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Editorial

This issue of NIU *Journal of Legal Studies* touches on the Issues such as Justice for Victims of Medical Malpractice, Tax Laws, Environmental and Socioeconomic Rights and so on.

One of the papers, in this edition, reveals that the present financial architecture for medical malpractice litigation in Nigeria is inadequate and constitutes significant barrier to access to justice and recommends a combination of legislative and policy reforms such as compulsory malpractice insurance, establishment of statutory compensation fund and regulated third-party funding.

Another paper argues that Nigeria is transitioning from a permissive tax planning regime to a rules-based and substance-oriented system, inspired by Base Erosion and Profit Shifting (BEPS) principles, through doctrinal and comparative analysis with these countries and the OECD frameworks. The paper therefore, concludes that it is inevitable for corporate taxpayers to avoid aggressive tax planning and embrace sustainable tax compliance.

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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Balancing User Trust and Mental Health Outcomes: A Comparative Analysis of Data Privacy Practices in Nigerian Mental Health Apps and the EU's GDPR

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Abstract. The increasing use of mental health apps in Nigeria has the potential to improve access to mental health services, but this also raises concerns about data security and protection. Concerns about data privacy, lack of adequate regulation and cultural stigma in the long run chip away at users' trust of those apps and raise doubts about their efficacy in providing support to those in need. This study examined the relationship between data privacy policies and the use of mental health apps in Nigeria, focusing on how data protection laws influence users' attitudes. The paper examines the existing legal framework, including the Nigeria Data Protection Act 2023 and compares it with other regulatory regimes such as the General Data Protection Regulation in Europe and the Protection of Personal Information Act in South Africa. In this paper empirical research on current data collection practices and privacy issues in mental health applications are reviewed. The findings suggest that despite the considerable advances in regulations in Nigeria, there are shortcomings in law enforcement, regulations based on the industry and guidance on handling of sensitive information offered by users of mental health apps. These limitations result in a lower user trust and reduced app efficacy. The paper underscores the necessity of clarifying regulatory guidelines, adopting privacy-by-design principles, and addressing sociocultural factors to enhance the effectiveness of mental health applications in Nigeria.

Keywords: Data privacy, mental health apps, user trust, personal data, privacy by design

1. Introduction

Rapid proliferation of digital mental health apps across the world has provided immense opportunities in terms of increasing the reach and accessibility of mental healthcare, but at the same time, it has sparked concerns related to privacy and data protection.[1] The nature of mental health data is very delicate since it comprises of information relating to personal thoughts, histories of mental health conditions, emotions, etc. Therefore, misusing this data or making it accessible could be detrimental.[2] Some of the most stringent data protection systems existing today in relation to protecting information pertaining to mental well-being can be identified as those prevailing in Europe based on the General Data Protection Regulation[3] system.[4] Under the GDPR, mental health information is termed "special category data," thereby mandating informed consent on the part of patients along with strict data protection measures.[5] Likewise, similar provisions have been made in South Africa with the passing of the Protection of Personal

1 Johanna Löchner and others, 'Digital Interventions in Mental Health: An Overview and Future Perspectives, Internet Interventions' (2025) 40, https://doi.org/10.1016/j.invent.2025.100824.

2 Alenezi Turner, 'Privacy And Ethics In Mental Health Data Management' (2024) 15(6) *Journal of Health & Medical* Informatics, 564

3 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1. (hereafter referred to as GDPR).

4 Antonio Pesqueira and others 'EU Privacy Law and B2B Digital Manufacturing Platforms in Mental Health' (2025) 4(1) *Innovation and Green Development* https://doi.org/10.1016/j.igd.2024.100196.

5 GDPR, 4(15)

Information Act (POPIA), which also covers health data.[6]

In Nigeria, the adoption of mental health apps is increasing, driven by unmet needs in mental health service delivery and the stigma associated with traditional care pathways.[7] It has been submitted that there is a treatment gap between mental health care delivery and those who need the treatment.[8] This is due to shortage of professionals ('in a country of over 200 million people, Nigeria has only 250 psychiatrists'),[9] fueling the need to fill the gap, especially considering the deficiency of traditional health care delivery.[10] This makes digital technology one means by which treatment can reach users.[11]

But worries over confidentiality, weak regulatory enforcement and cultural dispositions have stalled user trust and uptake. The Nigeria Data Protection Act (NDPA) 2023[12] is a significant legislative development, providing for rights such as access, rectification, erasure and restrictions on automated decision making.[13] Also, there is the Nigerian Mental Health Act which was passed into law in 2023.[14] This Act makes provisions for the right to privacy, informed consent and others." However, scholars note that although such advances have been made, many Nigerian healthcare facilities lack the infrastructure and training to translate the law into practice on paper. More empirical work is needed to link "national policy aspirations to institutional realities," scholars argue.[15] They argue that without systematic implementation strategies, legal frameworks like the NDPA remain "largely formal rather than operational.[16] A recent study on healthcare facilities showed that 37% of healthcare workers were unaware of any incident response plan for data breaches, citing "insufficient resources" (53%) and "lack of awareness" (71%) as primary barriers to compliance.[17]. Bagudu highlights that "loopholes still persist" in the enforcement of the NDPA. [18]He notes that the constant breach of data in Nigeria raises questions about the law's actual ability to guarantee privacy in practice, particularly in the era of the Internet of Things (IoT) where health data is increasingly digitalised.[19]

These shortcomings raise questions about whether Nigeria's framework can adequately protect mental health data and foster trust in digital platforms. There is also the issue of trust which is central to the adoption of mental health technologies. Studies show that privacy concerns are a critical barrier to engagement, with users often caught in a "privacy paradox": desiring help but fearing exposure.[20] In contexts like Nigeria, where stigma remains deeply entrenched, privacy protections are not peripheral but foundational to whether digital mental health tools can function as meaningful access points for care.[21]

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6 Protection of Personal Information Government Gazette Republic of South Africa Vol. 581 No. 4 2013 <https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013popi.pdf> accessed 9 December 2026

7 Chinyere Okoroafor, 'Mental Health Advocates Turn to Technology to reach African Youths' February 18, 2026 The Nation <https://thenationonlineng.net/mental-health-advocates-turn-to-technology-to-reach-african-youths/> accessed 8 May 2026

8 A. O. Onwudiwe, 'Digital Mental Health: Integrating Psychotherapeutic Innovations and Technology—A Nigerian Perspective' (2025) 35(6) *Journal of Psychology in Africa* 843-851.

9 Sakeenah Kareem, 'Beyond the Mental Health Act: How an AI app is Filling Nigeria's Therapy Gap' (2026) *Campus Reporter Africa* <https://campusreporter.africa/beyond-the-mental-health-act-how-an-ai-app-is-filling-nigerias-therapy-gap/> accessed 8 May 2026

10 Onwudiwe, (n8).

11 Ibid.

12 The Nigeria Data Protection Act 2023 Federal Republic of Nigeria Official Gazette No.119 Vol. 110 (1 July 2023). The Act was enacted on 12 June 2023. 'President Tinubu Signs Data Protection Bill In Nigeria Into Law' *Sahara Reporters* (14 June 2023) <https://saharareporters.com/2023/06/14/president-tinubu-signs-data-protection-bill-nigeria-law> accessed 28 June 2025

13 NDPA 2023, part VI

14 Nigerian Mental Health Act, 2021, s. 19 and 26

15 B Idoko, 'Enhancing Healthcare Data Privacy and Security: A comparative study of regulations and best practices in the US and Nigeria' (2024) 11(2) *Magna Scientia Advanced Research and Reviews*, 151–167.

16 Ibid.

17 Krystal Chinenye Ugwu-Anyanwu and others, 'Assessment of Compliance with Data Protection and Privacy Regulations in the Nigeria Healthcare Sector' (2025) 1(1) *SIAR-Global Journal of Computer Information and Library Science* 128.

18 Haruna Abubakar Bagudu, 'Legal and Institutional Challenges to the Enforcement of the Nigerian Data Protection Act' (2026) *UDUS Law Journal* 291-295.

19 Ibid.

20 N Gerber, P Gerber, and M Volkamer, 'Explaining the Privacy Paradox: A Systematic Review' (2018) 77 *Computers & Security* 226–261.

21 Kareem, (n 9).

Against this backdrop, this paper examines the relationship between data privacy practices and user trust in Nigerian mental health applications, situating the NDPA 2023 within a comparative analysis of GDPR and POPIA. By reviewing empirical literature and regulatory frameworks, the study highlights both the progress and limitations of Nigeria's approach, emphasizing the need for privacy-by-design principles, sector-specific standards, and culturally sensitive safeguards. Ultimately, the paper argues that strengthening data protection in Nigeria is essential not only for compliance but also for improving mental health outcomes by fostering trust, reducing stigma, and ensuring equitable access to digital care.

2. Conceptual Framework: Data Privacy, Trust, and Digital Mental Health Use

This study conceptualises the relationship between data privacy regulation, user trust, and digital mental health utilisation as a structured causal chain in which legal frameworks shape behavioural outcomes through institutional credibility and perceived risk.

(1) Data Privacy as Control Over Personal Information

Alan Westin defines privacy as: "the claim of individuals… to determine for themselves when, how, and to what extent information about them is communicated to others."[22] This conception is now embedded in legal doctrine. The protection of personal data as a fundamental right has been affirmed in cases such as: *S and Marper v United Kingdom* [23] and *Digital Rights Ireland Ltd v Minister for Communications*.[24] These decisions establish that processing of personal data must satisfy necessity and proportionality, particularly where sensitive data is involved.

In *S and Marper v United Kingdom,* the Court determined that indefinite storage of such data was a breach of the individual's right to privacy. The Court of Justice of the European Union has also rendered decisions regarding the invalidity of mass retention rules, such as *in Digital Rights Ireland Ltd v Minister for Communications*, on the basis of being disproportionate, as stated that processing must be justified and necessary in particular cases of sensitive information. In the context of mental health, the issue becomes magnified. Ohm argues that sensitive data such as health information, involves higher risks of both re-identification and harm.[25]

(2) User Trust as an Institutional and Psychological Construct

Trust goes beyond mere personal feeling and becomes an institutional expectation. According to Luhmann's theory, the sociological roots of trust lie in its ability to make complex situations simpler in uncertain times.[26] Likewise, Gambetta also explains that trust refers to the expectation that one will behave favourably or at least in a non-harmful manner in spite of any lack of surveillance on the other side.[27] Trust in digital spaces is thus dependent on legal protection and institutional enforceability of trust. The significance of institutional trust in digital governance has been established through the case of *Schrems v Data Protection Commissioner* [28]wherein it was highlighted that weak safeguards in data transfers lead to violation of the fundamental rights of individuals. This happens when there is a trust deficit in a digital system because of non-enforceable rights, unclear risks, and no sanctions on violations.

(3) Digital Mental Health Use as Behavioural Outcome

It has been proven through health behaviours research that people would not readily share their private data in contexts they consider unsafe.[29] As noted in the theory of contextual integrity developed by Nissenbaum, privacy is protected when flows of information align with context-related standards. It goes without saying that mental health data falls into the category of highly private data.[30] If confidentiality conditions are violated because of unclear policies, misuse of data or lack of appropriate protection measures, users can: leave the platform, not share their info, or opt out of digital mental health care services.

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22 Alan F. Westin, *Privacy and Freedom* (Atheneum 1967)

23 (2008) 48 EHRR 50

24 (Joined Cases C-293/12 and C-594/12)

25 Paul Ohm, "Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization" (2010) 57 *UCLA Law Review* 1701

26 Niklas Luhmann, *Trust and Power* (Polity Press 1979)

27 Diego Gambetta (ed), *Trust: Making and Breaking Cooperative Relations* (Blackwell 1988)

28 *Schrems v Data Protection Commissioner* (Case C-362/14)

29 Havva Nur Atalay and Şebnem Yücel, 'Decoding Privacy Concerns: the Role of Perceived Risk and Benefits in Personal Health Data Disclosure' (2024) 82(1): *Arch Public Health* 180.

30 Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life* (Stanford University Press 2010).

3. Methodology

This paper adopts a doctrinal and comparative legal research methodology, supplemented by interdisciplinary insights from digital health, psychology, and information systems literature. First, a doctrinal analysis is employed to examine the legal frameworks governing data protection in Nigeria, with particular emphasis on the Nigeria Data Protection Act 2023 (NDPA) and the General Application and Implementation Directive (GAID) 2025. This involves a close reading of statutory provisions, regulatory guidelines, and relevant institutional mechanisms in order to assess the scope, structure, and limitations of the Nigerian data protection regime as it applies to mental health data and digital applications.

Secondly, this research adopts a comparative law perspective in analysing Nigeria's regime against two chosen jurisdictions: the European Union and South Africa. The GDPR framework of the European Union will be used as one of the comparative frameworks owing to its worldwide recognition and role as a benchmark for data protection laws especially in regard to sensitive data and higher risk operations. On the other hand, POPIA of South Africa will be chosen for comparison purposes because of the nature of the legal system in that country. Comparative law analysis will focus on three main aspects of data protection which include provisions about substantive legal protection (definitions, grounds for processing data and dealing with sensitive data), specific and sectoral regulation especially on matters related to digital health and mental health services, and the effective implementation of data protection rights.

The paper also reviews empirical and interdisciplinary literature on mental health applications, data privacy risks, and user trust. This includes the study of app data collection practices, privacy vulnerabilities, algorithmic bias, and the socio-cultural determinants of technology adoption. These sources are not employed to produce new empirical findings but to contextualize the legal analysis and to shed light on how regulatory frameworks interact with real user behaviour and perceptions. This study is therefore analytical rather than empirical, and its conclusions are interpretative. It does not aim to measure user trust directly but rather to explore how legal structures may affect the conditions under which trust is either promoted or damaged.

4. Data Privacy Landscape in Nigeria

In Nigeria, the 1999 Constitution of the Federal Republic of Nigeria (as amended),[31] the Nigeria Data Protection Act 2023, a few statutes, and subsidiary legislation essentially regulate data protection. Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.'[32] The Nigeria Data Protection Act 2023 was enacted on 12 June 2023. Some of the objectives of this Act are to establish an effective regulatory framework for the protection of personal data, regulate the processing of information relating to data subjects, to safeguard their fundamental rights and freedoms as guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended), to establish an independent Commission to oversee data protection and privacy issues and to supervise data controllers and data processors among others.[33]

The NDPA 2023 is a comprehensive law, which offers some new rights to data subjects, such as the right not to be subject to automated decisions solely based on data processing.[34] The Nigeria Data Protection Act (NDPA) 2023 regulates organisations' processing of personal data.[35] It applies broadly to all processing methods, automated or not.[36] It covers organisations domiciled or operating in Nigeria, even if processing data from individuals outside the country.[37] There are exemptions for personal use, law enforcement, national security, and other reasons outlined in the Act (Section 3).

The NDPA 2023 is complemented by the General Application and Implementation Directive (GAID) 2025 issued by the Nigeria Data Protection Commission, which provides specific guidance on how to implement the Act. The GAID gives effect to key provisions of the NDPA by setting out requirements in relation to data processing including transparency obligations, lawful bases for processing,

31 See the Constitution of the Federal Republic of Nigeria 1999 (as amended), Act No.24, 5 May 1999, hereafter referred to as CFRN 1999

32 In addition, Section 39 of the CFRN 1999 (as amended) guarantees the right of every person to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference

33 Nigerian Data Protection Act 2023, s.1.

34 NDPA 2023, s.37(1)

35 Ibid, s.1

36 Ibid, s. 2(1)

37 Ibid, s.2(2)(a) - (c)

Data Privacy Impact Assessments and deployment of data processing software.[38] Therefore, the NDPA and the GAID must be read together to form the core of Nigeria's contemporary data protection framework.

The NDPA 2023 establishes core principles for data processing, requiring organizations to handle data lawfully, fairly, and transparently for specific purposes only.[39] Individuals have various rights under the Act, including the right to access, rectify, erase, and restrict the processing of their personal data.[40] They can also object to automated decision-making solely based on data processing and have the right to data portability, allowing them to move their data between organisations.[41]

For situations where data processing poses high risks to individuals, the Act mandates Data Protection Impact Assessments (DPIAs) before processing commence.[42] The Commission will provide further guidance on DPIA requirements.[43] In practice, this requirement has been further elaborated under the GAID 2025, which specifies circumstances such as healthcare services, sensitive personal data processing, and the deployment of digital applications as triggering mandatory DPIAs.[44]

The Act introduces "legitimate interest" as a justification for data processing, but leaves the term undefined, potentially causing confusion.[45] However, the GAID 2025 provides additional structure under Article 26 by requiring organisations to conduct Legitimate Interest Assessments and to apply principles such as necessity, proportionality, and duty of care, although the concept remains broadly framed in its application. The Act defines and sets conditions for processing sensitive personal data with the Commission empowered to add new categories in the future.[46]

The Nigeria Data Protection Act (NDPA) 2023 offers some provisions that could be effective for the protection of mental health, but it also has limitations. The provisions that could be effective are, for instance, the one that grants individuals the right to access, rectify, erase, and restrict the processing of their data.[47] This can empower people to control sensitive information related to mental health conditions. It is also instructive that the Act requires organisations to be transparent about collecting and using personal data.[48] A requirement further reinforced by Article 27 of the GAID, which mandates that such information must be clear, accessible, and understandable to data subjects. This can help individuals understand how their mental health data may be used. The Act mandates security measures to protect data from unauthorised access, loss, or destruction.[49] This helps safeguard sensitive mental health information from breaches.

The NDPA fails to provide adequate guidance on collecting and handling of mental health data especially in light of its application to digital media platforms such as mobile apps. While there is mention of Article 31 of the GAID which requires DPIA and embedding of privacy policy within the software, these terms are very general and lack specificity for mental health apps.

Additionally, it allows processing based on legitimate interest without specifying what this term means. The problem with this provision is that organizations can abuse it or misinterpret legitimate interest to handle mental health data when the proper approach would have been obtaining consent from Article 18 of GAID.

The Act grants individuals some basic rights regarding their personal information; it also has a number of enforcement provisions in the form of investigatory powers, compliance orders, [50] and administrative sanctions that can be applied by the Commission. These include fines for the harm caused by any data processing activity and can also include compensation for the individual affected or even an injunction against the processing of any personal data. [51] This is aimed at deterring non-compliance with the Act and giving individuals some remedy for any harm that they may have suffered. Fines can be imposed on individuals, organizations, bodies, or groups who process personal data in any way.[52] In addition, individuals can sue the data controller or processor for any damage that they have suffered because of the breach of their personal data. [53] This enables individuals to claim compensation for any damage done to their mental well-being. It is not clear from the

38 GAID, arts 27, 26, 28, 31.
39 Ibid, s.24(1)(a(and (b)
40 Ibid, s.34-36
41 Ibid, s.37(1) and 38
42 Ibid, s.28(1)
43 Ibid, s.28(3) – (4)
44 GAID, art 28(3)
45 Ibid, s.30(d)
46 Ibid, s.65 and 30 (2)
47 NDPA 2023, s.34-36
48 Ibid, s.24(1) (b)
49 Ibid, s.24(1)(f)
50 Ibid, s.46 and 47
51 Ibid, s.48
52 Ibid, s.48 and 49
53 Ibid, s.51

Act how priority will be given to mental health complaints by the Commission.[54]

However, the effectiveness of these mechanisms in practice remains dependent on the evolving institutional capacity and enforcement practices of the Nigeria Data Protection Commission. Notably, the Act requires individuals seeking damages to prove harm, a standard that may present significant challenges, particularly in relation to mental health matters. This can be difficult, especially for mental health issues.

In summary, the NDPA 2023 constitutes a positive development in the landscape of data protection in Nigeria. However, to ensure its effectiveness in safeguarding mental health data, further regulatory clarification and sector-specific guidance may be required. Potential areas for further development include:

- Developing sector-specific standards or guidance for mental health data processing, particularly in digital health applications.
- Clarifying the application and limits of legitimate interest in the context of sensitive personal data such as mental health information.
- Enhancing practical enforcement capacity and establishing clear regulatory priorities for high-risk data categories, including mental health data.

5. Relevant Data Protection Initiatives Related to the Digital Health Sector

5.1 The Nigerian Mental Health Act 2021

Although the NDPA 2023 has provided for a horizontal data protection regime with regard to personal data, the enactment of the National Mental Health Act 2021 ensures the provision of vital sectoral safeguards necessary considering the 'vulnerability' and 'high-risk' nature of mental health data as highlighted in this paper. The Act has been enacted as a replacement to the old Lunacy Act of 1958 that was introduced under colonial rule. This Act represents a shift from the country's rights-based approach, explicitly codifying privacy and confidentiality as fundamental clinical rights rather than just administrative obligations.

The Act provides dual-layer protection for information. Section 19 explicitly outlines the “Right to privacy and dignity” for persons with mental health conditions. Section 21 adds to this by creating a separate “Right to confidentiality” in respect of a patient’s medical condition and treatment history. For digital mental health applications, these provisions mean that any data breach is not just a regulatory failure under the NDPA but a direct violation of a patient’s statutory civil rights.

There is a provision for “Informed consent” under Section 26 of the Act. The Act requires that consent should be voluntary and made on the basis of an informed understanding of the nature of the treatment and its likely results. If this standard is applied in digital contexts, it adds weight to the claim that a broad “Terms of Service” or “Legitimate Interest” explanation used by applications is inadequate. As regards mental health data, the Act requires that the consent must be meaningful, given that the data is sensitive.

This Act creates the Department of Mental Health Services, whose sole responsibility is the gathering and dissemination of information about mental health, as well as conducting research.[55] Most importantly, Section 5(d) of the Act requires the Department to "guarantee the fundamental rights and safety of the patient." In other words, it ensures that users will be protected from any form of discrimination and stigma associated with their use of digital applications. In addition, the creation of a Mental Health Assessment Committee serves as a specialized system of dispute resolution.[56] The Committee has the authority to investigate claims about the abuse of individuals within the scope of the Act, which might offer an easier avenue of recourse than the general court system.[57]

5.2 The National Health Act 2014

The National Health Act 2014 provides that information concerning a user, including information relating to his health status, treatment or stay in a health establishment is confidential.[58] The National Health Act (NHA) 2014 has some effective provisions for mental health data, but there are also limitations to consider. There are effective provisions, for instance, the Act protects the confidentiality of user information, including mental health data.[59] This

54 Ibid, s.46
55 Nigerian Mental Health Act, s 2.
56 Ibid, s 9.
57 Ibid, s 11.
58 National Health Act, Federal Republic of Nigeria Official Gazette No.145 (27th October 2014) Vol. 101, (NHA 2014), s. 26(1)
59 Ibid, s.26(1)

safeguards sensitive information and protects patients from discrimination. Healthcare providers can access mental health data for treatment purposes with the patient's consent.[60] This ensures continuity of care. Patients can complain about how their mental health data is handled.[61] This empowers individuals to address potential breaches. The Act requires health facilities to implement security measures to protect health records, including mental health data.[62] This helps prevent unauthorized access. There are some provisions that may constitute limitations, for instance, consent for research or teaching that does not identify individuals does not require patient authorisation.[63] This could be misused for mental health data research without explicit consent.

Secondly, the Act focuses on health establishments, not data collection by other entities.[64] This leaves mental health data collected outside these settings (e.g., mental health apps) unprotected.
Overall, the NHA 2014 offers a basic framework for mental health data protection. However, it can be strengthened by:

- requiring explicit consent for using mental health data in research, even if anonymized,
- expanding the Act's scope to cover data collection by other entities that handle mental health information, and
- providing clearer definitions of key terms related to data protection.

By addressing these limitations, the NHA 2014 can become a more robust tool for safeguarding the privacy of mental health data in Nigeria.

5.3 Data Collection Practices in Mental Health Apps

Mobile health apps collect data through three main methods: built-in smartphone sensors (e.g., camera, microphone, GPS), external sensors (e.g., wearable devices) connected via Bluetooth and manual data entry by the user.[65] Most mental health apps rely on users to manually enter data rather than leveraging smartphone sensors or wearable devices.[66]

Data breaches in mental health applications are significantly more dangerous than in normal mobile applications.[67] This is due to the highly sensitive nature of the information associated with mental health. For example, the exposure of an individual's IMEI, UUID, or IP in the use of WhatsApp or Netflix may not be of much concern to people.[68] With respect to mental health applications, it is a severe violation of the user's privacy; users want their mental state to remain confidential.[69] In most cases, mere knowledge that an individual uses an application that deals with his/her mental well-being may already mean something significant to others.[70] This heightened risk underlines the need for stricter privacy protections and safeguards for mental health apps. Mental health apps pose unique data privacy risks due to the extra sensitivity of the information they handle.[71] Unlike general health apps for fitness or wellness, mental health apps deal with deeply personal details.[72] This creates a double threat:[73]

Security breaches can expose highly sensitive data: Information on mental health conditions is much more private than fitness data. A leak could have serious consequences.

Social stigma can be amplified by privacy violations: Mental health conditions still carry stigma. Even just knowing someone uses a mental health app could reveal that they are struggling, making them feel even more vulnerable.

Research that analysed top-ranked mental health apps (that require health and/or personal data as inputs to be functional and transmit users' data to a remote host) to understand how they handle data privacy has revealed significant data privacy problems including unnecessary app permissions, weak encryption methods, and leaks of personal data.[74] The apps lack mechanisms to prevent linking user data to

60 Ibid, s.28(1) (a)
61 Ibid, s.30
62 Ibid, s.29(1)
63 Ibid, 28(2)
64 NHA 2014, s.26
65 B. J. Phillip and others, 'Data Collection Mechanisms in Health and Wellness Apps: Review and Analysis' *Jmir Mhealth and Uhealth* (2022) 10(3) 2.
66 Ibid, 8; H. Wisniewski, 'Understanding the Quality, Effectiveness and Attributes of Top-Rated Smartphone Health Apps'(2019) 22(1) *Evidence Based Mental Health* 4-9.
67 L. H. Iwaya, 'On Mental Health Apps: An Empirical Investigation and Its Implications for App Development' *Empirical Software Engineering* (2023) 28.
68 Ibid.
69 Ibid.
70 Ibid.
71 Iwaya, (n 67).
72 Ibid.
73 Ibid.
74 Ibid, 1

individuals, increasing the risk of user profiling by developers or third parties.[75] The study found serious privacy issues in mental health apps, despite them being used by millions who likely expect strong privacy protections.[76] Some of these privacy issues include:

User tracking is very high risk: There is a possibility that many apps enable third-party entities to identify the person using them as well as track their actions.

Inadequate transparency: The privacy policies of many of these apps were too difficult to understand and did not warn about any risks such as targeted advertising based on mental problems or revealing one's illness.
Fewer apps had undergone any form of privacy impact assessments.

Difficult privacy policies: Nearly all privacy policies require advanced education to understand, making it hard for users to know how their data is handled.

Weak security: Static analysis revealed critical security risks in most apps, including weak encryption, and dynamic analysis showed some apps transmit sensitive data unencrypted, making it vulnerable to leaks.
Earning user trust is critical for digital health apps.[77] This starts with transparent and easy-to-understand explanations of how data is processed. Users should not be left wondering what is happening to their information. Users should have complete control over their health data. This means providing them with the ability to easily check what information is being collected about them at any given time. Empowering users is key. The app's user interface should be designed for transparency and allow users to effortlessly adjust their data privacy settings whenever they want.

6. Impact on User Behaviour and Mental Health Outcomes

6.1 Data Privacy Concerns and User Trust in Mental Health Apps

As a result of technological advancement, the question of data privacy and protection has gained more grounds in contemporary society. In respect to mental health sectors, technology has helped in the development of application software that cater for the mental needs of the larger society. This advancement conceptualizes the need of data privacy in relation to digital mental health, thus, its usage is not without skepticism. One of the major arguments against digital mental health apps is the privacy of the data of those who patronize these application tools. Prospective and willing users who patronize these apps are left with more worries as to the extent of security of their personal data, which in the long run is supposed to be built on trust between the credibility of these software applications (apps) and the extent of data protection. Trust becomes the driving requirement that facilitates the engagement of users. David Zhang and others argue that privacy concerns can serve as a critical barrier to adoption, directly undermining the very access to care that these platforms are designed to expand.[78]

Furthermore, these technological advanced mental health platforms in respect to privacy have been limited in their expansion, especially in Nigeria, as a result of its novelty and citizen's limited knowledge of data rights. In addition to these major concerns, the fear over disclosure of information has hindered the patronage of these platforms. However, the balance is debated between people to patronize these platforms than approach a mental health center where their data are also exposed to same risk as opening up to another person. This has been described as "privacy paradox". No doubts, Nigerians seems to be more woven in this paradoxical web. The fear of being found to have mental illness reduces interaction of these persons while they interact with tools before their personal information is not guaranteed safety. It has become a contest of being embarrassed and getting necessary help.[79]

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75 Ibid.

76 Ibid.

77 T. J. Schwarz, 'GDPR Compliance for Digital Health Apps' < https://www.taylorwessing.com/en/insights-and-events/insights/2021/04/dsgvo-compliance-bei-digital-health-apps#:~:text=Because%20digital%20health%20apps%20often,of%20digital%20health%20apps%20(Art.> accessed 28 May 2024

78 D. Zhang, J. Lim, L. Zhou and A. Dahl, "Breaking the Data Value-Privacy Paradox in Mobile Mental Health Systems Through User-Centered Privacy Protection: A Web-Based Survey Study" (2021) 8(12) *JMIR Mental Health* e31633, <https://mental.jmir.org/2021/12/e31633> accessed 1 March 2026.

79 N. Gerber, P. Gerber and M. Volkamer, "Explaining the Privacy Paradox: A Systematic Review of Literature Investigating Privacy Attitude and Behavior" (2018) 77 *Computers & Security* 226–261.

In the same light, the effect on Nigerian men proves to be no better. A study which examined the barriers to mental health support among Nigerian men, discovered that men tend to avoid digital mental health apps where complex privacy policies, technical language and overly formal layout of the app are needed rather than explore the potential benefit of these apps in solving their issues. This gap can be traced to the trust deficit.[80] The danger this paradoxical web poses is that it devalues the very antidote that addresses mental health issues of potential users. Thus, leading to progressive depreciation of mental wellness of the potential users.

6.2 Cultural Factors, Stigma, and Perceptions of Data Privacy

Cultural predisposition and determines the extent to which individuals will accept the usage of digital mental health tools. Historically, issues of mental health have been associated more with spiritual attacks rather than a medical situation that requires critical care like any other disease or sickness.[81] This complicates the how the mental health issues are addressed in Nigerian society. Victims are stigmatized and left without care not to talk of the mind-set towards digital mental health apps and tools. It has become a double barrel gun for the users ,as they face the fear of public stigmatization and breach of data privacy while using tools.

Accordingly, research confirms that stigma surrounding mental illness in Nigeria is more of a culturally embedded social response than an individual attitude, which stems from shared beliefs about the causes and meanings of mental disorder.[82] In addition to this position, scholarship on technology-based mental health in Nigeria has observed that mental health tools have received more cultural bias as it negates the conventional mode of handling mental health cases.[83] With this in mind, the central focus of data privacy is social exposure, community belonging, and the deeply personal decision to acknowledge mental distress rather than complex questions in relation to date sharing. Where users are not convinced of the confidentiality of their shared personal information in technology- based mental health tools, engagement with such tools will naturally decline.

In Nigeria, it is more important to note that these cultural predispositions in relation to data privacy have affected the female gender who experience stigmatization during pregnancy-related mental health which in long run avoid clinical services, to patronize technological tools which provides less stigmatization, more confidentiality and anonymity.[84] This pattern illustrates a broader principle: in contexts where mental health stigma is severe and social consequences for disclosure are real, privacy is not a peripheral feature of a mental health app. It is central to whether the app functions at all as a meaningful access point for care.

6.3 Algorithmic Bias and the Perpetuation of Mental Health Stereotypes

Several scholars have noted how AI systems used for mental health screening may misidentify or underdiagnose distress when applied to populations outside their training distribution.[85] For instance, AI tools trained on data from high-income, Western contexts may fail to recognise the culturally specific ways in which Nigerians describe and experience depression, anxiety, or other mental health conditions. Natural language processing systems, which underpin many conversational mental health apps have been shown to produce performance disparities across racial, ethnic, and linguistic groups, and these disparities can translate into diagnostic errors or irrelevant therapeutic recommendations.[86]

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80 F Oluwafemi and others, 'Barriers to the Use of Mental Health Services Amongst Men in Nigeria and the Potential of Digital Mental Health Support' (2023) 22(3) *Advances in Mental Health* 590-602

81 N Labinjo and others, 'Digital Mental Health: Integrating Psychotherapeutic Innovations and Technology — A Nigerian Perspective'(2025) 35(6) *Journal of Psychiatry and Allied Disciplines* 843–851.

