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# POTENTIALS OF SOCIOECONOMIC RIGHTS IMPLEMENTATION IN MITIGATING INSECURITY IN NIGERIA

**Daniel P. Saredau***

## Abstract

*Nigeria's Constitution proclaims the security and welfare of the people as the primary purpose of government. However, the acute conditions of insecurity and poverty afflicting the country hollow this proclamation. This analytical study employs a discursive research design to examine the potential of implementing socioeconomic rights in mitigating Nigeria's security challenges. The study finds a correlation between the implementation of socioeconomic rights and the quest for security in Nigeria. It also finds that socioeconomic rights implementation is essential for the existence, legitimacy, and stability of the Nigerian state. Accordingly, the study offers suggestions on socioeconomic rights implementation strategies that Nigeria can adopt towards a more secure and prosperous state. The study concludes that implementing socioeconomic rights doubles as both the means and end of attaining both human and national security, and that so doing is as beneficial to the people as it is to the state.*

**Keywords:** socioeconomic rights; human security; human development; Nigeria

## 1. Introduction

Nigeria is Africa's most populous country, and endowed with sufficient human and material resources to be one of the most socioeconomically prosperous countries of the world.[1] However, it remains a country of promise and enduring challenges, as it finds itself among the least viable, and confronted on numerous sides by perennial insecurity.[2] The insecurity in Nigeria can be explained from the perspective of the country's human development situation. Ranked at 161 of 189 countries in the Human Development Index 2021,[3] and with an estimated 83 million people -39 percent of its population living in extreme poverty-[4]

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[1]World Economic Forum '5 facts to know about Africa's powerhouse' 9 August 2019 https://www.weforum.org/agenda/2019/08/nigeria-africa-economy/ (accessed 20 March 2021).

[2] In our view, insecurity is the state of being vulnerable or subject to harm, danger or injury either in one's person or properties. Insecurity results in death, injury, harm, trauma, damage, or psychological stress.

[3] United Nations Development Program *Nigeria country profile* (2021) http://hdr.undp.org/en/countries/profiles/NGA (accessed 30 March 2023).

[4] World Poverty Clock *Nigeria* (2021) https://worldpoverty.io/map (accessed 16 April 2022).

Nigeria is labelled the poverty capital of the world.[5] Poverty is, unsurprisingly, both a cause and an effect of the insecurity situation in Nigeria.[6] For many Nigerians, forced to endure the country's harsh socioeconomic conditions, improvement in the quality of life remains a challenge, and life has become precarious, tiresome, and increasingly unbearable. A situation of insecurity with citizens increasingly resorting to self-help in an effort at improving their quality of life is neither sustainable nor inspiring. Rather than reduce, the insecurity in Nigeria has so snowballed dramatically that some have argued that the country now belongs in the rank of failed states.[7] Opinion editorials have corroborated earlier observations as noted in commentaries from the Nobel Laureate, Wole Soyinka, describing Nigeria as a warzone,[8] while Mathew Hassan Kukah, a revered clergy, described Nigeria as a nation wrapped in desolation.[9]

The discontentment with socioeconomic deprivation and poverty has contributed significantly to increased criminality and violent conflicts in Nigeria. This manifests in varied forms and dynamics including terrorism,[10] insurgency,[11] separatist agitations,[12] unknown-gunmen attacks,[13] banditry,[14] kidnapping and abductions,[15] farmers-herders violent conflicts,[16] and ethno-religious communal crisis.[17] The unfortunate social impact and outcome is spread across destruction of lives and properties, loss of livelihoods, displacement of persons, disintegration of communities, and the creation of an

[5] End Poverty 'Nigeria: Poverty Capital of the World' (2021) https://www.endpoverty.org/blog/nigeria-poverty-capital-of-the-world (accessed 12 May 2021).

[6] UC Okolie, OA Onyema & US Baseey 'Poverty and Insecurity in Nigeria: an empirical study' (2019) 6 *International Journal of Legal Studies* at 247

[7] RI Rotberg & J Campbell Foreign Policy 'Nigeria is a failed state' (2021) https://foreignpolicy.com/2021/05/27/nigeria-is-a-failed-state/ (accessed 17 October 2021); Proshare 'Failed States Index: Nigeria Ranked 15 out of 177 Nations' (2021) https://www.proshareng.com/news/Nigeria%20Economy/Failed-States-Index--Nigeria-Ranked-15-out-of-177-Nations/7135 (accessed 25 October 2021).

[8] S Aikuola 'Nigeria at war, in war zone, says Soyinka' *The Guardian* (Lagos) 8 December 2020 https://guardian.ng/news/nigerians-at-war-in-war-zone-says-soyinka/ (accessed 21 October 2021).

[9] 'Full text: Bishop Kukah's Christmas message that sparked reactions' *Sahara Reporters* (Lagos) 30 December 2020 http://saharareporters.com/2020/12/30/full-text-bishop-kukahs-christmas-message-sparked-reactions (accessed 21 October 2021).

[10] Such as the threat of Boko Haram in Nigeria's north-east.

[11] Such as the restive agitations in Nigeria's Niger-Delta region.

[12] Such as the threat of the Indigenous People of Biafra (IPOB) in Nigeria's south-east.

[13] Mostly in south-east Nigeria.

[14] Mostly in north-west Nigeria.

[15] Widespread across the country.

[16] Mostly in central Nigeria.

[17] Mostly in central Nigeria.

overall ominous cloud of fear, resulting in a toxic atmosphere of palpable tension, and subsisting apprehension among citizens.

Curiously, the varied forms of insecurities and criminalities continue to fester, and are often reinforced by the political elites' deliberate manipulation of fallouts of the country's heterogeneity. It is our view that Nigeria has suffered more from its post-colonial leaders than it ever did during the British colonial regime. It is considered that the post-colonial leaders have largely used the country's legitimate frameworks as stepping stones to their different heights of inanities, such as inexplicable wealth. The recurring antics of the political elites are to distract the society by pointing to the religious and ethnic differences among the people, which often instigate unending hate and hatred. Viewed critically, the disagreements among political elites in Nigeria are not about the fine ideals of good governance, but about the capture of power for the purpose of furthering parochial interests. Political power is mainly not sought for altruistic purpose of good governance, but as a source of economic security. In the mix, the citizens become disposable ladders.

Theoretically, the social contract posits that the basis of the state is a compromise or covenant among the people, who agree to abide by the law of the state in order to prevent conflict and insecurity. Authority is donated by the people to the government to advance the interests of the people, which is their security and welfare. In this connection, section 14 of the Constitution of the Federal of Nigeria, 1999 (Constitution of Nigeria) proclaims security and welfare of the people as the primary purpose of government, and that Nigeria is a state based on the principle of social justice. This provision creates an obligation on the Nigerian state to implement socioeconomic rights for its citizens. Consequently, this study argues that where socioeconomic rights are assured, citizens are thereby assured of the existence of legal and credible mechanisms for redressing socioeconomic grievances, thereby preventing resort to extra-legal mechanisms, namely crime and criminality.

