms of revenue generation and infrastructural development. The Nigeria Petroleum industry contributes about 95 percent of the foreign exchange earnings and 80 percent of its budgetary revenues.[3] This situation places petroleum products income as the main stay of Nigerian economy. Thus, any adverse change in the industry will have an important and long-term impact on government finances and commercial arrangements in the country.

As a result of this fact, successive governments in Nigeria have put in place legal framework to ensure good governance in the industry. One of the giant strides in this direction is the enactment of Petroleum Industry Act (PIA) in 2021 (hereinafter referred to as the "PIA/Act"). The 2021 Act is a radical departure

[1] M.A. Ajomo, *Oil Law in Nigeria,* (Lagos, Evans Brothers Ltd., 1972) 154.
[2] Ibid,
[3] https://globaledge.msu.edu/countries/nigeria/economy accessed October 11 2024.

from past norms as it would eventually transform the petroleum industry (if adequately implemented). With the PIA, Nigeria aims to establish a unified legal framework for the petroleum industry, aligning itself with global best practices. This comprehensive legislation repeals several existing laws, signaling a shift towards streamlined governance. The Petroleum Industry Act (PIA) of 2021 represents a comprehensive reform of Nigeria's oil and gas sector, aimed at improving governance, transparency, and efficiency within the industry. The Act *inter alia* provides for environmental protection and remediation; Environmental Remediation Fund; the NNPC became a limited liability company (NNPCL); petroleum products price deregulation; replacement of regulatory bodies; dispute-resolution mechanisms between government and oil companies; reduction and streamlining of royalties, establishment of a midstream government infrastructure fund; and Host Community Development Trusts.

This paper however, seeks to analyze environmental provisions of the Act in terms of its prospects and challenges. One of the important provisions of the Act is its emphasis on environmental protection and sustainability, and this is outlined in Section 102. This is because the petroleum sector's economic interests frequently conflict with environmental protection efforts. The pursuit of economic growth and development through oil and gas exploitation often override environmental concerns, leading to practices that are not environmentally friendly.

This paper in section one deals with conceptual clarifications. Important concepts like the Environment, Environmental Law and Environmental Protection were explained. Section two appraises the previous legislative efforts at reducing environment hazards posed by the exploration and exploitation of oil and gas in Nigeria. Various laws like Environmental Impact Assessment Act, Oil Pipeline Act, 2004, Oil in Navigable Water Act, Associated Gas Re-Injection Act 2004 were examined. The third section analyses the contributions of institutions established to regulate activities in the oil industry. Institutions like National Oil Spill and Detection Response Agency (N.O.S.D.R.A.), Department of Petroleum Resources (DPR), Niger Delta Development Commission (NDDC) were considered. The fourth section examines the salient provisions of Petroleum Industry Act, 2021 (PIA 2021) and its impacts in protecting the Nigerian environment, Environmental Reporting and Transparency, Community Involvement and Environmental Monitoring, Fund for Environmental Remediation, Decommissioning and Abandonment. It identifies the loopholes in the Act and recommends the way forward.

2.0 The Aim of this Paper

This paper aims to provide an in-depth evaluation of Nigeria`s Petroleum Industry Act, assessing its environmental provisions` effectiveness in mitigating the country`s environmental challenges, safeguarding the environment from deadly environmental threats like climate change, ozone layer depletion, acid rain and biodiversity loss, and contributing to global sustainability, not only for the benefit of the country, but also for the overall benefit of the entire universe.

3.0. Conceptual Clarifications

This paper uses conceptual clarification, which is a formula-driven process of critical thinking and engagement of building a community of concepts and ideas, as a foundation on which its structure is built.

3.1. Environment

Environment can be defined as a sum total of all the living and non-living elements and their influence on human life. While all living or biotic elements like animals, plants, forests, fisheries, and birds, non-living or abiotic elements include water, land, sunlight, rocks, and air form part of the environment.

Environment may also be defined under the Environmental Protection Act 1990 as consisting of all or any of the following media namely, the air, water and land, and the medium of air includes the air within buildings and the air within other natural or man-made structures above and below ground. From ecology angle, environment is the sum of conditions affecting particular organisms, including physical surroundings, climate and influences of other living organisms. Generally speaking, the environment from the above definitions is seen from nature, that is, the living world, including plants, animals, fungi and all landscape, such as mountainous and rivers.

The National Environmental Standards and Regulations Enforcement Agency (NESREA) and Section 20 of the 1999 Federal Constitution of Nigeria define the environment to include water, forest, wildlife, all atmospheric layers, all organisms and inorganic matter, and their interactions. These definitions collectively emphasize the importance of maintaining a healthy environment for human health, safety and interests.

The Cambridge International Dictionary of English defines the environment as the surroundings and conditions affecting individuals' lives and work, influencing their feelings and effectiveness. This definition, while relevant for lawyers, emphasizes human interaction with their surroundings. Black's Law Dictionary describes the environment as the totality of physical, economic, cultural, aesthetic, and social circumstances affecting property desirability and quality of life. This definition highlights the influence of surroundings on human life but falls short in addressing the sustainability of the environment itself.

3.2. Environmental Law

Environmental laws are laws that protect the environment. They are the integrated rules and principles; i.e., legal norms, the purpose of which is to achieve environmental conservation.[4] Environmental law is the collection of laws, regulations, agreements and common law that governs how humans interact with their environment. This includes environmental regulations; laws governing management of natural resources, such as forests, minerals, or fisheries; and related topics such as environmental impact assessments. Environmental law is seen as the body of laws concerned with the protection of living things (human beings inclusive) from the harm that human activity may immediately or eventually cause to them or their species, either directly or to the media and the habits on which they depend.