82 A Ogunwale, B Fadipe and O Bifarin, 'Indigenous Mental Healthcare and Human Rights Abuses in Nigeria: The Role of Cultural Syntonicity and Stigmatization' (2023) *Frontiers in Public Health* (2023) 11:1122396

83 Labinjo and others (n 82)

84 L Kola and others, 'Factors Impacting Mobile Health Adoption for Depression Care and Support by Adolescent Mothers in Nigeria: Preliminary Focus Group Study'(2025) *JMIR Formative Research* PMC12018861

85 T Chaspari and others, 'AI for Mental Health Screening May Carry Biases Based on Gender, Race' (University of Colorado Boulder, 5 August 2024) <https://www.colorado.edu/today/2024/08/05/ai-mental-health-screening-may-carry-biases-based-gender-race> accessed 15 February 2025

86 D Yoffe and others, 'Racial Bias in AI-Mediated Psychiatric Diagnosis and Treatment: A

Beyond diagnostic accuracy, algorithmic bias poses a subtler but equally important risk which is the reinforcement of stigmatizing narratives about mental health in specific populations. When data collected by apps is used to build predictive models that associate race, language, or geographic location with particular mental health outcomes, those models can embed and amplify existing prejudices. An argument between Timmons and colleagues, writing in the journal Perspectives on Psychological Science, was premised on the fact that the bias in AI mental health tools is likely to increase as these systems become more widely deployed. [87] Hence, if there are no deliberate corrective measures, these tools risk perpetuating the very inequities that mental health technology is meant to address.[88]

In Nigeria specifically, these concerns become compounded with the absence of adequate regulatory framework governing AI applications in general.[89] The effect is that Nigerian users may be subjected to algorithmically bias mental health assessments without any regulatory mechanism to identify, challenge, or remedy those biases.

7. Comparative Analysis: User Rights and Trust

7.1 European Union

The European Union General Data Protection Regulation (GDPR) serves as the legal framework for the collection and processing of personal data within the European Union.[90] It replaced Directive 95/46/EC, which addressed the protection of individuals concerning personal data processing and the free movement of such data. [91] The GDPR was established to safeguard the privacy rights of EU residents, reflecting the EU's strong constitutional commitment to data protection. [92] This commitment has been described as deeply ingrained and central to the identity of the EU as an information-age political entity.[93] In the EU, privacy is considered a fundamental right that encompasses family life, reputation, and communications.[94] Article 8 of the Charter states that everyone has the right to the protection of personal data concerning them.[95] Such data must be processed fairly, for specified purposes, and based on the consent of the individual concerned or another legitimate basis established by law.[96] Everyone has the right to access and rectify their collected data.[97] Additionally, the Charter mandates that an independent authority oversees compliance with these rules.[98] The principles of the Nigeria Data Protection Act 2023 (NDPA) are similar to those of the GDPR, though there are some differences between the two. Both the NDPA 2023 and the GDPR provide similar definitions for terms such as 'processing,' 'personal data,' and 'sensitive personal data.' The definition of 'personal data' under the NDPA 2023 shares certain similarities with the definition provided in the GDPR.[99]

Qualitative Comparison of Four Large Language Models' Nature (2025) PMC12137607

87 AC Timmons and others, 'A Call to Action on Assessing and Mitigating Bias in Artificial Intelligence Applications for Mental Health' (2023) 18(5) Perspectives on Psychological Science 1062

88 Ibid.

89 Lionel Ebenibo and others, 'Evaluating the Sufficiency of the data protection act 2023 in the age of Artificial Intelligence (AI): A Comparative Case Study of Nigeria and the USA' (2024) I5(1) *Internationa*l *Journal of Scholarly Research and Reviews*:088-107

90 Came into operation in 2018 and is applicable in all member states of the European Union to harmonize data privacy laws across Europe. 'General Data Protection Regulation (GDPR) – Official Legal Text'<https://gdpr-info.eu/> accessed 22 March 2022

91 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995.

92 P. Sen, 'EU GDPR and Indian Data Protection Bill: A Comparative Study' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3834112> accessed 22 March 2022; C. J. Hoofnagle, B. van der Slootand F. Z. Borgesius 'The European Union General Data Protection Regulation: What It is and What It Means' (2019) *Information & Communications Technology Law* 2. The EU Charter of Fundamental Rights and the EU Treaties both guarantee the right to privacy and the right to the protection of personal data

93 ibid, 2

94 Article 8 of the 1950 European Convention on Human Rights provides protection to private and family life, home, and communication. Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8, 4 November 1950, 213 U.N.T.S. 222

95 Charter of Fundamental Rights of the European Union (OJ C 364 of 18 December 2000) <https://www.europarl.europa.eu/charter/pdf/text_en.pdf> accessed 22 March 2022. Hereafter referred to as the Charter

96 The Charter, art 8(2)

97 ibid, art 8(2)

98 ibid, art 8(3)

99 NDPA 2023, s. 65. Under Article 4 of the General Data Protection Regulation (GDPR), personal data is defined as 'any information relating to an identified or identifiable natural person ('data

Data controllers and processors must adhere to the GDPR by incorporating policies and measures aligning with the data protection principles by design and default (DPbD).[100] GDPR's "privacy by design" and "privacy by default" principles are crucial for developing compliant digital health apps. This means prioritizing data protection throughout development and setting the strictest privacy settings as the default option.

DPbD, or Data Protection by Design, requires creators of products, services, and software used to handle personal data, including mental health apps, to prioritise data protection.[101] They must consider data protection rights when developing such products, services, and software. Additionally, they must ensure that those responsible for data processing can adhere to legal requirements, taking into account the latest technological advancements.[102] This is an integral part of being accountable and it involves integrating data protection throughout all activities and processing steps.[103] The GDPR makes recommendations for potential suitable actions, including data minimisation,[104] transparency[105] concerning the functions and processing of personal data, enabling the data subject to monitor the data processing, using pseudonymisation techniques,[106] and enhancing security features.[107] The process includes establishing protective measures at the outset of processing activities and during the processing itself, to uphold the data protection principles and preserve individual rights.[108] This method of safeguarding data is proactive rather than reactive, and it focuses on prevention rather than remedy.[109] A DPbD approach involves being proactive about data protection by anticipating privacy issues and risks, rather than waiting until breaches occur.[110]

The NDPA 2023 does not explicitly use the term "data protection by design and by default"; however, this approach is implicitly reflected and further operationalised under the GAID 2025. In particular, Article 31 GAID requires data controllers deploying software (including mobile applications) to implement privacy by design and by default, conduct a DPIA prior to deployment, and embed privacy policies and safeguards within the system architecture. However, data controllers are mandated by the NDPA 2023 to enforce suitable technical and organizational measures to safeguard the security, integrity, and confidentiality of personal data that they possess or control.[111] This includes implementing protections against accidental or unlawful destruction, loss, misuse, or access.[112] Some of the steps involve using pseudonyms, securing personal data through encryption, implementing procedures to guarantee the security, accuracy, privacy, accessibility, and robustness of processing systems and services, and more.[113]

Conducting Data Protection Impact Assessments (DPIAs) is crucial for implementing Data Protection by Design (DPbD).[114] The Data Protection Impact Assessment (DPIA) is a valuable tool for promoting accountability and enhancing the controller's responsibility.[115] The GDPR requires a Data Protection Impact Assessment (DPIA) when the data processing is likely to pose a significant risk to the rights and freedoms of individuals, especially when the data controller employs new technology for processing data.[116] Controllers are required to notify the supervisory authority if a high-risk data processing activity lacks risk-reduction measures, as per Article 36 of the GDPR.

Many digital health apps already require Data Protection Impact Assessments (DPIAs) under EU

subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.'

100 GDPR, recital 78

101 ibid

102 ibid

103 ICO, 'Guide to the General Data Protection Regulation' 157 <https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf> accessed 28 May 2024

104 GDPR, art 5(1)(c)

105 Ibid, art 12–14

106 Ibid, art 25(1)

107 Ibid art 32, recital 78

108 ICO, 'Guide to the General Data Protection Regulation' (n.)179

109 ibid

110 ibid

111 NDPA 2023, s.49(1)

112 ibid

113 ibid, s.40(2)

114 ICO, 'Guide to the General Data Protection Regulation' (n.) 182

115 K. Demetzou,'Data Protection Impact Assessment: A tool for Accountability and the Unclarified Concept of "High Risk" in the General Data Protection Regulation' (2019) *Computer Law & Security Review* 3.

116 GDPR, art. 35(1)

regulations.[117] These assessments help pinpoint potential risks to users' privacy when processing their information.[118] By identifying these risks early, developers can find user-friendly solutions to mitigate them.[119] DPIAs are crucial for two reasons.[120] Firstly, they fulfil the GDPR's requirement for organizations to be accountable for data protection practices.[121] Secondly, they demonstrate an app's compliance with GDPR and they should be documented and reviewed regularly. Since digital health apps often handle health data, considered 'special categories of personal data' under GDPR, processing this information must strictly adhere to Article 9, paragraph 2 of the regulation.[122]

Notably, the NDPA 2023 makes provision for circumstances where a data controller is to carry out a DPIA.[123] This obligation is significantly elaborated under Article 28 of the GAID 2025, which mandates DPIAs for high-risk processing activities, including healthcare services, sensitive personal data processing, and the deployment of digital applications such as mental health apps. This has several implications for Nigeria, for instance, DPIAs can help developers identify vulnerabilities in their apps that could lead to leaks of sensitive mental health data.[124]

By addressing these weaknesses before launch, the risk of exposing users' private information is minimised.[125] The DPIA process encourages developers to be more transparent about how they collect, use, and store mental health data. This transparency can build trust with users who might be hesitant to share sensitive information.[126] DPIAs can also help developers identify features or functionalities within the app that might pose privacy risks. This allows them to design the app in a way that protects user privacy while still offering valuable mental health services.

The NDPA does not currently specify how DPIAs should be conducted for mental health data specifically. The Nigerian Data Protection Commission will need to provide clear guidelines to ensure developers understand how to assess the unique risks associated with this type of data. Conducting DPIAs requires time and expertise. Smaller app developers might struggle to dedicate the resources necessary for a thorough assessment, especially if the requirements are complex. As with the overall NDPA, the effectiveness of DPIAs for mental health apps hinges on strong enforcement mechanisms. Clear penalties for non-compliance will be essential to ensure developers take DPIAs seriously.

Under the GDPR, digital mental health apps typically need users' explicit consent to process their health information.[127] This is because health data is classified as 'special' due to its sensitive nature. For situations beyond basic processing, such as using the data for research purposes, additional legal justifications might be required on top of consent.[128] Notably, the situation is the same in Nigeria, as health data is classified as 'sensitive personal data,'[129] this is reinforced under Article 18 of the GAID 2025. Processing of such data also requires the explicit consent of the data subject.[130]

Both the GDPR and the NDPA 2023 emphasize a key principle: data collected for a specific purpose cannot be reused for something entirely different and unrelated.[131] The NDPA and GDPR both require transparency. If one intends to utilize the information acquired from the application for purposes extending beyond its fundamental functionality, such as contributing the data for research or employing it for product development, it is imperative to transparently disclose this intention from the outset.[132] Clarity regarding all envisaged uses is essential, and it is crucial to ensure the presence of a valid legal basis for each use, such as user consent, at the time of data collection.

Worthy of note is Articles 13 and 14 of the GDPR, which emphasise transparency and the need for data subjects to understand how their personal data is used. Data controllers must describe data processing in the privacy policy in a way that is clear, specific to the

117 Schwarz, (n 78)
118 Ibid
119 ibid
120 ibid
121 GDPR, art. 5(2)
122 Schwarz, (n 78).
123 NDPA 2023, s.28
124 For the different phases of a DPIA, see M. Friedewald and others 'Data Protection Impact Assessments in Practice' In S. Katsikas, and others *Computer Security* ESORICS 2021 International Workshops. ESORICS 2021. Lecture Notes in Computer Science, 13106. (Springer,2022) 428.
125 G. G. Várkonyi and A. Gradišek, 'Data Protection Impact Assessment Case Study for a Research Project Using Artificial Intelligence on Patient Data' (2020) 44 *Informatica* (2020) 497–505.
126 Ibid, 498
127 GDPR, art. 9(2) (a)
128 Ibid, art.9 (2) (j)
129 NDPA 2023, s.65
130 Ibid, s.30
131 GDPR, art.5 (1) (b), NDPA 2023, s.24 (1) (b)
132 Schwarz, (n 78).

app's functionalities, and easy for users to understand.[133] They must also provide a privacy policy early and right when personal data is collected from the user.[134] This typically means including it on the app download platform (e.g., app store) and during initial app access.[135] In addition to the download platform, make sure the privacy policy is readily available within the app. Users should be able to find it easily at any time.[136] These requirements are broadly reflected in Nigeria under Article 27 of the GAID 2025, although the GAID does not prescribe detailed usability or readability standards for privacy notices.

Some digital health apps choose a decentralized approach, whereby the personal data collected remains on the user's device.[137] The data is therefore not hosted externally (via server or cloud), which at the same time significantly reduces the risk of misuse.[138] A decentralized approach also strengthens user trust in a privacy-friendly and abuse-proof infrastructure of the respective digital health app.[139] If, on the other hand, it is necessary to store the data collectively on a server/cloud, the data must be transmitted and stored in sufficiently encrypted form to ensure data security.[140] However, when storing data collectively on a server or cloud is necessary, robust security measures become crucial.[141] Encryption plays a key role here. By ensuring data is transmitted and stored in a sufficiently encrypted form, these apps demonstrate a commitment to data security. This strong security posture translates to greater user confidence and trust in the app's infrastructure.

The recent trends within the European Union (EU) with regard to digital health technologies and intensive use of data have greatly enhanced the scope of the GDPR model. Regulation (EU) 2024/1689 or the Artificial Intelligence Act (AI Act) provides a risk-based regulatory framework for artificial intelligence systems.[142] Article 6 and Annex III classify AI systems in healthcare applications, such as emergency triage and medical device software, as "high-risk" systems. In this regard, such systems shall be governed by stringent legal requirements that include the establishment of a risk management system,[143] strong data governance and management practices,[144] and transparent user information.[145] Moreover, appropriate human supervision[146] and post-market surveillance[147] are mandatory requirements for providers of high-risk AI systems. These obligations complement the GDPR, emphasising key GDPR principles as accountability and privacy by design by implementing them throughout the process of development of AI systems.[148]

Concurrently, the European Health Data Space (EHDS)[149] is an important development in terms of sector-specific efforts to achieve consistency in how health data are used, accessed, and shared within the EU. In particular, the EHDS aims to enable primary and secondary uses of health data, while ensuring that strict protections for data subjects remain in place.[150] New governance arrangements, interoperability, and rights over electronic health data are some of the features of the EHDS.[151]

These measures combined point to a wider regulatory trend in the EU, which includes sectoral and technological specialization in highly sensitive sectors like digital health and mental health solutions. The EU's approach to regulation does not only consider its overarching general data protection principles but increasingly involves the development of multiple

133 Ibid.
134 Ibid.
135 Ibid.
136 Ibid.
137 Ibid.
138 Ibid.
139 Ibid.
140 Ibid.
141 ibid.
142 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L, 2024/1689.
143 Ibid, art 9
144 Ibid, art 10
145 Ibid, art 13
146 Ibid, art 14
147 Ibid, art 61
148 M Veale, and F Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act: Analysing the Good, the Bad, and the Unclear Elements of the Proposed Approach' . (2021) 22(4) *Computer Law Review International*, 97–112.
149 Regulation (EU) 2025/327 of the European Parliament and of the Council of 11 February 2025 on the European Health Data Space and amending Directive 2011/24/EU and Regulation (EU) 2024/2847. (2025). *Official Journal of the European Union*, L series, 2025/327. http://data.europa.eu/eli/reg/2025/327/oj
150 Ibid art 4
151 S Kalkman, 'Responsible Data Sharing in International Health Research: The European Health Data Space' (2023) 30(12) *European Journal of Human Genetics*, *30*(12), 1344–1350; M Shabani, 'The European Health Data Space: A New Paradigm for Health Data Governance' (2023) *Health Policy*, *135*, 104861.

layers of regulations, with the GDPR serving as one layer, complemented by specific measures that address the unique risks of new technologies. This phenomenon is consistent with the concept of "regulatory densification" or "normative layering" whereby multiple legal instruments interact to create a more robust and context-sensitive system of data governance[152]

7.2 South Africa

The Nigeria Data Protection Regulation (NDPA 2023) forms the basis of data protection in Nigeria, while the Protection of Personal Information Act (POPIA 2013) and the National Health Act 2003 form the basis of data protection in South Africa. Some notable differences emerge from a comparative analysis of the laws on the subject in both countries.

In South Africa, the right to privacy is guaranteed in Section 14 of the Constitution of the Republic of South Africa 1996.[153] The right is not so different from that of Nigeria. This right is however limited by Section 36 of the Constitution of South Africa which provides that such right may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom considering key factors, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and its purpose, and less restrictive means to achieve the purpose. It is commendable that the South African Constitution requires the use of the less restrictive means to achieve the purpose. Thus, in line with this provision, a judge may approve, order the termination, or take any other appropriate action in respect of an interference with the right to privacy only after determining whether the interference is legal, necessary, and proportionate.

The primary law on data protection in South Africa is the Protection of Personal Information Act, 2013 (POPIA Act),[154] which specifies the minimum requirements for accessing and processing personal information. Under the Act, the Information Regulator, a data protection authority is established to ensure that the principles of the POPIA Act are complied with.[155] The POPIA Act emphasizes that the Information Regulator should be independent and subject only to the Constitution and the law and must be impartial to perform its duties and exercise its powers without fear, favour, or prejudice.[156] The Independent Regulator is accountable to the National Assembly.[157]

In South Africa, Health information is classified as "special personal information" according to Section 26(1) (a) of POPIA and thus receives special protection. However, if the data are anonymised to prevent re-identification, they are excluded from the scope of POPIA. Section 26 prohibits the processing of special personal data which includes health data. However, Section 32 of the POPIA deals with exceptions to this rule. It has been argued that this provision might allow health data collected through apps to be shared with medical insurers or HCPs under specific circumstances.[158]

In South Africa, Section 14 of the National Health Act 2003 protects a wide range of user information, including details about a user's health status, treatment, and stay in a health establishment.[159] This aligns with the sensitive nature of data collected by mental health apps. The default position is confidentiality, meaning user information cannot be disclosed without consent.[160] This is crucial for protecting user privacy in mental health apps, where users might be hesitant to share information if they fear it will be revealed. The default position is confidentiality, meaning user information cannot be disclosed without consent. This is crucial for

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152 A de Streel, 'The EU Digital Regulatory Framework: A New Model' (2022) 13(3) *Journal of European Competition Law & Practice*, 163–165; L Floridi, and others, 'AI4People—An Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations' *Minds and Machines*, (2018). *28*(4), 689–707.

153 <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1> accessed 12 January 2021

154 Protection of Personal Information Government Gazette Republic of South Africa Vol. 581 No. 4 2013 <https://www.gov.za/sites/default/files/gcis_document/201409/3706726-11act4of2013popi.pdf> accessed 9 December 2022

155 POPIA 2013, s.39 and s.40

156 POPIA Act 2013, s.39 (b) and (c)

157 ibid, s.39(d)

158 D. Brand and others, 'What Constitutes Adequate Legal Protection for the Collection, Use and Sharing of Mobility and Location Data in Health Care in South Africa?' (2023) 119(5-6): S Afr J Sci., 14605, \\<https://pmc.ncbi.nlm.nih.gov/articles/PMC11210507/> accessed 8 May 2026

159 National Health Act, 2004, No 61 of 2003, available at https://www.gov.za/sites/default/files/gcis_document/201409/a61-03.pdf accessed 6 June 2024

160 Ibid, s.14(2) (a)

protecting user privacy in mental health apps, where users might be hesitant to share information if they fear it will be revealed. Disclosures are permitted under certain circumstances, including with user consent, court orders, or threats to public health.[161] While these exceptions are reasonable, they create situations where confidentiality might be compromised. It is commendable that disclosure of user information by healthcare providers is permitted only for legitimate purposes within the scope of their duties and when it is in the user's best interests.[162] This ensures information is used responsibly and for providing care. However, the law does not define "legitimate purpose" precisely. This could lead to interpretations that allow for broader data sharing than intended, potentially affecting user privacy in mental health apps. This law provides a foundation for data privacy in mental health apps in South Africa. However, the exceptions and lack of specific definitions leave room for improvement.

Moreover, it has been argued that low literacy levels in some South African communities make it challenging for users to understand consent and data sharing practices in apps.[163] A recent study has highlighted the importance of data protection for health information collected through mobile apps in South Africa.[164] It emphasized the need for clear user consent, responsible data sharing practices, and specific considerations for vulnerable populations like children.[165] While South Africa lacks specific mobile app guidelines, the EU's "Guidelines on Mobile App Data Protection" offer helpful principles for lawful data processing.[166]

A few lessons Nigeria can learn from South Africa are discussed below:

South Africa has gone past data protection at large to health-specific guidelines. In 2026, the Information Regulator promulgated the Regulations on the Processing of Health Information.[167] The Regulations explain precisely how to process such information for all stakeholders involved including the insurance companies, employers, and medical schemes. The purpose of the Regulations include: to assist responsible parties in the correct interpretation of section 32(6) of the Act; provide more transparency to data subjects about how their health information may be used and provide a framework to the Information Regulator to enforce mechanism for processing health information of data subjects as provided in section 32(6) of the Act.[168]

Broad laws like the NDPA leave mental health app developers in “gray area.” Nigeria should emulate South Africa and develop specific subsidiary legislation or a “Code of Conduct” for digital health. This would give specific technical standards for encryption and anonymisation which general law lacks.

The South African legal system is heavily dependent on the constitutional “limitation clause.”[169] The South African Model: Any processing of sensitive data that infringes privacy must satisfy a three-part test: Is it lawful, necessary, and is there a way to accomplish the goal with less restriction? Nigeria’s NDPA allows processing on the basis of “legitimate interest”. But without a hard proportionality test, this can become a loophole for invasive data collection. If app developers were to adopt the South African approach of “least restrictive means”, they would be required to limit data collection to the absolute minimum required for therapy.

The need for transparent and user-friendly privacy policies is clear, such as Articles 13 and 14 of the GDPR, which calls for app-specific, accessible disclosures provided at the point of data collection and perpetually available within the application. The NDPA 2023, implemented by the GAID 2025, incorporates similar principles, such as privacy by design and by default, the requirement for explicit consent for sensitive personal data, mandatory Data Privacy Impact Assessments for high-risk processing activities like the provision of healthcare services, and in-app privacy notices. However, the practical impact of these safeguards varies across jurisdictions. In the EU these obligations are embedded in a well-developed enforcement ecosystem with established regulatory practices and meaningful penalties for non-compliance.

161 Ibid, s.15
162 Ibid.
163 Brand, and others, (n 159).
164 Ibid.
165 Ibid.
166 Ibid, 4
167 Regulations Relating to the Processing of Data Subjects' Health Information by Certain Responsible Parties, 2026 Government Notice 7198 of 2026 https://lawlibrary.org.za/akn/za/act/gn/2026/7198/eng@2026-03-06
168 Ibid, chapter 2
169 POPIA s 36

This makes an important difference for user. EU citizens use mental health apps in a developed regulatory regime where compliance measures such as obtaining explicit consent, providing adequate privacy notices, and performing data protection impact assessments are not only necessary but are also commonly enforced. This is also the case for Nigeria under NDPA 2023 and GAID 2025 (Articles 18 and 28), which require explicit consent for processing personal data and make DPIA mandatory for high-risk data processing activities. The effectiveness of these mechanisms is dependent on the growing expertise of the Nigerian Data Protection Commission.This asymmetry in effective protection, rather than formal rights, is what shapes user trust in practice.[170]

Adapting aspects of the GDPR framework to strengthen Nigerian mental health app regulation holds considerable promise, though it must be approached with an understanding of Nigeria's specific legal, socioeconomic, and cultural context. The GDPR's "data protection by design" principle, which requires privacy safeguards to be embedded into systems from the earliest stages of development, is directly applicable to the Nigerian mental health app sector and has been mandated through sector-specific guidelines issued by the Nigeria Data Protection Commission under its existing statutory authority. There is the General Application and Implementation Directive (GAID) 2025, which requires data controllers to prioritise privacy-by-design and by default.[171] Similarly, although the GDPR's Data Protection Impact Assessment requirement is mirrored in the NDPA 2023, Article 28 of the GAID 2025 goes further by expressly mandating DPIAs for high-risk processing, including healthcare services and sensitive data; however, more explicit, sector-specific guidance for mental health applications may still be necessary to address their unique risks.

GDPR Articles 13 and 14 set the standard for transparency, but such principles are already included within GAID 2025, specifically Article 27, which mandates that information must be clear, accessible, and comprehensible, especially to vulnerable data subjects and Article 7, which mandates that privacy policies must be published on appropriate channels. However, such principles are yet vague, as they do not set out concrete criteria for comprehension. Hence, the issue of compliance privacy policies indicates a gap not in legal recognition but in the operationalisation and enforcement of plain-language transparency.

As illustrated above, there exists a practical relationship between the regulation of data privacy and mental health. Data privacy regulations are not neutral technical instruments; they define the environment that affects people's decision to seek help, expose weaknesses, and make use of technological innovations that aim to improve their lives. In a country like Nigeria, where mental health facilities are scarce and there is still a significant level of stigma surrounding mental disorders, the effectiveness of mental health applications hinges on the effectiveness of their data privacy regulations. Failure to ensure proper data privacy will translate to non-use of the application and hence the inability to derive any benefits from it.

The comparative analysis demonstrates that both the GDPR and the NDPA 2023 share the same fundamental objectives of data subject rights protection, limitation of data usage for particular reasons, and increased regulation regarding the processing of sensitive personal information. Their differences include the level of advancement in the enforcement process, the extent of the regulations provided, and the presence or absence of provisions concerning the mental health sector as a context with a higher risk. The GDPR has been elaborated over years and has evolved due to regulatory guidance by national data protection authorities and the European Data Protection Board. In turn, while Nigeria is developing a compliance expectation environment, its plan of legislative initiatives cannot be called insufficiently ambitious. This idea can be supported by POPIA's experience in South Africa. Indeed, formal alignment of laws with international data protection standards is important, but not sufficient.[172]

From a mental health standpoint, the results of this study corroborate the long-held understanding among clinical practitioners and public health researchers that trust holds therapeutic significance.[173] Patients or

[170] International and Comparative Law Guides, 'Data Protection Laws and Regulations Report 2025–2026: Nigeria' ICLG (2025) <https://iclg.com/practice-areas/data-protection-laws-and-regulations/nigeria> accessed 15 February 2026

[171] GAID 2025, art 26 and 28(11)

[172] S Mishi and G Anakpo, 'Regulatory Challenges of Digital Health: The Case of Mental Health Applications and Personal Data in South Africa' (2025) *Frontiers in Digital Health* PMC12074941

[173] CIHI, 'Trust is Essential to Public Health's Success' (April 16, 2026) <https://www.cihi.ca/en/priority-indicators-for-public-health-systems-in-canada/foundations-of-public-health-systems/trust> accessed 8 May 2026

prospective patients who lack confidence in the protection of their disclosures tends to withhold information, withdraw from care, and cope with their distress privately, frequently in maladaptive ways. In the realm of mental health applications, the data privacy framework does not serve as an administrative backdrop to the therapeutic interaction. For many Nigerian users, it is the main factor that decides if any kind of therapy will happen.

8. Recommendations

On the basis of this analysis, the following recommendations are offered to policymakers, app developers, and the mental health community in Nigeria:

First, there should be a regulation that expressly covers mental health data collected and processed through digital platforms, including mobile applications. As presently constituted, the National Health Act's confidentiality protections apply to health establishments and their personnel; they do not extend to third-party app developers who may process equally sensitive mental health information without any clinical relationship with the user. Closing this gap would ensure that the therapeutic confidentiality expectations users bring to mental health apps are mirrored in the legal framework that governs them.

Second, app developers operating in the Nigerian mental health space should adopt a privacy-by-design approach as a matter of ethical best practice and commercial necessity. In other words, the issue of user privacy must be thought through in advance as part of the design of the app itself, rather than being implemented later just to satisfy legal requirements. More specifically, this includes giving users precise control over the collection of their data, keeping data decentralized where possible to decrease vulnerabilities, conducting periodic third-party security audits, and providing easily understandable privacy policy information, including a detailed description of the data that is collected, how this data is used, and which entities have access to this information. Moreover, developers need to disclose any algorithmic decision-making process used and allow for challenges to those decisions affecting care.

Third, there needs to be an active partnership between the Nigeria Data Protection Commission, the Federal Ministry of Health, organizations representing mental health professionals such as the Association of Psychiatrists of Nigeria, and the tech industry on creating an ethical framework for AI applications in mental health care. This framework will include provisions for monitoring algorithmic bias, cultural competence of AI mental health solutions, and basic clinical safety requirements.

Fourth, culturally sensitive public education campaigns should be carried by the government and private bodies to address the intersection between mental health stigma and concerns about digital privacy. Such campaigns should explain in accessible language the mental health benefits of digital support tools, as well as the legal protections that exist for users' data. They should be designed with an awareness of Nigeria's ethnic, linguistic and religious diversity and delivered through community channels including faith-based organisations, universities and local radio that have established credibility with target populations. Addressing stigma and promoting privacy literacy are two sides of the same coin. When users who clearly understand their rights and believe those rights will be protected, they are more likely to use mental health tech in ways that genuinely support their wellbeing.

9. Conclusion

This paper examined the link between the data privacy practices of Nigerian mental health apps and the existing legal frameworks. It compared Nigeria's regulatory environment with the GDPR and South Africa's POPIA. What this analysis indicates is not just a technical assessment of regulatory gaps, but a human rights argument: where data privacy protections are inadequate, the ability of vulnerable individuals to access mental health care is correspondingly diminished. The stakes here are not just commercial and administrative in terms of data privacy. They are clinical and urgent at a time when the country is grappling with a mental health crisis of enormous dimensions.

Nigeria is at a crossroads. The Nigeria Data Protection Act 2023 is a true legislative landmark, a principled comprehensive framework, appropriately drawing on international best practice, and establishing an independent regulatory body with meaningful enforcement powers. The private sector is beginning to respond to unmet demand, as evidenced by the country's growing digital health ecosystem, which has witnessed the emergence of AI-powered mental health platforms tailored to African users. And the signing of the National Mental Health Act in January 2023 indicates that the policy makers get the scale of the mental health challenge. What remains, however, is the work of implementation: translating legislative intent into effective protection, and effective

protection into the user trust upon which digital mental health adoption ultimately depends.

The lessons from the GDPR and POPIA are valuable but cannot be directly transplanted to Nigeria. The regulatory path should be informed by Nigeria's social and economic context, and its rich cultural and linguistic diversity. Other factors include high levels of stigma around mental health, and limits on regulatory capacity. The European and South African experiences do not offer a strict template but do highlight important principles such as privacy by design, mandatory impact assessments, clear transparency, meaningful consent and effective enforcement. The challenge before Nigerian policy makers, regulators and civil society is to adapt these principles quickly, correctly and with a clear understanding of the communities they serve.

This paper suggests a number of directions for future research. For example, there is a lack of data on the privacy perceptions of Nigerian users of mental health apps. The body of evidence will be significantly strengthened by studies that give priority to the voices and experiences of these users and consider factors such as gender, age, socioeconomic status and geographic location. Specific app evaluations in Nigeria's legal compliance market and their actual data practices would provide regulators with the granular accountability information necessary to target their enforcement efforts. Research on how culturally adapted privacy communication strategies can build user trust is also equally important; it would help implement the recommendations in this paper.

Ultimately, findings of this study indicate the great potential of technology in improving access to mental health care in Nigeria. Digital platforms can help in reaching those without access – especially youth in remote areas – and providing mental health professionals with private avenues for self-care. These interventions are technologically feasible and provide a practical way to address the widespread treatment gap affecting millions across the country. However, it is important to emphasise the successful implementation of these benefits is fundamentally dependent on the establishment of user trust. However, in this scenario, the issue of trust does not relate to mere intentionality on the part of the developers alone; instead, it is based on the existence of an effective legal framework that protects the privacy of such mental health records, with adequate regulations and a society that views mental health care as a basic right.