The social contract, social justice and socioeconomic rights unifying perspective illuminates the justification for citizens challenge to the existence of a government that controls state resources but neglects its socioeconomic rights obligations of ensuring social justice. This perspective provides some insight into the numerous internecine conflicts and insecurity in Nigeria. The study approaches the drivers of insecurity in Nigeria as not different from the response of citizens to penury, governmental inaction in the face of destitution, and the absence of a viable legitimate means for ensuring social justice. Expectedly, the study utilizes law, both from its traditional role as a means of social control, and importantly, from its role as an agent of social change towards the ends of development.[18] Law is applied for social justice through a human rights-based

[18] On the relationship between law and development in the context of Nigeria, see DP Saredau 'Law and Nigeria's development: how to strengthen the efficacy of law for

approach to development. In this perspective, law serves a dual purpose, namely, of security and development in the state. This proposition is contended as a viable addition to the existing security and development strategies in the country.[19] It is our assumption that in a stable society, where citizens are able to lead the kind of life they want, the incidence of insecurity and criminality would be greatly weakened,[20] while the prospects of development would be greatly enhanced.[21]

Through descriptive and theoretical analysis, this study shows how non-implementation of socioeconomic rights, is on the one hand, same as denial of social justice, and on the other hand, constitutes a breach of social contract, and responsible, on either ground, for precipitating resort to self-help by citizens which manifests in various forms of crime and criminality. It is argued that the reality and effects of the increasing insecurity and criminality in Nigeria could be halted through legitimate and coherent response to socioeconomic concerns of the citizens. Accordingly, we analyze how resolving the human development challenges in Nigeria through socioeconomic rights implementation would lead to attainment of social justice in the country. The projected outcome is to engender in Nigerians, the capacity to lead the kind of lives they have reason to value, to ensure the stability of the Nigerian state, and to weaken the propensity for citizens' resort to self-help, cumulatively contributing to decrease in insecurity. In undertaking these tasks, we segment the study into five sections. Section two, which follows this introductory section, attempts a linkage of the concepts of social contract, social justice, self-help and socioeconomic rights, as keys to the study. Section three provides the socioeconomic rights context to the challenges of insecurity in Nigeria. In section four, the study advances socioeconomic rights as a viable security strategy for Nigeria. The study ends with a conclusion in section five.

## 2. Linking the Concepts of Self-help, Social Contract, Social Justice, and Socioeconomic Rights

development in Nigeria' (2021) 29 *African Journal of International and Comparative Law* at 551 DOI:10.3366/ajicl.2021.0383.

[19] Of course, we are not supposing that realization of socioeconomic rights is the solution to all insecurity in Nigeria in all its multitudinous dimensions and causes. However, our view is that socioeconomic rights realization is vital to substantially mitigating insecurity in Nigeria, especially because we perceive that the drivers of insecurity in Nigeria have their causes and dimensions in socioeconomic malaise.

[20] For perspectives, see M Rudolph & P Starke 'How does the welfare state reduce crime? The effect of program characteristics and decommodification across 18 OECD-countries' (2020) 68 *Journal of Criminal Justice* 101684.

[21] For perspectives, see International Social Security Association Development and Trends Global Report 2010 *Dynamic social security: securing social stability and economic development* https://ww1.issa.int/sites/default/files/documents/publications/2-DT-global_en-24412.pdf (accessed 20 July 2022).

In a way, the proclamation of socioeconomic claims as human rights under the Universal Declaration on Human Rights (Universal Declaration) has set the parameters for evaluating the legitimacy of governments.[22] Consequently, if the purpose of a government is to provide for the welfare and security of citizens, it fails to fulfill this purpose when it commits to enforcing only civil and political rights while neglecting socioeconomic rights.[23] In that connection, citizens would be justified to question the existence of the state, its control over national wealth, and its overall responsibility, where it fails to live up to its socioeconomic obligations to the citizens.[24]

A contrast to legitimate expectations under social contract is an absence of credible plan for their realization, and a creation of citizen's vulnerability to neural exigencies for survival or self-help. The Cambridge Dictionary defines self-help as the activity of providing what you need for yourself and others with similar experiences or difficulties, without going through an official channel.[25] In the legal sense, self-help refers to obtaining relief or enforcing one's rights without going through the legal processes.[26] Self-help was practiced in the state of nature before governments were formed for order, and progressive benefit of citizens and states. Self-help prevailed in the life of the 'natural man', or as Thomas Hobbes called it, the picture of life in 'the state of nature.'[27] Hobbes depicted the horrors of such an existence in the legendary commentary on the life of man in the state of nature being 'solitary, poor, nasty, brutish and short.'[28]

The development of the state is a way of ending the war of each against all. Society is thus, a compromise which people enter into so as to assure their security and welfare. Hobbes used the theory of 'social contract' to explain society. The compromise or 'covenant', as Hobbes called it, consists of an agreement among people to abide by a certain set of rules, or 'conventions.'[29] These constitute their contemporary reference and usage as the 'laws of the

[22] SC Agbakwa 'Reclaiming humanity: economic, social, and cultural rights as the cornerstone of African human rights' (2002) 5 *Yale Human Rights & Development Law Journal* 180 https://digitalcommons.law.yale.edu/yhrdlj/vol5/iss1/5 (accessed 15 May 2021).

[23] As above.

[24] A Momoh & S Adejumobi *The Nigerian military and the crisis of democratic transformation: a study in the monopoly of power* (1999) 211.

[25] 'Self-help' Cambridge Dictionary https://dictionary.cambridge.org/dictionary/english/self-help (accessed 17 April 2022).

[26] 'Self-help' US Legal https://definitions.uselegal.com/self-help (accessed 17 April 2022).

[27] SA Lloyd & S Sreedhar 'Hobbes's moral and political philosophy' in EN Zalta (ed) *The Standford Encyclopedia of Philosophy* https://plato.stanford.edu/archives/fall2020/entries/hobbes-moral/ (accessed 20 July 2022).

[28] As above.

[29] As above.

society.' People agree to abide by the laws of the society in order to avoid being harmed in conflicts which would rage where there are no laws in existence. Similarly, John Locke's ideas, as expressed in the *Second Treatise on Civil Government*, reflected on the social contract theory. With a seeming reaffirmation of expositions of Hobbes in the *Leviathan*, Locke begins his *Second Treatise on Civil Government* with a historical account of the origin of government, using like Hobbes did, the notion of a social contract.[30] Locke then argued that even though men, on the whole, live peaceably in the state of nature, there were issues necessitating the formation of the state with governments for judicial, executive and legislative functions. Crucially, Locke perceived government as a mechanism employed by the people to advance their interests and to do those things they either could not do, or find inconvenient to do directly. Government is like a secretary to whom power is delegated, but never relinquished. Hence, once a government becomes deleterious to the ends for which it was formed, the authority delegated to it can be revoked.[31] Such unfortunate situation would return us to the state of nature with all its ills, especially the propensity for self-help. Hence, to prevent resort to self-help, a state must abide with its primary obligations under the social contract, namely, ensuring the security and welfare of its people.

The theory of social justice encapsulates this social contract obligation. Social justice, which refers to the distribution of valued goods and necessary burdens in the society, may be broadly understood as the fair and compassionate distribution of the fruits of economic growth.[32] In the United Nations system, the term was brought to prominence when used in the 1969 Declaration on Social Progress and Development which obliges states to ensure social progress

[30] W Uzgalis 'John Locke' in EN Zalta (ed) *The Standford Encyclopedia of Philosophy* https://plato.stanford.edu/archives/fall2022/entries/locke/ (accessed 20 July 2022).

[31] John Locke's 'social contract' ideas informed the United States' Declaration of Independence. Portions of par 2 of the Declaration, reads thus: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.' See National Archives 'Declaration of Independence: a transcription' https://www.archives.gov/founding-docs/declaration-transcript (accessed 16 March 2022).

[32] The International Forum for Social Development United Nations Department of Economic and Social Affairs Division of Social Policy and Development ST/ESA/305 *Social justice in an open world: the role of the United Nations* (2006) 7 https://www.un.org/esa/socdev/documents/ifsd/socialJustice.pdf (accessed 23 May 2022).

and development by promoting social justice, which requires the recognition and enforcement of civil and political rights as well as socioeconomic rights without any discrimination.[33] The UN document *Social Justice in an Open World: the Role of the United Nations* warns that social justice is not possible without strong and coherent redistributive policies conceived and implemented by public agencies.[34] The document further notes that while governments and international organizations vacillate between the adjustment, neglect, and abandonment of redistributive policies, there is no evidence yet of any socially, politically or economically viable alternative.[35]

The theory of social justice can be understood from the perspective of utilitarianism as propounded by Jeremy Bentham and John Stuart Mill. In this context, utility is viewed as the measure of justice: the maximum good of the greatest number of individuals. Whatever is painful and unjust must be reformed in the interest of the greatest number of individuals. Mill's perspective contains perhaps, the most persuasive presentation of this position, namely, all questions of distributions are to be resolved by reference to their consequences. Hence, a socially just allocation is one that produces the greatest sum of happiness for the greatest number of individuals.