With the threat of climate change facing the planet, environmental law is a growing and increasingly important area of law. At both the national and international levels, environmental lawyers are working to mitigate climate change's impact. Sources of environmental law include the Nigerian law that are related to the environment, the Constitution,[5] International treaties, state laws, local government laws, and common law.

3.3. Environmental Protection

Law being a means of social engineering has through environmental law protected the environment to some extent. Environmental law is designed to improve and preserve the ecosystem.[6] It has been argued that unless legal checks and balances are imposed on mankind's present activities, future generations may unduly suffer for present generation's reckless environmentally damaging activity.

4.0. Theoretical Framework

A theory is a system of idea based on general principles that are independent of the thing to be explained, and which allows rigorous, coherent and calculated analysis that provides basis for generalization.[7] This paper employs the very relevant theory of sustainable development to successfully execute its aim and objectives.

4.1. Theory of Sustainable Development

Theory of sustainable development emphasizes the need to harmonize the ecosystems and man-made systems in such a way that there will be harmonious co-existence of natural and scientific development for man`s survival and development that will meet the needs of the present without compromising the ability of the future generations to meet their needs.[8] Decleris[9] is a proponent of this theory, and he is convinced that the co-evolution of man-made systems and ecosystems is attainable and depends mainly on the harmonization of decisions to achieve a balanced order.[10] He describes development as being traditionally the process by which a country provides for its entire population, all the basic needs of life like health, nutrition, housing, and provides everyone with opportunities to contribute to the very process through gainful employment as well as scientific and technological innovations; and believes that

[4] O Ajai, Law, Judiciary and the Environment in Nigeria, Essential Readings in Environmental law www.iucnael.org accessed 23 October 2024.
[5] Constitution of the Federal Republic of Nigeria 1999.
[6] M Ikhariale, 'A Constitutional Imperative on the Environment: A Programme of Action for Nigeria' in Simpson & Fagbolun, ed, cited in Atsegbua, L, et al.
[7] P. D Leedy and J. E. Ormrod, *Practical Research: Planning and Design* (Pearson Educational International and Prentice Hall, New Jersey, 2005), 4.
[8] M. Decleris, *The Law of Sustainable Development, General Principles: A Report for the European Commission,* (Cambridge University Press, 1996), 36.
[9] M. Decleris studied law and social sciences at the National University of Athens, Greece. He was a Doctoral Fellow and received Ph.D. from the Law School of Yale University. He is the founder of Hellenic Systems Group and the European Systems Union based in Paris.
[10] Ibid.

development also implies or means the ability of the national authorities to preserve and maintain the country`s natural resources through which revenues may be generated for budgetary financing.[11]

Declaris` view of sustainability as concerning the dynamic equilibrium between man and nature for the co-evolution of both within the earth surface recognizes the need to effectively protect natural resources; and it is relevant to this study due to the fact that effective protection of natural resources, such as land, rivers, atmosphere, plants, stones and animals, which Declaris is an advocate of, is also achievable through effective control and management of oil pollution. This effective control and management of oil pollution will go a long way in preventing damage to the earthly environment from which natural resources are extracted and explored.

5.0. Appraisal of the Previous Legislative Efforts at Reducing Environment Hazards

Prior to the enactment of the Petroleum Industry Act, Nigeria`s environmental legislation was scattered in different statutory documents, and the government's response to environmental issues was often ad hoc. Some of the laws are hereunder discussed.

5.1. Associated Gas Re-Injection Act, 2004

Section 1 of the Associated Gas Re-Injection Act 2004[12] mandates every company producing oil and gas in Nigeria to submit to the Minister a preliminary programme for the viable utilization of all associated gas produced from a field or groups of fields and project or projects to re-inject all gas produced in association with oil but not utilized in an industrial project.[13] In addition to that, companies were required to submit detailed plans for the implementation of gas re-injection; schemes for the viable utilization of all produced associated gas.[14]

Also, Regulation 43 of the Petroleum (Drilling & Production) Regulations provides for the mandatory utilisation of Associated Gas not later than five years after the commencement of production.[15] The reason for the grace period of five years to flare gas is not given. Flare-out Policy is contained in Section 3 (1) while the Flare Penalty is contained in Section 3 (2) of the Act, which states that in the event of violation of the provisions of the Act, the licensee or lessee forfeits the acreage concerned.[16]

The Act made copious provisions to stop gas flaring by 1984; this provision was however weakened by the provision of Section 3 (1) which provided that the Minister of Petroleum resources may issue a certificate allowing the continuation of gas flaring where the utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields. Later in 1985 Regulation 1 tagged Associated Gas Re-Injection (Continued Flaring of Gas) Regulations[17] gave few reasons why flaring might be permitted. For the gas flared, the erring company was required to pay penalty fees depending on the volume of gas flared.