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Addressing Challenges to access to Justice for Victims of Medical Malpractice in Nigeria

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Abstract. Medical malpractice litigation provides an avenue for victims of malpractice to get justice and restore confidence in the health care system. However, a close examination of medical malpractice litigation in Nigeria reveals some challenges to the country's justice delivery. Although substantive law on medical negligence is relatively well developed, the practical ability of patients to pursue claims is limited due to procedural challenges. The financial burden associated with expert reports and the absence of structured compensation mechanisms leaves many injured patients without redress. This paper examines how these challenges can be surmounted. It adopts an analytical *legal research* approach. It reviews extant literature on the subject and compares the Nigerian situation with jurisdictions like the United Kingdom and South Africa. It finds the Nigerian system for financing medical negligence claims inadequate. Claimants bear nearly all initial costs, especially the procurement of medical expert reports which are often expensive due to limited availability and professional reluctance to testify. legal aid offers almost no support for tort-based medical claims. Professional indemnity insurance, although encouraged, is not mandatory and sparsely implemented among private hospitals and individual practitioners. Comparative insights reveal that countries with conditional fee arrangements, state-backed insurance schemes and statutory compensation funds experience fewer access barriers. It concludes that the present financial architecture for medical malpractice litigation in Nigeria is inadequate and constitutes significant barrier to access to justice and recommends a combination of legislative and policy reforms such as compulsory malpractice insurance, establishment of statutory compensation fund and regulated third-party funding.

Keywords: Access, Funding, Justice, Malpractice Negligence, Third party.

1. Introduction

Healthcare delivery is an essential aspect of human rights[1] which can be violated in cases of medical malpractice or avoidable medical errors. Healthcare delivery is a fundamental component of social welfare and human rights.[2] Patients who seek medical care reasonably expect to receive treatment that meets established professional standards. However, medical malpractice is an inevitable aspect of healthcare systems worldwide, often resulting in avoidable injury, disability, or death.[3] In such instances, access to justice becomes critical for victims, not only to obtain redress but also to ensure accountability and deter future negligence or malpractice.[4]

In Nigeria, medical malpractice is gaining prominence due to increase awareness of patients' rights, rising

[1] Article 12, International Covenant on Economic Social and cultural Rights, 1966

[2] World Health Organization, 'Human Rights' (World Health Organization 1 December 2023), available at <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> accessed November 30, 2025

[3] World Health Organization, 'Patient Safety' (World Health Organization 1 December 2023), available on <https://www.who.int/news-room/fact-sheets/detail/patient-safety, accessed February 15, 2026.

[4] G J Hoag, 'Understanding Your Rights: A Patient's Guide to Justice in Medical Malpractice Cases' available at https://gregoryjhoag.com/understanding-your-rights-a-patients-guide-to-justice-in-medicalmalpracticecases/ accessed February 15, 2026.

healthcare demands, and more publicised instances of substandard medical practice.[5] Despite the legal recognition of medical malpractice under tort law, as well as statutory frameworks such as the National Health Act 2014, the Federal Competition and Consumer Protection Act 2018, and the Patients' Bill of Rights 2018, getting justice through medical malpractice litigation is not easily accessible for financially vulnerable claimants[6] as victims often encounter serious barriers in their pursuit of justice.[7] These barriers include complex litigation procedures, high costs of litigation, judicial delays, limited availability of legal aid and difficulties in securing credible medical expert testimony due to financial constraint.[8] As a result, many victims are left without effective remedies, undermining trust in both the healthcare and judicial systems.

Although the Nigerian legal system provides avenues for patients to seek redress for medical malpractice, the reality is that access to justice is elusive for many victims.[9] The adversarial nature of litigation which is largely rooted in common law principles of tort, places the burden of proof heavily on the patient, who must demonstrate that a healthcare provider owed a duty of care, breached that duty, and caused harm as a result.[10] Often time expert testimonies are required and this becomes a disadvantage for victims who lack resources or technical knowledge.[11] Moreover, professional solidarity among medical practitioners frequently hinders the availability of independent expert testimony.[12] Compensation mechanisms, where available, are often inadequate and not effectively implemented across public and private institutions.[13] The consequence of the above is a justice gap where victims of medical malpractice are left without fair remedies and weakening public confidence in healthcare governance. Despite these systemic challenges, scholarly research addressing financial barriers faced by victims in Nigeria is limited. This paper seeks to bridge this gap by exploring the legal framework for financing medical malpractice litigation in Nigeria and proposing legal and policy reforms that includes victim compensation and third-party funding.

This paper is divided into six sections. The first introduces the subject matter and outlines the central problem which the paper seeks to address. The second contains the conceptual framework. it explains the main ideas and principles, including the meaning of medical malpractice, the idea of financing litigation, and the broader issues connected to access to justice. The third section contains a brief description of some laws as they relate to malpractice litigation in Nigeria. The fourth examines some of the major obstacles or challenges surrounding the financing of medical malpractice litigation in Nigeria. It considers the practical realities confronting claimants and highlights the gaps within the existing legal framework. The fifth section draws useful comparisons from other jurisdictions to illuminate possible alternatives and the sixth section considers proposals or reform options for improving access to justice for victims of medical malpractice seeking legal redress and concludes that it is only by addressing these challenges that the barriers to access to justice can be effectively removed.

2. Conceptual Framework

2.1. Medical malpractice

Medical malpractice refers to a failure by a healthcare professional to exercise the degree of skill and care expected in the circumstances, resulting in injury, disability or death.[14] In law of tort, liability arises where a claimant establishes duty of care, breach of duty, causation and compensable damage.[15] The principle that a doctor owes a duty of reasonable skill and care is well established in Nigerian jurisprudence.

[5] S Sodunke, 'Medical Negligence and Patient Safety in Nigeria: What the Law says in 2026' (Mondaq, 20 January 2026) available at https://www.mondaq.com/nigeria/healthcare/1733324/medical-negligence-and-patient-safety-in-nigeria-what-the-law-says-in-2026, accessed February 15, 2026.

[6] C V Odoeme, D Ugwuja & C S Onah, 'Medical Error Litigation in Nigeria: A Proposal for Change' (2022) 42(3-4) JLM 111-121 https://doi.org/10.1080/01947648.2023.2238564

[7] M C Opara, 'Legal Framework for Proof of Medical Negligence in Nigeria' (2025) 19(3) Asian Journal of Advanced Research and Reports 21.

[8] K Adegboyega, 'Medical Negligence in Nigeria and the Obstacles to Litigation' (2023) 1 MIMJRI 183

[9] B N Okpalaobi & C N Nzewi, 'Medical Malpractice and Negligence in Nigeria: Human Rights Enforcement as a Remedy' (2021) 3(2) IJOCLLEP 194.

[10] Opara (n. 7)

[11] Adegboyega (n. 8) p. 190

[12] Sodunke (n. 5)

[13] E Collins, U C Emenike, C Adeke, M Natukunda & L Ronald, 'An Appraisal of Contemporary Issues in Proof of Medical Negligence in Nigeria' (2024) 6 KIU Law Journal 327.

[14] Hoag (n. 4)

[15] Collins *et al* (n. 13) p. 336-340

In *Ojo v Gharoro*,[16] the Supreme Court reaffirmed that the law does not demand the highest level of professional competence but requires that practitioners act in accordance with standards accepted by responsible members of the profession.[17] This approach draws from the classical English decision in *Bolam v Friern Hospital Management Committee*,[18] where the court held that a doctor is not negligent if acting in accordance with a practice endorsed by a responsible body of medical professionals.[19]

Therefore, medical malpractice is said to occur when a doctor, nurse, or hospital fails to exercise the standard of care that a reasonably competent health professional would have provided under similar circumstance. In legal terms, medical malpractice is established when four key elements are proven: duty of care, breach of that duty, causation, and damage.[20] In Nigeria, cases such as *Ojo v. Gharoro & Ors (supra)* and *Okonkwo v. Medical and Dental Practitioners Disciplinary Tribunal (2001)*[21] have reinforced the principle that healthcare professionals owe patients a duty to exercise reasonable skill and care in their professional conduct.

In practice, proving malpractice in Nigeria is heavily dependent on expert evidence, clinical documentation, and the ability of litigants to finance the technical costs associated with complex litigation. These financial demands directly influence access to justice and highlight the importance of examining how litigation is funded.

2.2. Litigation Financing

Litigation financing implies the mechanisms, whether formal or informal, through which parties secure the financial resources necessary to initiate and sustain legal action.[22] In medical malpractice suits, litigation financing typically covers court filing fees, legal representation, expert witness fees, medical reports, transportation, and related incidental expenses.[23] In some jurisdictions, financing models include contingency fee arrangements, third-party litigation funding, legal expense insurance, public legal aid, and institutional compensation schemes.[24] In Nigeria, these financing options exist in limited and often fragmented forms. The Legal Practitioners Act traditionally restricts contingency fees, though modern practice particularly in civil claims has increasingly accepted conditional fee arrangements.[25] Legal aid is statutorily available through the Legal Aid Act 2011, yet medical negligence claims rarely qualify due to statutory exclusions and funding limitations.[26] Where professional indemnity insurance exists, it primarily benefits practitioners rather than patients. Understanding financing is essential because the cost of litigation often determines whether a victim can even enter the justice system.

2.3. Access to Justice

Access to justice embodies the ability of citizens to seek and obtain effective remedies through formal or informal legal institutions.[27] It demands affordability, fairness, absence of discrimination, and reasonable expedition.[28] The Nigerian Constitution recognises access to justice as an essential element of fair hearing

[16] *Ojo v. Gharoro & Ors* (2006) 2 SCM 113
[17] A Werner, 'What Is Negligence? Understanding the Reasonable Person Test and Different Types of Negligence'(Werner, Hoffman, Greig & Garcia 3 August 2024) available at https://wernerhoffman.com/blog/what-is-negligence/ accessed November 15, 2025.
[18] Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.
[19] *Ojo v. Gharoro & Ors* (supra) n. 16.

[20] Collins, (n.15) p. 338
[21] *Okonkwo v Medical and Dental Practitioners Disciplinary Tribunal* (2001) 7 NWLR (Pt.711) 206

[22] Mintos, 'Understanding Litigation Funding: A Comprehensive Guide' (Smart Finance 17 July 2024) available at https://www.mintos.com/blog/litigation-funding/.html accessed 18 February 2026
[23] Burnett & William, 'Contingency Fees and Beyond: Understanding Attorney Payment in Malpractice Cases' available at https://burnettwilliams.com/medical-malpractice-attorneys-get-paid-guide/accessed 18 February 2026.
[24] W van Boom, 'Third-Party Litigation Funding in Europe' (2014) 3 Journal of European Tort Law 102.

[25] Legal Practitioners Act, Cap L11 LFN 2004.

[26] Legal Aid Act 2011, s. 8–10.

[27] A Gutterman, 'Older Persons' Access to Justice (Oakland CA: Older Persons' Rights Project, 2022), available at SSRN: https://ssrn.com/abstract=3889752 or http://dx.doi.org/10.2139/ssrn.3889752 021722 accessed 18 February 2026
[28] O Ayenakin, 'Access to Justice in Nigeria: The Challenges, Opportunities and The Future of Legal Practice' available at https://tau.edu.ng/assets/oer/conferences/74_access-to-justice-in-nigeria-the-challenges-opportunities-and-the-future-of-legal-practice_Conference_Presentation_File.pdf accessed 18 February 2026

under section 36.[29] In medical malpractice claims, access to justice is shaped not only by legal rules but also by financial realities. Previous studies such as that carried out by Odunsi, have shown that victims most of the times abandon claims due to the cost of expert reports, difficulty securing lawyers willing to accept complex malpractice briefs, and the perception that litigation is too expensive and prolonged.[30] These challenges highlight the need for an examination of how financing models either facilitate or inhibit access to justice.

2.4. Professional Indemnity Insurance

Professional indemnity insurance, often known as errors and omissions or professional liability insurance, protects businesses and professionals against legal liability and financial losses arising from alleged negligence, errors, or omissions in their services.[31] Professional Indemnity insurance is also called medical malpractice insurance. It serves as a critical risk management tool for healthcare practitioners. It covers legal defence costs and compensation claims from clients for financial loss or damage.[32] Professional indemnity insurance plays a central role in the management and financing of medical malpractice claims because it provides a financial cushion for healthcare practitioners when civil actions are instituted against them for alleged negligence.[33]

2.5 Legal Aid and State-Supported Financing

Legal aid is the provision of free or low-cost legal services to individuals who cannot afford legal representation. It ensures that such vulnerable group have access to the justice system and equality before the law.[34] It is typically funded by governments or charitable organizations and is a cornerstone of protecting human rights in both criminal and civil matters.[35] Legal aid is one of the significant state-supported financing mechanisms for ensuring access to justice for poor and vulnerable individuals in Nigeria. However, its usefulness in medical malpractice litigation is limited. Although the Legal Aid Act 2011 provides for civil representation, its coverage is narrow and restricted to matters involving fundamental rights under the Constitution.[36] In Nigeria, tort actions including medical negligence or malpractice claims fall outside the core mandate of the Legal Aid Council, leaving victims to shoulder the financial burden of pursuing complex and expensive litigation.[37]

2.6 Expert Evidence

An expert is someone qualified with special knowledge, skill, training, and experience. An expert can express an opinion based on information that they have personally observed, or information that was provided by others.[38] Expert evidence occupies a central place in medical malpractice litigation because courts must rely on individuals with specialised knowledge to determine whether a healthcare professional acted below the required standard.[39] In Nigeria, judges consistently emphasise that questions relating to diagnosis, treatment decisions, or medical protocols lie outside the realm of ordinary knowledge and therefore require expert explanation before liability can be established.[40]

2.7 Compensation Models

[29] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36.

[30] B Odunsi, 'Medical Negligence and Its Litigation in Nigeria' [2023] Beijing Law Review 1090

[31] IGI, 'Professional Indemnity, available at https://www.iginigeria.com/products/non-life-products/general-business/professional-indemnity/accessed 18 February 2026

[32] M C Mathur 'Professional Medical Indemnity Insurance - Protection For The Experts, By The Experts' (2020) 68(1) Indian J Ophthalmol 3

[33] ibid

[34] B C Malathesh, P L Nirisha, C N Kumar, R K Madegowda, B Vajawat, C Basavarajappa & S B Math, 'Free Legal Aid for Persons with Mental Illness and Other Marginalized Group of Population, (2021) 59 Asian Journal of Psychiatryavailable at https://www.sciencedirect.com/science/article/pii/S1876201821001106 accessed 18 February 2026.

[35] National Legal Service Authority 'Legal Aid' available at https://nalsa.gov.in/legal-aid/ accessed 18 February 2026

[36] Legal Aid Act 2011, s. 8–10.

[37] Legal Aid Council, Nigeria (LAC) 'Legal Aid Council Functions and Mandate' available at https://legalaidcouncil.gov.ng/function-and-mandate/#:~:text, accessed 18 February 2026.

[38] JES 'Expert Witnesses Basics' available at https://supremecourtbc.ca/civil-law/trial/expert-basics#: accessed 18 February 2026

[39] T Babafemi 'Access to Justice for Victims of Medical Negligence in Nigeria: An Evaluation of Legal and Institutional Barriers' (2022) 14(1) Journal of Contemporary Legal Issues in Nigeria 112, F Tafita, 'Accessing Justice for Medical Negligence Cases in Nigeria and the Requisite for No-Fault Compensation' (2017)10(2) Journal of Private and Comparative Law 77.

[40] *Ojo v Gharoro* (2006) 10 NWLR (Pt 987) 173.

In medical malpractice litigation, compensation model refers to the framework, formula, or system used to determine the financial amount awarded to patients or victims after proving that a healthcare provider's negligence caused them harm.[41] The goal is to make the patients whole again by compensating them for both tangible financial losses and intangible, non-financial suffering.[42] Compensation for medical injury may be delivered through two broad models: fault-based system**s** and no-fault or administrative schemes.[43] Each model reflects different philosophies of justice and carries distinct implications for how malpractice claims are financed and resolved.

3. Legal Framework for Financing Medical Malpractice Litigation in Nigeria.

The following legislative enactment are considered because they either help to establish malpractice or could provide some basis for funding through compensation or other means.

3.1The National Health Act (NHA) 2014

This Act recognises patient rights and establishes standards for healthcare delivery in Nigeria. Although the Act provides a foundation for accountability, it does not establish mechanisms for funding or facilitating litigation when those rights are breached. Notably, however, Section 20 mandates record-keeping and creates duties relevant to proving negligence or malpractice, but it offers no financial support for victims seeking legal redress. This absence of litigation-support measures in the NHA represents a significant gap for patients navigating costly malpractice claims.[44]

3.2 The Medical and Dental Practitioners Act (MDPA)

This Act regulates professional conduct and provides a disciplinary tribunal for medical misconduct. However, the Act is disciplinary rather than compensatory. Sanctions imposed by the Medical and Dental Council of Nigeria (MDCN) do not entitle victims to damages and do not reduce the cost of pursuing civil claims. As a result, the disciplinary framework offers limited support for victims, leaving them to finance litigation independently. Commendably, the MDCN provides disciplinary sanctions, but it does not provide for compensation. This institutional gap leaves victims without structured financial support and reinforces the burdens associated with civil litigation.

3.3 The Federal Competition and Consumer Protection Act (FCCPA) 2018

The FCCPA does not directly provide for the funding of medical malpractice claims. Its relevance here lies in the institutions created to enforce its provisions: the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal (CCPT). Some aspect of FCCPC's functions relates to consumer protection in the health sector and thus has some implications for medical malpractice litigation.[45]

The FCCPC's role is in a collaborative capacity with applicable professional bodies. It investigates and determines whether service providers adequately respect the rights of consumers and the appropriate standards of care in compliance with those rights and provide redress or remedies for injured consumers. The FCCPC's involvement and interest in medical malpractice is premised on the fact that patients are consumers of medical services and must be protected.[46]

The Patients' Bill of Rights is a major achievement of the FCCPC. However, there have been tension between the FCCPC and the MDCN. For instance, in June 2021, the Medical and Dental Practitioners' Council wrote to the FCCPC that its investigation of an alleged medical malpractice case amounted to an encroachment on its statutory mandate which is the regulation of the professions and practice of medicine and dentistry in Nigeria. It also complained that the proposed format of FCCPC's investigation would place registered medical practitioners in violation of the rights of a patient to confidentiality even after their demise, this being a very serious offence under the

[41] Finch Mccranie LLP 'How Compensation Works in a Medical Malpractice Case' available at https://www.finchmccranie.com/compensation-for-medical-malpractice.html, accessed 18 February 2026

[42] ibid

[43] A. Kachalia & M M Mello, 'New Directions in Medical Liability Reform' (2011) 364 New England Journal of Medicine 1564

[44] C Okeke & S Wodi, 'How to seek Justice for Medical Negligence in Nigeria Understanding Medical Negligence' available at https://oal.law/how-to-seek-justice-for-medical-negligence-in-nigeria/#:~:text, accessed 18 February 2026

[45] T O Adegbile, 'Examining the Role of Federal Competition and Consumer Protection Commission (FCCPC) in Regulating the Medical Profession in Nigeria' (2022) 2 RUNJJIL 209.

[46] ibid

Code of Medical Ethics in Nigeria.[47]

3.4 The Legal Aid Act 2011

The Act provides legal assistance to indigent persons, but its mandate excludes tort claims such as medical negligence and because medical malpractice cases often require expert testimony and specialised representation, victims rarely qualify for state-funded support.[48]

3.5 High Court Civil Procedure Rules

The High Court Rules across states in Nigeria allow judges to award costs at the conclusion of litigation, but these retrospective awards do little to assist claimants who cannot afford expert reports or retainers at the beginning of proceedings.[49] Since upfront financing is essential for medical negligence claims, the existing cost-recovery regime is inadequate for ensuring access to justice.

3.6 Nigerian Insurance Industry Reform Act (NIIRA) 2025

Professional indemnity insurance is designed to protect healthcare practitioners from personal financial exposure arising from negligence or malpractice claims.[50] For a long time in Nigeria, indemnity insurance was inconsistently adopted, largely unregulated and underutilised because the MDPA does not mandate compulsory insurance for practitioners.[51] However, the NIIRA 2025 hope to alter this position. It explicitly lists professional indemnity for healthcare providers as a compulsory class of insurance. Hopefully, there should be significant regulatory shift in 2026.[52]

This is a positive development because where a practitioner lacks indemnity coverage, successful claimants must enforce judgments against personal assets or institutions with limited financial capacity.[53] This frequently results in delayed compensation, partial enforcement of judgments or situations where victims receive nothing despite judicial success.[54] Thus, inadequate insurance coverage directly undermines compensation outcomes and discourages lawyers from accepting medical negligence cases on contingency arrangements.

4. Challenges to Access to Justice in Medical Malpractice Litigation in Nigeria

Victims of medical malpractice in Nigeria encounter a wide range of obstacles that significantly limit their ability to seek legal redress or secure fair compensation. Some of these challenges are discussed below.

4.1 Evidentiary Challenge

The burden of proof for medical malpractice is strict. The substantive and procedural requirements for establishing medical malpractice include medical negligence, duty of care, breach of an established duty of care, causation and damage. These create a complex evidential burden for claimants.[55]

Nigerian courts maintain a strict approach to the quality of pleadings and evidence that must be presented at the outset. In many cases, actions fail at the preliminary stages because particulars of negligence are considered insufficient or because no expert evidence accompanies the pleadings.[56] Proof gap is one of the most formidable impediments to successful medical malpractice litigation in Nigeria.[57] The doctrinal legacy of *Bolam v Friern Hospital* (supra), continues to influence Nigerian jurisprudence, with courts frequently deferring to medical professional opinion unless it is manifestly

[47] ibid
[48] ibid
[49] C B Okosa, 'Award of Costs in Judicial Proceedings: When A Legal Practitioner May Be Personally Liable for Payment of Cost' (2022) 3 IJOLACLE 75
[50] Mathur (n. 32)
[51] S U Jibril, I A Baba & A K Maude, 'Critical Analysis of Fundamental Principles of Insurance under the Nigerian Law' (2018)4(7) International Journal of Advanced Academic Research 28
[52] A Fatimah, 'The Law Industry Trends an Overview on Nigerian Medical Negligence: Liability News & Insights' (2022) available at <https://libralawoffice.com/wp-content/uploads/2022/11/An-Overview-of-Medical-Negligence-in-Nigeria-Liability.pdf> accessed 1 December 2025
[53] S Adesina 'Enforcement of Judgments in Medical Negligence Cases: Practical Difficulties and Reform Options' (2022) 6(1) University of Ilorin Journal of Private and Property Law 59.
[54] Fatimah (n. 52)
[55] *Abubakar & Another v Joseph & Another* [2008] NSC 5
[56] M C Opara 'Proof of Medical Negligence in Nigeria: Legal and Procedural Considerations' available at <https://journalajarr.com/index.php/AJARR/article/view/988> accessed 1 December 2025
[57] O A Adejumo & O A Adejumo 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35 Pan African Medical Journal 1

unreasonable.[58]

This doctrinal stance amplifies the cost of litigation, as claimants must hire experts capable of contradicting institutional medical testimony. Courts' treatment of medical evidence is heavily shaped by common law traditions, particularly the *Bolam* principle which emphasises adherence to practices accepted by a responsible body of medical opinion.[59]

Although some jurisdictions, following the refinement introduced in *Bolitho v City and Hackney HA*, now require that expert medical testimony be not only responsible but also logically defensible, Nigerian courts continue to apply the traditional *Bolam* approach with limited scrutiny of the reasoning behind expert opinions. As a result, courts may place heavy reliance on medical expert testimony without rigorously examining whether such opinions meet the threshold of logical justification envisaged in *Bolitho*. This can inadvertently reinforce professional solidarity and make it more difficult for plaintiffs to challenge medical malpractice.[60]

Obtaining expert evidence is one of the most challenging aspects of medical malpractice litigation. Specialist doctors, particularly those working in teaching hospitals, often charge substantial fees for medico-legal reports, making expert testimony prohibitively expensive for many claimants.[61] The problem is further compounded by the reluctance of medical practitioners to testify against colleagues, a dynamic that is sometimes described as professional solidarity.[62] As a result, victims frequently struggle to secure impartial experts willing to review hospital records or appear in court and many otherwise meritorious claims fail at an early stage simply because the evidentiary threshold cannot be met.

Furthermore, where expert testimony conflicts, courts tend to prefer the evidence of senior or institutional practitioners, placing an almost insurmountable burden on financially disadvantaged claimants. This contributes to unequal outcomes, as well-resourced defendants such as teaching hospitals can mobilise multiple experts, while victims can rarely afford more than one.[63]

4.2. High Cost of Malpractice Litigation

The financial demand of pursuing a medical malpractice claim is arguably, one of the most difficult hurdles for victims of negligent healthcare in Nigeria.[64] While the high cost of malpractice litigation is a recognised global problem, the impact is more severe in countries where institutional support is weak and individuals must personally finance most aspects of both healthcare and legal services.[65]

In Nigeria, a claimant is confronted with significant expenses even before a medical malpractice litigation begins. One of the earliest requirements is obtaining an independent medical expert report, an essential document because courts rely on such expert testimony when determining whether a healthcare provider breached the expected standard of care.[66] Although contingency fee arrangements could ease the burden for victims, they are not widely embraced in Nigeria. Many legal practitioners are cautious about them because the regulatory environment around them is still evolving.[67] So, victims face significant financial pressure due to cost of legal retainers, filing fees, expert reports, transport and administrative expenses and prolonged case durations.

As a result of the above, only financially stable individuals can realistically pursue claims.[68] This creates a filtering effect where economic status determines access to justice. Inadequate or lack of funding substantially reduces the number of genuine

[58] ibid
[59] ibid
[60] S Bamgboye, 'Judicial Deference in Nigerian Medical Litigation' (2021) 5(2) Journal of Medical Law and Ethics 93
[61] O A Odunsi 'Challenges of Medical Negligence Litigation in Nigeria' (2023) 9(2) Nigerian Journal of Health Law and Ethics 45.
[62] D S Im, C M Tamarelli & M R Shen, 'Experiences of Physicians Investigated for Professionalism Concerns: A Narrative Review' (2024) 39 Journal of general internal medicine 283 <https://pubmed.ncbi.nlm.nih.gov/38051480/>
[63] Bamgboye, (n. 60)
[64] Odunsi (n. 61)
[65] C Kasonde and J Eng (eds), Health Systems in Africa: Community Perceptions and Perspectives (WHO Regional Office for Africa 2020).
[66] Odunsi, (n. 64)
[67] O A Oyeyipo 'Contingency Fees and Legal Practice in Nigeria: Assessing Ethical and Regulatory Constraints' (2021) 5(3) Nigerian Law Review 78
[68] Rosewood Legal, 'The Cost of Litigation in Nigeria: Evaluating the Value of Time Spent in Court | Rosewood Legal' (*Rosewood Legal* December 2023) <https://rosewoodlegal.com/the-cost-of-litigation-in-nigeria-evaluating-the-value-of-time-spent-in-court/?utm_> accessed 1 December 2025

claims reaching trial.[69] Expert evidence is indispensable in malpractice cases, yet it remains one of the costliest elements of litigation. Experts often charge substantial fees for report preparation and court appearances, which are beyond the reach of many victims. This disparity grants defendants especially public hospitals and institutions with institutional support an overwhelming advantage.[70]

Furthermore, lengthy litigation significantly increases the financial weight on claimants. Between frequent adjournments, procedural challenges, and the difficulty of securing expert witnesses, medical negligence suits can remain in court for half a decade or even longer. As Adebayo noted, the cumulative costs of such prolonged litigation often push victims to abandon their claims, even when they possess credible evidence of negligence or malpractice.[71]

In addition to the above, victims of negligence often face additional opportunity costs such as time away from work, transportation expenses, the cost of obtaining medical records. Moreover, there is the emotional and psychological cost of litigation. Medical malpractice litigation can be emotionally draining. Victims often face repeated adjournments, hostile cross-examinations, and re-traumatisation as they recount painful experiences. These emotional burdens encourage premature settlements or abandonment of claims, even where strong evidence exists.[72] Many victims simply lack the psychological resilience or financial stability to sustain prolonged court battles. As a result, litigants withdraw from proceedings not because of lack of merit, but due to financial stress and competing survival priorities.

Unfortunately, state-sponsored financial mechanism like legal aid which would have come handy in situations like this does not because tort actions including medical negligence or malpractice claims fall outside the core mandate of the Legal Aid Council, leaving victims to shoulder the financial burden of pursuing complex and expensive litigation.[73] The absence of adequate coverage by legal aid compounds the emotional and financial strain experienced by patients and their families in cases of medical injury. So, Salmon et al and Iyioha argued that extending public funding to medical malpractice claims is essential for strengthening patient protection and promoting fairness within the healthcare sector.[74] Without such reforms, litigation will remain inaccessible to those who need it most. Adebayo and others have similarly observed that without state support, many victims lack the financial strength to challenge hospitals or powerful healthcare providers, resulting in a system where wrongs go unaddressed and accountability is weakened.[75]

4.3 Weak Institutional Redress and Limited Compensatory Mechanisms

Regulatory bodies such as the Medical and Dental Council of Nigeria (MDCN) provide avenues for disciplinary action, but these mechanisms focus primarily on professional accountability rather than compensation.[76] Even when disciplinary sanctions are imposed, victims must still pursue separate civil litigation to obtain damages a costly and time-consuming process.

Although the Medical and Dental Council of Nigeria encourages doctors to maintain indemnity cover, compliance is far from universal, particularly within private healthcare facilities. Where no insurance exists, victims who win their cases must enforce judgments directly against individual practitioners or poorly funded hospitals. Execution proceedings such as obtaining garnishee orders or attaching property carry their own expenses, which many victims struggle to bear.[77] This inconsistent use of professional indemnity insurance among medical practitioners is yet another factor that complicates financing in medical malpractice claims.

Nigeria relies on a fault-based model. This means that there is no statutory compensation fund or administrative injury scheme, cost or damages can only be awarded at the end of a successful malpractice

[69] A Adebayo 'The Cost of Civil Litigation and Its Implications for Victims of Medical Malpractice in Nigeria' (2020) 8(1) African Journal of Tort Law 33.
[70] ibid
[71] ibid
[72] R Madan, 'Consequences of Medical Negligence and Litigations on Health Care Providers a Narrative Review' (2024) 66 Indian Journal of Psychiatry/Indian journal of psychiatry 317
[73] A Adebayo & A Ugowe, 'Access to Justice through Legal Aid in Nigeria: An Exposition on Some Salient Features of the Legal Aid Act' (2019) 6 Brawijaya Law Journal 141
[74] J W Salmon & S L Thompson, 'Medical Malpractice Crisis: Oversight of the Practice of Medicine' 139; I Iyioha, 'Medical Negligence and the Nigerian National Health Insurance Scheme: Civil Liability, No-Fault or a Hybrid Model?' (2010) 18 African Journal of International and Comparative Law 46
[75] Adebayo & Ugowe (n. 73)
[76] Medical and Dental Practitioners Act 2004, s 15.
[77] S Adesina 'Enforcement of Judgments in Medical Negligence Cases: Practical Difficulties and Reform Options' (2022) 6(1) University of Ilorin Journal of Private and Property Law 59.

suit. [78] Thus, Nigeria lacks alternative compensation mechanisms such as patient compensation funds or no-fault schemes, which are utilised in several jurisdictions to streamline compensation without protracted litigation. The absence of such structures leaves civil litigation as the primary route for redress.[79] Unfortunately, when fewer claims are brought to court, jurisprudential development stalls and without clear precedents, judicial reasoning remains conservative, favouring medical defendants and perpetuating the cycle of low compensation.

Nigeria's current reliance on a fault-based model produces inequitable outcomes and perpetuates delays that weaken confidence in both the justice delivery system and the health sector.[80] These financial realities also discourage many lawyers from specialising in medical malpractice work and because defendants are not always insured and recovery of costs is uncertain, practitioners often regard these cases as financially risky. As a result, fewer lawyers are willing to take them on, further narrowing access to justice for victims.[81]

5. Comparative Insights

In other jurisdiction like the United Kingdom and South Africa, the approach to handling and financing medical malpractice claims is far more organised and patient-centred placing little burden on the litigants.[82] In jurisdictions with well-developed medical liability systems, such as the United Kingdom, indemnity schemes are not only compulsory but embedded within the broader health governance structure. For instance, the National Health Service operates a state-backed indemnity arrangement. This arrangement ensures that injured patients have a clear and predictable avenue for compensation while shielding practitioners from personal financial ruin.[83] The availability of indemnity coverage in the United Kingdom has helped to shape litigation pattern, encouraged early settlements and reduced the adversarial burden on individual clinicians.

In the United Kingdom, a key part of this system is NHS Resolution, the body that manages claims arising from treatment in the National Health Service. Rather than relying solely on adversarial court battles, NHS Resolution investigates complaints, negotiates settlements, and works with hospitals to address underlying problems. This structure helps to streamline compensation and reduces the hostility that often accompanies negligence disputes.[84]

The UK has also developed funding options that ease the financial strain on individuals seeking redress. One of the most notable is the conditional fee arrangement, widely known as the "no win, no fee" model.[85] Under this arrangement, a claimant is not required to pay legal fees upfront; payment only becomes due if the case is successful. This system opens the door for individuals who might otherwise lack the resources to challenge negligent medical care.