Understood from the perspective of John Rawl's theory of justice,[36] social justice means that each person is to have an equal right to the most extensive system of basic liberties compatible with a similar system of liberty for all. For Rawls, a 'good' society distributes its wealth in such a way that poverty is minimized. Rawls' main concern was on an economically just society as a society could be politically just because of its commitment to certain basic freedoms, and yet distribute its wealth in ways that are unfair. Hence, Rawls' outlook is tinged by the kind of moral fervor we find in Karl Marx, who believes that unrestrained capitalism is immoral in the way it exploits workers. But unlike Marx, Rawls does not object to a society which exhibits differentials in wealth. What Rawls objects to, is a society where inequalities in wealth allow some persons to sink beneath a minimal level with respect to basic needs. A fundamental principle in Rawls work is, therefore, 'the difference principle' which demands that inequalities in certain basic goods of society be allowed only when the distribution of primary goods also benefits the worst off in society. The theory of social justice is relevant to Nigeria because section 14(1) of the Constitution of Nigeria asserts that Nigeria is a state based on the principle of social justice.

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[33] Office of the High Commissioner on Human Rights *Declaration on social progress and development* (1969) https://www.ohchr.org/Documents/ProfessionInterest/progress.pdf (accessed 23 December 2019). At art 2 of the Declaration.
[34] (n 32) 6.
[35] (n 32) 7.
[36] J Rawls *A Theory of Justice* (1971).

An effective and sustainable means of achieving social justice is by realization of human rights. Literally, human rights are the rights that one has simply as a human- as such they are equal rights, because we are all equally human beings.[37] Human rights are often described as universal, inalienable, and independent. While the inalienability premise draws attention to the fact that human rights are inherent rights of individuals, the universality speaks to the fact that all people have and should enjoy them, and the independence premise refers to the materiality and availability of human rights as standards of justification whether or not they are recognized and implemented by the legal system of a country. Global attention to human rights can be traced to the adoption of the Universal Declaration by the UN General Assembly on 10th December, 1948, as a common standard of achievement for all peoples and nations.[38] Out of the Universal Declaration came the International Covenant on Civil and Political Rights (ICCPR)[39] as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR)[40]. Further, the 1993 Vienna Declaration and Programme of Action sets the parameters for equal treatment of all human rights, and asserts that the promotion of human rights is the first responsibility of governments.[41]

Human rights are sometimes classified into generations, where civil and political rights (such as right to life, right of expression, right of association, and right to liberty, among others) are said to be the first generation rights, while socioeconomic rights (such as right to work, right to adequate standard of living, right to health, right to education, among others) are termed second generation rights.[42] Historically, the civil and political rights have received more

[37] J Donnelly 'Human rights, democracy and development' (1999) 21 *Human Rights Quarterly* 612

[38] United Nations 'Universal Declaration of Human Rights' (1948) https://www.un.org/en/about-us/universal-declaration-of-human-rights (accessed 10 July 2022).

[39] Office of the High Commissioner on Human Rights 'International Covenant on Civil and Political Rights' (1976) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (accessed 10 July 2022).

[40] Office of the High Commissioner on Human Rights 'International covenant on Economic, Social and Cultural Rights' (1976) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights (accessed 10 July 2022).

[41] Office of the High Commissioner on Human Rights 'Vienna Declaration and Programme of Action' (1993) https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action (accessed 10 July 2022).

[42] S Ilesanmi, M Adigun & A Olatunbosun 'Economic rights and justice: of walls and bridges, exclusions and inclusions' in IS Chiroma & YY Dadem (eds) *Proceedings of the 51st Annual Conference of the Nigerian Association of Law Teachers* (2018) at 118.

attention, and protection than the socioeconomic rights, which are placed in a relegated position.[43] Yet, the socioeconomic rights protect the necessities of life, such as housing, employment, health, education, and environment.

Though it may seem fanciful to classify human rights generationally, however, it is our view that, it is more helpful to simply talk about types of rights. This is because the generational classification can be misconceived as some form of ranking or grading which may lead to an erroneous assumption of pre-eminence of civil and political rights over socioeconomic rights, or that priority should be accorded to the first-generation rights over the second-generation rights. This is unhelpful and counterproductive. Our view finds support in the theory and practice of international human rights law asserting all human rights as indivisible, equal, interrelated and interdependent. Hence, even though various ideological, textual, and pragmatic reasons may have relegated socioeconomic rights, we submit that the underlying idea of human rights as the promotion of human dignity, freedom and wellbeing can hardly be achieved without fulfilling socioeconomic rights. For as some writers have asserted, socioeconomic rights provide protection for the dignity, freedom and well-being of individuals, by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods.[44]

## 3. Contextualizing Insecurity in Nigeria

National security is inextricably linked with human security.[45] While the traditional understanding of national security is a state-centric analysis focusing on the safety of the state from military aggression, human security beams focus on the subnational and the way communal conflicts, poverty, and diverse forms of terrorist and criminal activities by illegally armed non-state actors within the state's borders, threaten the safety of citizens, communities, and the institutions of state. Thus, in order to ensure sustainable national security, the state must first ensure and embrace 'the organizing concept of human security which is a people-centered approach focused on individual human beings and their rights and needs.'[46] Human security encompasses the wellbeing of the human person, their health, access to adequate standard of living (especially in terms of food, housing, and employment), as well as a socioeconomic system that protects and promotes their welfare. Accordingly, a secured human is one who is insulated from the threat of hunger, destitution, unemployment, environmental degradation, and socioeconomic deprivation. As popularized by the slogan of

[43] UN Committee on Economic, Social and Cultural Rights *Fact Sheet No 16 (Rev 1)* (1991) http://www.unhchr.ch/html/menu6/2/fs16.htm (accessed 15 January 2022).
[44] Ilesanmi, Adigun & Olatubosun (n 42) 117.
[45] For perspectives on the interface between human security and national security, see DS Reveron & KA Mahoney-Norris *Human and national security: understanding transitional challenges* (2019); D Anderson-Rogers & KF Crawford *Human security: theory and practice* (2018).
[46] Reveron & Mahoney-Norris (n 45) 10.

the UN Commission on Human Security, human security aims for people to live in 'freedom from want, freedom from fear, and freedom to live in dignity'.[47]

Human security, understood, as the security of the human person *qua* the citizen of the state, enhances our appreciation of the linkages between the citizen and the state. This is does by emphasizing a people-based security structure, where the security of the citizen determines that of the state. The human security approach, because it looks inward to the people, and enjoins the state to create socioeconomic, political, and environmental structures that promote the survival, livelihood, and dignity of its people, has the capacity to help states 'reduce the likelihood of conflicts, overcome the obstacles to sustainable development, and promote a life of dignity all.'[48]

When security threats to the survival, livelihood, and dignity of the human person are addressed, the interface between security, development, and human rights is expanded, and a new integrated and human-centered approach to advancing national security and development is promoted. As one commentator observed, the biggest single problem faced by states aspiring to be democratic has been their 'failure to provide the substance of what people want from government: personal security, shared economic growth, and the basic public services (especially education, health care, and infrastructures)'.[49] We submit that the failure of governments to make these provisions is what has resulted in destabilizing insecurity from within national borders. In context, the spate of banditry, terrorism and communal clashes in Nigeria should be understood as the result of the inadequate human security policy and implementation mechanisms in the country.

Actually, the Nigerian state displays crass laxity in dealing with the fundamental human security needs of its citizens, which in the words of section 14(2)(b) of the Constitution, is the security and welfare of the people. Many citizens resort to varied forms of criminality in order to escape the biting pangs of poverty, or to defy a state order which is irresponsive to their concerns of socioeconomic welfare and human dignity. Others, affected by conflict and security, especially those whose sources of livelihoods are destroyed by insecurity, may also turn to criminality to secure new livelihoods. Some become psychologically washed up into radical fanaticism since they are already disillusioned by the brutish existence into which the state forces them. Again, the political elites who feed fat on the country's hegemony, in order to distract

[47] See https://www.un.org/humansecurity/ (accessed 20 April 2022).

[48] Report of the Secretary-General, Follow-up to the General Assembly Resolution 666/290 on human security A/68/685 (2013) https://www.un.org/humansecurity/reports-resolutions/.