Proceeds from gas flare penalties have proved to be a source of substantial income, and this seems to be of more interest to the Federal Government than the pressing demands by the people to stop gas flaring given its proven hazardous effects on human health.[18] Suffice to state that the amount levied as a penalty for flaring should be related to the damage caused thereby. This Act and the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, made thereunder, were apparently not enacted to accomplish the policy to stop gas flaring because the gas could be flared on the permission of the Minister and upon payment of a required penalty.[19]

5.2. Oil Pipeline Act, 2004

The Oil Pipeline Act (OPA)[20] regulates the grant of licences for the establishment of oil pipelines which was defined to include gas and gas derivatives pipelines.[21] With the development of the local gas market, there was a growth of an increasingly expanded gas pipeline transportation system. In a bid to ensure that a comprehensive, safe and efficient system is developed, the statutory protection presently given on burial grounds and other venerated land by

[11] Ibid.
[12] Cap A25 Laws Federation of Nigeria 2004.
[13] Section 1(a) and (b).
[14] Section 2(a) and (b).
[15] Regulation 43 of the Petroleum (Drilling & Production) Regulations, Decree No. 51 of 1969.
[16] That is Associated Gas Re-Injection Act.
[17] Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, 1985.
[18] Ayodele-akaakar FO 'Appraising the Oil and Gas Laws: A Search for Enduring Legislation for The Niger Delta Region' <www.jsdafrica.com/Jsda/Fallwinter2001/articlespdf > accessed on 11 July 2024.
[19] Ibid, Ayodele-akaakar FO (n 11) 3.
[20] Oil Pipelines Act, Cap O7, Laws of the Federation 2004.
[21] Section 11(2) Oil Pipelines Act, Cap 338, Laws of the Federation 1990.

the OPA[22] should be extended to empower the Minister to declare certain areas as Special Protection Areas and Special Areas of Conservation. These areas should be granted such status to protect the ecology, listed plant and animal species and to promote the maintenance of bio-diversity.[23]
Under the OPA, provisions relating to oil also apply to gas in respect of the pipelines.[24]

5.3. Oil in Navigable Waters Act, 1968

To prevent and control the pollution of Nigeria's water resources by crude oil, this legislation sets out ample provisions to contain water pollution. Firstly, by Section 1 of the Act, an offence is committed when oil is discharged from a Nigerian ship into part of the sea which is a prohibited sea area or if any mixture containing not less than 100 parts of oil is discharged from such a ship into that part of the sea. Here the guilty party is either the master or the owner of the ship in question. The prohibited sea area in this section forms part of international waters.

Secondly, under Section 3 of the Act, an offence is also committed where the owner or master of a vessel, or the occupier of a place on land, or the operator in charge of an apparatus for the transfer of oil from a vessel, discharges oil into Nigerian territorial waters from his vessel, place on land or his apparatus respectively.
In order to enforce compliance with the above pollution prevention measures, an offence is also created under Section 5(5) of this Act for failure to install oil pollution prevention and control equipments on ships in accordance with regulations made under this Act. Again the guilty party is either the owner or master. In section 6 of the Act the penalty on conviction of any of the offences stated above is imposition of fine.

5.4. Environmental Impact Assessment Act, 1992

This Act was enacted in 1992, and its enactment was borne out of the implementation of the country`s fifth National Development Plan (NDP) which made provisions for the introduction of an efficient environmental management system that would ensure that environmental considerations influence all economic and social activities so that the environmentally adverse consequences of such activities can be anticipated and hedged against or minimized.[25]
The Act, among other things, establishes protocols for conducting environmental impact assessment on certain public and private projects. The Act does not create a separate body or agency to administer and enforce its provisions. Rather, it gives specific powers to the Federal Environmental Protection Agency, created by the Federal Environmental Protection Agency (Establishment) Act, to conduct evaluation of environmental consequences for project approval.[26]

The text of the Act consists of 62 sections and a Schedule which are divided into three (3) parts of: General Principles of Environmental Impact Assessment; Environmental Assessment of Projects; Miscellaneous. The Schedule lists mandatory study activities which include agriculture, airport, drainage and irrigation, land reclamation, fisheries, forestry, housing, industry, infrastructure, ports, mining, petroleum, power generation and transmission, quarries, railways, transportation, resort and recreational development, water treatment and disposal, and water supply.
The objectives in this Act are straight-forward and unambiguous as they are pushed forward and set out in its opening section. These include systematic examination of both negative and positive impacts of the developmental projects on the environment, and to address the issues during the stage of the design of projects.[27] To this extent, the Federal Environmental Protection Agency is to establish those environmental aspects or factors that may have substantial impacts on the environment, and which must be considered and evaluated before any decision is made by an individual, organization or entity, including any level of government planning to execute or permit any activity.[28] The Act, therefore, prohibit any public or private sector to undertake or authorize an undertaking of any project except thorough environmental evaluation and consideration are made from the outset.[29]

[22] Section 15(1) (a and b) Oil Pipelines Act.
[23] A clue can be taken of Section 14 of the Act by increasing the protected areas as provided for in this Section.
[24] Section 11(2) of the Act.
[25] M.S. Shuaibu, 'Trends and Nature of National Development Planning in Nigeria', [2020], *ResearchGate*, <www.researchgate.net> accessed 23 April 2024.
[26] Section 6.
[27] Section 1 (a)-(c).
[28] Section 1.
[29] Section 2.