In addition, many people have access to legal expense insurance, usually as part of common home or motor insurance policies. This insurance can cover legal costs involved in pursuing a claim, giving claimants a further means of support where needed. Taken together, these mechanisms NHS Resolution, conditional fee arrangements, and legal expense insurance create a framework that reduces financial obstacles and gives patients a realistic opportunity to seek compensation. This blend of institutional support and flexible funding has made medical negligence claims more accessible across different income groups in the UK.[86]

If you compare the above to Nigeria, there is a stark contrast. Although professional indemnity insurance is

[78] Oluwakemi Mary Adekile, 'Compensating Victims of Personal Injuries in Tort: The Nigerian Experience in Fifty Years' (2013) SSRN Electronic Journal https://ssrn.com/abstract=3111539 or http://dx.doi.org/10.2139/ssrn.3111539.
[79] Ibid
[80] Kachalia A and Mello MM, 'New Directions in Medical Liability Reform' (2011) 364 New England Journal of Medicine 1564
[81] C E Aniekwe 'Why Lawyers Avoid Medical Negligence Litigation in Nigeria: An Economic and Professional Analysis' (2021) 4(2) Journal of Medical Law and Bioethics 102.
[82] J O Ezejiofor 'Barriers to Medical Negligence Litigation in Nigeria' (2022) 14 UNIZIK Law Review 88.
[83]NHS Resolution, 'Clinical Negligence Scheme for Trusts' available at https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-trusts/, accessed 18 February 2026
[84] NHS, 'About NHS Resolution' available at https://resolution.nhs.uk/about/, accessed 18 February 2026
[85] JFLAW, 'What Is A Conditional Fee Agreement?' available at https://www.jflaw.co.uk/legal-glossary/conditional-fee-agreement/, accessed 18 February 2026
[86] Blacks Solicitors, 'Covering the Cost of Legal Action' available at https://www.lawblacks.com/2010/05/20/here-to-help-covering-the-cost-of-your-legal-action/, accessed 18 February 2026

recognised within the health sector, it is not administered uniformly across all health institutions in the country. In practice, it is largely dependent on the institutional culture of individual facilities. Public hospitals have some form of government-supported coverage, but many private hospitals and clinics operate without any structured indemnity protection. Research into Nigerian medical practice consistently shows that most practitioners either do not carry indemnity insurance or possess policies with very low coverage limits, leaving significant gaps when large claims arise.[87]

One of the major challenges stems from the regulatory framework. Ayenakin and others have noted that regulation of medical malpractice in Nigeria has not kept pace with the financial realities of modern medical practice and the growing frequency of malpractice complaints.[88] Hopefully, the Nigerian Insurance Industry Reform Act (NIIRA) 2025 which has now made professional indemnity for healthcare providers compulsory should alter this position in the coming years. In this way, the situation in Nigeria can reflect what has since been the case in other jurisdictions as professional indemnity insurance has become widely recognised as an essential pillar in medical malpractice litigation in other jurisdictions.

On the other hand, the situation is different in South Africa. Unlike Nigeria and the United Kingdom, South Africa has in recent years grappled with a significant rise in medical malpractice claims, a trend that has placed considerable strain on both the public health sector and the country's litigation system.[89] The growing number and value of claims have been described by policymakers as a "medical malpractice crisis," prompting a range of reform efforts aimed at easing the pressure on courts and ensuring that injured patients receive fair and timely compensation.[90]

One of the major reforms has been the promotion of mediation as a first step in resolving disputes.[91] This shift encourages parties to engage in dialogue before resorting to full litigation, reducing both costs and delays for claimants and healthcare providers. In addition to this, the government has explored alternative compensation models, including structured settlements and administrative schemes designed to provide compensation without the need to prove negligence.[92]

Another important development is the move toward strengthening state-backed insurance arrangements to help public hospitals manage the financial impact of malpractice claims.[93] These reforms are part of a broader effort to stabilise the system, protect healthcare budgets, and ensure that patient safety and accountability remain central within South Africa's evolving medico-legal landscape.

Nigeria can borrow a lead from these jurisdictions by initiating legal and policy reforms like those indicated below to address funding, insurance, and evidential challenges that constitute barriers to access to justice for medically injured patients.

6. Recommendation and Conclusion

6.1. Recommendations

The first proposal for reform is the amendment of the Legal Practitioners Act to allow for contingency fees and third-party funding. The long-standing prohibition on champerty and maintenance has restricted innovation in litigation funding. Amending the Act to permit regulated "no win, no fee" arrangements to attract third-party funding would significantly reduce

[87] Ezejiofor (n. 82)
[88] Ayenakin (n. 20)
Parliamentary Monitoring Group (PMG), 'Status of the medico-legal claims and service delivery implications (with Minister & Deputy Minister)' available in https://pmg.org.za/committee-meeting/39467/#:~:text=The%20AGSA%20indicated%20that%20the%20National%20Development%20Plan%20(NDP)%20intervention,paid%20were%20still%20high%20%E2%80%93%20R1, accessed 18 February 2026[89]
[90] ibid
[91] Mediation Academy, 'Summary of the October 2025 Updates to the Mandatory Mediation Directive' available athttps://www.mediationacademy.co.za/single-post/summary-of-the-october-2025-updates-to-the-mandatory-mediation-directive, accessed 18 February 2026
[92] Global Law Experts, 'Revolutionizing Justice: The Rise of Mandatory Mediation in South Africa' available at https://globallawexperts.com/revolutionizing-justice-the-rise-of-mandatory-mediation-in-south-africa/, accessed 18 February 2026.
[93] In a judgment delivered recently in February 11, 2026, the Supreme Court of Appeal has set aside an order of the Eastern Cape High Court which purported to abolish the common law once-and-for-all rule in a medical negligence claim involving a child who sustained spastic quadriplegic cerebral palsy as a result of negligent management of labour and delivery in a provincial hospital. In a unanimous decision, the Court held that the High Court's development of the common law was inappropriate because such structural reform of the law of damages should be undertaken by the legislature. See *T N Obo B N v Member of the Executive Council for Health of the Eastern Cape Government and Others* (Case No: 383/23) [2026] ZASCA 14 (11 February 2026).

upfront costs for victims. The Recent developments especially the President's transmission of a new Legal Practitioners Bill to the National Assembly signal an emerging recognition of these challenges. The Bill seeks to modernise the profession by reviewing advertising restrictions, reconsidering the prohibition on contingency fees, and opening the door for third-party funding. These initiatives, when properly implemented, could significantly reduce the financial barriers documented in this study. The proposed Legal Practitioners Bill already signals a move in this direction, and its passage should include clear rules on ethics, disclosure and fee regulation.

The second is the introduction of compulsory malpractice insurance for all health workers and facilities. Professional indemnity insurance should be made a mandatory requirement for both the licensing of health practitioners and the registration of healthcare facilities. This would ensure that hospitals and medical professionals have the financial capacity to satisfy judgments, settlements, or compensatory awards arising from medical negligence claims, thereby protecting patients and maintaining public trust in the health system. Efforts should be made to implement the recent Nigerian Insurance Industry Reform Act (NIIRA) 2025 which has now made professional indemnity for healthcare providers compulsory. Non-compliance should result in suspension of licenses, fines, or other administrative sanctions. To ensure affordability and sustainability, the government could explore pooled insurance schemes for smaller facilities and individual practitioners or provide regulatory incentives for insurance companies to offer standardised malpractice policies. Additionally, the system should include periodic audits to verify coverage and ensure claims are honoured promptly.

A third proposal for reform is the expansion of legal aid to cover medical negligence claims. The Legal Aid Act should be amended to explicitly include tort claims arising from medical injury. Alternatively, a specialised health-law legal aid unit could be established within the Legal Aid Council to provide dedicated support for victims of medical negligence. The mechanism for achieving this could involve earmarked government funding or a levy on healthcare institutions to finance the unit, ensuring sustainability. In practice, the legal aid provision would operate side by side with medical malpractice insurance. While insurance covers the potential financial liability of hospitals or practitioners, legal aid would provide victims with access to legal representation to pursue claims, negotiate settlements, or enforce judgments. This dual system balances the playing field, allowing victims to assert their rights without being deterred by the high cost of litigation, while insurance ensures that defendants can meet their financial obligations.

A fourth proposal is the institutionalization of court-accredited expert panels. Nigerian courts should have access to accredited panels of independent medical experts. These experts can be appointed by judges to reduce disputes between partisan experts, lower costs for litigants, and enhance the accuracy of medical assessments.

One mechanism to achieve this is the creation of a registry of court-accredited medical professionals, vetted by a regulatory body such as the Medical and Dental Council of Nigeria, from which judges can appoint experts as needed. Additionally, adopting the 'Single Joint Expert' (SJE) model, where one expert provides a single report jointly instructed by both parties, can streamline proceedings, reduce conflicting testimony, and ensure that the court receives an impartial, authoritative assessment.

A fifth proposal is the creation of a Medical Ombudsman and Mandatory Pre-Action Protocols. A medical ombudsman system would provide early intervention, resolve complaints, and reduce unnecessary litigation. Mandatory pre-action protocols, similar to those in the UK, would facilitate early disclosure of records, encourage settlements, and streamline the litigation process. In the UK, the protocol typically follows these steps: the claimant must send a letter of claim to the defendant outlining the nature of the complaint and supporting evidence; the defendant is then required to respond within a specified timeframe, providing relevant medical records and a summary of their position; both parties may engage in alternative dispute resolution such as negotiation or mediation; finally, if settlement is not reached, the claimant may commence formal court proceedings. Implementing such structured steps in Nigeria could promote transparency, reduce delays, and ensure that disputes are resolved efficiently before escalating to litigation.

In addition to the above, there is need to strengthen the enforcement of judgments. Procedural reforms should include simplified garnishee processes, stricter compliance obligations for hospitals, and the creation of enforcement monitoring units. For example, garnishee orders could allow direct deduction of awarded sums from hospital accounts or insurance providers, while enforcement monitoring units within the judiciary or regulatory bodies could track compliance, issue reminders, and report non-compliance to appropriate authorities. By establishing

these mechanisms, the effective execution of court judgments can be ensured, making litigation a meaningful remedy rather than a hollow formality.

6.2 Conclusion

Financing of medical malpractice litigation is one of the weakest aspects of Nigeria's justice and healthcare systems. While the substantive principles governing medical negligence are relatively clear, the practical environment for enforcing those rights is riddled with obstacles. For many victims, the cost of litigation alone is a barrier they cannot surmount. Where claims are initiated, they are often prolonged by procedural delays, evidentiary challenges and the absence of affordable expert testimony.

The inadequacy of litigation financing mechanisms whether through legal aid, contingency fees, third-party funding or statutory compensation schemes means that justice is more accessible to the affluent than to the average Nigerian patient. Even successful litigants may struggle to enforce monetary judgments, especially where healthcare providers lack indemnity insurance or operate with limited assets.
Unless Nigeria adopts a more modern, equitable and patient-centred framework for funding malpractice claims, medical negligence litigation will remain inaccessible to most victims. Emerging reform efforts, such as the proposed review of the Legal Practitioners Act and the recommendation for compulsory malpractice insurance, indicate a potential policy shift that aligns with some of the core findings of this study. However, meaningful change will require comprehensive reforms across legal, institutional and health-sector domains.

The proposed reforms in this paper with consistent with the conceptual foundations and challenges discussed. First, the emphasis on expanding access to legal representation through regulated contingency fee arrangements, legal aid inclusion, and third-party funding reflects the need to address identified barriers to access to justice. Similarly, the recommendation for compulsory professional indemnity insurance and the establishment of structured compensation mechanisms are designed to redistribute risk away from victims and toward institutional actors better positioned to bear it, thereby promoting fairness and equity. In the same vein, the conceptual analysis of compensation systems and litigation financing demonstrated that jurisdictions with diversified funding models experience greater access to justice and improved deterrence.

The need to address challenges to access to justice for victims of medical malpractice cannot be over emphasised. When the legal system is inaccessible to ordinary citizens, trust in healthcare institutions erodes, professional accountability weakens and the deterrent function of the law is lost.

References

Books

Allan S. Gutterman, *Older Persons' Access to Justice* (Oakland CA 2022) http://dx.doi.org/10.2139/ssrn.3889752 021722

Journal Article

Adesina S 'Enforcement of Judgments in Medical Negligence Cases: Practical Difficulties and Reform Options' (2022) 6(1) *University of Ilorin Journal of Private and Property Law* 59-77.

Allen Kachalia and Michelle M Mello MM, 'New Directions in Medical Liability Reform' (2011) 364(16) *New England Journal of Medicine* 1564-1572 https://doi:10.1056/NEJMhpr1012821.

Barikar C. Malathesh, P. Lakshmi Nirisha, C. Naveen Kumar, Rajendra Kiragasur Madegowda, Bhavika Vajawat, Chethan Basavarajappa and Suresh Bada Math, 'Free legal aid for persons with mental illness and other marginalized group of population' (2021) 59 *Asian Journal of Psychiatry,* https://doi.org/10.1016/j.ajp.2021.102654.

Beatrice Nkechi Okpalaobi and Chino Nnenne Nzewi, 'Medical Malpractice and Negligence in Nigeria: Human Rights Enforcement as a Remedy' (2021) 3(2) *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP)194 -202.

Babafemi Odunsi, 'Medical Negligence and Its Litigation in Nigeria' (2023) 14 (2) BeijingLawReview1090-1122https//doi: 10.4236/blr.2023.142058.

Burnett & William, 'Contingency Fees and Beyond: Understanding Attorney Payment in Malpractice Cases' available at https://burnettwilliams.com/medical-malpractice-attorneys-get-paid-guide/accessed 18 February 2026

Chike B. Okosa, 'Award of Costs in Judicial Proceedings: When A Legal Practitioner May Be Personally Liable for Payment of Cost' (2022) 3 *International Journal of Law and Clinical Legal Education (IJOLACLE)*75-82.

Collins Okeke and Stephanie Wodi, 'How to seek

Justice for Medical Negligence in Nigeria Understanding Medical Negligence' available at https://oal.law/how-to-seek-justice-for-medical-negligence-in-nigeria/, accessed 18 February 2026

Ekpenisi Collins, Uchegbulem Chinyere Emenike, Caroline Adeke, Mastulah Natukunda and Lukoma Ronald, 'An Appraisal of Contemporary Issues in Proof of Medical Negligence in Nigeria' (2024) 6 *KIU Law Journal* 327-348 https://doi.org/10.59568/KIULJ-2024-6-1-15 1.

Finch Mccranie LLP 'How Compensation Works in a Medical Malpractice Case' available at https://www.finchmccranie.com/compensation-for-medical-malpractice.html, accessed 18 February 2026

Folake Tafita, 'Accessing Justice for Medical Negligence Cases in Nigeria and the Requisite for No-Fault Compensation' (2017)10(2) *Journal of Private and Comparative Law* 77–91.

Gregory J. Hoag, 'Understanding Your Rights: A Patient's Guide to Justice in Medical Malpractice Cases' available at https://gregoryjhoag.com/understanding-your-rights-a-patients-guide-to-justice-in-medicalmalpracticecases/ accessed February 15, 2026.

JES 'Expert Witnesses Basics' available at https://supremecourtbc.ca/civil-law/trial/expert-basics#: accessed 18 February 2026

Kamorudeen Adegboyega, 'Medical Negligence in Nigeria and the Obstacles to Litigation' (2023) 1 MAAUN I*nternational Multidisciplinary Journal of Research and Innovations (MIMJRI)* 183-196.

Legal Aid Council, Nigeria (LAC) 'Legal Aid Council Functions and Mandate' available at https://legalaidcouncil.gov.ng/function-and-mandate/#:~:text, accessed 18 February 2026.

Manoj Chandra Mathur, 'Professional Medical Indemnity Insurance - Protection for the Experts, by the Experts' (2020) 68(1) Indian J Ophthalmol 3-5 https://doi: 10.4103/ijo.IJO_2279_19.

Maxwell Chibuike Opara, 'Legal Framework for Proof of Medical Negligence in Nigeria' (2025) 19(3) *Asian Journal of Advanced Research and Reports* 20–32 https://doi.org/10.9734/ajarr/2025/v19i3918.

Mintos, 'Understanding Litigation Funding: A Comprehensive Guide' (Smart Finance 17 July 2024) available at https://www.mintos.com/blog/litigation-funding/.html accessed 18 February 2026.

National Legal Service Authority 'Legal Aid' available at https://nalsa.gov.in/legal-aid/ accessed 18 February 2026.

Oliver Cojo Manuel, Oliver, 'Third-Party Litigation Funding: Current State of Affairs and Prospects for its Further Development in Spain' (2014) https://ssrn.com/abstract=2521347.

Oludamilola Adebola Adejumo and Oluseyi Ademola Adejumo 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35 *Pan African Medical Journal* 1-9 https://doi: 10.11604/pamj.2020.35.44.16651

Oluwakemi Mary Adekile, 'Compensating Victims of Personal Injuries in Tort: The Nigerian Experience in Fifty Years' (2013) http://dx.doi.org/10.2139/ssrn.3111539.

Samuel Sodunke, 'Medical Negligence And Patient Safety In Nigeria: What The Law Says In 2026' (Mondaq, 20 January 2026) available at https://www.mondaq.com/nigeria/healthcare/1733324/medical-negligence-and-patient-safety-in-nigeria-what-the-law-says-in-2026, accessed February 15, 2026

Shamsi Ubale Jibril, Ishaq Abubakar Baba and Abdulkarim Kabiru Maude, 'Critical Analysis of Fundamental Principles of Insurance under the Nigerian Law' (2018)4(7) *International Journal of Advanced Academic Research* 28-40.

Titilola O. Adegbile, 'Examining the Role of Federal Competition and Consumer Protection Commission (FCCPC) in Regulating the Medical Profession in Nigeria' (2022) 2 Redeemer's University Nigeria, *Journal of Jurisprudence & International Law* (RUNJJIL) 209-221.

Werner A, 'What Is Negligence? Understanding the Reasonable Person Test and Different Types of Negligence' (Werner, Hoffman, Greig & Garcia 3 August 2024) available at https://wernerhoffman.com/blog/what-is-negligence/ accessed November 15, 2025.

World Health Organization, 'Patient Safety' (World Health Organization 1 December 2023), available on <https://www.who.int/news-room/fact-sheets/detail/patient-safety, accessed February 15, 2026.

World Health Organization, 'Human Rights' (World Health Organization 1 December 2023), available at <https://www.who.int/news-

room/fact-sheets/detail/human-rights-and-health> Accessed November 30, 2025

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An Assessment of the Implementation of Socioeconomic Rights in Nigeria

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Abstract. The socio-economic landscape of Nigeria is characterized by sharp contradictions, abundant natural resources, widespread poverty, and insufficient access to basic services. Despite constitutional guarantees, the country is struggling to ensure basic rights to education, healthcare, and a satisfactory environment. This study examines the implementation of socio-economic rights in Nigeria, highlighting the challenges that hinder their effective realization, and assessing the progress made to date. Key issues are critically assessed, including ineffective policy implementation, limited institutional capacity, and environmental degradation. In addition, the analysis examines the legal frameworks, political initiatives, and institutional mechanisms established to promote socio-economic rights. The research shows that, although some progress has been made, particularly in legislation and international cooperation, there are still significant gaps in translating policy into tangible results. This assessment highlights the need for a multifaceted approach to addressing the socio-economic issues facing Nigeria. Recommendations include strengthening the institutional framework, enhancing accountability, and supporting inclusive participation in policy development processes. Ultimately, this research aims to contribute to the ongoing discourse on promoting socio-economic justice and human dignity in Nigeria, highlighting the need for coordinated efforts among the government, civil society, and international partners.

Keywords: Socioeconomic Rights, Nigeria, Policy Implementation, Human Development, Sustainable Governance

1. Introduction

Despite being Africa's biggest economy, Nigeria continues to grapple with poverty, many unemployed youths, many out of school children and poor infrastructural development in general. Nigeria is signatory to several international conventions aimed at safeguarding the human rights of its citizens. The 1999 Constitution also makes provisions for the promotion and protection of these rights but inspite of this, there remain a gap in the implementation of the socioeconomic rights in Nigeria. This gap raises serious concerns about the government's willingness and ability to uphold these fundamental rights. Against this backdrop, this study assesses the implementation of socioeconomic rights in Nigeria, looking at the legislative frameworks, policy initiatives, and institutional mechanisms in place. This study aims to contribute to the discourse about encouraging socioeconomic justice and human dignity in Nigeria by looking at the difficulties, progress, and future potential for advancement.

1.1 The Nature and Scope of Socioeconomic Rights in Nigeria

Socioeconomic rights In Nigeria had its origin in the United Nation's International Covenant on Economic, Social and Political Rights [ICESCR] 1966 ratified by Nigeria in 1993. These rights are enshrined in the constitution under chapter two of the constitution which is titled 'Fundamental Objectives and Directive Principles of State Policy'. The fundamental objectives are regarded as ideals towards which the nation is expected to strive whilst the Directive Principles lay down the policies which are expected to

be pursued in the efforts of the nation to realize the national ideals[1].

The Constitution Drafting Committee [CDC] posited as the philosophical basis for the inclusion of the objectives and directives in the constitution the fact that governments in developing countries have tended to be preoccupied with power and its material prerequisites with scant regard for political ideas as to how society can be organized and ruled to the best advantage of all.[2]

As touching the ICESCR, as a prelude to the rights under the Covenant, the preamble to the Covenant provides a definite alienation and affirmation to the principles proclaimed in the Charter of the United Nations and Universal Declaration of Human Rights in words of the Covenant:
The states parties to the Covenant, considering that, in accordance with the principles proclaimed in the Charter of the United Nations, Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Recognizing that, in accordance with the universal declaration of human rights, the ideal of free human beings enjoying freedom from dear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights. Considering the obligation of states under the Charter of the United Nations to promote universal respect for and observance of human rights and freedom. Realizing that the individual, having duties to other individuals and to the community which he belongs is under a responsibility to strive for the promotion and observance of the rights recognized in the present covenant.

In Nigeria, all authorities – legislative, executive and judicial powers are under the duty and responsibility to conform to, observe, and apply the fundamental objectives and directive principles of state policy. [3] However, the court lacks the jurisdiction to entertain matters pertaining to chapter two of the constitution by virtue of section 6 [6] [c] which provides that:

The judicial powers vested in accordance with the provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter two of this Constitution.

Following English tradition which assumes that socioeconomic rights by their nature do not lend themselves in judicial enforcement, the English lawyer considers socioeconomic rights as mere manifestoes, which are out of place in a constitution[4]. Nigeria inherited this English tradition. Hence, In the case of Archbishop Olubunmi Okogie [Trustees of Roman Catholic Schools] and Ors v Attorney-General of Lagos State[5] the court held that:

No court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting, in conformity with the fundamental objectives and directive principles.

Interestingly, this tortuous position was not shared by two members of the Constitutional Drafting Committee who objected to the majority report in these terms:

The CDC draft has correspondingly robbed the masses of Nigerians of one major instrument for monitoring and controlling the conduct of those making public decisions on their behalf. We cannot grasp the value of a 'fundamental objectives and directive principle of state policy' which cannot be enforced in law even when it is clear to all and sundry that state policy decision-makers are constantly and consistently violating these objectives and principles[6].

As if to pre-empt objections regarding the interface between socioeconomic rights and Chapter II, the Committee observed that socioeconomic rights are: rights which can only come into existence after the government has provided facilities for them. Thus, if there are facilities for education or medical services one can speak of the 'right' to such facilities. On the other hand, it will be ludicrous to refer to the 'right' to education or health where no facilities exist.[7]The 1979 Constitution was remarkable for being the first in the

[1] See Report of Constitution Drafting Committee, Vol.1 1976.
[2] Ibid.
[3] Section 13 of the Constitution of the Federal Republic of Nigeria 1999
[4] De Smith: *The New Commonwealth and its Constitutions* [London: Stephens & Sons Ltd, 1964] p. 166

[5](1981) 1 N.C.L.R 218
[6]Osoba and Yusuf, *Minority Report and Draft Constitution for the Federal Republic of Nigeria*, 2019, p.15

[7](FGN, 1976, p. XV).

country to entrench provisions known as "Fundamental Objectives and Directives Principles of State Policy", Incorporated in Chapter II of the 1979 Constitution, the provisions are repeated in the current one, the Constitution of 1999, enumerating the classic socioeconomic rights such as right to work (section 17(3) (a),(b), right to health care (section 17(3)(d)), right to social security (section 17(3)(g), right to education (section 18), and right to environment, (section 20) and so on. However, these category of human rights were not properly designated as fundamental human rights but rather are considered as guidelines to shape state policies. They are dubbed 'Directive Principles' and deemed non-justiciable.[8] Section 17 of the constitution provides for the social objectives of the state, viz:

In promoting the social objectives of the nation, the State shall ensure promote equality of rights, obligations and opportunities before the law, the sanctity of the human person, governmental actions shall be humane, exploitation of human and natural resources shall be preserved while the independence, impartiality and integrity of the judiciary shall be secured and maintained. Accordingly, the State shall direct its policy towards ensuring that all citizens have opportunities to secure adequate means of livelihood and suitable employment, conditions of work are just and humane, health, safety and welfare of persons in employment are safeguarded, there are adequate medical and health facilities for all persons, equal pay for equal work and that children, young persons and the aged are protected while there shall be public assistance in deserving cases.

This means that social rights which are not justiciable may be enforced under chapter 4 of the Constitution. Furthermore, the National Assembly has enacted a number of laws to advance the social rights of the Nigerian people. They include the Labour Act, National Minimum Wage Act, Pension Reforms Act, Employees Compensation Act, National Health Insurance Act, National Health Act, Peoples Bank Act, National HIV/AIDS Agency Act and so on[9]. Apart from promoting science and technology Government is obligated to eradicate illiteracy; and to this end, the Government shall as and when practicable provide(a) free, compulsory and universal primary education; (b) free secondary education; (c) free university education; and (d) free adult literacy programme[10]. The Child's Rights Act and the Compulsory, Free Basic Education Act have imposed a duty on the Government to provide free and compulsory education for every child in the country. Section 20 of the constitution is to the effect that "the state shall protect and improve the environment, and safeguard the water, air and land, forest and wildlife of Nigeria. While Section 13 of the Constitution makes it a duty and responsibility of the judiciary, among other organs of government, to conform to and apply the provisions of Chapter II, Section 6(6)(c) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy.

There are several exceptions to the non-justiciability of socioeconomic rights in Nigeria. One of such exceptions is as stated in the case of Olafisoye v. Federal Republic of Nigeria,[11]Niki Tobi [of blessed memory], said:

...the non-justiciability of section 6[6][c] of the constitution neither total nor sacrosanct as the subsection provides a leeway by the use of the words 'except as otherwise provided by this constitution'. This means that if the court otherwise provides in another section which makes a section of Chapter justiciable, it will be so interpreted by the section, which make a section or sections of chapter two justiciable, it will be so interpreted by the court.

Again, an individual seeking to enforce his or her socioeconomic rights may also do so by relying on the provisions of the African charter[12] in the court of law. This position has been given judicial affirmation in the case of Alhaji Sani Dododo v. Economic and Financial

[8]Obiajulu Nnamuchi, Joy Ezeilo, Miriam Anozie, Nicholas Agbo and Maria Ilodigwe, 'Justiciability of Socioeconomic Rights in Nigeria and Its Critics: Does International Law Provide Any Guidance?' (2022) 19 The Age of Human Rights Journal ,<https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/7561/7335> accessed April 29 2025

[9]Ibe Stanley, 'Beyond Justiciability: Realising the Promise of Socio-Economic Rights in Nigeria' (2010) 10 African Human Rights Law Journal 31, https://www.ahrlj.up.ac.za/images/ahrlj/2007/ahrlj_vol7_no1_2007_stanley_ibe.pdf, accessed April 29 2024

[10] Section 18 1999 Constitution of the Federal Republic of Nigeria (as amended)

[11] [2005] 51 W.R.N 52

[12] **Article 15- right to work, Article 16- right to health, Article 17- right to education, Article 18- right to protection from discrimination, particularly,** Article 22 provides that "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Crimes commission and Ors,[13] the court of appeal stated that:

The African charter is now part of the laws of this country protecting the social economic rights of citizens. The African charter is preserved by the 1999 Constitution and must be always relied on to recognize political and socioeconomic rights.

In the case of General Sanni Abacha v. Chief Gani Fawehimi,[14] it was held that:

The African Charter on Human and People's Rights, having been passed into our municipal law, our domestic courts certainly have the jurisdiction to construe and apply the treaty. It follows then that anyone who felt that his rights as guaranteed or protected by the charter have been violated could well resort to its provisions in our domestic courts.

Lastly, in the Economic Community of West African States [ECOWAS] case of Socio-Economic Rights and Accountability Project v. Federal Republic[15] of Nigeria, the court held that:

It is trite law that this court is empowered to apply the provisions of the African Charter on Human and People's Rights and article 17 thereof guarantees the right to education. It is well established that the rights guaranteed by the African Charter on Human and People's Rights are justiciable before this court. Therefore, since the plaintiff's application was in pursuance of a right, guaranteed by the provisions of the African Charter, the contention of second defendant that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold.

The African Charter having been ratified and domesticated by the National Assembly pursuant to the provisions of section 12[1] of the 1999 Constitution [as amended], it becomes law in Nigeria and must be enforced by our courts as such. Despite the fact that the Nigerian constitution considers that social and economic rights as non-justiciable, the African charter regards such rights as being justiciable.[16]

The courts are also not precluded from exercising jurisdiction with respect to certain provisions of chapter II of the constitution which have been enacted into law by the National Assembly. Item 60 (a) of the Second Schedule to the Constitution is another exception to the non-justiciability rule of Socio-economic rights in Nigeria. It provides that
the National Assembly may make laws to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.

Laws which the legislature has made following these provisions include, but not limited to; the Price Control Act,[17] the People's Bank Act,[18] the Nigerian Education Bank Act[19] just to name a few. The major problem of socioeconomic right in Nigeria however is the lack of political will of leaders of the country to enforce socioeconomic rights of the people, largely due to greed and mismanagement of the resources of the nation. Only if the Nigerian Government will properly and adequately manage the resources of the country, there would be sufficient resources available to carry out the due enforcement and implementation of socioeconomic rights of all Nigerians.

1.2 Socioeconomic Rights and Development in Nigeria

The respect for Socio-economic rights in a nation such as Nigeria is an effective recipe for development. There can be no true development in a nation without the actual promotion and protection of human rights, particularly the Socio-Economic Rights of the people. Every nation must endeavor to carry out practical implementation of socio-economic rights in their respective jurisdictions. Particularly, the developmental goals of the government of Nigeria cannot be fully realized without the guaranteed enforcement of the socioeconomic rights of citizens. Ever since Nigeria attained independence in 1960, it has been challenged with so many irregularities and anomalies, and even to date she remains a third-world country, yet it is largely believed and posited that Nigeria is very much endowed with natural resources. There are only a few good roads, no stable or regular power supply, no adequate or quality health, and no social security and housing facilities. Nigeria has much poverty despite its abundant resources and being rated the sixth largest crude oil

[13][2013] 1 NWLR [Pt. 1336] 468
[14] [2000] 6 NWLR [Pt. 66o] 228
[15] [Unreported] Suit No. ECW/CCJ/APP/08/08
[16] Yinka Olomojobi, 'Human Rights and Civil Liberties in Nigeria: Discussions, Analyses and Explanation' (2016), Lagos : Princeton & Associates Publishing Co. Ltd., 2016. p.1

[17]Cap P28, Laws of the Federation of Nigeria, 2004
[18] Cap P.7 Laws of the Federation of Nigeria, 2004
[19] Cap N104 Laws of the Federation of Nigeria, 2004

exporter.[20] Though the Nigerian constitution states that the Government's foremost objective should be Nigerians' security and well-being and to ensure an adequate and dignified quality of life[21], the Nigerian Government has failed in its constitutional responsibility to provide security, safeguard lives, provide an adequate standard of living, and enable an environment for business and economic activity to strive.[22]The level of a state's development can be determined by the extent to which its citizens enjoy human rights in all their ramifications. Peace, progress and stability are predicated at both national and international levels with respect to human rights.[23]
It has long been understood that 'most development objectives generally overlap with economic, social, and cultural [ESC] rights'.[24]

Article 2(1) of the UN's International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes a standard of gradual achievement (that is, 'progressive realization') of its enumerated rights, which will obviously track development. The greatest beneficiaries of both development and human rights activities flowing from the Covenant are in the same target groups (the poor, the socially-excluded, the vulnerable) and in the same subject areas (education, housing, food, water).[25] Furthermore, the Covenant can be understood as a framework intended to mandate that certain outcomes of economic processes (like development) should be realized in conformity with non-derogable standards of humanity.[26]

We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed.[27]

Human rights add value to the agenda for development by drawing attention to the accountability to respect, protect, promote and fulfill all human rights of all people. It, in turn, contributes to the human rights-based approach to development. A human rights-based approach will further generally lead to better analyzed and more focused strategic interventions by providing the normative foundation for tackling fundamental development issues.[28] Human rights are considered an instrument for the advancement of socioeconomic goals and therefore of human Development. According to Umozurike, there is hardly any government today that does not, at least, profess human rights. The acid test of good government is the level of response to the human rights requirements of the citizens. The protection and promotion of human rights have become the fundamental purpose of government. The level of a state's development can be determined by the extent to which its citizens enjoy human rights in all their ramifications. Peace, progress and stability are predicated at both national and international levels with respect to human rights[29] The actual measure of sustainable development is the well-being of the individual. The right to life includes the right to live with human dignity and all that goes along with it, namely; the bare necessities of life, such as adequate nutrition, clothing and shelter over the head and facilities for reading, freely moving about, and mixing with fellow human beings.[30]In Nigeria, there exist little or no respect for the protection and promotion of socioeconomic rights. The general result of this state of affairs is that there is little or no national development, and boundless feelings of insecurity, inflation, crises, and insurgency in Nigeria. Over the years, successive democratic governments in Nigeria have continued to include in their political manifestoes the burning issues of respect for human rights and improve standard of living among Nigerians. Despite

[20] R. S. Dauda, *Poverty and economic growth in Nigeria: Issues and policies. Journal of Poverty*, (2017); Taylor & Francis, ISSN 1087-5549, ZDB-ID 1357832-7. - Vol. 21.2017, 1/3, p. 69
[21]Woleola J. Ekundayo, 'Good governance theory and the quest for good governance in Nigeria', *International Journal of Humanities and Social Science*, (2017) 7(5), 154–161.