[49] F Fukuyama 'At the "End of History" still stands democracy' *The Wall Street Journal* June 6 2014 https://www.wsj.com/articles/at-the-end-of-history-still-stands-democracy-1402080661 (accessed 10 July 2022).

attention of citizens, fan the embers of distrust, hate and hatred, especially based on the touchy divides of religion and ethnicity, with the result being violent communal clashes.[50] This is the context for the varied incidences of violent ethno-religious crisis, insurgency, terrorism, herders-farmers violent clashes, banditry, kidnappings, and the other criminalities bedeviling Nigeria. These manifestations of insecurity constitute existential threats to the country, as they become metastasized, more organized, and seemingly overwhelming the capacity of law enforcement authorities.

It is acknowledged that human rights protection is central to conflict management and peace-building,[51] and in that context, put forward as an indispensable ingredient of stability and legitimate governance.[52] Again, the UN Secretary-General, advances 'the creation of open, equitable, inclusive and pluralist societies based on the full respect of human rights and with economic opportunities for all'[53] as a viable panacea to violent extremism. The above identified instrumental role of human rights is why the Universal Declaration proclaims that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.[54] It is noteworthy that the Universal Declaration speaks of human rights in general, and not merely some type of human rights. For as the Vienna Declaration and Programme of Action proclaims, all human rights are interdependent, indivisible and interrelated.[55] However, Nigeria, much like most African countries, focuses on just the civil and political rights, while largely neglecting the socioeconomic rights.[56]

Nigeria's fractional acknowledgement of human rights is a risky approach, and little wonder, conflicts and insecurity persist and prevail in the country. The neglect of socioeconomic rights, which is about the welfare of the people, and therefore, at the crux of human security, coupled with the absence of a viable

[50] The situation is not helped by the fact that parties are belligerent, asserting competing claims, claiming victimhood, accusing the 'other' of state support and consequently resorting to reprisals.

[51] NJ Udombana 'The third world and the right to development: agenda for the next millennium' (2000) 22 *Human Rights Quarterly* 774.

[52] SC Agbakwa 'A path least taken: economic and social rights and the prospects of conflict prevention and peace-building in Africa' (2003) 47(1) *Journal of African Law* 38

[53] UNDP *Journey to extremism in Africa: drivers, incentives and the tipping point for recruitment* (2017) at preface https://journey-to-extremism.undp.org/.

[54] Para 3 of the preamble.

[55] Vienna Declaration and Programme of Action, 25 June, 1993, UN World Conference on Human Rights in Vienna, UN Doc. A/CONF. 157/24 (1993).

[56] Hence, while ch 4 of the Constitution of Nigeria guarantees and provides judicial mechanisms for enforcing civil and political rights, social and economic rights are banished to ch 2 of the Constitution as non-justiciable fundamental objectives and directive principles of state policy.

mechanism for redressing socioeconomic grievances, routinely push citizens towards extra-legal means for redressing grievances. The correlation between neglect of socioeconomic rights and the persistence of insecurity provides insight for appreciating the spate of insecurity in Nigeria. Rather than religion, ethnicity or region, the main determinants of these conflicts and insecurity are socioeconomic in nature. Agreed that a model human rights regime, where socioeconomic rights are implemented as much as civil and political rights, may not be the antidote for every manifestation or dynamic of insecurity, yet, it would have a certain and substantial defusing impact, since the conflict and insecurity challenges bedeviling Nigeria have socioeconomic roots.[57]

Underscoring the fact that gainful employment is a guard against criminality is the biblical admonition that 'Idle hands are the devil's workshop.'[58] A person who is not gainfully employed but is otherwise idling away would have enough time and energy to contrive varied shades and dimensions of mischief. And this illustrates the insecurity trajectory for Nigeria where a large unemployed youth population has resorted to varied dimensions of criminality to make ends meet or to defy the state order.[59] Unemployment produces a large pool of jobless, hungry, and angry youths, who soon find themselves involved in various forms of criminality. The rising unemployment rate in Nigeria and its attendant strain of reduced economic security creates fear, frustration, and aggression in the youths, which precipitates criminality.[60] By the latest estimates, while 33.3% percent of Nigeria's population is unemployed, the figure is higher for youth unemployment which stands at 42.5%. [61] In its research on the factors precipitating extremism in Africa,[62] the UN Development Program (UNDP) finds that 'employment is the single most frequently cited "immediate need" at the time of joining' for persons recruited into violent extremism, and that 'if a person was studying or working, they were less likely to be a terrorist.'[63]

The UNDP research findings also confirm that socioeconomic factors are a critical component of the overall incentives and drivers of insecurity as many a

[57] S Nwokoro 'Falana, others call for enforcement of socio-economic rights of Nigerians' *The Guardian* (Lagos) 8 March 2022 https://guardian.ng/features/falana-others-call-for-enforcement-of-socio-economic-rights-of-nigerians (accessed 15 April 2022).
[58] Proverbs 16:27 *The Living Bible* (1971).
[59] C Akor 'Youth unemployment and the coming anarchy in Nigeria and South Africa' *Business Day* (Lagos) 5 May 2022 https://businessday.ng/columnist/article/youth-unemployment-and-the-coming-anarchy-in-nigeria-and-south-africa/ (accessed 20 July 2022).
[60] A Conteh et al., 'Liberia' in A. Adedeji (ed.) *Comprehending and mastering African conflicts: the search for sustainable peace and good governance* (1999) at 181.
[61] See, Nigeria Bureau of Statistics https://www.nigerianstat.gov.ng/# (accessed 20 July 2022).
[62] UNDP (n 53).
[63] UNDP (n 53) 59

person is wont to channel their socioeconomic grievances and associated frustration into the cause or 'bigger picture' of violent extremist groups.[64] This is enabled by what the research terms 'accident of geography', whereby socioeconomic issues associated with growing up in marginalized or peripheral areas, areas with deficit of infrastructure and social amenities, areas with higher multidimensional poverty than national averages, areas with lived reality of unemployment, areas with low or poor quality of literary and educational and services, add up to shape a child's worldview and future susceptibility to engagement in terrorism.[65] The logic is that a child who is neglected both by the state and its educational facilities, who grows up frustrated by socioeconomic injustice and relative deprivation, and who lacks a sense of direction or future opportunity, would have a mindset of heightened threat perception formed ready for terrorism or other forms of criminality.[66]

The above findings also lend credence to the contention that socioeconomic factors such as poverty, unemployment, and high illiteracy rate, not only precipitate and exacerbate conflicts and insecurity, [67] but also create the environment of deprivation and marginalization, which, too often, encourages the criminality and conflict that sustain insecurity. Moreover, in order to forestall the risk of deprivation and marginalization resulting from negative change in socioeconomic fortunes, groups are likely to engage in conflicts, while individuals gravitate towards varied criminal acts. To mitigate insecurity therefore, the state must look to its socioeconomic framework for credible outcomes. Citizens expect their governments to provide not only political stability, but also socioeconomic security, employment, healthcare and shelter. The non-fulfillment of these legitimate expectations breeds discontentment and social unrest,[68] which enable insecurity. This is because when these legitimate expectations, which are about the human dignity and welfare of the citizens, are left unaddressed, and the horizon promises no path for advancement, the narratives of radical upheaval and change would appeal to the multifaceted sense of grievances of many a citizen.[69] Indeed, the message of social change or a 'bigger picture' can easily be tailored by recruiters in recruiting into criminality citizens who are otherwise disillusioned by the apparent injustice and deprivation in the society, by presenting criminality as a challenge to the status quo and a form of escape.[70]

The above illustrates the inextricable linkage between human rights protection and national security. The linkage reinforces the proclamation in paragraph 3 of

[64] UNDP (n 53) 41
[65] As above.
[66] As above.
[67] JB Laggah, J Allie & R Wright 'Sierra Leone' in Adedeji (n 59) 174.
[68] Agbakwa (n 52) 43.
[69] UNDP (n 53) 86.
[70] As above.