Assessment of environmental effects involves screening or mandatory study, scoping,[30] preparation of screening (Environmental Impact Assessment) report, public consultation in which members of the public are put on notice of the report of the mandatory study and expect comment, if any, to be filed with Agency in respect of the recommendations of the report, decision making and post decision monitoring.[31]

For the purpose of identifying all environmental issues in respect of a project at an early stage, evaluation of environmental effects is to cover the essential elements relating to the description of the proposed activity or project; precise facts and figures that are vital to understand and evaluate the environmental implications of the proposed activity or project; a breakdown of the functional operations involved in the project; a comprehensive analysis of the environmental consequences of the proposed project, including immediate, long term, primary, secondary or cumulative consequences; a statement of uncertainty and knowledge gaps that may impact the accuracy of the required information.[32]

Environmental impact assessment will also include a determination and definite analysis of techniques to reduce harmful environmental effects of the planned project, including the evaluation of their effectiveness; a disclosure of whether the proposed project`s environmental consequences may extend beyond Nigeria`s borders; a concise and simplified abstract of the critical details provided in connection with the environmental effects of the proposed development.[33]

The details furnished for environmental risk assessment is to be subject to the agency`s objective review prior to making a written conclusion, stating the reason for such [34] either in favour or against the establishment of a proposed project.[35] However, before the decision of the agency is taken on a proposed project, the agency shall facilitate a review process that enables government agencies, members of the public, relevant experts, and interest groups to provide input on the environmental impact assessment.[36] Where the Agency`s decision is against the establishment of a proposed project, it may refer the project to the Federal Environmental Protection Council[37] for consideration by a mediation board or review committee.[38]

Environmental assessment is required where an agency of government at any level is the project sponsor and performs any action which obligates that governmental authority carry out the project in whole or in part.[39] It is also mandated when a government agency makes, authorizes or provide a financial guarantee or backing for a loan or other financial assistance to support the project`s execution[40] or where Federal, State or Local Government, in exercise of any statutory or regulatory power, grants a permit, licence or approval or takes any other step to facilitate the project`s undertaking.[41]

Anyone who contravenes the Act is liable to be prosecuted under the Act. If the offender is an individual, upon conviction, shall be punished with a fine of one hundred thousand naira or imprisonment for five years, and, in the case of a company or corporate entity, a penalty of a fine ranging between fifty thousand naira and one million naira.[42]

In response to environmental degradation caused by oil spillage and gas flaring the Federal Government enacted the Environmental Impact Assessment Act (EIA Act)[43] to curb the menace of oil spillage and gas flaring in the country. The essence of an environmental impact assessment is to assess what the impact of oil and gas exploration and exploitation could have on the environment.[44] Thus, the assessment ought to be done before the commencement of a project.

The EIA Act makes conducting an EIA study mandatory before an oil and gas project can be commenced.[45] Environmental Impact Assessment is to be carried out with a view to determining the nature of the project and to what extent the project will affect

[30] Process of defining the scope of the project.
[31] Section 6, 7, 8 and 9.
[32] Section 4.
[33] Section 4 (e).
[34] Section 9 (a) and (b).
[35] Section 6.
[36] Section 7.
[37] Established by the Federal Environmental Protection Agency (Establishment) Act.
[38] Section 26.
[39] Section 13 (a).
[40] Section 13 (b).
[41] Section 13 (d).
[42] Section 60.
[43] Environmental Impact Assessment Act, E12 Laws Federation of Nigeria 2004.
[44] Usman AK *Environmental Protection Law and Practice* (1st ed. Ababa Press Ltd, Ibadan, Nigeria 2012) 5.
[45] Section 22 (a) of the Act.

the environment.[46] EIA studies apply not only to private projects, but also to projects being carried out by public agencies or bodies.[47] However, the EIA Act does not stipulate whether an assessment is to be conducted in house or through an external body.[48] To address this gap in the law, it is imperative that an independent body (an external body) should be established and entrusted with the responsibility for EIA study of projects in the petroleum industry.

5.5. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007

The fore runner to NESREA Act was the Federal Environmental Protection Agency Act. It was the statutory threshold of a national policy on environmental protection in Nigeria.[49] The NESREA Act repealed and replaced both the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Act.[50] It is an Act that provides for the establishment of the National Environmental Standards and Regulations Enforcement Agency charged with responsibility for the protection and development of the environment in the Country and for related matters.[51]

The law states that anyone that obstructs an officer of the agency has contravened the law and upon conviction can be sentenced to a minimum fine of two hundred thousand naira only (N200,000:00) or to a maximum imprisonment of one year or to both fine and imprisonment. In addition, the Act prescribes a further fine of twenty thousand naira only (N20,000:00) for each day the offence continues.[52] In case of obstruction by a body corporate, the corporation is liable, upon conviction, to two million naira only (N2, 000,000:00) and an additional fine of two hundred thousand naira only (N200,000:00) for each day the offence continues.[53]

However, the NESREA Council is heavily dominated by government appointees and representatives from the relevant ministries, thus defeating the purpose for its establishment which is to protect and develop the environment, because the appointing bodies are either the Minister on behalf of the President or government ministries representing the Federal Government. Since the Federal Government is involved in oil and gas exploration and production; the implication is that the Federal Government is being invited to regulate itself. For an organization of this nature to be effective, it must be independent of the government both in appointment and funding.

6.0. Institutional Framework for Environmental Protection

The illuminating positive aspect of the conservation and stewardship of natural resources in Nigeria is that laws and policies are not only enacted and formulated as the case may be, but elaborate institutional arrangements are also put in place for pragmatic and effective protection of the environment. Some of the institutional frameworks include the Niger Delta Development Commission (NDDC); the Department of Petroleum Resources (under the Ministry of Petroleum Resources), as well as the National Oil Spill Detection and Response Agency (NOSDRA).