[22]Adebayo, P., &Adepoju, A. Insecurity problems and socio-economic development in Nigeria: An historical reassessment, 1999-2017 Studies, (2018) 2(2), 80–89.
[23]U.O. Umozurike, The African Charter on Human and People's Right, (Kluwer Law International, The Netherlands, 1997) p. 7.
[24]Bantekas and L Oette, International Human Rights Law and Practice (Cambridge University Press 2013) 367.

[25] A Marx et al, 'Human Rights and Service Delivery: Review of Current Policies, Practices, and Challenges', *World Bank Legal Review* (2015) 6 39, 40.
[26] M Dowell-Jones, Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit, (Brill 2004) 2.
[27] Report of the UN Secretary-General, 'In larger Freedom: towards development, security and human rights for all', 2005, https://digitallibrary.un.org/record/543857?v=pdf, accessed April 5, 2026.
[28]UNDP, A Human Rights-based Approach to Development Programming in UNDP – Adding the Missing Link, https://www.undp.org/sites/g/files/zskgke326/files/publications/HR_Pub_Missinglink.pdf, accessed May 1 2026
[29] U.O. Umozurike, *Supra*
[30]See Caroline v Union Territory of Delhi .I.R. 1981 Sup. Ct. 746 (App. 5) cited in C.C. Nweze, supra, at p.16

regimes of campaign promises, poverty among Nigerians keeps widening while enforcement of fundamental rights appears to be on graphical retrogression.[31] Governments with sufficient resources may however lack the will to implement human rights institutions and policies if it does not see it as a priority.[32] The national parliament should protect and serve the people's interests, not enrich itself at their expense.[33] Financial resources have always been available for the government to utilize for the implementation of socioeconomic rights, and even quite recently, the World Bank has approved a total of $2.25 billion loan for Nigeria to help stabilise its economy following reforms and scale up support for the poor.[34]

2. Social and Economic Underdevelopment in Nigeria: A Trajectory

Nigeria as a country started relatively well in the area of providing for good welfare structures. Nigeria's golden years ran from the early 1970s to the early 1980s. During this time, the schools in Nigeria were some of the best in Africa and compared favorably to the best schools in the world. Nigerian universities participated in international exchange student programmes where schools sent their students to study in Nigeria.[35] The 1970s and 1980s were also a period when doing business in Nigeria was attractive. Global companies worked to have a Nigerian presence. Companies like Lever Brothers, Coca-Cola, United African Company, UAC, and Leventis were some of the companies in Nigeria.[36] The Naira dominated the financial market. From the 1970s through the 1980s, the naira exchanged 90 Kobo for one United States dollar. The unemployment rate stayed between 4.3% and 6%.[37]On the home front, from the 1970s through the 1980s, things were also going well for Nigerians. The workers got paid on time; pensioners got what was owed to them by the government every month. Many Nigerian students went to study abroad on government scholarships and received stipends from their government. University students received bursary awards while receiving quality education. Politicians and government officials were people with high-quality education backgrounds.[38]But during this period, the Nigerian government was composed of young and inexperienced military officers who had no idea of global economics. Instead of capitalizing on the opportunity to put Nigeria on a lasting growth trajectory, they squandered it on youthful exuberance.[39]

This was the case as at the time Yakubu Gowon made his most famous speech. He stated that money was not Nigeria's problem but how to spend it. . He uttered those words at a time when the surging price of oil was multiplying federal income faster than sensible spending could catch up with it. (For some context, Nigeria's oil revenues more than quadrupled in the eight months between September 1973 and May 1974) Even though today's circumstances are very different, I think Gowon's words are as apt today as they were back then.[40]

The tide has turned for Nigeria, and for the past 40 years, Nigeria has continued a downward economic spiral. The effects on Nigerians are too numerous to list. For example, the unemployment rate in Nigeria is one of the highest in the world. Former Emir of Kano, Muhammadu Sanusi has said that Nigeria as a country has made no progress in the past 40 years. He stated that:

In 1980, Nigeria's GDP per capital on purchasing power parity basis was $2,180. In 2014, it appreciated by 50 per cent to $3,099. According to the World Bank, where were we in 2019? $2,229. At this rate in the next two years in terms of purchasing power parity, the average income of a Nigerian would have gone back to what it was in 1980 under ShehuShagari. That means, in 40 years, no progress, we made zero progress. 40 years wasted,[41]

[31]Igwe Onyebuchi Igwe, Matthew Enya Nwocha and Amaramiro A Steve, 'Enforcement of Fundamental Rights in Nigeria and the Unsolved Issue of Poverty among the Citizens: An Appraisal' (2019) 10(1) Beijing Law Review 154.<https://www.scirp.org/journal/paperinformation?paperid=89952> accessed May 1 2024

[32]LanseMinkler and Shawna Sweeney, 'On the Indivisibility and Interdependence of Basic Rights Developing Countries' (2011) 33 HRQ 351.

[33]Ibid

[34]Damilola Aina, 'World Bank Approves $2.25bn Loan for Nigeria' Punch Newspaper (14 June 2024) <https://punchng.com/world-bank-approves-2-25bn-loan-for-nigeria/> accessed 11 May 2026.

[35]Hamilton Odunze, 'Why Nigeria's Golden Years Were Unsustainable' Punch Newspaper (28 November 2023) <https://www.vanguardngr.com/2023/11/why-nigerias-golden-years-were-unsustainable/> accessed 11 May 2026.

[36] ibid

[37] ibid

[38]ibid

[39] ibid

[40]Tolu Ogunlesi, 'How to Spend It' The Cable (30 November 2015) https://www.thecable.ng/how-to-spend-it (thecable.ng in Bing) accessed 11 May 2026.

[41]Ibrahim Wuyo, 'In Nigeria, It's 40 Years of Waste, Zero Progress — Sanusi' Vanguard Newspaper (14 August 2021, Kaduna) https://www.vanguardngr.com/2021/08/in-

The drop in the international price of oil in the early 1980s led to a fall in government revenues and "triggered an unprecedented crisis of immense dimensions in the economy".[42]

This adversely affected the domestic economy, engendered and sustained a patronage system that developed around political office holders and underlined waste and corruption in government, particularly the Shehu Shagari civilian government (1979-1983). The Shagari-led Federal Government grossly mismanaged the economy through lack of financial discipline, corruption, patronage and embezzlement of funds by political officeholders at federal and state levels of government.[43] As a result, from an annual growth rate of 6-7 percent between 1975 and 1980, GDP fell by 8.5 percent in real terms between 1981 and 1983, while consumer prices increased by over 20 percent.[44]

The resultant effect, which lingered into the 1990s, was a drastic fall in the standard of living of most Nigerians, and an increase in the level of poverty and inflation rate in the country. The poverty headcount of 27.2 percent in 1980 increased to 46.3 percent by 1985,[45] and the inflation rate averaged 13.4 percent, 22.6 percent and 26 percent over the periods of 1980-1983, 1984-1985 and 1986-1992 respectively.[46]The poor socio-economic condition of the people in the 1980s worsened in the 1990s, as shown by a poverty rate of 65.6 percent in 1996.[47]

This was due to the economic policy of the Babangida government (1985-1993), which was predicated on a structural adjustment policy (SAP), and political highhandedness of the Abacha government (1993-1998). The structural adjustment policy of the Babangida government was predicated on reducing dependency on imports, currency devaluation and withdrawal of consumer subsidies on petroleum products. However, the policy was compromised by wasteful spending, corruption and patronage that typified the government.

2.1 Misplacement of Priorities and Corruption in Nigeria

The economic policies of the government of the day have had its toll on Nigerians, and **at a time when the Nigerian masses are facing severe hardship from the impact of the fuel subsidy removal, the country's** Senate **is justifying a move to purchase 360 sports utility vehicles (SUVs) for its members.**[48]

At a time when millions of Nigerians are bearing the brunt of the removal of fuel subsidy, at a time when 133 million Nigerians are multi-dimensionally poor, at a time when the country's debt servicing cost has surpassed its revenue, purchasing luxurious SUVs should never be a priority.[49] The enhancement of the socioeconomic rights of the people is no longer the priority of government. The Federal Government has come under fire for its recent decision to subsidise the 2024 Hajj with N90 billion despite allocating only N50 billion for the student loan scheme in the 2024 budget. Education and legal experts have slammed the decision, noting that spending such a humongous amount of money to subsidise Hajj is a misplacement of priority.[50] **How does such humongous sum to be paid for a religious activity help the masses of Nigerians who are struggling with their survival? This act displays yet another instance of misplaced priority on the part of the Nigerian government.** Some other examples to buttress this point is the N500 million for the renovation of the State House Clinic, which became operational only in 2023 and is not meant for public use, and is said to be a world class infrastructure with every needed gadget installed.[51]

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nigeria-its-40-years-of-waste-zero-progress-sanusi/ (vanguardngr.com in Bing) accessed 11 May 2026.

[42] Adebayo O. Olukoshi, The Politics of Structural Adjustment in Nigeria, London : J. Currey ; Ibadan ; Portsmouth, N.H. : Heinemann, (1993) p. 58

[43]Eghosa Emmanuel Osaghae, *Crippled Giant: Nigeria since Independence,(* John Archers Publishers Limited, Ibadan, 2002) 1-342

[44] ibid

[45](UNDP, 2009),

[46]Adedoyin Soyibo, The Savings-Investment Process in Nigeria: An Empirical Study of the Supply Side (African Economic Research Consortium, Research Paper No 11, 1994).,https://www.researchgate.net/publication/46452262_The_savings-investment_process_in_Nigeria_An_empirical_study_of_the_supply_side, accessed May 10 2026

[47](UNDP, 2009).

[48]Chinomso Momoh, '360 SUVs: Why Nigerian Senate Must Halt Purchase', October 23, 2023<https://developmentdiaries.com/360-suvs-why-nigerian-senate-must-halt-purchase/> **accessed May 13 2026**

[49] ibid

[50] Imoleayo Oyedeyi, A. Olasupo, D. Musa, and N. Shaibu, 'FG under fire over N90bn Hajj subsidy', 19th May 2024<https://punchng.com/fg-under-fire-over-n90bn-hajj-subsidy/> accessed August 23, 2025

[51] Mariam Ileyemi, 'Months to tenure expiration, FG to build new medical centre in Buhari's hometown', *Premium Newspapers* (December 6, 2022), https://www.premiumtimesng.com/health/569263-

Even so, there always seems to be justification for the president to travel overseas for a medical check-up. The rulers of the day give much attention to the maintenance of their luxurious lifestyles and more than to the maintenance of the social and economic welfare of the country, which should ordinarily be the focus of government according to the social contract theory.

Again, **Amidst the economic hardship facing Nigerians, President Bola Tinubu on Friday commissioned the N21 billion official residence of the vice president, Kashim Shettima.**[52] The National Assembly in November 2023, approved an additional N15 billion to construct the building, bringing the total cost of the project to N21 billion.[53]

The government has a poor record of management of humanitarian affairs in the country, even as the mandate of the ministry of humanitarian affairs and poverty alleviation is to develop humanitarian policies, provide effective coordination of national and international humanitarian interventions, ensure strategic disease mitigation, preparedness and response; and manage the formulation and implementation of fair focused social inclusion and protection programs in Nigeria.[54] The Humanitarian Affairs Department is saddled with the responsibility of coordination all humanitarian interventions for the Ministry. They ordinarily are meant to ensure holistic coordination of all sectors in collaboration with humanitarian actors in the field. However, the stench of corruption emanating from the Ministry of Humanitarian Affairs has become too overpowering to ignore two senior officials have been implicated in massive fraud totaling billions of naira meant for the country's poorest citizens. Betta Edu was accused of paying a whopping sum of N585.2 million into the account of one Bridget Oniyelu Mojisola said to be an accountant in charge of the federal government projects to disburse funds meant to ameliorate the condition of the poor people in Ogun, Lagos, Cross River and Akwa Ibom States. This was after she allegedly spent about N3 billion on some questionable pro-poor projects that is yet to be duly accounted for.[55]

2.2 Which Comes First- Rights or Duties?

It has been opined in many quarters that duties, which are the responsibilities of the citizens to the government comes first as same is the cost for the ownership and enjoyment of rights claimed. Others have opined that for equality, respect for humanity and prosperity, rights should come first before duties. These controversies are unending.

A 'right', according to Hohfeld, is a legal interest that imposes a correlative duty. Hohfed says

If X has a right against Y to keep off the latter's land, the correlative [and equivalent] is that Y has an obligation toward X to stay off the place[56]

The people have a right to the government and the government has duties to the people. In order to build a liberal society, rights are firstly provided to the people by the rulers of the day. Duties are then imposed, which serves as a correlation to the rights provided.

Under the African charter, rights come before duties. The rights provided under the African Charter are stated under Chapter one of the Charter, Articles 1-26. Particularly socioeconomic rights are provided articles 15- right to work, article 16- right to health, article 17- right to education etc. Duties under the charter are provided under Article 27-29.

It would be observed that the duties provided under the African charter are to ensure the betterment of society. As touching the government, section 13 of the constitution[57] makes it the duty of all organs of government to enforce and enforce the observance of the rights provided under chapter two of the Constitution.

months-to-tenure-expiration-fg-to-build-new-medical-centre-in-buharis-hometown.html, accessed August 11, 2025.

[52]Kazeem Badmus, 'Amidst Hardship, Tinubu Commissions N21bn VP's Official Residence' Osun Defender (8 June 2024) https://osundefender.com/amidst-hardship-tinubu-commissions-n21bn-vps-official-residence/ (osundefender.com in Bing) accessed 11 May 2026.

[53] ibid

[54]United Nations Children's Fund (UNICEF), Humanitarian Action for Children: Nigeria Appeal 2026 (UNICEF, 2026) <https://www.unicef.org/appeals/nigeria> accessed 11 May 2026.

[55]Editorial Board, 'Scrap Humanitarian Ministry Now' Leadership Newspaper (c 2024) https://leadership.ng/scrap-humanitarian-ministry-now/ (leadership.ng in Bing) accessed 9 May 2026

[56]Lazarev N, 'Hohfeld's Analysis of Rights: An Essential Approach to a Conceptual & Practical Understanding of the Nature of Rights' (2005) 12(1/2) Murdoch University Electronic Journal of Law <https://www5.austlii.edu.au/au/journals/MurdochUeJlLaw/2005/9.html>. accessed 11 May 2026

[57] Fundamental obligations of the Government as contained in the Nigeria 1999 Constitution (as amended)

Socioeconomic rights are positive rights which means that they require government involvement in their fulfillment and same has been confirmed under the African charter and the Nigerian constitution.[58] This means that the government has a duty to fulfill these rights; hence the people in effect have rights which the Government must protect and the people have duties to the State and Government. The respect for rights [particularly socioeconomic rights] and duties is necessary for the ordering of society and for the common good.

What happens when government neglects to fulfill its duty to enforce the rights of its people, for example the right to good roads and adequate health facilities, provide security? Are the people yet bound to carry out their duties such as the duty to pay taxes? The essence of government in such situation is defeated. Government exist in order to ensure the sustenance of lives and properties of the people whom they serve, where they fail in this duty, the refusal of citizens to fulfill their own duties become the order of the day, the essence of society is thus threatened. Hence it is more reasonable for rights to come first before duties. Socioeconomic rights must first be enforced before government seeks to impose duties on the citizens as both works together. For every right, there is a duty, and for every duty there is right.

Enforcing socioeconomic rights in Nigeria not merely as ideals of government but as the fundamental rights of the people will help avoid situations where a governor of a particular state in Nigeria who refused to pay government workers salaries for months and where there exist many out of school children could transfer state funds to the tune $760,000 dollars [77 million naira] to pay in advance for his children's school fees.

2.3 The Necessity to Uphold International Human Rights Obligation

Professor Oppenheim has defined international law as: Law of Nations or International law is the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other.[59]

International law governs states in their interrelatedness as opposed to municipal law that controls and regulates the state's internal structure; source of which includes but not limited to Treaties, Customary International law, General Principles.[60] States in their capacity come together and create for themselves obligation to foster international peace and try to eliminate conflict. These obligations are laws which the international community are expected to observe and follow strictly. Therefore, every nation that is a party to a treaty shall be obligated to observe and obey what is being laid down in the treaty and other international norms. Article 26 of Vienna Convention provides that every treaty in force is binding upon the parties and must be observed by them in good faith. Every treaty to which Nigeria is a signatory, whether at the regional or international level must first be ratified by the National Assembly before they become law in Nigeria and enforceable in our courts of law. This is provided in Section 12(1) of the Constitution[61]: No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

This position of the law was stated in the case of Abacha v Fawehimi[62] where the court held that the African charter is enforceable in Nigeria, like all other laws, having been ratified and domesticated by the National Assembly as the African Charter on Human and People's Rights[63] and because Parliament does not intend to breach an international obligation.

Two principal theories are known as monism and dualism. According to monism, international law and state law are concomitant aspect of the one system--law is general; according to dualism, they represent two entirely distinct legal systems, international law having an intrinsically different character from that of state law. According to dualists, national judges never apply international law, only international law that has been translated into national law "International law as such can confer no right cognizable in the municipal courts. It is only insofar as the rules of international law are recognized as included in the rules of municipal law that they are allowed in municipal

[58] See for example article 1 of the African charter which provides to the effect that "the Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them" and section 13 of the constitution provided supra

[59] L. Oppenheim. International Law (Long'sman Green $ Co., 1905) 1-2.

[60] Article 36 of International Court of Justice Statute, 1945 cited in YinkaOlomojobi, *supra*

[61] Constitution of the Federal Republic of Nigeria [1999] as amended

[62] (2000) 6NWLR [Pt. 600] 228

[63] Ratification and Enforcement Act [1983]

courts to give rise to rights and obligations."[64] Nigeria as a country, practices the dualist system, as common law which was adopted by Nigeria on independence prefers the transformation of international Laws into municipal laws before they are enforceable in the country.

There exist at the international level, the Universal Declaration of Human Rights[65] and the ICCPR[66], and the ICESCR[67], and a host of other instruments to which Nigeria is a signatory. Unfortunately, Nigeria's international posture is at variance with its domestic constitutional scheme of human rights; a paradoxical and hypocritical stance that renders Nigeria vulnerable to charges of engagement in a bogus public relations stunt.[68]

The supremacy of international law on municipal sphere simply requires that if a state is in breach of its international obligations, for which it is internationally responsible, it cannot shelter itself behind domestic law.[69] Very often, municipal courts are confronted with situations calling for applications of rules of international law, sometimes at variance with municipal law, to the cases before them. It is in this context that the issue of relationship between two systems of law assumes importance.[70] Regional and International human rights obligations are, broadly speaking, created by treaties and international law. On respect of the former, these articles are consent-dependent, given that states are not in obligation to enter into treaties.

However, until the National Assembly ratifies a treaty, it will have no binding force in Nigeria, by virtue of section 12 of the constitution. As touching the enforcement of Socio-economic rights in Nigeria, the African Charter is the most potent regional instrument in enforcing socioeconomic rights. Nigeria is a signatory to African Charter on Human and People' Rights (ACHPR), and having domesticated it as ACHPR (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 is part of Nigeria's municipal legislation. It may be argued therefore that social and economic rights are recognized in the country and Nigeria has obligation both negative and positive to ensure obedience to the legitimate requirement of the order of the legislation as may be enforced by the Courts. This is simply because the African Charter provides for socio-economic rights, and the Ratification Act has neither been inconsistent with the constitution, suspended nor repealed.

Nigeria should endeavour to enforce socioeconomic rights in order to fulfil its international obligations as a party to international human rights treaties; the principle of International Law relating thereto is pacta sunt savanda which means that agreements must be kept. Therefore, unless it can be shown that the socio-economic rights provisions in the African Charter are inconsistent with provisions of the Constitution, the state has obligations under international law to obey and enforce the provisions pursuant to the Ratification Act.[71] Also, the decision of the Supreme Court in *Abacha v Fawehinmi* shows that irrespective of the constitutional order in the country, whether military or democratic, the executive, legislative and judicial authorities in the country have obligations to obey and enforce provisions of the African Charter pursuant to the Ratification Act, unless the provisions have been expressly suspended or repealed by a later statute. SERAP v Nigeria &Ors[72] is another case on point having the same implication as does the earlier one. In this case, the Plaintiff, a civil society organization, in a form of public interest litigation instituted at the ECOWAS Community Court a suit against the President of the Federal Republic of Nigeria and Others. The complaint was based on violation of Socio-economic rights of the people in certain areas of the Niger Delta: "violation of the right to adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and health environment; and to economic and social development." These rights are not of the category of first-generation rights that are guaranteed by chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended).[73] In the suit before the

[64]James Atkin, Baron Atkin, in MichealAkehurst(ed.), *Modern Introduction to International Law*, (Harper Collins, London) 45

[65]1948

[66] 1966

[67] 1966

[68]Dakas, CJ, Dakas, 'A Panoramic Survey of the Jurisprudence of India and Nigerian Courts on the Justiciability of Fundamental Objectives and Directive Principles of State Policy', in Azinge and Owosanoye (eds.) *Justiciability and Constitutionalism: An Economic Analysis of Law* (Lagos: NIALS,2010) 262 at 265.

[69]Pierre-Marie Dupuy, 'International Law and Domestic (Municipal) Law' in R Wolfrum (ed), Max Planck Encyclopedia of Public International Law (Oxford University Press, April 2011) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1056> accessed 11 May 2026.

[70] Ibid

[71] Ibid

[72]Suit No: ECW/CCJ/APP/08/09

[73]Nigerian Constitution [1999] ss. 33-46

ECOWAS Court, the Plaintiff, SERAP, relied principally on, among others, the African Charter on Human and Peoples Rights, the ICESCR and the ICCPR. The reasons for this were obvious; Nigeria is a signatory to the International Instruments (but they have not been domesticated) as well as the Protocol on the Community Court of Justice. The defendants raised preliminary objections on many grounds, most essentially on jurisdiction of the court. The court however held that "it has jurisdiction to adjudicate on the case brought by the Plaintiff against the corporate defendants." It is important to note that Nigeria is a member nation of the Economic Community of West Africa (ECOWAS) and as such the decision of the court has binding force in the Country. Article 15(4) of the ECOWAS Revised Treaty provides that judgment of the court shall be binding on member states, institutions of the commission, individuals and corporate bodies. Worthy of note is the articles of the charter that touches upon socioeconomic rights. Under Article 15 of the charter, every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. Article 16 provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. Article 17 of the same charter states that every individual shall have the right to education, [2] every individual may freely, take part in the cultural life of his community. The Act created obligation on all authorities and persons exercising legislative, executive or judicial powers in Nigeria to give full recognition to the provisions of the charter and apply same; thus, making provisions of the charter, including those relating to social and economic rights enforceable in Nigeria, not only by the courts established by or under the constitution, but also by the ECOWAS Community Court of Justice and the African Court of Human Rights. The internalization of the African Charter has filled the gap created by the non-justiciability of chapter II of the Nigerian Constitution. In Abacha[74], the court found that the provisions of the Act are in a class of their own…., the Decrees of the Federal Military Government may over-ride other municipal laws, they cannot oust the jurisdiction of the Court whenever properly called upon to do so in relation to matters pertaining to human rights under the African Charter. They are protected by the International Law and the Federal Military Government is not legally permitted to legislate out of its obligations. In the case, Ogundare, JSC, delivering the judgment of the Court held that, most importantly among others:

…Cap 10 remained in full force and effect as it was never at any time altered by the Provisional Ruling Council nor was there any need for its modification to bring it into conformity with the 1979 Constitution (as amended, suspended or modified) or any decree made after the commencement of Decree No. 107 of 1993, that is, after 17th November 1993. Cap. 10 was not inconsistent with any provision of the 1979 Constitution or any such decree.

The ICSECR to which Nigeria is a party is also of importance in this respect, unfortunately, however, it cannot be enforced in Nigeria, not having been ratified in conformity with the constitution. The instrument being in the category of multinational treaty cannot have the force of law in the Nigeria, unless and until, to the extent to which such treaty has been enacted into law by the National Assembly. However, it is submitted that a state must endeavor to uphold its international obligations in the spirit of the pact sunt servanda, which means that agreements must be met. Hence, socioeconomic rights should be enforced in a bid to fulfil our International human rights obligations.

2.4 The Indivisibility of the First and Second Generation Rights

Humanity witnessed the most terrible destruction of lives and property and the deprivations of the human rights of the individual during the second world war which was fought from 1939-1945. In a bid to ensure that there would no longer be the recurrence of such a destructive war, and to ensure that governments uphold and respect the human rights of their people, which would serve as a check on government excesses and promote the cause of its existence, the United Nations produced and adopted two human rights documents; the ICCPR and the ICESCR in 1966. The ICCPR contains rights which have been described as negative rights; meaning that they are rights which the government must refrain from infringing upon. They are immediately enforceable. As to ESCR, they are to be progressively realized, that means that governments should utilize their available resources to ensure the progressive enforcement of Socio-economic rights of their people. The two documents were initially designed as one document. Ideological and political differences - human rights versus national sovereignty, individual liberty versus communal needs - prevented a consensus. The dispute revolved around the question: whether economic, social, and cultural interests should be recognized as rights at par with the civil and political rights. The capitalist countries - the United States and her allies, were opposed to the uplifting of the economic, social and cultural rights to a position of equality with the civil and political rights.

[74]Abacha v. Fawehimi, n.115

On the hand, the communist countries - the former Soviet Union and her allies - held contrary position, and where supported by the newly independent states from the third world. (The concept, philosophy and historical development of human rights snapped). To resolve the stalemate, the drafters agreed to prepare two covenants, one dealing with civil and political rights, while the other one would deal with economic, social and cultural rights, this giving states the option to ratify either or both of them.[75] On 16, December, both covenants were adopted and they entered into force in 1976. Nigeria ratified both treaties on 29, July, 1993. The provisions of both covenants are reproduced in chapter two and four of the constitution 1999 (as amended). The civil and political rights provided in chapter four are titled 'fundamental human rights', some of which are the right to life, right to personal liberty etc, while the economic, social and cultural rights are provided in chapter two of the constitution, which is titled 'fundamental Objectives and Directive Principles of State Policy '. They are such rights as right to food, education, housing etc. The fundamental human rights chapter is justiciable in court and given preference and promotion by the government, while the provisions of the fundamental objectives and directives principles of state policy are made non justiciable at law by virtue of section 6 (6) (c) of the constitution. However, it has been opined in many quarters that; what good is the division between both covenants? What good is the right to life when one cannot access adequate health care? Or what good is the right to vote when one has no food to eat? Nelson Mandela (of blessed memory) was of the opinion that:

A simple vote, without food, shelter and health care is to use first generation rights as a smokescreen to obscure the deep underlying forces which dehumanize people. It is to create an appearance of equality and justice, while by implication socioeconomic inequality is entrenched. We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society".[76]

First generation rights include civil and political rights such as free speech and conscience and freedom from torture and arbitrary detention. In other words, first generation human rights command governments to stand back from the citizen; they are "non-derogable", meaning that they establish bright line rules about which governments have no discretion.[77] Second generation rights are social, economic and cultural and include the rights to reasonable level of education, healthcare, and housing and minority language rights. Second generation rights require governments to take affirmative action; they are incremental and discretionary because they have a direct financial bearing upon the provision of government services.[78] Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background. Inalienable because people's rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural and economic are equal in importance and none can be fully enjoyed without the others.[79]

Indeed, it has been said that indivisibility of human rights is a concept at the very root of international human rights law[80] and that it is fundamental to the very establishment of the United Nations.[81]

The meaning and significance of the term 'indivisible' has evolved since it was first used in a human rights context in 1950. It was at this time that the Third Committee of the General Assembly of the United Nations was debating how to rework the Universal

[75] Ibid

[76] Nelson Mandela's opening address on the occasion of the ANC's Bill of Rights Conference, Mandela Bill of Rights for a democratic South Africa 12. cited in N. Gabru,'SOME COMMENTS ON WATER RIGHTS IN SOUTH AFRICA', ISSN 1727-3781SOME COMMENTS ON WATER RIGHTS IN SOUTH AFRICA2005 VOLUME 8No 1, p.4, https://perjournal.co.za/article/view/2831/2746, accesed August 20, 2024.

[77]Stanford Center on Democracy, Development and the Rule of Law, Second and Third Generation Rights in Africa (Freeman Spogli Institute for International Studies, Stanford University, 2012) <https://cddrl.fsi.stanford.edu/research/second_and_third_generation_rights_in_africa> accessed 11 May 2026

[78] Ibid

[79]World Health Organization, 'Human Rights ' WHO Fact Sheet (1 December 2023) <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health> accessed 11 May 2026

[80]Victoria Hamlyn, 'The Indivisibility of Human Rights: Economic, Social and Cultural Rights and the European Convention on Human Rights', *Bracton Law Journal* (2008) 40, 13

[81]AsbjørnEide, 'Interdependence and Indivisibility of Human Rights' in Yvonne Donders and Vladimir Volodin (eds), *Human Rights in Education, Science and Culture: Legal Developments and Challenges*(2007) 11

Declaration of Human Rights (UDHR) into a binding treaty form.[82]

The following fifth paragraph of the Vienna Declaration and Programme of Action, drafted at the Vienna World Conference on Human Rights in 1993, and adopted unanimously by 171 nations present[83] elucidates indivisibility from this perspective: All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.[84] Indeed, ESCR are still afforded less emphasis in practice[85] with limited implementation such as in national constitutions, and enforcement.[86]

Ewelukwa considers that resistance to indivisibility is widespread, particularly due to the western tradition which is based on "a strong faith in full economic liberalism and a severely constrained role for the state in matters of welfare".[87]
Although various countries have made the ICESCR to be unenforceable in their constitutions (Nigeria for example), the judiciary of some of these nations have taken up judicial activism in the enforcement of Socioeconomic rights in their various jurisdictions. This the exact case of India, where In J P Unnikrishnan v State of AP[88] the court observed that:
It is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that fundamental rights are but means to achieve the goals indicated in Part IV of the Directive Principles.

The Court further expressed that "the directive principle now stand elevated to inalienable fundamental human rights."[89]
Interestingly, the court completely transformed its approach towards the directives. It initiated a method of reading the directives to justify the legislative measures of the State. It started interpreting the various directives to provide meaningful content to welfare legislations like labour laws.[90] The interpretation of the constitution in India was to the effect of making socioeconomic rights justiciable in India. Lastly in Paschim Banga Khet Majdoor Samity v State of West Bengal[91], the Supreme Court carved out the right to emergency medical care for accident victims as forming core component of the right to health, which in turn was recognized as forming an integral part of the right to health.
Socioeconomic rights and civil and political rights are interdependent and indivisible as has been so recognized by the United Nations, India and a host of other nations like South Africa. It is thus submitted that socioeconomic rights should be given priority in tandem with civil and political rights, as touching their enforcement which sadly is currently not the case.