the preamble of the Universal Declaration that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. The linkage further accentuates the need for the state to guarantee and realize all human rights for all citizens.[71] Indeed, the UN Secretary-General has affirmed that the deepest causes of conflict are unfulfilled basic needs.[72] Accordingly, a state where socioeconomic rights are neglected would not only be unstable, but would also be unable to realize civil and political rights.[73] As has been contended, civil and political rights would continue to sound hollow for the majority poor, rural, and illiterate Nigerians, unless they are empowered educationally and their living standards improved.[74] Little wonder therefore, the African Charter on Peoples' and Human Rights (African Chater) proclaims that the satisfaction of socioeconomic rights is a guarantee for the enjoyment of civil and political rights.[75]

The basic strand in the discussion in this section is that human security, because it obviates the necessity for citizens to rely on self-help by seeking extra-legal means of improving the quality of their lives, is a critical component of national security. Human security is about the welfare needs of citizens, and hence it is also about social justice, since it requires the government to meet its social contract obligations to citizens. Where there is no effective protection of socioeconomic rights or a viable legitimate means of making legal claims against the state to redress perceived socioeconomic injustices, people are wont to gravitate to extra-legal channels for solution. This is consistent with the findings of the UNDP that the 'journey to extremism is significantly marked by a fractured relationship between state and citizens' and that 'a sense of grievance towards, and limited confidence in, government… is associated with the highest incidence of recruitment to violent extremism.'[76] Such citizens, whose life experience is shaped by the context of multidimensional poverty, neglect, and political marginalization, who are disaffected with government because they believe that government only looks after the interests of a few, who have a low degree of confidence in the potential for democratic institutions to deliver progress or positive change, develop an attitude of deep-seated pessimism with, and an alienation from, the nation-state. If this tide is to be turned, then 'beyond simply holding elections, wider commitment to building

[71] In the words of art 2 of the Universal Declaration 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind.'
[72] Report of the Secretary-General on the Work of the Organization, an Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping, UN GAOR at 4 U.N. Doc. A/47/277/S/24111 (1992).
[73] Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development at para 5 UN Doc A/CONF 166/9.
[74] UO Umozurike *The African Charter on Human and Peoples' Rights* (1997) 41
[75] Para 8 of the preamble.
[76] UNDP (n 53) 68.

an inclusive social contract between government and citizens is a critical means of establishing resilience to violent extremism.'[77]

In context, there is an imperative for Nigeria to implement socioeconomic rights for its citizens. The urgency of action is hinged on the peculiar socioeconomic context of the country, where the vast majority of the population is facing the struggle for existence in its brutal multidimensionality. Hence, for Nigeria, the principles and practices of human rights must include genuine mechanisms for implementation of socioeconomic rights, such as right to work and to a living wage, right to shelter, right to health, right to education, and the other similar rights, which can mean something for the people fighting to survive the excruciating burden of poverty.[78] Accordingly, there is the need to interconnect the promotion of human rights with the promotion of human security, and to ensure that socioeconomic rights are no longer relegated to irrelevance and insignificance. [79] Such approach is fundamental to ending insecurity, and consistent with the imperative of human development. In delineating the need for implementation of socioeconomic rights as instrumental to the enjoyment of civil and political rights, Chief Justice Reynato Puno of the Supreme Court of Philippines, said thus:[80]

> Indeed, in countries where the task of maintaining body and soul together is getting more and more to be a mission impossible, man's efforts should be focused in enhancing the socioeconomic rights of the vulnerable in our society. For what good is not being arrested if one is already incarcerated by the prison of poverty? What good is freedom of expression if the only ideas you can mumble are words begging for food? What good is freedom to think on the part of the ignorant who is even ignorant of his ignorance? What good is the right to property to him who is shirtless, shoeless, and roofless? What good are political and civil rights to those whose problem is how to be human?

## 4. Advancing Socioeconomic Rights as a Peace and Security Strategy in Nigeria

It has been contended that incompleteness is a crucial shortcoming of the extant dominant security and peace-building strategies in Africa, Nigeria inclusive.[81] For one, the strategies fail to account for all the basis of dissatisfaction in the country, and consequently, they are insufficient in tackling insecurity from its roots. Furthermore, the strategies do not reflect the viability of socioeconomic

[77] UNDP (n 53) 80.
[78] C Ake (JO Ihonvbere ed) *The Political economy of crisis and underdevelopment in Africa: selected works of Claude Ake* (1989) 84.
[79] F Falana *Nigerian Law on Socioeconomic Rights* (2017) 10.
[80] Philippines Supreme Court 'Socio-economic rights and globalisation' http://sc.judiciary.gov.ph/speech/socio-economic.htm# (accessed 12 January 2024).
[81] Agbakwa (n 52) 62.

rights as a grievance remedial mechanism. It is logical that such incomplete and therefore, deficient strategies, would fail in addressing the root causes of insecurity, let alone producing sustainable solutions thereto.

The sure way to produce effective and sustainable solutions to the challenge of insecurity in Nigeria is to address it from the root cause, hence the need to pay attention to the issue of human security. Human security can be achieved through implementation of socioeconomic rights for citizens. This is because socioeconomic rights implementation ensures not only that the basic needs of citizens are met, [82] but also that the standard of living of citizens is enhanced in such a way that they are able to live dignified lives- the kind of lives they have reason to value; to do and to be all they want to do and be. [83] In context therefore, socioeconomic rights implementation enhances the cause of social justice. Indeed, it has been asserted that for a human to be considered whole, he must be able to enjoy both civil and political rights, and socioeconomic rights, in a generalized context. The basis for the assertion is that these rights ensure that daily physical existence is not under a threat of predictable extermination by hunger, disease, or conflict.[84] For this reason, we can advance realization of socioeconomic rights as a key strategy for the Nigerian state to adopt in its quest to effectively and sustainably attack the root cause of the prevalent and persistent strife, insecurity and conflict in the country.

How can the realization of socioeconomic rights contribute to security and peace-building in Nigeria? By empowering the people, and providing them with a viable mechanism for redressing perceived and real socioeconomic grievances, enforceable socioeconomic rights obviate the necessity of citizens seeking extra-legal means of self-help to improve their quality of life. [85] Secondly, a system of enforceable socioeconomic rights will concomitantly be utilised for review of executive policies and decisions, thereby engendering accountability and good governance. This leads, on a third point, to improvements of living standards of the citizens, the governance processes and institutions, as well as enhancement of the legitimacy of the state viewed from the social contract prism. Concomitantly, because the state is responsive to the quality of life of citizens, and is seen as legitimate, it would be accepted as relevant to the lives of the citizens. With such an attitude from the citizens, and

[82] PS Streeten 'Basic needs: premises and promises' 1979 *Journal of Policy Modeling* 136.

[83] A Sen *Development as Freedom* (1999) 75: Poverty is not merely deprivation of income to afford a basket of wants or needs, but deprivation of the capability of a person to be and do what they want to be or do ('functionings').

[84] J Oloka-Onyango 'Human rights and sustainable development in contemporary Africa: a new dawn, or retreating horizons? 2000 (6) *Buffalo Human Rights Law Review* 44.

[85] Agbakwa (n 52) 58.

such a situation of the government, there is bound to be harmony and stability in the state.

Again, socioeconomic rights implementation as a social justice tool can lead to redistribution of resources, and consequently, of socioeconomic and even political power within the state. This would effectively even out the effects of abuse of power in the polity, and in so doing, many people can be able to assert their dignity, free from the arbitrary discretion of politicians of the day.[86] Accordingly, it is our argument that such a tendency would serve to enhance the prospects of the legal system as a tool for redressing socioeconomic inequality, and thereby engender a more just, and equitable society. A society where citizens are able to lead the kind of lives they have reason to value- a life of dignity, where they are able to live to their full potentials. Indeed, where more citizens are socioeconomically empowered by the redistributed power, the state is able to reduce the pool of idle and disgruntled persons that would otherwise be available for recruitments by agents of destabilization.