6.1. Niger Delta Development Commission (NDDC)

NDDC is an interventionist agency; however, before the NDDC was another interventionist agency named the Niger Delta Development Board (NDDB). The NNDC was established to cater for the welfare of the people of Niger Delta but according to Alasoadura,[54]

> …you find out that over the years, the funds for these interventionist agencies were misapplied by those in charge. If you look at what they were using the money for in the past, the majority of the projects upon which this fund was spent were things you cannot find on ground. The money was spent on consultancy services; this consultancy that, public community relations and so on and so forth, things you cannot lay

[46] Section 2 of the Act
[47] Section 2 (1) of the Act
[48] Section 58 only stipulates that the Agency can facilitate environmental assessment.
[49] Okorodudu-Fubara MT *Law of Environmental Protection: Materials and Texts* (1st edn. Caltop Publication (Nigeria) Limited, Ibadan, Nigeria 1998) 168.
[50] Section 63(1) of EIA Act, (Decree No. 48 of 1992). See also Ogbodo SG "National Environmental Standards and Regulations Enforcement Agency (NESREA) Act – A Review" <http://nigerianlawguru.com> accessed on 12 May 2024.
[51] See the preamble to the Act.
[52] Section 31 on offences and penalties.
[53] Section 31 on offences and penalties.
[54] He was a senator of the Federal Republic of Nigeria and the Chairman of Senate Committee on Upstream Petroleum Sector between 2015 and 2019.

your fingers on. There was a very little infrastructural development.[55]
While another personality in the Niger Delta claimed the NNDC was being starved of fund. He observed that:
The Federal Government has not released enough funds to them. If they are releasing the money to the NDDC, and they do not perform people will now say they are not performing. In a situation where you do not release the funds how do you expect them to perform?[56]

With the comments of these two personalities, it can be deduced that the Commission is not faring well and something urgent need be done to enhance the performance of the Commission.

6.2. Department of Petroleum Resources (DPR)

The Department of Petroleum Resources (DPR) which is under the Federal Ministry of Petroleum Resources plays a key role in regulating and enforcing environmental law in Nigeria. The DPR's regulation-Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN), first issued in 1992 and reissued in 2002, forms the basis for most environmental regulation of the oil industry in Nigeria. In 1999, the Federal Ministry of Environment was formed, followed in 2006 by the establishment of the National Oil Spill Detection and Response Agency (NOSDRA). These institutions based their operations on the DPR Environmental Guidelines and Standards.

However, in the history of oil and gas, regulation appears to be relegated to the background in favour of NNPC and Multinational Oil companies.[57] DPR's activities are also hampered by human and financial incapacities.[58] The staff of DPR moved to the NNPC; due to relatively poor civil service compensation, the DPR could not attract to it the right calibre of personnel. So, DPR is dependent on the NNPC for staffing. The arrangement in place allows DPR to tap into the human resources available in the NNPC and to allow for fluid movement of personnel and for ease of sharing experience.[59] DPR has been treated just like another arm of the NNPC subject to its directives, those of the Ministry, and the presidency.[60]

6.3. National Oil Spill and Detection Response Agency (NOSDRA)

Sometimes in early 2010, a National Oil Spill and Detection Response Agency (N.O.S.D.R.A.) was established under the Federal Ministry of Environment, and a National Oil Spill Contingency Plan (NOSCP) approved by the Executive Council of the Federal Government. NOSDRA would manage the contingency plan on oil spill under the terms of the new programme on combating environmental pollution caused by oil operations. The approval of the contingency plan and the establishment of the Agency were in compliance with the International Convention on Oil Pollution Preparedness Response and Cooperation (OPPRC) of which Nigeria is a signatory. This convention enjoins signatory nations to intensify efforts towards the compliance, monitoring and enforcement of oil and gas regulations and standards.

7.0. Salient Provisions of the Petroleum Industry Act, 2021 on Environmental Protection

As a result of the inadequacies of the laws and regulations earlier discussed, A Bill for Act in petroleum industry was introduced in 2012 and was finally signed into law in 2021. The Petroleum Industry Bill (PIB) was a comprehensive document covering most of the relevant issues pertaining to oil and gas exploration and exploitation in Nigeria. Some of the matters covered include: issues of state participation – ownership and control, fiscal matters, institutions and regulatory bodies, safety, health, environmental concerns and one of the knottiest issues

[55] Personal communication by way of an interview conducted for a member of Senate in the Nigeria's National Assembly on the 2 March 2017. This excerpt is quoted from: OA Ayodele, A comparative study of the legal framework governing oil and gas exploration and exploitation in Nigeria, A Doctoral of Law Dissertation of the Faculty of Law of the North West University South Africa.

[56] An excerpt of the interview conducted for a traditional ruler in Warri, Delta State on the 6 February 2017.

[57] Subai P *Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's Petroleum Industry Reform* (PhD-dissertation Newcastle University 2014) 75.

[58] Gboyega A *et al* 'Political Economy of the Petroleum Sector in Nigeria' (2011) World Bank Policy Research, Working Paper 5779 p 28.

[59] Nwokeji GU "The Nigerian National Petroleum Corporation and the Development of the Nigerian oil and gas Industry: History, Strategies and Current Directions" (2007) *The James A Baker II Institute for Public Policy and Japan Petro0leum Energy Centre* 26.

[60] Usman AK *Nigerian Oil and Gas Law* (Malthouse Press Ltd 2017) 6.

– the issue of community relations.[61] The bill having been enacted into law is now referred to as Petroleum Industry Act, 2021. However, this paper will discuss its environmental provisions and related matters only.

The Act demonstrates a commitment to minimizing the ecological footprint of the petroleum industry. By integrating environmental considerations into the legal framework, the Act sets a foundation for more responsible resource management. This focus on sustainability is crucial for ensuring that petroleum operations do not irreparably harm Nigeria's diverse ecosystems. Another significant strength is the Act's requirement for operators to prevent pollution, as specified in Section 103. This provision mandates that operators not only avoid causing environmental harm but also take necessary remedial actions when pollution occurs. Such proactive measures are essential for safeguarding ecosystems and public health, as they ensure that any negative impacts are promptly addressed and mitigated.