2.5 Inequality of Resource Distribution

Social and economic inequality in Nigeria is not due to lack of resources, but to the ill-use, misallocation and misappropriation of such resources. At the root there is a culture of corruption and mismanagement with a political elite that is out of touch with the realities of the state of the nation. According to the Economic and Financial Crimes Commission (EFCC), between 1960 and 2005, about $20 trillion was stolen

[82]Universal Declaration of Human Rights, GA Res 217 A (III) (adopted 10 December 1948) cited in Indivisibility of Human Rights: A Theoretical Critique, Dorothea Anthony.

[83]United Nations, World Conference on Human Rights, Vienna Declaration and Programme of Action (Vienna, 1993) <https://www.ohchr.org/en/about-us/history/vienna-declaration> accessed 11 May 2026.
[84]Vienna Declaration and Programme of Action: Report of the World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc A/CONF.157/23 (1993); 32 ILM 1661 (1993), I.5.
[85]Shedrack C. Agbakwa, 'Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights', *Yale Human Rights and Development Law Journal* (2002) 5 177, 178
[86]E. Nii Ashie Kotey, 'Some Fallacies About Rights: Of Indivisibility, Priorities and Justiciability' in International Commission of Jurists and African Development Bank (ed), Report of a Regional Seminar on Economic, Social and Cultural Rights (1998) 27, 27.
[87]Uché U. Ewelukwa, 'Litigating the Rights of Street Children in Regional or International Fora: Trends, Options, Barriers and Breakthroughs', *Yale Human Rights and Development Law Journal* (2006) 9 85, 118.
[88]All India Reporter Supreme Court 2178 [199]
[89]Air India Statutory Corporation v United Labour Union, All India Reporter 1997 Supreme Court 645.
[90]Bijay Cotton Mills v State of Ajmer, All India Reporter 1955 Supreme Court 33; Crown Aluminum Works v The Workmen, All India Reporter 1958 Supreme Court 30; Express Newspaper Ltd v Union of India, All India Reporter 1958 Supreme Court 578. Cited in Socio-Economic Rights in India: Democracy Taking Roots By Uday Shankar and DivyaTyagi, Kharagpur / Raipur
[91](1996) 4 Supreme Court Cases 37.

from the treasury by public office holders. This amount is larger than the GDP United States in 2012 (about $18 trillion).[92]

The Costs of government are also inflated by the excessive staff numbers, inflated salaries and benefits, arbitrary increase in the number of government agencies and committees, secret allowances and oversized and unjustifiable retirement packages for government officials. For example, The National Assembly and the 36 state assemblies of the federation as well as their agencies will spend about N724bn this year, an analysis of their 2024 budgets.[93]

The shares of government budget allocated to education, health and social protection are among the lowest in the region. For example, in 2012, 6.5% of the budget was allocated to education, 3.5% to health and 6.7% to social protection in 2010.[94] Agriculture is the main source of non-oil exports and employs almost half of the Nigerian population. However, unfavourable policies have prevented small, poor farmers from benefiting from agricultural growth.[95] For example, import quotas introduced to encourage investments in the rice value chain and meant for investors with rice-milling capacity were instead issued to cronies, who in turn sold them to larger traders and corporations. This pushed down the market price of rice, harming millers and rice farm owners whom the measure was originally meant to favour.[96] The oil sector provides 80% of the Nigerian government's revenue, but its performance is not efficient, and its contribution to the economy is not equitable. Further, Nigeria continues to spend huge amounts of scarce foreign exchange importing refined petroleum, because domestic capacity is insufficient to meet demand. Allegations are that government resources allocated for refineries maintenance are captured by the political elite.[97] Another consequence of the mismanagement of the nation's resources is the high rate of unemployment, especially among the young. In 2016, between 12.1% and 21.5% of Nigeria's youth were without a job, and rates of underemployment are even higher. The inability of the economy to generate enough jobs results from the insufficient allocation of resources to the creation of new economic opportunities, combined with a difficult business environment, which disincentivises domestic investment and induces capital flight.[98] The situation of the unemployed reached desperate levels when on 15th of March 2014, 6.5 million people visited recruitment centres to apply for 4000 vacant positions in the Nigeria Immigration Service. At least 16 people died in the stampede that ensued during the process. These socioeconomic issues have also expanded inequalities among the wealthy and the poor.[99]

Government disregard for equal distribution and management of the wealth of the nation has resulted in backwardness in every facet of Nigeria's existence and stunted the economic and social growth of many Nigerians. It has created an unequal society which benefits the rich and sidelines the poor. In such societal situation, the enforcement of socioeconomic rights is stagnated and defeated as the focus of government is not on the welfare of the majority of the population but that of a select few who benefits from and enjoys the wealth of the nation at the expense of the majority of the people.

3. Conclusion

Socioeconomic rights are not fully justiciable in Nigeria as same has been rendered non-justiciable by virtue of the Constitution. Even though there are enough resources in Nigeria, as evidence suggests[100], against the claims of the government that there is not enough resources, to meet aid the enforcement and implementation of socio-economic rights in the country. About forty years ago General Yakubu

[92]$20trn stolen from Nigeria's treasury by leaders – EFCC- < http://www.vanguardngr.com/2015/03/20trn-stolen-from-from-nigeriastreasury-by-leaders-efcc/> accessed 23 May 2025

[93]Damilola Aina and Nathaniel Shaibu, 'National, State Assemblies to Spend N724bn in 2024' Punch Newspaper (13 May 2024) <https://punchng.com/national-state-assemblies-to-spend-n724bn-in-2024/> accessed 11 May 2026.

[94]Nigeria DHS, 2013 'inequality in Nigeria: exploring the drivers. Oxfam International May 2017

[95]'inequality in Nigeria: exploring the drivers. Oxfam International May 2017

[96] ibid

[97] ibid

[98]ibid

[99]Awofeso, O., and Irabor, P. A. 'Assessment of government response to socioeconomic impact of COVID-19 pandemic in Nigeria', *Journal of Social and Political Sciences,* (2020) 3(3).

[100]The World Bank has approved a total of $2.25 billion loan for Nigeria to help stabilise its economy following reforms and scale up support for the poor<World Bank approves Nigeria's $2.25 billion loan request | Reuters>Date accessed June 15 2024

Gowon famously said that Nigeria's problem is not money, but how to spend it. Hence the lack of funds is the not the major setback in enforcing socioeconomic rights but the political will to do so. The level of a nation's development is determined by their level of respect for the human rights of their citizens.

Nigeria at independence and up to the 1980s fared better in catering for the social and economic welfare of her citizens. Political mishaps, corruption, mismanagement of scarce resources and an inexperienced and unworthy leadership stunted the growth of the nation, and ever since then, Nigeria has failed to recover its position of development and human prosperity it once had. There are no strict mechanisms of ensuring the accountability of public officers, hence the high level of corruption and inefficiency at all levels of government. This state of affairs has contributed to the collapse of the economic and created multidimensional poverty in the country. The economic and social system of the country favors the few and sidelines the vast majority of the population. This worrisome state of affairs brings to the fore the necessity to look back into history and understand the negative consequences of such a situation where same has been initiated and sustained by government.

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Judicial Balancing of Environmental Rights and Economic Development: A Comparative Analysis of Uganda and the European Court of Human Rights Interventions

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Abstract. In developing countries such as Uganda, the pursuit of economic development including mining and extraction of oil and mineral resources usually infringe on environmental rights. The court is faced with the arduous duty of ensuring a balance in the pursuit of economic development and preservation of environmental rights. Using doctrinal research method and comparative analytical method, this article presents a comparative analysis of judicial balancing between environmental rights and economic development in Uganda and under the European Court of Human Rights. It examines how courts structure legal reasoning when environmental protection needs conflicts with economic and developmental objectives, with particular focus on constitutional provisions, statutory frameworks, and judicial interpretation. The study is guided by the research question of how different legal systems conceptualise and operationalise the balance between environmental rights and economic development in judicial decision-making. It employs a comparative analytical method to assess the laws relating to right to a clean and healthy environment, which enables direct rights-based litigation before national courts. The European Court of Human Rights has given protection of environmental interests through established human rights provisions, especially the right to respect for private and family life. The article focuses on judicial reasonings in environmental disputes and the role of courts in resolving conflicts between environmental protection and economic development within their respective legal frameworks. The article contributes to existing scholarship by moving beyond single-jurisdiction studies to provide a structured comparison between a constitutional environmental rights model, as seen in Uganda, and an indirect human rights model, as developed by the European Court of Human Rights.

Keywords: Environmental Rights, Economic Development, Judicial Balancing, Proportionality, Uganda, European Court of Human Rights, Sustainable Development.

1. Introduction

The tension between environmental protection and economic development is one of the defining legal questions in current governance frameworks. States frequently justify projects that harm the environment, such as laying of oil pipelines through wetlands, construction of mega dams for electricity projects which may in turn cause flooding of farmlands and forests; or mining concessions in biodiversity rich areas on the basis of energy security, job creation or foreign investment. On the other hand, the affected communities, in turn, invoke constitutional or human rights to resist ecological degradation, claiming threats to clean water, health or cultural heritage. Where legislative and executive bodies prioritize economic growth over ecological sustainability, courts therefore occupy an important institutional space in resolving this conflict, especially where legislative and executive choices have failed to achieve an acceptable equilibrium between environmental protection and economic development.[1]

[1] Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, CUP 2018) 1–5.

The courts in Uganda and the European Court of Human Rights offer a useful comparative framework for studying how the conflict between the pursuit of economic development and preservation of environmental rights are resolved. In Uganda, the tension between environmental protection and economic development is particularly evident, where the Constitution guarantees a clean and healthy environment and the National Environment Act which requires environmental impact assessments for projects for instance the Hoima-Tanzania oil pipeline and wetland conversions for urban expansion to protect natural resources and manage environmental harm.[2] The courts in Uganda have recognized environmental rights, although they tend to accommodate national interest considerations in major development cases.[3] The European Court of Human Rights, by contrast, has no explicit environmental right in the European Convention, but it has developed a substantial body of case law under rights such as private life, home and property, often in disputes involving pollution, industrial activity and planning decisions. The European Court of Human Rights has consistently held that states must ensure that economic projects comply with the law, satisfy the requirements of proportionality, and adequately consider both human rights and environmental interests. The Court has clearly recognised that serious environmental harm may amount to a violation of human rights, even in the absence of an explicit environmental right in the Convention. This approach has laid the foundation for a body of jurisprudence requiring states to strike a fair balance between economic development and the protection of individuals from environmental risks.[4]

Against this background, this article examines how courts in Uganda and the European Court of Human Rights structure their reasoning when balancing environmental protection against economic development. It considers the tools which each system employs, including constitutional interpretation, proportionality, and the margin of appreciation, and evaluates how these tools shape judicial outcomes. It also explores what each system can learn from the other in strengthening environmental adjudication; identifies judicial approaches for possible legal transplant; and proposes practical reforms aimed at improving the clarity, consistency, and effectiveness of environmental decision-making. The authour argues that environmental adjudication is most effective where courts conceptualise environmental integrity not as a competing interest, but as a precondition for lawful and sustainable development. Section II of the study reviews the existing literature; Section III outlines the methodology and analytical tools employed; Section IV examines the legal frameworks; Section V analyses key judicial decisions; Section VI discusses the policy implications; Section VII provides recommendations; and Section VIII concludes the study.

2. Literature Review

The relationship between environmental protection and economic development has received sustained attention in environmental law, human rights law, and comparative constitutional scholarship. At its centre lies a persistent tension concerning whether environmental protection should function as an independent legal constraint on development or as one interest to be balanced against economic growth. Courts have become the principal institutional hubs where this tension is resolved, yet the methods they employ vary significantly across jurisdictions. A substantial body of scholarship treats environmental protection as part of human rights law. On this view, environmental harm is not considered a separate legal wrong on its own, but addressed when it affects existing rights such as the right to life, health, dignity, or private and family life. This approach is useful in practice because it allows courts to deal with environmental harm through established legal rights. However, scholars also note its limits, especially where environmental degradation affects ecosystems or communities in ways that do not easily fit within individual-rights frameworks.[5] In such cases, protection remains indirect rather than autonomous. This approach is most visible in the judicial jurisprudence of the European Court of Human Rights. Because the European Convention on Human Rights contains no express environmental right, the Court has developed an indirect and incremental environmental doctrine, chiefly through Article 8 on private and family life. This approach can be traced to various decided cases, for instance in *López Ostra v Spain* and *Fadeyeva v Russia*, the Court recognised that severe environmental degradation may constitute a violation

[2] Constitution of the Republic of Uganda 1995, arts 39 and 245; National Environment Act, Cap 181.

[3] Ben Kiromba Twinomugisha, 'Some Reflections on Judicial Protection of the Right to a Clean and Healthy Environment in Uganda' (2007) 3 *Law, Environment and Development Journal* 244, 255–258.

[4] European Convention on Human Rights 1950, art 8; see also *Lopez Ostra v Spain* (1994) 20 EHRR 277.

[5] Elinor Buys and Bridget Lewis, 'Environmental protection through European and African human rights frameworks' (2022) 26 *International Journal of Human Rights* 949.

of human rights even where states pursue legitimate economic objectives.[6] However, scholars disagree aon how well this approach works. The proportionality test gives courts a clear method, but the margin of appreciation often leads to inconsistent scrutiny.[7]

In Uganda, the issue is approached differently because environmental protection is mainly through constitutional rights and public interest litigation. The Constitution of the Republic of Uganda, 1995 expressly guarantees the right to a clean and healthy environment under Article 39, which places Uganda among progressive constitutional systems on environmental protection.[8] Scholars such as Twinomugisha argue that this constitutional framework has enabled courts to gradually recognise environmental rights as justiciable, even when it is against private actors.[9] This development is reflected in *Greenwatch v Attorney General*, where the High Court ordered disclosure of agreements relating to the Bujagali hydropower project. This decision enabled environmental stakeholders to scrutinise whether state institutions and private developers were complying with environmental and procedural obligations, even though the project was justified on the basis of national development of energy needs.[10] Despite this constitutional dividend, enforcement challenges exist. Courts do not always apply environmental rights consistently in disputes involving large development projects, especially where economic development is framed as a matter of national importance. As Twinomugisha observes, the enforcement of environmental rights in Uganda is often shaped by broader governance and development priorities, which can, in practice, lead courts to adopt a cautious or deferential stance in cases framed around national development.[11] As a result, the constitutional guarantee does not always translate into strong remedial protection in practice.

Comparative scholarship on environmental rights and economic development has largely developed in separate streams. Studies of the European Court of Human Rights focus on proportionality, fair balance, and the margin of appreciation, while studies of Ugandan courts emphasises constitutional design, public interest litigation, and enforcement constraints. What remains underexplored is how these different legal structures shape judicial balancing in concrete disputes where courts must weigh environmental harm against economic justifications such as infrastructure expansion, extractive projects, and energy development. The study makes a comparison of how courts in Uganda and the European human rights system reason when environmental protection and economic development conflict. It focuses not simply on whether environmental rights are recognised, but on how judicial balancing is carried out in practice, and whether the structure of each legal system affects the intensity and outcome of review.

3. Methodology

The study employs a doctrinal and comparative analytical methods of research. The research examines primary legal sources such as constitutions, statutes, regulations, and judicial decisions from Uganda and the European Court of Human Rights. Secondary sources include peer-reviewed journal articles, books and policy documents. The selection of Uganda is justified by its express constitutional recognition of environmental rights under Article 39 of the 1995 Constitution, enabling direct rights-based litigation. The European Court of Human Rights was selected for its extensive jurisprudence on environmental matters through indirect protection under Convention rights, particularly Article 8. Data collection involved systematic review of case law databases such as the Uganda Legal Information Institute and Human Rights Documentation, statutory instruments, and scholarly literature. Analysis employed thematic comparison, examining four dimensions, that is to say; (1) constitutional or legal basis for environmental protection; (2) judicial reasoning frameworks; (3) application of proportionality; and (4) remedial approaches. The analysis focuses on judicial reasoning structures rather than outcomes alone.

4. Legal Framework

The judicial balancing of environmental rights and economic development in Uganda and under the European Court of Human Rights operates within two structurally distinct legal systems, that is to say; one based on explicit constitutional environmental rights, and the other grounded in the judicial interpretation of

[6] *López Ostra v Spain* (1994) 20 EHRR 277; *Fadeyeva v Russia* (2005) 45 EHRR 10.

[7] A. Morrow, 'The European Court of Human Rights and Environmental Protection: Standards and Uncertainty' (2019) 10 *European Human Rights Law Review* 215 (characterising the Court's approach as 'derivative and incremental').

[8] Constitution of the Republic of Uganda 1995 (n 3) art 39.

[9] Twinomugisha (n 4) 244.

[10] *Greenwatch (U) Limited v Attorney General*, HCT-00-CV-MC-0139 of 2001, 12 November 2002.

[11] Twinomugisha (n 4) 258–262.

established human rights provisions. Despite this divergence, both systems require courts to resolve conflicts between environmental protection and development through structured legal reasoning grounded in proportionality and legality.

4.1 Constitutional and Statutory Environmental Rights Framework in Uganda

The environmental governance in Uganda is grounded in the Constitution of the Republic of Uganda 1995, which elevates environmental protection to a justiciable right. Article 39 guarantees every person the right to a clean and healthy environment, thereby providing a direct basis for judicial intervention where environmental harm is alleged. This right operates alongside Article 245, which mandates Parliament to enact laws ensuring sustainable environmental management.[12] While the National Objectives and Directive Principles of State Policy, particularly Objective XIII, impose a constitutional obligation on the state to protect natural resources.[13] These constitutional provisions establish an integrated environmental governance framework that limits state authority over natural resources by requiring their management in accordance with principles of environmental protection and sustainable use. Judicial interpretation in Uganda has primarily operationalised this framework through administrative law review, allowing courts to quash or invalidate environmental approvals where decision-makers fail to comply with mandatory environmental and social impact assessment requirements, disregard relevant statutory procedures, or act in a manner inconsistent with the Constitution and the National Environment Act. This constitutional foundation is given effect through the National Environment Act, which establishes the institutional mechanisms for environmental governance. For instance, the National Environment Management Authority (NEMA) ensures compliance with environmental impact assessment requirements, and enforcement mechanisms such as restoration and compliance orders.

Environmental and social impact assessments are required for projects with significant environmental effects, including infrastructure development, extractive industries, and large-scale land use change. The Act also incorporates principles of sustainable development and public participation as binding considerations in environmental decision-making.[14] Read together, these statutory provisions empower courts to scrutinise administrative decisions where environmental assessments are inadequate or where approvals disregard ecological carrying capacity, particularly in judicial review proceedings challenging non-compliant development authorisations.[15] Complementing the statutory framework, regulatory system operationalises environmental governance through a structured regime of prior authorisation, environmental assessment, and continuing compliance obligations that condition the legality of development activities.

The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000 impose restrictions on activities in ecologically sensitive areas by requiring prior approval for any intervention likely to alter ecological or hydrological integrity, thereby establishing a legally enforceable threshold for land-use intervention. This preventive approach is reinforced by the National Environment (Environmental and Social Assessment) Regulations 2020, which make environmental and social impact assessment a mandatory precondition for approval of projects with potential significant environmental effects, including infrastructure development and extractive activities. Beyond the approval stage, environmental regulation extends into the operational lifecycle of development activities through continuing compliance obligations. The National Environment (Waste Management) Regulations 2020 impose enforceable duties on waste generators and operators to comply with prescribed handling, treatment, and disposal standards, supported by inspection powers and enforcement mechanisms including sanctions and restoration orders in cases of breach. Similarly, the National Environment (Oil Spill Prevention, Preparedness and Response) Regulations 2020 require operators in the petroleum sector to maintain approved contingency plans, reporting obligations, and response capacity measures designed to ensure immediate mitigation of environmental harm arising from operational failure. In the extractive sector, the National Oil and Gas Policy for Uganda 2008 provides interpretive guidance for regulatory and administrative decision-making by framing petroleum development within a long-term sustainability and public interest

[12] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245.

[13] Constitution of the Republic of Uganda 1995, objective XIII.

[14] National Environment Act Cap 181, ss 78–79, 103, 109–115, 122, 126, 157, 163–165, 180, Schs 4–5 (Uganda).

[15] *Water & Environment Media Network (U) Ltd and 2 Others v National Environment Management Authority and Hoima Sugar Limited* (Consolidated Miscellaneous Cause Nos 239 & 255 of 2020) [2021] UGHCCD 30.

orientation. Although not directly enforceable as legislation, it informs licensing decisions and regulatory discretion by requiring consideration of poverty reduction, domestic capacity building, and long-term resource management objectives in the approval and governance of oil and gas activities.[16]

Read together, these instruments reflect a regulatory approach in which development is not prohibited, but made conditional upon compliance with environmental safeguards. Economic activity is permitted only where it has undergone environmental screening, obtained lawful authorisation through established procedures, and met legally defined environmental risk thresholds. This shifts environmental governance from broad constitutional commitments into enforceable administrative requirements, where adherence to environmental assessment procedures becomes a prerequisite for legality rather than a matter left to policy discretion.

4.2 International Environmental Law and Domestic Integration

In Uganda, environmental legal framework is shaped not only by the Constitution and statutory instruments but also by its participation in International environmental agreements. Through these International instruments, Uganda has adopted core principles of international environmental law, such as sustainable development, the precautionary principle and intergenerational equity.[17] In the domestic context, these principles do not operate as independent sources of law in a strict sense, rather, they function as interpretative standards that inform constitutional and statutory interpretation, particularly where environmental provisions are broadly framed or leave room for judicial discretion. Uganda is a party to major global environmental treaties such as the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, and the United Nations Framework Convention on Climate Change.[18] These treaty commitments are primarily relied upon as interpretative reference points in environmental disputes, guiding courts and regulatory authorities in giving substantive content to statutory obligations relating to environmental protection and sustainable resource use.[19]

In environmental litigation, these principles are primarily invoked to support preventive reasoning in cases involving uncertain scientific risk or cumulative environmental harm. The precautionary principle enables decision-makers and courts to justify intervention even where scientific certainty is lacking, provided there is a credible risk of serious environmental damage. Sustainable development requires that proposed economic activity be assessed against environmental constraints rather than economic benefit alone, while intergenerational equity extends the analysis to the long-term consequences of environmental degradation on future generations. In practice, these principles are most frequently engaged in disputes concerning wetland encroachment, pollution of water resources, and environmental impacts arising from infrastructure and extractive projects, where ecological harm may be gradual, cumulative, and difficult to reverse once development has commenced. However, the influence of international environmental law in Uganda is not uniform. Its application depends on the extent to which courts are willing to integrate international principles into domestic adjudication, the manner in which such principles are invoked by litigants, and whether judicial reasoning adopts a harmonised or deferential approach to administrative environmental decision-making. This variation contributes to differences in intensity of judicial review in environmental disputes involving competing development interests.

4.3 Environmental Rights Approach under the European Court of Human Rights

The European Court of Human Rights addresses environmental protection indirectly, through established rights under the European Convention on Human Rights rather than any standalone environmental right. The primary provision is Article 8, which protects private and family life and the home.[20] Environmental harm, such as pollution,

[16] National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000 (No 3 of 2000, Uganda); National Environment (Environmental and Social Assessment) Regulations 2020 (No 143 of 2020, Uganda); National Environment (Waste Management) Regulations 2020 (No 49 of 2020, Uganda); National Environment (Oil Spill Prevention, Preparedness and Response) Regulations 2020 (Uganda); *National Oil and Gas Policy for Uganda* (Ministry of Energy and Mineral Development 2008) 5–7.

[17] Rio Declaration on Environment and Development (adopted 14 June 1992) princs 3, 15.

[18] Convention on Biological Diversity (adopted 5 June 1992) 1760 UNTS 79; United Nations Convention to Combat Desertification (adopted 14 October 1994) 1954 UNTS 3; United Nations Framework Convention on Climate Change (adopted 9 May 1992) 1771 UNTS 107.

[19] Abdul Khamid Kalumbi, 'The principle of intergenerational equity in Uganda's legal framework' (LLM thesis, Makerere University 2026).

[20] European Convention on Human Rights (n 5) art 8

industrial emissions, and infrastructure-related disturbance, is brought within the scope of Article 8 where it attains a sufficient level of severity to interfere with the enjoyment of these interests. Once Article 8 is invoked, the Court applies a structured proportionality analysis requiring that the interference be lawful, pursue a legitimate aim such as economic development or public infrastructure, and strike a fair balance between individual rights and the interests of the community. At the proportionality stage, the Court examines both the intensity of environmental harm and the adequacy of the regulatory response. This includes consideration of whether environmental standards were effectively enforced, whether mitigation measures under environmental impact assessments were implemented in practice, and whether affected individuals had access to remedies such as compensation or relocation. The analysis therefore combines regulatory effectiveness with the practical impact of environmental harm on daily life.

The fair balance assessment constitutes the decisive stage of review. It requires the Court to determine whether the environmental burden imposed on individuals is disproportionate in relation to the public interest pursued by the state. Even where a project serves legitimate economic or infrastructural objectives, a violation may be found where serious environmental harm is insufficiently mitigated or unevenly distributed. This approach is reflected in *López Ostra v Spain*, where the Court held that severe pollution from a waste treatment facility violated Article 8 due to the authorities' failure to prevent serious harm to nearby residents.[21] A similar reasoning was applied in *Fadeyeva v Russia*, where prolonged industrial pollution affecting a residential area was not adequately controlled, and economic justification was insufficient in the absence of effective mitigation.[22] However, the intensity of review varies depending on the complexity of the subject matter and its connection to domestic policy choices. Through the margin of appreciation doctrine, states are afforded discretion in balancing environmental protection against economic priorities, particularly where decisions involve technical assessments or planning judgments. Nevertheless, this discretion is not unlimited. Where environmental harm is serious and persistent, the Court examines whether regulatory systems are effectively implemented in practice rather than merely existing in law.

In environmental property related disputes, Article 1 of Protocol No. 1 is applied where environmental harm, whether through state action or regulatory omission, amounts to an interference with the peaceful enjoyment of possessions.[23] Such interference may arise where pollution, noise, or environmental degradation results in a restriction on use, a reduction in economic value, or a regulatory burden affecting effective control of property, thereby triggering the Court's proportionality assessment between individual property rights and the public interest in environmental and economic policy. This approach was applied in *Hatton v United Kingdom*, where the Court considered whether night flight operations at Heathrow Airport imposed a disproportionate burden on residents.[24] The assessment required a balancing exercise between the economic importance of aviation policy and the practical impact of sustained noise on private life and property enjoyment. More recent decisions suggest that environmental litigation under the Convention is slowly moving beyond localised pollution disputes toward broader claims involving climate change and cross-border environmental harm. This development is illustrated by *Duarte Agostinho and Others v Portugal and 32 Other States*, where the applicants sought to hold multiple European states responsible for insufficient action on greenhouse gas emissions, arguing that climate inaction exposed them to foreseeable and long-term risks affecting their health, home environment and quality of life.[25] The case illustrates a shift from isolated pollution disputes to broader challenges to regulatory and policy frameworks.

Therefore, this jurisprudence read together, demonstrates that the Court does not recognise environmental protection as an autonomous right. Instead, environmental claims are assessed through Article 8 and resolved through proportionality review, requiring a fair balance between environmental harm and competing public interests, subject to controlled deference to national authorities.

4.4 Comparative Analysis of Constitutional and Judicial Interventions of Ugandan Courts and European Human Rights Court

A comparison of Uganda and the European human rights judicial intervention reveals two distinct

[21] *López Ostra v Spain* (1994) 20 EHRR 277.
[22] *Fadeyeva v Russia* (2005) 45 EHRR 10.
[23] Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) art 1.
[24] *Hatton v United Kingdom* (2003) 37 EHRR 28.
[25] *Duarte Agostinho and Others v Portugal and 32 Others* App no 39371/20 (ECtHR, 9 April 2024)

constitutional and adjudicative models for judicial balancing of environmental protection and economic development. As earlier noted, environmental protection in Uganda is constitutionally entrenched under Article 39 of the Constitution of the Republic of Uganda 1995, which guarantees the right to a clean and healthy environment. This provision, read together with Article 245 and the National Objectives and Directive Principles of State Policy, provides a direct constitutional basis for judicial review of environmental decision-making.[26] These constitutional provisions enable courts to assess both procedural compliance and substantive environmental legality in development related disputes. Judicial intervention typically arises where environmental impact assessments are not conducted in accordance with statutory requirements, or where administrative approvals fail to adequately account for ecological risk and sustainability obligations.[27] In this sense, environmental adjudication in Uganda operates through a combination of constitutional enforcement and administrative law review, allowing courts to invalidate decisions that are inconsistent with environmental protection obligations. On the other hand, the European Court of Human Rights does not recognise an express environmental right within the European Convention on Human Rights. Instead, environmental protection has been developed through judicial interpretation of existing Convention rights, principally Article 8, which protects private and family life and the home, and in certain circumstances Article 1 of Protocol No. 1 on peaceful enjoyment of possessions.[28] Environmental harm becomes legally relevant where it attains a level of severity that interferes with the effective enjoyment of these rights. The Court's jurisprudence is grounded in the doctrine of positive obligations, which requires states not only to refrain from unlawful interference but also to establish and maintain a regulatory framework capable of protecting individuals from serious environmental harm.[29] This approach requires an assessment of both the design and implementation of domestic environmental regulation. The Court examines whether states have established adequate environmental standards, whether environmental impact assessment procedures are properly applied, and whether enforcement mechanisms operate effectively in practice. The inquiry therefore extends beyond formal legality to the practical effectiveness of regulatory systems in preventing or mitigating environmental harm.

The central analytical test remains whether, in light of the severity of the environmental impact and the public interest pursued, the state has struck a fair balance between the competing interests of the individual and the community. This proportionality assessment integrates both environmental harm and economic or developmental justification within a single evaluative framework.[30] While the harm must reach a minimum level of seriousness to engage Article 8, the Court also recognises risk-based claims where the likelihood and gravity of potential harm are sufficiently substantiated to trigger positive obligations. The threshold is therefore not limited to actual harm but may extend to credible and significant environmental risks affecting private life or the home under Article 8.[31] The case law, taken as a whole, demonstrates that environmental protection under the European Convention on Human Rights is not based on an autonomous environmental right. Rather, it is constructed through the application of existing Convention rights, principally Article 8 and, in property-related disputes, Article 1 of Protocol No. 1, to environmental conditions that interfere with the effective enjoyment of private life, the home, and personal well-being.

Despite these differences, judicial reasoning across both systems is structured by proportionality-based analysis, although it operates through different legal entry points. In Uganda, proportionality reasoning is embedded within constitutional rights adjudication and statutory environmental compliance, whereas in the European Court of Human Rights system it is expressed through the fair balance test under Article 8 jurisprudence. Despite these doctrinal differences, both systems require courts to evaluate whether environmental harm is justified in light of competing economic or public policy considerations.

5. Judicial Analysis

The courts in Uganda have progressively deepened environmental adjudication in disputes involving land use, energy infrastructure, and public interest litigation. Building on the constitutional entrenchment of environmental protection, judicial engagement has been facilitated through purposive interpretations of

[26] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245; and (n 13) objective XIII.
[27] National Environment Act (Cap 181), ss 68–72.
[28] European Convention on Human Rights, art 8; Protocol No 1, art 1.
[29] *López Ostra v Spain* (n 21).
[30] *Hatton v United Kingdom* (n 24).
[31] *Tătar v Romania* App no 67021/01 (27 January 2009).

standing, particularly where communities and civil society organisations seek to enforce environmental accountability in development projects.[32] A notable illustration is *Greenwatch (U) Ltd v Attorney General*, arising from the Bujagali hydropower project, a major energy infrastructure initiative intended to address national electricity deficits. The High Court emphasised that compliance with environmental impact assessment requirements under the National Environment Act is a mandatory precondition to lawful project approval, reaffirming the statutory role of the National Environment Management Authority in safeguarding environmental integrity.[33] While the project itself reflected a serious public interest in energy expansion, the court's reasoning emphasized that economic necessity does not extinguish procedural environmental safeguards. The decision therefore strongly illustrates judicial insistence on procedural legality as a threshold condition for development activity rather than a post-hoc consideration.

A similar constitutional approach is reflected in *Advocates Coalition for Development and Environment (ACODE) v Attorney General*, which concerned state approval processes relating to the management and conversion of forest resources, such as Butamira Forest Reserve. The petitioners challenged the legality of administrative decisions authorising commercial use of protected ecological areas, invoking Articles 39 and 245 of the Constitution, which establish both an individual environmental right and a public trust obligation over natural resources.[34] The court's reasoning reinforced the principle that natural resources are held by the state in fiduciary capacity for present and future generations, which obliges decision makers to justify alienation or conversion of protected environmental assets in accordance with constitutional and statutory standards.