In view of the foregoing, it is fitting to highlight some of the veritable pathways for socioeconomic rights implementation in Nigeria. The first is constitutionalization. A country's constitution is its prime domestic instrument to express agreed values.[87] The Constitution of Nigeria professes that the country is a state based on the principles of democracy and social justice,[88] and declares the security and welfare of the people as the primary purpose of government.[89] Accordingly, it stands to reason that socioeconomic-rights, being at the heart of the principles of democracy, social justice, security, and welfare, are pre-eminent values in Nigeria. But, this is more in theory than in practice, as when it matters, the Constitution of Nigeria bailed on socioeconomic rights, by declaring the category of rights as non-justiciable, but as mere directives of state policy.[90] This is contrasted with the pre-eminent position the Constitution of Nigeria granted to civil and political rights, which it guarantees as judicially enforceable rights.[91] The significance of constitutionalizing socioeconomic rights is that it would emplace on the government a pre-eminent obligation to implement the rights, and a mandate on the courts to enforce this obligation. Again, it has the effect of widening the scope of constitutional justice to issues of citizen welfare, while also placing a positive duty on the state to alleviate socioeconomic disadvantage.

[86] (n 52) 61.
[87] NJ Udombana 'Keeping the promise: improving access to social and economic rights in Africa' 2013 (18) *Buffalo Human Rights Law Review* 144-145.
[88] Sec 14(1).
[89] Sec 14(2)(b).
[90] Sec 6(6)(b).
[91] Sec 46.

A second pathway for implementing socioeconomic rights in Nigeria is legislative action. As democratic participation can enable rational decision-making for law and state to overcome poverty and powerlessness, it is imperative that lawmakers should design laws and implementation processes that empower the majority and enable democratic participation in the development process.[92] While section 6(6)(c) of the Constitution of Nigeria makes the socioeconomic rights contained in Chapter II thereof to be non-justiciable by the courts, they are not, thereby made 'non-legislatable' by the legislature. Indeed, under the ICESCR, one of the primary obligations of states is to adopt 'legislative measures' to give effect to socioeconomic rights.[93] Similarly, article 1 of the African Charter provides for the basic obligation of state parties to 'adopt legislative and other measures to give effect' to socioeconomic rights. Nationally too, section 13 of the Constitution of Nigeria stipulates that is the duty of all organs of government, and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the socioeconomic provisions of chapter II thereof. In view of these provisions, aspects of socioeconomic rights such as health, education, housing, food and water, employment, social security, could be legislated through development-oriented laws as a response to the multifaceted human development challenges in the country. Moreover, through legislative oversight and investigative activities, designed as checks and balances in the democratic state, the legislature can help direct executive policy implementation towards the ends of socioeconomic rights.

A third pathway is executive action. Given its competency and capacity, the executive branch of government is, perhaps, on the best pedestal to deliver socioeconomic rights in Nigeria, by giving life to socioeconomic rights norms. For if socioeconomic rights are to be of any relevance to the masses, they require effective and urgent translation from conceptual norms to concrete legal entitlements.[94] Accordingly, there is the need for the executive to be responsible, to be aware of its obligations, and to be able and willing to act accordingly. The executive should advance development planning that has implementation of socioeconomic rights at its crux. Such planning, alive to Nigeria's human rights obligations under international law, would be rights-based, and targeted towards Nigeria's attainment of its commitments under the New Partnership for Africa Development,[95] Agenda 2063,[96] and the Sustainable

[92] A. Seidman 'Participation and the Law' *Third World Legal Studies* (1993) 2.
[93] Art 2(1).
[94] As above.
[95] The New Partnership for Africa's Development (NEPAD) is a pledge by African governments to eradicate poverty and to place their countries on a path of sustainable growth and development. It is a pledge to promote peace and stability, democracy, sound economic management and people-oriented development. Aiming to sustainably achieve its aims, the AU has transformed the NEPAD into an institutional structure as

Development Goals.[97] Nigeria's current national development plan is the Medium-Term National Development Plan 2021-2025 (MTNDP).[98] Complementing the MTNDP is the National Poverty Reduction and Growth Strategy (NPRGS)[99]. The major challenge is to translate the MTNDP and NPRGS into gains for Nigerians. This is crucial to the concern of security, for as found by the UNDP study, economic factors - such as unemployment, frustration at the economic circumstances and multidimensional poverty- are a critical component of the overall incentives and drivers leading to recruitment into criminality.[100] Accordingly, the programming efforts of the executive should result in economic regeneration of risk areas, upgrading of infrastructure, access to markets and financial services, removal of obstacles to entrepreneurship, and provision of livelihood, life-skills, entrepreneurship and social cohesion support.[101]

The fourth pathway is the judicial action. International human rights law obliges Nigeria to provide effective remedies and redress for violations of socioeconomic rights. The role of the Nigeria judiciary therefore, is to ensure that the country lives out its obligations to fulfill socioeconomic rights beyond what the political organs are prepared to concede on their own. This is more so that the concept of an obligation may lose much of its force if there is no notion of sanction for failure to comply. Again, citizens can be genuinely assuaged if they feel that there exists a mechanism to vent out their socioeconomic grievances. Although, the Constitution of Nigeria makes socioeconomic rights in chapter II thereof to be non-justiciable, yet, through judicial activism, the Nigerian judiciary can produce instrumental gains in the quest for socioeconomic rights implementation in the country. For, as was suggested:[102]

> Courts could interpret relevant enforceable civil and political rights to include relevant socioeconomic rights . . . the right to dignity of the human person could be interpreted to mean the right to an adequate standard of living. There

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the African Union Development Agency- New Partnership for Africa's Development (AUDA-NEPAD): https://www.nepad.org/.

[96] Agenda 2063 is Africa's plan for socioeconomic transformation within 50 years (2013-2063): https://au.int/en/agenda2063/overview (accessed 15 March, 2022).

[97] The Sustainable Development Goals (SDG), based on the UN's 2030 Agenda for Sustainable Development is the international community's shared blueprint for peace and prosperity for people and the planet, now and into the future: https://sdgs.un.org/goals (accessed 15 March 2022).

[98] National planning: https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025_AA_FINAL_PRINTING.pdf (accessed 20 July 2022).

[99] National planning: https://nationalplanning.gov.ng/wp-content/uploads/2021/08/NPRGS-Final_23April-2021.pdf (accessed 20 July 2022).

[100] UNDP (n 53) 91

[101] UNDP (n 53) 92

[102] M Lawan 'Law and development in Nigeria: a need for activism' (2011) 55 *Journal of African Law* 81-2.

> is evidence of this activism from India, for instance, from which Nigeria could take inspiration. In the case of *Olga Tellis v Bombay Municipal Corporation*, the court expanded the meaning of right to life to cover the right to a means of livelihood . . . Such activism in Nigeria finds support in the fact that the African Charter on Human and Peoples' Rights, which contains similar socioeconomic rights, has been domesticated in the country

Fifthly, Nigeria can implement socioeconomic rights for its citizens by developing and implementing a veritable social welfare policy. Cumulating the rationale and significance of sections 14, 16, and 17 of the Constitution of Nigeria, it is found that Nigeria is a state based on the principles of democracy and social justice. The projected and desired expectation is a state where security and welfare of the people is the primary purpose of government, and whose social policy is, among others, directed towards harnessing the country's resources for the benefit of its citizens. Along this direction, the government would produce and implement a sustainable mechanism for promoting national prosperity, securing the maximum welfare of citizens, and ensuring that suitable and adequate shelter, healthcare, and food is provided for citizens. Essentially, Nigeria is a welfare state obligated to adopt social protection policy. The Nigerian Social Protection Policy (NSPP)[103] defines social protection as a mix of policies and programs designed for individuals and households throughout the life cycle, to prevent and reduce poverty and socioeconomic shocks, by promoting and enhancing livelihoods and a life of dignity. In view of the fact that social protection is now globally reckoned as a viable policy framework for addressing poverty, socioeconomic vulnerabilities, inequality and exclusion,[104] social protection in Nigeria, is relevant to engendering citizens' right to a life of dignity, and in promoting human development.