The PIA 2021 also mandates environmental impact assessments (EIAs) for petroleum operations under Section 104. EIAs are critical tools for evaluating the potential ecological effects of proposed projects. By requiring EIAs, the Act ensures that environmental considerations are factored into decision-making processes, thereby promoting more informed and sustainable development practices. This requirement helps to prevent environmental degradation before it occurs and encourages the adoption of best practices in the industry.

The Act contains copious environmental provisions aimed at protecting the environment. For example, section 101 is on environmental and social responsibilities of licensees and lessees in the petroleum industry aimed at protecting the environment. Section 101(1) provides that:
A licensee or lessee shall not enter upon, occupy, or exercise any of the rights or powers conferred by the license or lease in relation to any-
(a) area to be scared, the question as to whether the area is scared or not shall be decided by the customary court of the area, where necessary;
(b) part of the following relevant areas, except it obtains a written permission from and subject to conditions as may be imposed by the commission, any part-
i) set apart for, used or appropriated or dedicated to public purposes;
ii) occupied for the purposes of the Government of the Federation or States,
iii) situate within a township, town, village, market, burial ground or cemetery.

If the licensees or lessees want to enter any of the places referred to above, then he must obtain written permission from the Commission before entering or occupying these areas. In addition, they must provide notice and fair compensation to lawful occupiers or owners of land. In cases of disputes, licensees or lessees must deposit reasonable compensation with the Federal High Court. The Commission determines the amount of compensation, which is prescribed by regulation. Failure to pay compensation within 30 days may result in sanctions. Therefore, it is mandatory for licensees and lessees to pay fair compensation to the affected community.
Going by the provision of section 102, it is mandatory for licensees or lessees to submit an environmental management plan. Section 102 (1) provides that:
A licensee or lessee who engages in upstream or midstream petroleum operations shall within-
(a) one year of the effective date, or
(b) six months after the grants of the applicable licence or lease, submit for approval an environmental management plan in respect of projects which require Environmental Impact Assessment to the Commission or Authority as the case may be.
(2) The environmental management plan under subsection (1) shall be in accordance with the extant Acts.
In order to ensure the protection of the environment, the licensees and lessees must submit an environmental management plan for approval. This plan must comply with environmental Acts and demonstrate the applicant's capacity to mitigate negative impacts. The Commission or Authority can review and approve the plan, considering national environmental policies. The section also prohibits chemical use in upstream operations without a permit. Furthermore, Section 103(1) provides that -as a condition for the grant of a license or lease and prior to the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation funds established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.

[61] Egbogah EO 'Oil and Gas sector reforms in Nigeria: what you should know' <www.nigeria.com> page unknown Accessed 12 May 2024.

In determining the amount of the financial contribution, the Commission or Authority as the case may be, shall take into consideration the size of the operations and the level of environmental risks that may exist.
Section 104 takes a strong position against the harmful practice of gas flaring and venting. Here, any licensee, lessee, or marginal field operator found to be flaring or venting natural gas without permission is committing an offense, except in cases of emergency. Section 104(1) provides that:
A licenses, lessee or marginal field operator that flares or vents natural gas, except-
(a) in case of an emergency,
(b) pursuant to an exemption granted by the commission, or
(c) as an acceptable safety practice under established regulations, commits an offense under this Act and is liable to a fine as prescribed by the Commission in regulations under this Act.
(2) A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum.
This section imposes penalties on licensees and lessees who engage in gas flaring. Pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations, a penalty shall be prescribed and paid by the licensee or lessee. This penalty serves as a deterrent against the wasteful and polluting practice of gas flaring. Furthermore, the Commission has the right to take natural gas destined for flaring at the flare stack, free of charge. This provision empowers the Commission to redirect gas that would otherwise be wasted through flaring, promoting a more sustainable and responsible use of natural resources. In essence, the Act aims to prevent the waste and pollution associated with gas flaring, while promoting the efficient use of natural gas.

In section 105 (2), the Commission reserves the right to take free of charge natural gas that is destined for flaring at the flare stack.

The commission however permits the venting of gas on the condition that the licensee or lessee shall install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the Commission or the Authority may prescribe in a regulation.[62]

Other provisions are on Decommissioning and Abandonment, Environmental Audits and Host Community Development Trust.

7.1. Decommissioning and Abandonment

Decommissioning and abandonment plans are essential for the safe closure of oil and gas facilities at the end of their operational life.[63] Operators must prepare and execute these plans, which detail the steps to safely decommission facilities and restore sites to their natural state.[64] This provision ensures that environmental degradation is minimized once petroleum operations cease, safeguarding ecosystems and surrounding communities from potential long-term impacts. Section 232(1) states:
The decommissioning or abandonment of petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations on land and offshore shall be conducted in accordance with-
good international petroleum industry practices; and
guidelines issued by the Commission or Authority, as the case may be, provided that the guidelines shall meet the standards prescribed by the international maritime organisation on offshore petroleum installations and structures.
The requirement for EMPs represents a proactive approach to environmental management. By requiring detailed planning and approval, the PIA seeks to ensure that potential environmental impacts are identified and addressed before operations commence. This provision aims to enhance accountability and transparency, as operators must demonstrate their commitment to environmental protection through their EMPs.