These decisions indicate that Ugandan courts now treat environmental protection under Article 39 as a constitutional standard of review that conditions the legality of development decisions, particularly through mandatory compliance with environmental impact assessment procedures and fiduciary obligations under Article 245, which embeds environmental considerations within judicial review of development authorisations. However, environmental adjudication operates within a constitutional framework where environmental protection is considered alongside strong development imperatives, and courts frequently deal with projects justified on grounds of energy security, industrialisation and investment needs. In such cases, judicial reasoning tends to focus on whether the statutory environmental impact assessment requirements under the National Environment Act have been followed, rather than applying a structured proportionality test that directly weighs environmental harm against economic benefit. The main legal inquiry is therefore procedural, that is to say; whether a proper environmental assessment was carried out, whether public participation was ensured, and whether NEMA lawfully approved the project.[35] As a result, Article 39 is mainly enforced through administrative law review, rather than through a direct balancing of competing environmental and economic interests.

Balancing environmental rights and development still occurs, but it is mostly implicit. Courts consider both development needs and environmental protection, but they rarely apply a clear proportionality framework based on necessity, suitability, and minimal impairment. The level of scrutiny also varies. Courts tend to intervene more strongly where there is clear failure to compliance with procedures, but they are more deferential where projects are presented as being in the national interest or linked to strategic development goals.[36] In contrast, the European Court of Human Rights jurisprudence on environmental disputes is characterised by a structured judicial inquiry into justification, necessity and regulatory adequacy once a prima facie interference is established. This approach is clearly illustrated in several leading cases, which together show a consistent pattern in how environmental harm is assessed through a balancing framework between individual interests and public or economic considerations. A notable illustration is *López Ostra v Spain (1994)* as one of the earliest and most important landmark case.[37] The applicant lived near a waste treatment plant built to manage industrial waste and supported by public authorities as part of urban infrastructure. Although the facility served a clear public and economic function, it produced strong fumes, foul smells, and pollution that made everyday life extremely difficult for nearby residents and eventually rendered parts of the area almost unfit for

[32] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245; and (n 13) objective XIII.
[33] *Greenwatch (U) Limited* (n 10).
[34] *Advocates Coalition for Development and Environment v Attorney General*, Miscellaneous Cause No 100 of 2004.
[35] *Water & Environment Media Network (U) Ltd and 2 Others v National Environment Management Authority and Hoima Sugar Limited* (n 15).
[36] Twinomugisha (n 4) 244, 258-62.
[37] *López Ostra v Spain* (n 21).

normal habitation. The Spanish authorities were aware of the situation but failed to take effective steps to stop the pollution or to relocate those affected. The Court held that this amounted to a violation of Article 8. What is important is that the Court did not treat the economic usefulness or legal authorisation of the plant as decisive. Instead, it focused on whether the state had taken reasonable and effective measures to protect individuals from serious environmental interference affecting their private and family life.

Fadeyeva v Russia (2005) builds directly on this reasoning and shows how the Court deals with long-term industrial pollution.[38] In this case, the applicant lived in close proximity to a large steel plant and was exposed over many years to harmful emissions, including dust, Sulphur dioxide, and heavy metals. The government relied on the economic importance of the plant, particularly its role in employment and local industry. However, the Court made clear that economic necessity does not remove the state's responsibility under Article 8. The central issue was the failure of public authorities to take practical and sustained measures, such as reducing emissions or relocating residents away from the danger zone. The judgment also clarified that where a state is already aware of environmental risks and recognises them in its own legal framework, it is expected to act on that knowledge. Failure to do so narrows the state's margin of appreciation.

Another landmark case *Taşkin v Turkey (2004)* extends this line of reasoning by shifting attention from damage that has already occurred to risks that arise before a project is approved.[39] The case concerned a gold mining project using cyanide, which posed serious risks to water safety and public health. The Court held that states are required to carry out proper environmental impact assessments and ensure meaningful public participation before authorising such activities. Even though the project pursued a legitimate economic aim, approval without adequate assessment and safeguards was found to violate Article 8. This case is important because it confirms that the Court's approach is not only reactive to environmental harm already suffered, but also preventive. It requires states to anticipate, assess, and manage environmental risks in advance, rather than waiting for harm to occur.

Across these cases, the European Court of Human Rights uses a clear proportionality approach based on the fair balance principle. Economic development is accepted as a legitimate state objective. However, this alone is not enough to justify environmental harm. The Court requires states to show that such development is properly regulated. This includes having effective environmental laws, carrying out proper environmental impact assessments, and ensuring that decisions are based on evidence and real necessity rather than assumptions or general economic claims. In practice, therefore this means the state must explain why a project that causes environmental damage is still necessary and why less harmful alternatives were not sufficient. The Court also looks at whether the harm to individuals or communities is excessive compared to the benefit of the development. Thus, environmental protection is not treated as an independent right in itself, but it is strongly protected through Article 8. States are therefore required to justify environmental interference in each case, rather than assuming that development goals automatically outweigh environmental concerns.

5.1 Comparative Analysis of Judicial Balancing between Ugandan Court and European Court of Human Rights

A comparison between Ugandan Court and the European Court of Human Rights shows both similarities and clear differences in how courts deal with conflicts between environmental protection and economic development. In Uganda, court intervention is mainly triggered when there is failure to follow environmental impact assessment requirements or when there is a breach of the constitutional right to a clean and healthy environment. The focus is therefore largely on whether decision makers followed the correct legal and procedural steps before approving development projects. In contrast, the European Court of Human Rights only engages with environmental matters where the harm is serious enough to affect private life, family life, or the home the rights enshrined in in the European Convention on Human Rights. The way courts reason through these disputes is also different. In Uganda, environmental disputes are generally handled through constitutional enforcement of the right to a clean and healthy environment, combined with judicial review of administrative decisions under the National Environment Act. The balancing between development and environmental protection is therefore often implied through these procedural and constitutional checks rather than set out in a structured test. In the European Court of Human Rights system, however, the court applies a clear proportionality test.

[38] *Fadeyeva v Russia* (n 22).

[39] *Taşkın and Others v Turkey* App no 46117/99 (ECtHR, 10 November 2004).

It asks whether the interference with individual rights is justified and whether a fair balance has been struck between the interests of the individual and those of the wider community. The focus of judicial review also differs in a material way. In Uganda, courts are primarily concerned with the legality and procedural integrity of development approvals, particularly compliance with constitutional and statutory requirements governing environmental assessment and authorisation. In contrast, the European Court of Human Rights goes beyond procedural legality to assess whether the environmental interference itself is substantively justified, applying a proportionality inquiry to determine whether a fair balance has been struck between individual rights and the public interest.

These differences are also reflected in the nature of remedies. In Uganda, courts generally issue orders aimed at ensuring compliance with legal and procedural requirements, such as directing proper environmental assessment or correcting defective administrative decisions. The European Court of Human Rights, by comparison, issues declaratory findings of violation and may award just satisfaction, while also prompting broader regulatory or policy adjustments at the state level through supervisory enforcement mechanisms.

Notwithstanding these differences, both systems share a clear legal position, that is to say; economic development alone is not enough to justify serious environmental harm. In both jurisdictions, development decisions must be backed by lawful procedures and supported by a reasonable, evidence supported explanation that takes environmental impacts into account. The real difference is not whether courts balance environment and development, but how they do it, Uganda does it mainly through constitutional and administrative review focused on procedure, while the European Court of Human Rights applies a clear proportionality test that directly weighs the competing interests.

6. Policy Implications

The comparative analysis points to practical reforms that can improve how courts handle conflicts between environmental protection and economic development. For Uganda, courts would benefit from adopting a more structured method when assessing environmental disputes, similar to the proportionality approach used by the European Court of Human Rights. This would require decision-makers to show, in a clear and reasoned way, that a proposed development is necessary, appropriately designed, and does not impose avoidable environmental damage. Judicial training should also be strengthened so that judges are better equipped to understand and assess technical environmental evidence, including impact assessments and ecological reports. Further, the National Environment Act should be applied in a way that treats environmental impact assessments as part of the substantive decision-making process, rather than a purely formal requirement that is satisfied once documentation is submitted without meaningful evaluation of environmental consequences. Courts should also be willing, in appropriate cases, to set aside approvals where regulatory authorities give excessive weight to economic arguments without properly addressing environmental harm. On the other hand, the European Court of Human Rights, one possible reform would be formal recognition of environmental protection as a standalone right under the Convention. This would reduce reliance on proving individual harm under private life claims and allow the Court to address broader environmental problems such as biodiversity loss and climate change more directly. If treaty reform is not immediately possible, the Court could still refine its approach by applying less deference to states in cases involving serious environmental risk, especially where pollution crosses borders or affects vulnerable communities. Greater clarity on how Article 8 applies to environmental harm would also help states better anticipate legal obligations when approving development projects.

Therefore, in both systems, there is a need to strengthen judicial reasoning grounded in scientific and technical environmental evidence. Governments should not be permitted to justify environmentally harmful projects solely on broad references to economic growth or national interest without providing clear and verifiable environmental assessments supported by scientific and technical evidence. Courts in both jurisdictions should therefore require decision-makers to demonstrate, with credible environmental impact data and expert analysis, that the anticipated environmental harm has been properly identified, assessed, and weighed against the stated development objectives. In effect, Uganda would benefit from the European Court's structured reasoning, while the European system would benefit from a stronger recognition of environmental realities that go beyond individual harm. This would shift judicial review from a narrow focus on legality or individual rights alone, toward a more practical role in ensuring that development decisions remain environmentally responsible and sustainable in the long term.

7. Recommendations

7.1 Judicial Methodology Reforms

The courts in Uganda should adopt a more structured way of reviewing disputes between development and environmental protection. This does not require abandoning Article 39 of the Constitution, but it does require a clearer method when courts are asked to approve or review projects with potential environmental impact. A practical approach would be a three-step inquiry in development cases. First, courts should ask whether the project serves a legitimate public purpose such as energy supply, infrastructure or economic development. Second, courts should examine whether the environmental harm could reasonably be avoided or reduced through alternative measures or improved project design. Third, courts should assess whether the environmental harm is still justified when weighed against the expected public benefit. This would make judicial reasoning more consistent and reduce reliance on broad references to national interest without detailed justification. Fourth, Judicial capacity needs strengthening because environmental disputes require technical understanding of impact assessments, pollution levels, land degradation, and ecological risk. Regular training through the Judicial Training Institute, supported by environmental regulators and technical experts, would help judges engage more confidently with scientific evidence. In addition, assigning environmental matters to judges with specialised experience in land and environmental law would improve consistency in decision-making.

7.2 Legislative and Institutional reforms

The National Environment Act should be amended to ensure that environmental impact assessment administrative decisions clearly reflect constitutional obligations under Article 39. Environmental authorities should be required to explain not only whether statutory procedures were followed, but also show how environmental harm was considered in relation to development benefits. Access to justice also needs improvement because public interest organisations and affected communities should be allowed to bring environmental claims without restrictive standing rules, especially where environmental harm affects groups rather than individuals alone. At an institutional level, environmental disputes would be handled more effectively through a strengthened Environment and Land Court with clear enforcement powers. Courts should be able to issue binding compliance orders and require restoration of damaged environments where harm has already occurred.[40]

7.3 Cross Country Legal Lessons

Uganda and the European Court of Human Rights operate in very different institutional settings, but each system exposes a gap in the other's approach to environmental adjudication. In Uganda, the environmental main strength lies in its constitutional structure which gives environmental protection direct legal status, allowing courts to engage with environmental harm without needing to reframe it through other rights. In practice, however, judicial reasoning often remains closely tied to procedural review under environmental impact assessment processes, which can limit deeper engagement with questions of environmental harm versus development benefit. The European Court of Human Rights, by contrast, has developed a more disciplined method of reasoning through the proportionality test under the European Convention on Human Rights. This requires states to justify environmental interference in a structured way. However, because protection is indirectly derived from private and family life, environmental harm must often be translated into individual impact. This makes it more difficult to fully address broader issues such as ecosystem degradation, climate-related harm, or cumulative environmental loss that do not always present as immediate personal injury. Therefore, in practical terms, Uganda could benefit from more structured judicial reasoning when balancing environmental harm against development objectives, particularly in large infrastructure and extractive projects where public interest is often asserted in broad terms. At the same time, the European model could be strengthened by giving greater legal recognition to environmental harm that is collective or long-term in nature, especially where it affects communities rather than identifiable individuals.

8. Conclusion

This comparative analysis shows that courts play an important role in balancing environmental protection with economic development, but they do so in different ways in Uganda and before the European Court of Human Rights. In Uganda, the Constitution especially Article 39 which gives courts a direct and strong legal basis to protect the environment. This allows judges to stop or question development projects that threaten environmental harm. However, in

[40] Twinomugisha (n 4) 244, 258-62.

practice, enforcement is not always consistent. Courts sometimes give significant weight to government claims about national interest and development priorities, and environmental review may focus more on whether procedures like Environmental Impact Assessments were followed rather than on the overall environmental impact of the project. In contrast, the European Court of Human Rights applies a more structured legal test under Article 8 of the European Convention on Human Rights. It requires states to show that environmental interference is justified and that a fair balance has been struck between individual rights and public interest. This approach is more systematic and predictable, but it has a limitation: it mainly protects individuals. Environmental harm that affects ecosystems, biodiversity, or future generations may fall outside its reach unless it can be linked to individual suffering.

In effect, both systems show that economic development is not automatically allowed to override environmental protection. Courts in both contexts require justification before environmental harm is accepted. The difference lies in method and scope rather than principle. A more effective approach would combine the strengths of both systems. Ugandan courts would benefit from clearer and more consistent standards when balancing environmental and economic interests, including clearer use of proportionality, necessity, and precaution. At the same time, the European system could give greater recognition to broader environmental harm that goes beyond individual rights. Ultimately, sustainable development depends on courts treating environmental limits as real legal constraints, not optional considerations. Development should proceed only where it is justified, proportionate, and environmentally responsible.

References

Table of Cases

European Court of Human Rights
López Ostra v Spain (1994) Series A no 303-C
Fadeyeva v Russia (2005) 45 EHRR 10
Hatton and Others v United Kingdom (2003) 37 EHRR 28
Taşkin and Others v Turkey (2004) 42 EHRR 50
Duarte Agostinho and Others v Portugal and 32 Other States (Application no 39371/20, ECHR Grand Chamber, 9 April 2024)

Uganda (High Court)
Greenwatch (U) Ltd v Attorney General and Uganda Electricity Transmission Co Ltd (High Court of Uganda at Kampala, HCT-00-CV-MC-0139 of 2001, 12 November 2002)
Advocates Coalition for Development and Environment (ACODE) v Attorney General (High Court of Uganda at Kampala, Miscellaneous Cause No 0100 of 2004, 2005)

Table of Legislation

Uganda
Constitution of the Republic of Uganda 1995
National Environment Act, Cap 181
National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000 (SI No 3 of 2000)
National Environment (Environmental and Social Assessment) Regulations 2020
National Environment (Waste Management) Regulations 2020
National Environment (Oil Spill Prevention, Preparedness and Response) Regulations 2020

European Convention on Human Rights
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) 1950

Table of Treaties and International Instruments

Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993)
United Nations Convention to Combat Desertification (adopted 17 June 1994, entered into force 26 December 1996)
United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994)

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A Critical Analysis of Corporate Tax Planning Under the Nigeria Tax Act, 2025: Doctrinal, Judicial, and Comparative Perspectives

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Abstract. The passing of the Nigeria Tax Act (NTA) 2025 marks a historic development in Nigeria's tax regime with an overhaul of disparate and overlapping tax statutes into one cohesive framework that also incorporates many globally accepted anti-avoidance provisions. This paper critically examines the legal framework of corporate tax planning in Nigeria, distinguishing between acceptable tax avoidance and unacceptable tax evasion, while probing into the extent to which aggressive tax planning is restricted by the NTA 2025. Within the larger context of international tax governance, the paper explains how corporate tax planning methods have been restructured under the NTA 2025. It uses a doctrinal and comparative approach, incorporating ideas from the United States, the United Kingdom, and the Base Erosion and Profit Shifting (BEPS) programmes of the Organisation for Economic Cooperation and Development (OECD). The paper argues that Nigeria is transitioning from a permissive tax planning regime to a rules-based and substance-oriented system, inspired by Base Erosion and Profit Shifting (BEPS) principles, through doctrinal and comparative analysis with these countries and the OECD frameworks. The paper further contends that while the NTA 2025 contains measures to mitigate aggressive tax planning and promote transparency, the success of these provisions depends on the enforcement capacity and institutional coherence regarding corporate governance. Accordingly, the paper concludes that it is inevitable for corporate taxpayers to avoid aggressive tax planning and embrace sustainable tax compliance.

Keywords: Corporate Tax Planning, Nigeria Tax Act 2025, Critical Analysis, Tax Avoidance, Tax Evasion.

1. Introduction

The enactment of the Nigeria Tax Act 2025 (NTA), with January 1 2026 effective date, symbolises a paradigmatic shift in Nigeria's corporate taxation framework, harmonising multiple tax regimes into a unified system and embedding anti-avoidance norms aligned with global standards.[407] The reforms aim to enhance revenue mobilisation, curb base erosion,[408] and modernise tax administration. However, these reforms fundamentally alter the architecture within which corporate tax planning operates. Conventional strategies—particularly those exploiting gaps between domestic law and international tax rules—are increasingly constrained by anti-avoidance doctrines, economic substance requirements, and global minimum tax rules.

Corporate tax planning in Nigeria has historically been characterised by aggressive minimisation strategies, often exploiting legislative gaps and administrative inefficiencies, as well as judicial inconsistencies. The NTA 2025 is a radical shift from opaque and overlapping provisions towards a more transparent regime, anti-avoidance, and alignment with global best practices. This paper examines how corporate entities can restructure tax planning strategies under the new regime, drawing comparative lessons from the United Kingdom and the OECD/BEPS frameworks.[409]

[1] Nigeria Tax Act 2025, s. 1.

[408] Base erosion occurs when profits that should be taxed in one country are artificially transferred elsewhere, so that the country where the economic activity actually occurred collects less tax revenue.

[409] See the OECD/G20 BEPS Inclusive Framework in Tax Policy Reforms 2025.

Tax planning under the NTA 2025 refers to the lawful arrangement of a taxpayer's financial affairs to minimise tax liability while complying fully with the law. Under the new Act, tax planning has become more structured, transparent, and aligned with global standards. Tax planning, broadly defined as the lawful arrangement of financial affairs to minimise tax liability, occupies a central role in modern fiscal systems. In Nigeria, historical fragmentation of tax laws enabled aggressive tax practices, including profit shifting, thin capitalisation, and opacity in financial disclosures.

The consolidation of multiple tax statutes into a single framework, the expansion of anti-avoidance provisions, the introduction of minimum effective tax rules, and digital taxation mechanisms have radically transformed corporate tax planning from a fragmented, loophole-prone system to a modern, globally aligned tax regime. By embedding the OECD/BEPS principles, introducing minimum tax rules, and expanding anti-avoidance mechanisms, the Act significantly constrains aggressive tax planning strategies and aligns Nigeria with international tax norms. These innovations raise a fundamental question: To what extent does the NTA 2025 redefine the boundaries of permissible tax planning? While answering this question, this paper will also juxtapose Nigerian tax laws with some other jurisdictions, as well as consider the doctrinal and judicial perspectives of tax planning law.

2. Conceptual Framework: Tax Planning vs Tax Avoidance vs Tax Evasion

2.1 Tax Planning, Tax Avoidance and Tax Evasion

Generally, tax planning involves taking advantage of allowable deductions, reliefs, tax holidays, and other incentives in tax law to pay the least tax possible. It is the structuring of transactions efficiently, timing income and expenses legally, and ensuring compliance to avoid penalties. Under the NTA 2025, tax planning is more compliance-driven and transparent, unlike older regimes where loopholes encouraged aggressive tax avoidance. Tax planning refers to the legitimate structuring of transactions to reduce tax liability within the law.

According to studies on the subject, "tax avoidance" refers to any legitimate tax planning technique used by businesses to reduce their taxable profit.[410] Conversely, any tax planning strategy employed by taxpayers to lower their tax liability from their source of income in a manner that is against the law is known as tax evasion.[411] Harvey[412] defines tax planning as formulating plans to reduce tax liabilities during the tax year, such as selecting the most advantageous tax filing status for the taxpayer. One way to attain this tax planning position is to defer selling an asset until the following year to realise capital gains. Making an investment choice based on a company's estimated revenue as well as its present and future tax obligations is another strategy of tax planning.

A company's income tax basis and revenues have been impacted by how tax planning adapts to changes in tax law. This argument is supported by a combination of tax avoidance, evasion, and tactics, such as overstating tax deductions or underreporting taxable income. One of the means of achieving this, for example, is to treat non-deductible expenses as if they are deductible, thereby reducing chargeable profit and, by so doing, reducing tax payable. Tax planning techniques are generally legal, although some people may use them to evade taxes by understating their taxable income or overstating their deductions.[413]

Tax planning has been defined in many ways, one of which is "the capacity of the taxpayer to arrange his financial activities in a way that will minimise his expenditure for taxes."[414] Jeff Pniowsky[415] defined it as "the process of arranging one's affairs to defer, reduce or even eliminate the amount of taxes payable to the government." The best way to lower tax liabilities while staying within the boundaries of the tax law has likewise been determined to be tax planning. This is made possible by the various tax benefits offered by the tax laws and the varying tax

[410] A Sanni, 'The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions' [2012] IJBSS 3 (17) 3-4.
[411] A Sanni, Ibid.
[412] CR Harvey, "Tax planning" <http://financial dictionary.thefreedictionary.com/Tax Plan> accessed 4 July 2025.
[413] D Bruce et al, 'On the extent, growth, and Efficiency Consequences of State Business Tax Planning' in AJ Auerbach et al, (eds.), *Taxing Corporate Income in the 21st Century*. (Cambridge, United Kingdom: Cambridge University Press, 2007) 226-256.
[414] WH Hoffman, 'The Theory of Tax Planning' [1961] TAR 36 (2), 274.
[415] J Pniowsky, 'Aggressive tax planning-How aggressive is too aggressive?' (Thompson Dorfman Sweatman LLP, 3, 2010) 1. <http://www.tdslaw.com/newsletter/2010/Oct/articles/aggressive_tax_planning.pdf.>accessed 18 June 2023.

rates across different economic sectors and jurisdictions.[416]

In his submission, Hoffman[417] argued that it is essential to distinguish between tax avoidance and tax evasion to comprehend tax planning principles. Failure to do so may result in the discrediting of permissible tax planning, which could have major legal ramifications (such as fines arising from a taxpayer's ignorance of any legal component of tax planning). Thus, it can be said that the phrases "legal" and "illegal" are essential for defining the differences between tax avoidance and tax evasion."[418]

The legal use of the tax law to one's benefit in order to lawfully reduce the amount of tax owed through legal means is known as tax planning, sometimes known as tax avoidance. To borrow from Wheatcraft's aphorism, it is the art of dodging tax without breaking the law, or alternatively, the right of every citizen to arrange one's affairs in a manner allowed by the law or to pay no more than what is required.[419]

A distinction between tax avoidance and tax mitigation can also be drawn in jurisdictions like the United Kingdom and New Zealand. Tax avoidance is a set of business transactions designed to oppose or defeat the evident intention of the parliament. Tax mitigation, otherwise called tax planning, on the other hand, are transactions that reduce tax liabilities without avoidance. This conduct aligns with the intention of the legislature. Such conduct includes gifts to charity or investments in certain assets or industries that qualify for tax relief.

The clear understanding of the distinction between avoidance and mitigation goes back to the 1970s. It was an innovation drawn from the case of *IRC v Challenge Corporation Ltd*,[420] a New Zealand case. The case is a leading decision from the House of Lords on the application of double taxation treaties, particularly focusing on the interpretation of tax treaties and the issue of relief from double taxation. The facts of the case were that Challenge
Corporation Ltd was a New Zealand company that paid dividends to a UK-resident shareholder.

Under the UK-New Zealand double taxation agreement, there were provisions regarding relief from double taxation on income, such as dividends. The issue arose as to how much credit (relief) the UK shareholder could claim for tax paid in New Zealand, especially in relation to the underlying corporate tax paid by Challenge Corp in New Zealand. The House of Lords held that the UK taxpayer was not entitled to a tax credit for the underlying New Zealand corporate tax paid by Challenge Corp, because the company (not the shareholder) paid that tax, and the treaty did not explicitly provide for crediting such tax. The ruling clarified that double tax relief is strictly based on the wording of the treaty. This author agrees with the UK tax authorities (IRC) in denying credit for tax paid by the New Zealand company because relief provisions must be clearly expressed. Also, there is no general right to credit for foreign tax unless the treaty expressly allows it.

In practice, there is a very thin line of distinction between tax avoidance and tax evasion. The main factors to consider when deciding if a particular conduct is avoidance or mitigation include whether a particular tax regime is applicable, or whether transactions have economic consequences or importance.

Another approach in differentiating tax avoidance and tax mitigation is to seek the identification of 'the spirit of the statute' or 'misusing' a provision. However, this is the same as the "evident intention of parliament" adequately understood. Another approach is to seek 'artificial' transactions. However, a transaction cannot be described as 'artificial' if it has valid legal circumstances unless some standards can be set up to establish what is 'natural' for the purpose. It must be noted that part of the reasons for high tax avoidance can be traced to the multiplicity of taxes in Nigeria,[421] which the NTA 2025 has come to correct by consolidating these fragmented laws into a unified Act.[422]

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[416] L Fallan, et al, 'Adoption of Tax Planning Instruments in Business Organizations: A Structural Equation Modelling Approach' [1995] SJM 11(2), 177-190.

[417] WF Hoffman, Op. cit.

[418] NS Abdul Wahab, *Tax planning and corporate governance: Effects on shareholders valuation.* (Thesis for the degree of Doctor of Philosophy, University of Southampton, Southampton UK, 2010) from <http://eprints.soton.ac.uk/> accessed 5 November 2025.

[419] O Oguntokun: 'Global Perspectives in Tax Evasion and Avoidance: The Legal Quagmire in Nigeria,' in (*KWAREVE News*, a monthly publication of Kwara State Internal Revenue Service, 3 (21), August 2017) 7.

[420] [1986] NZPC 1; [1986] UKPC 45; [1987] AC 155; [1986] 2 NZLR 513; [1987] 2 WLR 24; (1986) 10 TRNZ 161 is a prominent case in New Zealand tax law regarding tax avoidance.

[421] A Sanni, 'The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions' [2012] IJBSS 3 (17) 3-4.

[422] See generally, Nigeria Tax Act 2025, section 1 which states that "The objective of this Act is to provide a unified fiscal legislation governing taxation in Nigeria."

In all, tax avoidance occurs when a person undertakes transactions that align with the letter of the law but violate the spirit and intent of the law. On the other hand, tax evasion is used to describe efforts by individuals, firms, trusts, and other entities to illegally reduce tax liabilities or fail to pay tax as and when due or refuse to pay tax at all.

Tax evasion involves deliberately misrepresenting or concealing the true state of affairs by the taxpayers to the tax authorities to reduce tax liability. Such misrepresentation includes but is not limited to dishonesty in reporting tax (such as declaring less income, profits, or gains than usually earned or overstating deductions). It may also extend to outright failure or refusal to pay tax, or failure to pay tax as and when due.[423]

Tax evasion is a crime in most countries, including Nigeria, and subjects the guilty party to fines, imprisonment, or both. Tax aggressiveness is a behaviour of manipulating taxable income that can lead to tax evasion.[424] Tax aggressiveness can also be defined as a deliberate act by taxpayers who adopt aggressive or borderline positions to minimise their tax liabilities in breach of current tax regulations. Thus, it can be concluded that tax avoidance is an activity or action that reduces the amount of tax payments.

2.2 Tax Planning vs Tax Avoidance: From Strict Interpretation to Purposive Interpretation

Corporate tax planning traditionally refers to the lawful arrangement of affairs to minimise tax liability. The difference between legitimate tax planning and impermissible avoidance has been framed by judicial doctrines. In *IRC v Duke of Westminster,*[425] the House of Lords affirmed the taxpayer's right to arrange affairs to reduce tax liability. However, modern jurisprudence has shifted towards a purposive interpretation. In *WT Ramsay Ltd v IRC,*[426] the UK courts rejected artificial tax schemes lacking commercial substance, establishing the *Ramsay principle*, which allows courts to disregard composite transactions designed solely for tax avoidance. Similarly, Nigerian courts have increasingly embraced purposive interpretation, though not yet as robustly institutionalised as in the UK.

3. Legal Framework of Tax Planning under the NTA 2025

The NTA 2025 introduces several key reforms, especially regarding tax planning. These include the General Anti-Avoidance Rules (GAAR),[427] Enhanced transfer pricing regulations,[428] Mandatory disclosure of aggressive tax arrangements, Digital tax compliance mechanisms,[429] and strengthened penalties for non-compliance. These provisions signal a move towards aligning Nigeria's tax system with international standards. The legal framework of tax planning under the NTA 2025 refers to the body of statutory rules, administrative structures, and guiding principles that regulate how taxpayers may legally minimise their tax liabilities while complying with the law. The framework is broader than a single statute—it is built around the NTA 2025 and supporting tax reform laws.

3.1 Consolidation and Harmonisation

The NTA 2025 consolidates multiple tax laws into a single unified framework and simplifies tax structure by reducing multiplicity of taxes.[430] It expands deductions, incentives, and taxable scope.[431] It also introduces digital taxation and aligns with global standards (e.g., OECD BEPS). This means tax planning is now easier to understand, more regulated, and less prone to abuse.

The harmonisation of multiple tax laws into a unified statute has reduced duplication and regulatory arbitrage. This limits planning strategies previously based on jurisdictional inconsistencies and overlapping tax regimes.

3.2 Anti-Avoidance Provisions

The Nigeria Tax Act 2025 introduces a plethora of anti-avoidance mechanisms, including:

Minimum Effective Tax Rate (ETR)

[423] A Sanni, "The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions" [2012] IJBSS 3 (17) 3-4. <https://risevest.com/blog/differences-between-tax-avoidance-and-tax-evasion> accessed 25 May, 2025.

[424] MM Frank et al., 'Tax Reporting Aggressiveness and Its Relation to Aggressive Financial Reporting' [2009] TAR 84 (2) 467-496.

[425] [1936] AC 1.

[426] [1982] AC 300.

[427] Nigeria Tax Act 2025, ss 190-193.

[428] Nigeria Tax Act 2025, s 192 (2).

[429] Nigeria Tax Act 2025, s 27 (6).

[430] Nigeria Tax Act 2025, s 1.

[431] Nigeria Tax Act, 2025 s 20.

Large multinational enterprises shall meet a minimum tax threshold. The NTA 2025 introduces an ETR of 15% of the net income of a company.[432] The Act defines net income as the profits before tax as reported in the Audited Financial Statements (AFS), excluding franked investment income and unrealised gains and losses.[433] This provision applies to companies with turnover exceeding ₦50 billion, and companies that are part of a multinational enterprise (MNE) group with an aggregate turnover of at least €750 million or its equivalent.

This 15% ETR aligns with the OECD Pillar II framework, which mandates a top-up tax to ensure that large multinational groups with a turnover exceeding €750 million or its equivalent pay tax at an ETR of 15% on the income generated in each jurisdiction they operate in. The provision is a significant improvement on the repealed Companies Income Tax Act 2007, as it prevents large multinational companies such as the Nestle Group (of which Nestle Nigeria Plc is a member) from profit shifting. Under the OECD Pillar Two, multinationals must pay a minimum of 15% effective tax globally, and top-up taxes apply where income is undertaxed. This marks the end of "stateless income" planning structures and promises to reduce tax aggressiveness.

(b) Controlled Foreign Company (CFC) Rules and Taxation of Nigerian Companies

The significant changes in this area include:

Introduction of Controlled Foreign Corporation (CFC) Rules: The NTA 2025 introduces CFC rules to counter profit shifting. Where a foreign subsidiary of a Nigerian company retains profits that could have been distributed without adversely affecting its operations, those profits will be deemed distributed and taxed in Nigeria.[434] This eliminates the deferral advantage sometimes used in tax planning and strengthens Nigeria's ability to tax offshore profits that economically belong to Nigerian entities.