Sixthly, Nigeria can implement socioeconomic rights for its citizens and thereby achieve national security by reinvigorating state legitimacy through improved governance performance and accountability. As the UNDP research notes, the importance of state legitimacy to delivering peace-building and state-building objectives is well established globally, and reflected in SDG 16, which calls for the promotion of peaceful and inclusive societies for sustainable development, access to justice for all, and effective, accountable and inclusive institutions at all levels.[105] The challenge is for the Nigerian government to upgrade the quality and accountability of its institutions across service delivery areas, to deepen the democratic institutions and processes, to commit to an inclusive social contract with the citizens, and to create genuine opportunities for civic engagement and

[103] National social safety-nets coordinating office: http://nassp.gov.ng/revised-draft-national-social-protection-policy/ (accessed 22 July 2022).
[104] F Merrien 'Social protection as development policy: a new international agenda for action' (2013) 4.2 *International Development Policy* https://doi.org/10.4000/poldev.1525.
[105] UNDP (n 53) 87.

participation in the national development agenda. In particular, there is the need to amplify the effectiveness of anti-corruption institutions and processes so as to contain the menace of corruption ravaging the country. If this is not done, embezzlement and misappropriation of public resources would continue to sabotage the efforts of governments at translating the availability of resources to improved quality of life for citizens.

Finally, the civil society, as the channel of popular responses, and a major analytical paradigm in politics, has a key role to play in the implementation of socioeconomic rights in Nigeria. The civil society is central to overcoming Nigeria's human development challenges,[106] and can employ tools such as advocacy, lobbying, investigation, monitoring, reporting, strategic litigation, protest, mass mobilization, and political engagements, towards the ends of socioeconomic rights. The civil society is well suited organizationally, materially, and ideologically, to act as the centerpiece of the civil movements and protests for change. The civil society gives human rights issues both attention and notoriety.

## 5. Conclusion

It has been asserted that the greatest benefit of guaranteeing enforceable socioeconomic rights is the assurance it gives to people that effective mechanisms for adjudicating violations or threatened violations of the rights are available.[107] As the separatist agitations and violent attacks by unknown gunmen in south-east Nigeria, violent communal clashes in central Nigeria, terrorism and banditry in northern Nigeria, among other security challenges currently bedeviling the country have revealed, the absence of a viable mechanism for addressing socioeconomic grievances gives the impression that resort to extra-legal means of criminality is a veritable path towards improving one's socioeconomic condition or otherwise challenging government's neglect of its socioeconomic obligations.

In context, the insecurity bedeviling Nigeria can be understood as a fight against poverty, deprivation and destitution in the face of governmental inaction and neglect. It is a result of decades of impoverishing neglect, and the absence of other viable means of compelling meaningful change. The government has the constitutional obligation to meet the basic needs of citizens, and in the absence of a proper forum to compel it to action, there is a growing tendency for some citizens to demand results in militant terms. Accordingly, the insecurity reflects poverty, unemployment, and ineffective and insensitive socio-political and economic systems. It was therefore, the assumption of this study that effective implementation of socioeconomic rights by the Nigerian state could greatly accentuate the prospects of human development in the country, and concomitantly, of peace and security.

[106] Udombana (n 87) 186.
[107] Agbakwa (n 22) 181.

In view of the inter-link between human development, security and socioeconomic rights, it is high time Nigeria moved away from the theory of socioeconomic rights onto its practice. While the development of socioeconomic rights jurisprudence relies on a greater appreciation of human dignity, the advancement of human dignity is a matter of social justice. Accordingly, social justice, which advances human dignity, and is achievable through implementation of socioeconomic rights, is an essential component of the modern state, Nigeria inclusive. The challenge is how to develop a substantive socioeconomic jurisprudence and implementation mechanism within the institutional and constitutional abilities of the Nigerian state, which can give teeth to socioeconomic rights as legal claims.

While the Nigeria state may be lethargic to fully implement socioeconomic rights on the excuse of cost or resource constraints, the appropriate question to ask is not 'what is the cost of implementing socioeconomic rights?', but 'what is the cost of *not* implementing socioeconomic rights?' If this proper question is asked, it would become apparent that socioeconomic rights deserve implementation not only because the state has the legal obligation to do so, but even more, because socioeconomic rights, as economic stabilizers, serve to protect the most vulnerable from falling into poverty, and can spur economic buoyancy, thereby creating both a safety net and a sense of communal belonging. The net result is social inclusiveness or social cohesion, and a productive workforce in place of socioeconomic morbidity and social unrest. Implementing socioeconomic rights is not much a favor to the poor than it is to the state - the existence and the stability of the state depends on it!

In context therefore, the promotion of a rights-based approach to development in Nigeria is not merely a legal question or a question of justiciability; it is more importantly, a moral question, a question of justice, and a practical question, upon which revolves the legitimacy and viability of the Nigerian state. Efforts by the state to address poverty should not be seen as acts of charity, but as a legally binding constitutional and human rights obligation. Government must understand that implementing socioeconomic rights doubles as the means and end of attaining both human and national security, and that so doing is as beneficial to the people as it is to the state.

# INVESTIGATING THE MORAL AND LEGAL CONUNDRUM OF JUGGLING HUMAN RIGHTS WITH HUMAN LIFE IN THE NIGERIAN MEDICARE AND MEDICAID SERVICES

Edwin Arum[*] Obinne Obiefuna[**] Damian Uche Ajah[***] and Lucky Daniel Iyoyojie[****]

**Abstract**

*In modern healthcare administration, the connection between preserving human life and protecting human rights creates a difficult ethical quandary. The idea of beneficence highlights healthcare practitioners' responsibility to prioritise efforts that promote well-being and life preservation. This notion is typically visible in decisions regarding blood transfusions, triage measures, and end-of-life care. However, this pragmatic approach can also clash with the ideas of self-governance and fairness, particularly when it results in unequal access to medical treatment or affects individual liberty. The ideals of autonomy highlight the importance of protecting patients' rights to make their own decisions and guaranteeing equitable access to healthcare services. Patients have the right to make well-informed decisions about their own medical care, even if those decisions do not align with the primary goal of maximum life preservation. When health treatment conflicts with religious convictions, Africans choose their religion over their own lives. Most patients do not consider the persons who may be impacted by their actions, including children, parents, and dependents. It is then necessary to safeguard dependents by establishing paternalism as a legal exception to autonomy. Using doctrinal research methods, this study investigates the complicated ethical terrain where the need to preserve lives frequently conflicts with the need to respect individual autonomy and dignity. This study looks into the difficulties that arise when dealing with competing priorities. This study suggests that the Nigerian legal and healthcare systems be modified to make paternalism a statutory exception to autonomy.*

**Keywords:** human rights; moral and legal issues in healthcare; human rights and Medicare; Medicaid; Nigeria

## 1. Introduction

Human life and human rights are like Siamese twins, relying on each other to thrive. As a result, denying one is proportional to denying the other. Human

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rights apply to every aspect of human life, including health care. Human rights should continue to be valued in the administration of health care and the safeguarding of human lives. An individual's various health-care rights are combined into a single phrase known as autonomy. Individuals who violate their autonomy may face criminal and civil repercussions. However, there are various occasions where these co-joined twins dispute, with each attempting to prioritise one over the other, and prioritising one has the potential to do harm to the individual's dependents, particularly when right is prioritised above life. This creates a lacuna in terms of how the law could be used to balance such conflicts in order to protect the rights of the individual while not jeopardising the interests of the dependents, who are usually minors. This paper is broken into four parts after the introduction. Section two discusses human rights in health-care administration, while Section three discusses biomedical ethics principles. Section four examines the issues between human rights and health care, and section five closes the paper.

## 2. **Human Rights and Health Care Administration**

Human rights are the rights that people have just by virtue of being human. While there are many human rights, there are certain that are particularly important in the governance of healthcare. These include the right to life, the right to personal liberty, the freedom from torture, inhumane and humiliating treatment, and the freedom to think, conscience, and practise religion. These rights are legally protected; yet certain disputes emerge when one right must be surrendered to safeguard another;[1] for example, when personal liberty or free thought, conscience, and religion are compromised to safeguard the right to life.