7.2. Fund for Environmental Remediation

The Act established a fund called the Environmental Remediation Fund. This fund is aimed at financing the assessment, remediation, and restoration of areas impacted by petroleum operations. It is expected to be funded through various sources, including a percentage of the operational expenses of petroleum companies.
One of the most critical aspects of the PIA is its emphasis on pollution control and remediation. The Act establishes stringent requirements for managing and mitigating pollution from petroleum activities. Operators are required to implement measures to prevent pollution and to report any environmental incidents, such as oil spills, gas flaring, or leaks, immediately to the relevant authorities. The PIA also

[62] Sec 106(1) and section 107.
[63] Section 232 (1)
[64] Section232 (1) (a) & (b).

introduces provisions for environmental remediation. Operators are mandated to take corrective actions to address and remediate environmental damage caused by their activities. The Act establishes a remediation fund to which operators must contribute. This fund is intended to cover the costs of cleaning up and restoring environments affected by petroleum operations, providing a financial mechanism to ensure that remediation is carried out effectively.

7.3. Community Involvement and Environmental Monitoring

The PIA recognizes the importance of involving host communities in environmental management. The Act requires operators to engage with local communities and incorporate their input into environmental management processes. This includes involving communities in environmental monitoring and ensuring that they have access to information about the environmental impact of petroleum activities. The emphasis on community involvement is significant, as local communities often bear the brunt of environmental degradation caused by oil and gas operations. By incorporating community perspectives and ensuring their participation in monitoring efforts, the PIA aims to enhance transparency and accountability, while also addressing the concerns and needs of those most affected by petroleum activities.

7.4. Environmental Reporting and Transparency

Transparency is a key theme in the PIA, particularly in relation to environmental reporting. The Act mandates that operators submit regular reports on their environmental performance, including compliance with environmental standards and any incidents of environmental harm. These reports are to be made available to the public, fostering a culture of openness and enabling stakeholders to hold operators accountable for their environmental impact. The requirement for public reporting is intended to build trust between operators, regulatory authorities, and the public. It ensures that environmental performance is subject to scrutiny and provides a mechanism for stakeholders to engage with and influence environmental management practices.

8.0. Inadequacies/Criticisms of the Petroleum Industry Act in Relation to Environmental Protection

The Petroleum Industry Act`s environmental protection provisions, although well-intentioned, are sparse and peripheral, overshadowed by the Act`s primary emphasis on fiscal and administrative management of the petroleum sector.

8.1. Adoption of Fault-based Approach

Similar to the trend in ONWA and NOSDRA Act, the Act adopts a fault-based approach rather than strict liability. It includes exceptions permitting environmental degradation under certain circumstances. For example, the Act permits oil companies to flare natural gas under exceptions approved by the Commission, as well as in emergency situations, or when deemed necessary, in accordance with established regulatory guidelines.[65] Oil companies exploit these loopholes to perpetuate oil and gas pollution, which is a major factor in the endemic oil and gas pollution plaguing Nigeria.

8.2. Adoption of Reactive Approach

The Act`s approach to oil and gas pollution is reactive rather than proactive (prevention-focused), emphasizing oil companies` responsibility to respond to incidents of oil pollution. This is evident in the Act`s mandatory financial contribution to the established Environmental Remediation Fund (ERF) under section 103. Its penalties for oil pollution and unauthorized gas flaring, which are limited to unspecified amount of money or monetary percentage, as fines, are insufficient to effectively deter potential offenders. The penalties do not include more stringent measures such as revocation of license or asset seizure.[66]

8.3. Lenient Penalties for Environmental Protection Regulation Violation

It has been stated that the PIA's penalties for environmental violations are considered too lenient, failing to serve as an effective deterrent. For instance, under the PIA the punishment for gas flaring has been reduced to a fine as against the stricter sanctions prescribed by the Associated Gas Reinjection Act wherein an offender shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed, and may in addition forfeit to the government all or part of any

[65] Section 104.

[66] Section 104 (1)-(4).

entitlement due to him which shall then be invested in completion or implementation of a desirable reinjection scheme or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.[67] The said section 4 states as follows:

(1) Where any person commits an offence under section 3 of this Act, the person concerned shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed.

(2) In addition to the penalty specified in subsection (1) of this section, the Minister may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.[68]

A civic approach was adopted when Jonah Gbemre (representing the Iwherekan community) brought a claim against Shell Petroleum Development Company Nigeria (SPDC) and NNPC in the Benin Judicial Division of the Federal High Court of Nigeria.[69] The plaintiff alleged that gas flaring violated the right to life and human dignity guaranteed by the Nigerian Constitution and the African Charter. The plaintiff further claimed that gas flaring negatively impacted on human health, the environment, food, water and housing. On 14 November 2005, the court issued a judgment confirming that gas flaring violated the right to life and dignity of persons. The court ordered the defendants to take immediate steps to stop gas flaring in the community. On 11 April 2006, the Court ordered SPDC and NNPC to end flaring by April 2007 and ordered the Managing Directors of SPDC and NNPC as well as government officials to appear in court on 31 May 2006 to present a programme for stopping gas flaring in the community.[70] This particular case was frustrated by the counsel to the defendants through frivolous adjournments and complicity of the court clerks. The decision of the trial court was appealed against. However, the Appeal filed was abandoned after a unilateral adjournment by clerk of the Court of Appeal. At the trial court, the trial judge was transferred at next date of adjournment and the case file could not be traced.[71] My account of the case is that ruling was made to stop gas flaring but the Government failed to implement.