Anti-base erosion through minimum Effective Tax Rate (ETR): The NTA 2025 also adopts a top-up tax mechanism aligned with the OECD's BEPS Pillar 2 framework. Profit shifting to low-tax jurisdictions is neutralised, and the use of tax havens becomes ineffective unless justified by substance. If a foreign subsidiary of a Nigerian company (or a group member) pays less than the minimum ETR of 15%, the Nigerian parent must pay the shortfall. This provision discourages the use of low-tax jurisdictions for profit shifting and ensures a fairer allocation of taxing rights to Nigeria. These measures enhance the robustness of Nigeria's tax system by addressing tax avoidance strategies, protecting the domestic tax base, and aligning with international best practices on BEPS.

(c) Taxation of Non-Resident Persons (NRPs):[435] In determining the total profits, only expenses incurred in producing the profits attributable to the permanent establishment in Nigeria will qualify for deduction. In other words, they should be expenses wholly and exclusively incurred in producing the profits.[436] However, no deduction will be allowed in respect of royalty, fees, or similar payments in return for the use of patents or other rights.[437] Where the total profits of a Non-Resident Person cannot be ascertained, the Nigeria Revenue Service (NRS) shall apply the applicable profit margin to the total income generated from Nigeria. However, the tax payable by any NRP will not be less than the tax withheld at source.[438] If the NRP does not have any income liable to withholding tax, the tax payable shall not be less than 4% of the total income generated from Nigeria.

(d) Record-keeping: The NTA 2025 mandates separate record-keeping for priority and non-priority operations, audited independently.[439] Taxpayers are required to maintain accurate books of accounts and financial records, retain records for a specified statutory period and provide supporting documentation for deductions, reliefs, and exemptions. Failure to comply will result in all income being treated as non-priority, disqualifying the company from tax credits. It may also result in penalties or additional tax assessments. In addition to annual tax returns, there is a requirement to submit annual tax incentives returns to the relevant tax authority in the form prescribed by the NRS covering income tax and any incentive other than those that are generally available. The implication of this is that proper record keeping will make business transactions transparent, thereby preventing any form of tax shielding, and thereby preventing tax evasion or aggressive tax planning.

(e) Transitional provisions and anti-avoidance: The NTA 2025 also prohibits double-dipping as companies granted the Economic Development Tax Credit

[432] Nigeria Tax Act, 2025. s 57.
[433] Nigeria Tax Act, 2025. s 202.
[434] Nigeria Tax Act, 2025. s 6.
[435] See generally, Nigeria Tax Act, 2025. s 6.
[436] Nigeria Tax Act, 2025. s 20.
[437] See generally, Nigeria Tax Act, 2025. s 21.
[438] Nigeria Tax Act, 2025. s 19.
[439] See generally, Nigeria Tax Act, 2025. s 179.

(EDTC) are barred from accessing similar incentives under any other law.[440] However, businesses currently benefiting from the PSI may continue for the remainder of their approved period. Likewise, EDI benefits granted before a sector's sunset date remain valid until expiry.

(f) Sunset Clause: The NTA 2025 introduces a "sunset" mechanism setting a definitive end date after which a sector or activity will no longer qualify for EDI, ensuring periodic review and relevance of tax incentives.[441] This is a significant improvement, as the absence of definite timelines under the previous regime led to uncertainty. While the former framework allowed for periodic review and deletion from the PSI list (i.e., manufacture of cement), the processes for these were sometimes unclear. With this clear provision under the NTA 2025, companies can now take advantage of the incentives within the timeframe and thereby reduce tax aggressiveness.

(g) Rescoping the VAT exempt and Zero-Rated Supplies in Nigeria: Sections 185 to 187 of the Act outline the items that constitute exempt supplies and taxable supplies chargeable at the rate of zero percent.[442] The Act also allows for the transfer of unutilised capital allowances, unabsorbed losses, and unutilised withholding tax credits from merging entities to the surviving entity in the event of a merger.[443] Unutilised capital allowances shall be available for use by the surviving entity. This is another incentive which companies can utilise in their tax planning strategies.

Incentives and Reliefs: From Tax Holidays to Performance-Driven Incentives

The Act replaces traditional tax holidays with performance-based incentives. This restructures tax planning towards investment-driven strategies and compliance-based optimisation. The Act introduces several tax incentives,[444] such as income generated by companies engaged in agricultural businesses, including crop production, livestock, aquaculture, forestry, dairy, cocoa processing and manufacturing of animal feeds, will be exempt from income tax for the first five years from commencement of business. A company will be entitled to an additional deduction of 50% in the relevant years of assessment in respect of costs incurred in any two calendar years from 2023 to 2025 with respect to wage awards, salary increases, transportation allowance or transport subsidy granted to a low-income worker which brings the gross remuneration of such worker to an amount not exceeding ₦100,000. However, any award or salary increase to any worker earning above ₦100,000 shall not qualify.[445]

Another ground for additional deduction of 50% is where salaries of any new employees that constitute a net increase in the average number of new employees hired in 2023 and 2024 calendar years over and above the average net employment in the preceding three years, provided that such new employees are not involuntarily disengaged within a period of three years post-employment.[446] Net employment is defined as the total number of persons employed less the total number of persons disengaged during the calendar year, regardless of whether the disengagement is voluntary or not.[447]

Other incentives include deductions for research and development.[448] The allowable deduction under Section 165 of the Act has now been adjusted to 5% of a company's turnover for the year. This represents a significant departure from the provision under the repealed CITA, which allowed a deduction of 10% of total profits. The implication is that companies now have a broader base of 5% of turnover, as opposed to total profits, from which they can commit funds to research and development activities. The Act also provides that where a company that has enjoyed this deduction transfers or sells the outcome of the research and development to another person, the proceeds from the sale or transfer shall be taxable.[449]

3.4 Administrative and Compliance Measures

The administrative and compliance measures under the NTA 2025—read together with the Nigeria Tax Administration Act, 2025 (NTAA 2025)—form the operational backbone of the new tax regime. These measures are designed to simplify tax processes, enhance enforcement, and ensure taxpayer accountability. Specifically, the Nigeria Tax Administration Act 2025 provides for the disclosure of

[440] Nigeria Tax Act, 2025. s 183.
[441] Nigeria Tax Act, 2025. See s.177 (3) which states "A company having unutilised tax credit may utilise it within five assessment years after the end of the priority period, after which any unutilised tax credit shall lapse". See also ss 183-184.
[442] Nigeria Tax Act, 2025, ss 185-187.
[443] Nigeria Tax Act, 2025, s 189.
[444] See generally, Nigeria Tax Act, 2025, s 166.
[445] See generally, Nigeria Tax Act, 2025, s 166 (3) (a).
[446] See generally, Nigeria Tax Act, 2025, s 166 (3) (b).
[447] Nigeria Tax Act, 2025, s 166 (4).
[448] Nigeria Tax Act, 2025, s 165.
[449] Nigeria Tax Act, 2025, s 165 (3).

tax planning strategies employed in the business transactions.[450]

(a) Harmonised Tax Administration Framework
A central administrative reform is the creation of a uniform tax administration system applicable across federal, state, and local levels in Nigeria. The NTAA 2025 establishes consistent procedures for assessment,[451] collection, and enforcement of taxes.[452] It eliminates duplication and conflicting tax rules, ensuring coherence and predictability in administration. It also makes clear provisions for offences and penalties[453] to enhance compliance.

(b) Mandatory Taxpayer Registration and Identification
Administrative compliance begins with proper registration. Every taxable person shall register with the relevant tax authority. The use of Tax Identification Numbers (TINs) is mandatory for tracking taxpayers.[454] Tax authorities maintain a centralised taxpayer database. The purpose is to widen the tax net and ensure traceability of taxable persons. Inspired by OECD BEPS Action 12, the NTA 2025 provides for mandatory disclosure rules which mandates disclosure of aggressive tax arrangements.[455] This shifts the compliance burden onto taxpayers and advisors.

(c) Self-Assessment and Filing Obligations[456]
A major compliance measure is the introduction of a self-assessment regime.[457] Taxpayers must file periodic tax returns (usually annually or as prescribed). Returns are deemed to be self-assessed declarations of tax liability. Filing may be done electronically through digital platforms. This encourages voluntary compliance, reduces administrative burden on tax authorities. This aligns with global best practices.[458]

(d) Digitalisation of Tax Administration[459]
The Act strongly promotes electronic tax systems through E-filing of returns, digital record-keeping and data integration and electronic tax assessments and notices. This reform enhances efficient tax planning, transparency, and real-time monitoring of compliance. The inclusion of digital and virtual asset transactions within the tax base expands the scope of taxable income. Companies operating in digital sectors must implement data tracking systems for digital transactions. This aligns with evolving valuation methodologies and ensure cross-border digital income is appropriately reported. These provisions in NTA 2025 mirrors OECD BEPS Action 1 addressing the tax challenges of the digital economy.

(e) Powers of Tax Authorities (Audit and Investigation)
To ensure compliance, tax authorities are granted extensive administrative powers, such as the power to audit tax returns and financial records, authority to enter business premises[460] and inspect documents,[461] power to remove books and documents,[462]and power to request information from taxpayers and third parties. Refusal to grant access may attract penalties.

(f) Assessment and Collection Mechanisms
Administrative measures also include structured procedures for tax assessment through acceptance of taxpayer self-assessment, and issuance of additional assessments where necessary. Enforcement is carried out through demand notices, garnishee orders and recovery proceedings. The goal is efficient and timely tax collection.

(g) Penalties and Enforcement Measures
The NTA 2025 and the NTAA 2025 jointly introduce strict compliance enforcement mechanisms, including administrative penalties for non-compliance, daily default penalties for continuing offences, and criminal sanctions (fines and imprisonment in severe cases). For example, there may be a ten thousand Naira penalty for general non-compliance, plus daily fines for continued default.[463] The importance of this is that it deters tax evasion and strengthens enforcement, thereby enhancing tax planning.

(h) Dispute Resolution Mechanisms

[450] See generally, Nigeria Tax Administration Act, 2025, s 30.
[451] See generally, Nigeria Tax Administration Act, 2025, Chapter II Part II.
[452] See generally, Nigeria Tax Administration Act, 2025, Chapter II Part III.
[453] See generally, Nigeria Tax Administration Act, 2025, Chapter IV Part I.
[454] See generally, Nigeria Tax Administration Act, 2025. ss 7-8.
[455] OECD, *Mandatory Disclosure Rules, Action 12 – BEPS Project* (2015).
[456] See generally, Nigeria Tax Administration Act, 2025 s 11.
[457] Nigeria Tax Administration Act, 2025. s 34.
[458] Such as the OECD Model.
[459] Nigeria Tax Administration Act 2025. sections 79 and 83.
[460] Nigeria Tax Administration Act 2025. s 58.
[461] Ibid.
[462] Nigeria Tax Administration Act 2025. s 59.
[463] Nigeria Tax Administration Act 2025. s 109.

To ensure fairness, the Act provides structured procedures for tax dispute resolution. Taxpayers may challenge assessments through administrative review, tax tribunal and the courts. It also introduces clear timelines and procedural safeguards.

(i) Taxpayer Rights and Obligations
The compliance framework balances enforcement with protection. The taxpayers' rights include the right to fair hearing, right to confidentiality of tax information and the right to clarity in tax obligations. On the other hand, their obligations include timely filing and payment, honest disclosure of income as well as cooperation with tax authorities.

(j) Inter-Agency Coordination and Data Sharing
The Act promotes cooperation between tax authorities and other government agencies, data sharing for tracking income and preventing tax evasion, and integration with financial institutions and regulatory bodies.

(k) Elimination of Multiple Taxation and Simplification
Administrative efficiency is further enhanced by merging overlapping taxes, eliminating nuisance taxes, and ensuring that a single tax base is not taxed multiple times. Summarily, the administrative and compliance measures under the Nigeria Tax Act 2025 represent a modern, technology-driven, and enforcement-oriented tax system. Key pillars include self-assessment and digital compliance, strong enforcement and penalties, unified administrative procedures and enhanced taxpayer accountability and rights. Overall, the framework seeks to balance efficiency, fairness, and revenue optimisation, positioning Nigeria's tax system closer to global best practice.

4. Judicial Attitude to Tax Planning in Nigeria

The judicial attitude to tax planning in Nigeria reflects a gradual evolution from strict legal formalism (respect for taxpayer autonomy) to a more purposive and anti-avoidance–oriented approach under the NTA 2025. Nigerian courts generally recognise the legality of tax planning but draw a clear line between legitimate tax avoidance and illegal tax evasion.

4.1 Conceptual Foundation: Tax Planning v Tax Evasion

Nigerian courts have consistently distinguished tax planning or tax avoidance, which is the arrangement of business transactions to minimise tax liability within the law, and which is considered legal, from tax evasion, which is illegal because it is the deliberate misrepresentation, concealment, or fraud to escape tax. This distinction underpins judicial reasoning.

4.2 Traditional Judicial Attitude: Strict Legalism

Historically, Nigerian courts adopted the literal rule of interpretation, emphasising that a taxpayer is entitled to arrange his affairs to pay the least tax possible. This approach is rooted in English jurisprudence, particularly in *IRC v Duke of Westminster*. [464] The major principle in that case is that if a transaction complies with the letter of the law, courts will respect it—even if it reduces tax liability. The Nigerian courts initially followed this approach by respecting corporate structures, upholding artificial but legally valid transactions, and avoiding inquiry into taxpayer motive.

4. 3 Shift Toward Substance Over Form

Over time, Nigerian courts began to move away from rigid formalism toward examining the economic reality of transactions, as can be seen in the case of *Ayanwale v FIRS.*[465] Courts may now look beyond legal form, examine the substance and intent, and disregard sham or artificial transactions. This marks a shift toward anti-avoidance reasoning as evident under the NTA 2025. In *FIRS v Mobil Producing Nigeria Unlimited,*[466] the court distinguished legitimate structuring of petroleum operations (avoidance) from manipulative accounting practices (evasion). The case emphasised that intention and legality of the arrangement are key tests. Also, in *Oando Plc v FIRS,*[467] the tribunal upheld the taxpayer's right to rely on statutory incentives and allowances. It confirmed that using tax incentives is avoidance and it is lawful, while falsifying claims is evasion and unlawful. The case of *Furniss v Dawson*[468] also reinforced the substance-over-form doctrine.

4.4 Anti-Avoidance Doctrine in Nigerian Jurisprudence
Modern judicial attitude reflects increasing reliance on substance over form principle. Courts now assess the real nature of the transaction to see whether it has commercial purpose beyond tax benefits. Also, the

[464] See also, Ayrshire Pullman Motor Services v IRC (1929)
[465] (2017) 32 TLRN 1 (TAT).
[466] (2016) 28 TLRN 1.
[467] (2014) 1 TLRN 1 (TAT).
[468] [1984] AC 474.

sham transaction doctrine is to the effect that a transaction may be disregarded if it is fictitious and if it lacks economic reality. Furthermore, under the business purpose test, courts usually ask a pertinent question: does the transaction serve a genuine commercial objective? If it does not, then it will be disregarded, and applicable tax will become payable. All of these are judicial interventions to prevent tax evasion.

4. 5 Statutory Influence on Judicial Attitude

Judicial reasoning is now heavily influenced by statutory anti-avoidance provisions, such as section 22 of the repealed Companies Income Tax Act 2007. The courts have since been supporting the power of tax authorities such as the Nigeria Revenue Service to disregard artificial transactions and reconstruct tax liability where avoidance is evident.

4. 6 Key Nigerian Cases Reflecting Judicial Trends

In *FBIR v Halliburton* (WA) Ltd,[469] the Supreme Court emphasised substance over form in determining tax liability. In *Shell Petroleum Development Company v FIRS,*[470] the court rejected artificial arrangements designed to evade tax obligations and upheld tax authority scrutiny of complex arrangements. Also, in *Abdulrazaq v FIRS,*[471] the court reinforced the distinction between avoidance and evasion. It supported the sanctioning powers of the FIRS where abuse is evident. Furthermore, in *Cadbury Nigeria Plc v FIRS,*[472] the court demonstrated readiness to investigate financial structuring by highlighting the importance of transparency and proper accounting.

4. 7 Contemporary Judicial Attitude

The current Nigerian judicial stance can be summarised as balanced and pragmatic because courts will uphold legitimate tax planning, respect corporate personality and legal structures, and apply strict interpretation where statutes are clear. However, the courts will neither allow abuse of legal forms nor recognise sham or fictitious transactions. The court will also not allow tax evasion that has been disguised as tax avoidance.

4. 8 Comparative Analysis with the UK and the US

The UK tax system provides a mature model of anti-avoidance regulation. These are the GAAR framework under the Finance Act 2013, the Disclosure of Tax Avoidance Schemes (DOTAS). The Judicial approach in *IRC v Duke of Westminster,*[473] allowing tax planning is giving way to the modern purposive interpretation. The UK experience demonstrates a shift from formalism to substance-over-form analysis.

The UK's CFC regime, particularly under the Finance Act 2012, similarly targets artificial profit diversion. In *Cadbury Schweppes plc v IRC*[474] the European Court of Justice held that CFC rules must target "wholly artificial arrangements." Nigerian law, however, appears broader, focusing less on artificiality and more on effective taxation thresholds, thereby reflecting BEPS-driven substance requirements.

The UK adopts a General Anti-Abuse Rule (GAAR) under the Finance Act 2013. The rule targets "abusive" arrangements and applies a "double reasonableness" test. In the UK, while the *IRC v Duke of Westminster*[475] legitimised tax avoidance, the case of *WT Ramsay Ltd v IRC*[476] introduced purposive interpretation. The US, on the other hand, adopts the economic substance doctrine and the substance-over-form principle. For instance, the US case of *Gregory v Helvering*[477] established that transactions must have economic substance. It is a landmark decision of the US Supreme Court on the distinction between legitimate tax avoidance and impermissible tax evasion, and it established the "substance over form" principle in tax law. The Nigerian situation is quite different from these. Presently, with the NTA 2025 in place, Nigeria is moving from Westminster-style formalism towards the Ramsay-style substance.

Nigeria's CFC rules and minimum tax mirror the US anti-deferral regimes. Unlike the UK's judicially developed doctrines, Nigeria's approach is statutorily codified, reducing reliance on judicial activism. In *IRC v DSG Retail Ltd,*[478] the House of Lords emphasised strict adherence to arm's length standards. Similarly, Nigerian tax authorities, such as the Nigeria Revenue

[469] [2016] 4 NWLR (Pt. 1501) 53.
[470] Consolidated Appeals Nos. TAT/LZ/040/2013, TAT/LZ/041/2013 & TAT/LZ/042/2013.

[471] ***Abdulrazaq v FIRS*** **(2014) 6 TLRN 1 (Tax Appeal Tribunal). See also Shell Petroleum Development Company of Nigeria Ltd v Federal Board of Inland Revenue** ***(1996) 8 NWLR (Pt. 466) 256 (SC).***

[472] (2010) 2 NWLR (Pt. 1179) 561.
[473] *IRC v Duke of Westminster* [1936] AC 1 (HL).
[474] (Case C-196/04).
[475] *IRC v Duke of Westminster* [1936] AC 1 (HL).
[476] *WT Ramsay Ltd v IRC* [1982] AC 300.
[477] 293 U.S. 465 (1935).
[478] [2009] UKHL 4.

Service, are empowered to re-characterise transactions lacking economic substance.

4. 9 Influence of Global Tax Norms and Laws

Nigerian courts are increasingly influenced by international standards, especially by incorporating and complying with the OECD Base Erosion and Profit Shifting (BEPS) principles, and the anti-abuse doctrines such as the General Anti-Avoidance Rules (GAAR), and the economic substance doctrine. This aligns Nigeria with global tax jurisprudence trends, and they are provided for in the NTA 2025. The OECD's BEPS project seeks to curb: profit shifting and base erosion. In this regard, there are two key pillars: Pillar One (digital taxation), and Pillar Two (global minimum tax). Nigeria's 15% minimum tax aligns with OECD Pillar Two. Under the NTA 2025, there is now a shift from aggressive to defensive tax planning.

Tax planning now focuses on compliance, risk management, and transparency. The unified tax laws now eliminate multiple taxation loopholes, and drastically reduce jurisdictional inconsistencies. Also, penalties and enforcement powers discourage aggressive schemes. The NTA 2025 now aligns with Global Standards by transiting toward the OECD-compliant taxation, and by embracing the global transparency norms. For taxpayers and corporations, transactions must have economic reality, and serve business purposes beyond tax reduction. Tax authorities and courts now closely examine aggressive tax planning schemes. Taxpayers must maintain proper records, and justify transactions.

The OECD BEPS project represents the global standard for combating aggressive tax planning. Key pillars include:

BEPS Action 3 – Controlled Foreign Company (CFC) rules
BEPS Action 4 – Interest limitation
BEPS Action 6 – Treaty abuse prevention
BEP ACTION 12-Mandatory disclosure rules
BEPS Action 13 – Transfer pricing documentation through country-by-country reporting.
Pillar Two – Global minimum tax (15%)

The NTA 2025 reflects these principles through the introduction of CFC rules, the minimum effective tax rate of 15% for multinationals, and the expansion of taxing rights over non-resident companies. Nigeria's adoption of these principles under the NTA 2025 reflects increasing global tax harmonisation.

5. Key Areas of Corporate Tax Planning under NTA 2025

The Act affects companies through a revised corporate tax rule. There is also a broader definition of taxable entities (including foreign-controlled companies), as well as the introduction of global minimum tax concepts. Corporate tax planning strategies under the Act include proper capital structuring (debt vs equity), timing of revenue recognition, use of tax-deductible expenses, and group restructuring to optimise tax exposure. The NTA 2025 expands allowable deductions such as business expenses, capital investments, and sector-specific allowances. For example, gas reinjection and infrastructure investments are deductible in petroleum operations. Generally, planning focuses on the identification of fully deductible and non-deductible expenses, as well as avoiding disallowed expenses (e.g., penalties).

Investment and Incentive-Based Planning: The Act promotes investment through capital allowances, sector incentives (e.g., energy, infrastructure), and tax reliefs for certain industries. Planning Strategies include investing in tax-favoured sectors, structuring projects to qualify for incentives, the use of capital allowances to defer tax, the use of double taxation treaties, transfer pricing compliance, and avoiding base erosion risks.

General Anti-Avoidance Rules (GAAR): The GAAR empowers tax authorities to disregard artificial or fictitious transactions designed to evade tax liability. This reflects principles established in *WT Ramsay Ltd v IRC*.[479] Under the NTA 2025, companies must ensure that transactions have economic substance beyond tax benefits.

Transfer Pricing Regulations: The Act reinforces the arm's length principle consistent with OECD Transfer Pricing Guidelines.[480] Multinational corporations must justify intra-group transactions with economic evidence.

Digital Economy Tax Planning: There are new provisions in the Act that cover online businesses, remote services, and digital transactions. The planning strategies include proper classification of digital

[479] *WT Ramsay Ltd v IRC* [1982] AC 300 – established the **Ramsay Principle**, disregarding artificial steps in tax avoidance schemes.

[480] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2022).

income, ensuring compliance with digital tax rules, and structuring cross-border digital operations efficiently. Under the NTA 2025, there is now a mandatory taxpayer registration as well as electronic filing and invoicing, which must strictly be complied with by maintaining accurate records and filing taxes promptly, thereby avoiding penalties and audit. Compliance itself is now a core tax planning strategy.

Anti-Avoidance and Limits to Tax Planning: The NTA 2025 discourages aggressive tax avoidance through broader tax definitions, anti-avoidance rules, and increased transparency. This creates a distinction between tax planning (legal and acceptable), tax avoidance (exploiting loopholes, which has now been restricted, and tax evasion, which is illegal.

Importance of Tax Planning under NTA 2025: Tax planning is essential because it reduces tax burden legally, improves cash flow, enhances business profitability, ensures compliance with modern tax rules, and minimises the risk of penalties.

Strategic Implication: Companies must abandon artificial structuring (e.g., asset disposal schemes) and adopt substance-over-form planning. Tax planning should now focus on operational efficiency rather than transactional re-characterisation.

Anti-Avoidance and Minimum Tax Regime: There is the introduction of a 15% minimum effective tax rate (ETR) for large companies and multinationals. This makes top-up tax applies where profits are shifted to low-tax jurisdictions.[481]

Restructuring approach: The Act aligns tax strategies with OECD BEPS principles. It reduces reliance on tax havens, transfer pricing manipulation, and profit shifting. It also adopts real economic substance (people, assets, functions) in tax jurisdictions.

Strategic restructuring: There is now a shift from "location-based incentives" to investment-driven tax planning. There is also the prioritisation of capital-intensive projects, such as those in the manufacturing, infrastructure, and technology. There is also the structuring of investments to maximise qualifying capex and carry-forward benefits.

Research and Development Deductibility: Research and Development expenses are deductible up to 5% of turnover. This implies that there is now an integration of innovation and tax planning. There are also the establishment of formal Research and Development structures and documentation systems to capture deductions.

Optimising Corporate Structure and Group Tax Planning: Offshore disposals deriving value from Nigerian assets are now taxable. The restructuring strategy includes the re-assessment of holding company structures (especially offshore SPVs), consideration of treaty jurisdictions and double taxation relief mechanisms, and the controlled company rules and ownership.

Transition from Tax Minimisation to Tax Risk Governance: Under the NTA 2025, corporate tax planning must shift from aggressive avoidance structures to risk-managed compliance frameworks. The imposition of minimum tax thresholds and expanded taxable bases (including digital assets) necessitates internal tax control systems that align with statutory thresholds, integration of tax risk into corporate governance structures, and adoption of real-time compliance and reporting mechanisms. All of these align with the OECD's emphasis on co-operative compliance and transparency in tax administration.

Implications for Corporate Governance: The Act redefines tax planning as a governance issue rather than a purely financial function. Directors may face increased accountability for tax strategies, aligning with global trends in corporate responsibility. The integration of tax planning into corporate governance has gained prominence, particularly following OECD reforms.[482] Boards now oversee tax risk. There is also an increase in transparency and disclosure obligations through the mandatory record-keeping. More than ever before, aggressive tax strategies may trigger reputational risks under the NTA 2025. Boards are increasingly expected to align tax strategies with ethical standards and stakeholder expectations. Tax planning strategies are now priority board matters.

Summary: From Old to New

The overarching restructuring philosophy under the Nigeria Tax Act 2025 is:

[481] Nigeria Tax Act, 2025. Section 57.
[482] OECD, *Principles of Corporate Governance* (OECD Publishing 2015).

Old Strategy	New Strategy under NTA 2025
Aggressive tax avoidance	Compliance-driven optimisation
Use of loopholes	Alignment with global standards
Offshore profit shifting	Substance-based taxation
Tax holidays reliance	Investment-linked incentives
Fragmented compliance	Integrated tax governance

6. Critical Evaluation and Conclusion

The Nigeria Tax Act 2025 promotes fairness in taxation. It also prevents revenue loss to the government. It also aligns with global best practices. However, despite these improvements, there are still some challenges. For instance, there are increased compliance requirements, digital monitoring reduces flexibility, broader tax net, which now captures more entities for taxation. Furthermore, the institution to enforce compliance, such as the NRS, appears weak and may not have the enforcement capacity, without which tax evasion might persist. There is limited technical expertise within tax authorities. Some corporations that are so accustomed to aggressive tax planning might resist the radical changes in the Act in the absence of tax experts.

Tension between Revenue Maximisation and Investment Attraction: While the NTA enhances revenue through increased tax burden (e.g., CGT at 30%), this may discourage investment. There is also the compliance complexity, which may deter foreign investors.

Administrative Capacity Constraints: Effective implementation of the NTA 2025 depends on the expertise of tax authority, availability of digital infrastructure and enforcement capacity. Without these, anti-avoidance rules risk will just be symbolic rather than effective.

Incomplete Harmonisation with International Standards: Although aligned with BEPS, there are still notable gaps, such as the absence of a fully developed GAAR framework, limited jurisprudence guiding interpretation, and weaknesses in treaty network.

Judicial Inconsistencies: There might also be the likelihood of risk of judicial inconsistency. Furthermore, there is the possibility of abusing the wide and discretionary powers of tax authorities.

Concluding, the Act fundamentally reshapes tax planning by shifting from a form-driven system to a substance-oriented regime. While legitimate tax planning remains permissible under the Act, aggressive tax avoidance is increasingly curtailed through anti-avoidance rules, global minimum taxation, and enhanced compliance mechanisms. Comparatively, Nigeria is converging with the UK, US, and the OECD standards, particularly in adopting substance-over-form doctrines and BEPS-aligned policies. However, the effectiveness of this transformation depends on judicial interpretation, administrative capacity, and regulatory clarity.

The Nigeria Tax Act 2025 marks a decisive transition from aggressive tax planning to regulated tax optimisation, driven by global anti-avoidance norms. By incorporating BEPS-aligned provisions—such as minimum tax rules, CFC regimes, and expanded tax bases—the Act compels companies to restructure their tax strategies around substance, transparency, and compliance. Comparatively, while the UK relies heavily on judicial doctrines like the Ramsay principle, Nigeria adopts a more legislatively prescriptive approach, thereby providing greater certainty but reduced flexibility. Ultimately, effective tax planning under the NTA 2025 requires a shift from "tax avoidance engineering" to strategic tax governance embedded within corporate decision-making frameworks.

Also, the judicial attitude to tax planning in Nigeria has evolved from strict legalism to a purposive and substance-based approach. While courts still respect the right of taxpayers to minimise tax liabilities, they increasingly prioritise economic reality over legal form, anti-avoidance principles, and statutory compliance. Ultimately, Nigerian courts aim to strike a balance between protecting taxpayer rights and preventing abuse of the tax system.

In summary, tax planning under NTA 2025 is legal optimisation, not manipulation. In essence, tax planning is no longer a purely technical exercise—it is now a core strategic function tied to business substance, investment decisions, and long-term value creation. The Nigeria Tax Act 2025 marks a decisive transition from aggressive tax planning to regulated tax optimisation, driven by global anti-avoidance norms. By incorporating BEPS-aligned provisions—such as minimum tax rules, CFC regimes, and expanded tax bases—the Act compels companies to restructure their tax strategies around substance, transparency, and compliance.

Comparatively, while the UK relies heavily on judicial doctrines like the Ramsay principle, Nigeria adopts a more legislatively prescriptive approach, thereby providing greater certainty but reduced flexibility. Ultimately, effective tax planning under the NTA 2025 requires a shift from "tax avoidance engineering"

to strategic tax governance embedded within corporate decision-making frameworks.

In conclusion, under the Nigeria Tax Act 2025, tax planning has evolved from a loophole-driven activity to a structured, compliance-oriented strategy. The Act encourages taxpayers to optimise tax through legitimate incentives, maintain transparency, and align with global best practices. To effectively restructure tax planning under the Nigeria Tax Act 2025, companies must transition to a holistic, forward-looking model that integrates Legal compliance (anti-avoidance, minimum tax rules), and Operational strategy (investment, R&D, supply chain design).

7. Recommendations

To maximise the benefits of the Nigeria Tax Act 2025, several policy recommendations are proposed. Nigeria should codify a GAAR similar to the UK model to provide clarity and ensure consistency in application. Institutional capacity should be strengthened within tax authorities to ensure effective implementation. Taxpayer education and awareness should be enhanced to promote voluntary compliance. This can be anchored by the relevant professional bodies such as the Chartered Institute of Taxation of Nigeria (CITN) and the Institute of Chartered Accountants of Nigeria (ICAN).

For ease of compliance, the definition of 'small companies' under the Companies and Allied Matters Act 2020[483] should align with the definition under the NTA 2025. The discrepancies in the definition may lead to difficulty in compliance or conflicting judicial pronouncements when issues bothering on financial thresholds arise.

The radical transformation under the NTA 2025 necessitates a fundamental restructuring of corporate tax planning—from artificial, form-driven arrangements to substance-based, compliance-oriented strategies. While the reforms enhance fiscal integrity, their success ultimately depends on effective implementation, institutional capacity, and a balanced approach that sustains both revenue generation and economic growth. In comparative perspective, Nigeria is converging with global tax norms but must refine its doctrinal coherence and administrative framework to fully realise the objectives of the reform.

There should also be investment in digital tax systems through improvement in digital infrastructure to support electronic tax administration, as well as improved audit mechanisms. There should also be an enhancement of treaty Network through renegotiation of outdated treaties and the inclusion of BEPS-compliant provisions. There should be a clear guidance and advance rulings through the issuance of interpretative guidelines and the introduction of advance pricing agreements (APAs). This will ensure transparency and accountability in the management of tax revenues. There is also the need to promote collaboration between federal and state tax authorities to avoid jurisdictional conflicts. Lastly, there should be a balancing of anti-avoidance provisions, with investment incentives through targeted incentives (e.g., EDTI) and certainty in tax policy. While the expansion of revenue generation under the Act is a welcome development, the Act should not deter investors through its stringent provisions.

[483] See the Companies and Allied Matters Act (CAMA) 2020, s. 394, and the Nigeria Tax Act 2025 s. 202 for comparism.