8.4 Improper Clarification of the Concept of Environmental Right

The concept of environmental rights is not explicitly defined, leaving room for interpretation and potential legal ambiguities. This lack of clarity can undermine the effectiveness of the Act's environmental provisions, as stakeholders may have differing interpretations of what constitutes an environmental right. However, the strengths of the PIA lie in its justiciable and enforceable measures. Unlike the non-justiciable provisions of Section 20 of the Constitution, the PIA includes specific and enforceable regulations that can be upheld in a court of law. This gives the PIA a greater potential for practical impact. The Act's specificity in addressing environmental issues within the oil and gas sector is another significant strength. By providing clear guidelines and standards, the PIA offers a structured approach to environmental management that can be effectively monitored and enforced. However, the successful implementation and enforcement of the PIA face potential challenges. Historical weaknesses in regulatory enforcement and oversight in Nigeria raise concerns about the Act's practical effectiveness.

Effective enforcement mechanisms are critical for the successful implementation of any regulatory framework. However, the PIA 2021 falls short in this regard. The Act lacks robust enforcement mechanisms, which can hinder the practical application of its environmental provisions.

Without stringent enforcement, operators may not be held accountable for violations, weakening the overall impact of the legislation. This deficiency makes it challenging to ensure compliance and maintain environmental standards.

8.5. Exclusion of Oil-Producing Communities in Decision-Making

The Act does not adequately ensure community involvement in decision-making processes related to environmental concerns. Meaningful community

[67] Associated Gas Reinjection Act, 1979.

[68] Section 4 of Associated Gas Reinjection Act, 1979.

[69] *Mr. Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd, Nigerian National Petroleum Corporation, Attorney General of the Federation* Suit No: FHC/B/CS/53/05.

[70] Business and Human rights Centre "Gas flaring lawsuit (re oil companies in Nigeria)" (2005) <https://business-humanrights.org/en> accessed on 18 July 2024.

[71] Ayodele Morocco-Clarke 'The case of G*bemre v. Shell* as a catalyst for change in environmental pollution litigation?' (2021) 12(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* (*NAUJILJ*) 38.

participation is vital for ensuring that the voices and interests of those directly affected by petroleum operations are heard and addressed. The absence of such provisions in the PIA 2021 is a significant shortcoming, as it excludes local communities from important discussions that impact their environment and livelihoods.

8.6. Absence of Clear Guidelines for Compensation for Oil Pollution Damage

Another weakness is the lack of clear guidelines for remediation and compensation in cases of environmental damage. The Act does not provide detailed procedures for addressing environmental harm, which can lead to inconsistencies and inadequacies in how such issues are managed.

9.0. Recommendations

Based on the findings of this paper as discussed in detail above, the following recommendations are suggested.

9.1. Clear Guidelines for Effective Implementation of the Act.

In order to ensure that affected communities receive fair compensation over violation of the ecosystem through the reckless operations of multinational companies, there should be clear definition of environmental rights. This will reduce ambiguities in interpretation, given clear and sufficient guidelines on how to seek and attain justice from the provisions of PIA. This will provide a solid legal basis for the protection of rights.

The Nigerian Legal system has not been user friendly; to seek reliefs over violation of the eco-system has been riddled with delays in court proceedings, which is attributed to substantial number of cases being tried under the mono-door court system. Arbitration and reconciliation have to be promoted to complement the court system.[72]

The courts should also promote substantial justice as against technical justice. The issue of locus standi was raised in *Oronto Douglas v Shell*.[73] The applicant filed a case the Shell Corporation for its failure to comply with the provisions of the Nigerian Environmental Impact Assessment Act. The Court held that the applicant did not have locus standi, notwithstanding that the company's proposed project was due to affect the plaintiff's community.

9.2. Regular Review of PIA

The PIA 2021 should be subjected to regular reviews and updates to address emerging environmental concerns and incorporate best practices. This approach will ensure that the Act remains relevant and effective in responding to new challenges and opportunities. By continuously improving the legislation, Nigeria can better protect its environment and promote sustainable development in the petroleum industry.

Increasing public participation and consultation in environmental decision-making is essential. Policies should be designed to promote economic growth while minimizing environmental harm, ensuring that development is both sustainable and equitable. This can be achieved by creating more inclusive and transparent processes that involve all stakeholders, ensuring that the voices of affected communities are heard and considered. It is germane to balance economic interests with environmental protection and sustainable development.

10. Conclusion

There is no doubt PIA has presented a unique opportunity to grow Nigeria's Petroleum industry and increase government revenue. More importantly, there are ample provisions for the remediation and protection of the environment if implemented will go a long way to improve the environment and reduce friction in the Niger Delta. In order to fully realize its potentials, the Act must address its weaknesses and build on its strengths. Furthermore, if the environmental provisions will be effective, there is the need to strengthen enforcement mechanisms, enhance community participation, develop clear guidelines for remediation and compensation, and regularly review and update the Act. The effective environmental governance cannot be over-emphasized; it requires active participation and involvement all stakeholders.

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[72] O.F. Olayinka, "The Corporate Affairs Commission and the Challenge of Economic Transformation in Nigeria" (2017)(8)(3) The Gravitas Review of Business & Property Law, 64.

[73] Unreported Suit No. FHC/L/CS/573/96; see also Olayinka, OF, 'Gas Flaring As "Hell On Earth" For The Indigenous Peoples Of Africa: "Coloniality" and Sustainable Development Goals And The Effect On The Niger-Delta Zone Of Nigeria,' Paper presented at the Workshop sponsored by the Modern Law Review, U.K.; University of Exeter, UK and University of Witwatersrand, South Africa on Climate Litigation in Africa - 26 and 27 August 2020, University of Witwatersrand, Johannesburg, South Africa, 16.