Battery, assault, and false detention are all possible consequences for violating the right to personal liberty. This breach always happens in health care when a patient, particularly a psychiatric patient, refuses treatment and is imprisoned in a medical facility, where treatment is forced. [2]

These fundamental rights are embodied in a patient's right to autonomy, which is the right to self governance. Simply said, people have the right to decide what healthcare they receive and how it is delivered to them. This also entails being able to make decisions based on one's own free will, rather than being swayed by external forces such as coercion or ‘internal’ causes such as drugs, alcohol, mental illness, or other emotions. Many international charters and national

[1] National Human Rights Commission **‘**Right To Health (Thematic Team**’** <https://www.nigeriarights.gov.ng/focus-areas/right-to-health.html#:~:text=Regionally%2C%20the%20Right%20to%20Health,Scheme%20Act%20(1999)%20etc> accessed 10 June 2024

[2] Emma Cave, ' The ill-informed: Consent to Medical Treatment and the Therapeutic Exception (2017) (46) (2) *Common Law World Review*140-168. Available online at https://doi.org/10.1177/1473779517709452. See also, Mason and McCall Smith’s Law and Medical Ethics (London, Butterworths 1999) 56.

constitutions recognise the right to autonomy or self-government. In Nigeria, for example, it is enshrined as the right to human dignity (as guaranteed in Section 34), personal liberty (as provided in Section 35), and privacy (as provided in Section 37).

The right to autonomy prioritises consent in health care, and failure to comply may result in legal and criminal charges. Obtaining consent is an important aspect of providing healthcare, whether it is through signed documentation or just asking the patient to be contacted. While there are other sorts of consent, such as inferred, expressed, informed, and unanimous, this article will focus on informed consent. To provide consent to a treatment, a patient must be educated on the potential risks, outcomes, and healing processes related with the treatment.[3]

When consent is not obtained, every Medicare provided to the patient is considered a trespass against the individual. As previously stated, trespass to a person can be classified into three types: assault, battery, and false detention. [4] Assault occurs when one party threatens to harm or use force against another party, and the second party is reasonably concerned that the first party will use unlawful or unjustified force against them at any time. Assault is defined as any act, gesture, or threat made by the defendant that causes the plaintiff to fear the use of force against him. Sections 252-253 and 351-360 of the Criminal Code Act define a variety of assault crimes.

Assault requires evidence of an imminent threat to use force, or that the conduct in question would cause a reasonable person to fear for their own safety. In other words, the plaintiff had reasonable grounds to expect an immediate battery and a clear threat to use force. Assault is not always synonymous with battery. It is not necessary to show that the victim was actually terrified in order to establish an attack. The plaintiff must prove that he or she reasonably anticipated immediate battery. For example, in *R v Barrett*, the defendant charged at the complainant, clenched his fist angrily, and threatened to strike the complainant on the spot, causing the complainant to fear for his safety. The court ruled that there was an assault. Threats in assault include both words and deeds, but assault can also occur when words are not spoken, as in Ireland and Burston v. R.[5] The defendants repeatedly called three victims but did not talk to them. During some calls, he resorted to excessive breathing. For months, the victims were stalked relentlessly, leaving them scared of being alone. Many of

[3] Irsch, A. Relational Autonomy and Paternalism – Why the Physician-Patient Relationship Matters (2023) *ZEMO* **6**, 239–260. https://doi.org/10.1007/s42048-023-00148-z

[4] Nwabueze RN. The Legal Protection and Enforcement of Health Rights in Nigeria. In: Flood CM, Gross A, eds. *The Right to Health at the Public/Private Divide: A Global Comparative Study*. Cambridge University Press; 2014:371-393.

[5] [1997] 3 WLR 534

the victims suffered from depression or other mental health problems. The House of Lords declared an assault. Assault was perpetrated when the victims were threatened with violence via silent phone conversations.

In *Sweeney v Janvier*,[6] the complainant in this case was an Englishwoman from France who was betrothed to a German imprisoned on the Isle of Man during WWI. During the war, one of the defendants approached her at her house and falsely claimed to be speaking on behalf of the military authorities, accusing her of being wanted for her correspondence with her fiancé, the German, who was suspected of being a spy. The plaintiff suffered from nervous shock as a result of the bogus threat, and she sought damages after discovering the accusation was baseless. The court ruled that she could sue for trespass and person damages as a result of her injuries.

The plaintiff's lack of fear is irrelevant; the purpose of the law is to protect people from threats of violence or the immediate application of battery. In *Brady v Schatzel*,[7] the defendant threatened to shoot the plaintiff, who filed for assault. However, the plaintiff testified in court that he was not scared. Regardless, the court found the defendant guilty of assault.

Battery on the other hand is the aggressive or unjustifiable application of force on another person's person, regardless of how minor that force may be. It is also the purposeful use of force against another person. It is defined as the unlawful application of force to another individual without his agreement. To prove battery, the plaintiff must demonstrate that the offender intentionally made offensive and injurious contact with them. In Wilson v Pringle[8] and Lane v Holloway[9], it was ruled that physical contact between parties does not have to be violent or produce pain to constitute battery. As a result, any illegal, willful, or angry touching of a person, their clothing, or any other attached item might constitute battery. Similarly, a surgical surgery conducted without the patient's consent might be considered battery. As a result, even the tiniest contact, touch, or force can be used, and no injury is necessary. In healthcare, battery is defined as a damaging or offensive touching of a patient by a medical worker in a healthcare context. A healthcare provider can be charged with medical battery if the patient was not properly informed before to a surgery, which is known as informed consent. The bulk of medical battery claims are for surgical operations. When speaking with patients, providers must have a calm and compassionate demeanour, regardless of whether the patients reciprocate.

Under no circumstances should a healthcare provider physically or verbally abuse a patient, as this may result in the patient's damage or a medical battery complaint against the practitioner. False incarceration happens when a person is

[6] [1919] 2 KB 316.
[7] St R Qd 206.
[8] 1986] 2 All ER 440.
[9] [1968] 1 QB 379.

physically restrained without his consent or without legal authority. Imprisonment is more than just losing movement power; it also entails being constrained within a narrow space determined by someone else's will or power.[10] False imprisonment requires an intention to deprive the claimant of their liberty, although ill will or malice is not required to establish it. Intention is sufficient. Every restriction on a free man's liberty is a type of imprisonment, even if he is not physically confined to a prison.[11]

In a similar spirit, Sir William Blackstone said, "Every confinement of the person is an imprisonment," whether it occurs in a public prison, a private dwelling, the stocks, or even the streets. [12] The patient's awareness of confinement, or the reasonable assumption that they could not be released from their involuntary detention in a healthcare facility, nursing home, or even an ambulance, is an important component of a false imprisonment claim in healthcare.

Patients have the freedom to refuse treatment, even if nurses or doctors disagree with the reasoning behind their decision. Exceptions include cases of mental incompetence, individuals who endanger themselves or others, and those whose capacity has been compromised by drug or alcohol use. Medical institutions and clinicians should always treat patients as autonomous individuals without force.

Another right granted to patients under the Nigerian Constitution is the right to privacy, which means that medical workers cannot access a patient's body, telephone, or other personal information without the patient's consent. [13]

One of the most contentious rights in health care is the freedom of thought, conscience, and religion. This right becomes an issue when a patient's religious views conflict with the healthcare being provided. This right is protected by Section 38 of Nigeria's constitution. Furthermore, the European Convention of Human Rights, Article 9, All persons have the right to freedom of religion, thought, conscience, and speech, which includes the ability to change one's religious views and practices, as well as the freedom to publicly or privately

[10] J Thomas and G Moore, 'Medical-legal Issues in the Agitated Patient: Cases and Caveats' *West J Emerg Med* (2013) 14(5):559-65. doi: 10.5811/westjem.2013.4.16132. PMID: 24106559; PMCID: PMC3789925.

[11]GO Mgbodi, (2023) 'Inadequate Healthcare Service Administration and Management In Nigeria and Solutions' https://www.researchgate.net/publication/372769855_INADEQUATE_HEALTHCARE_SERVICE_ADMINISTRATION_AND_MANAGEMENT_IN_NIGERIA_AND_SOLUTIONS accessed 10 June 2024

[12] Sir William Blackstone, *Commentaries on the Laws of England* (Book 3, Chapter 8 Of Wrongs, and Their Remedies, Respecting The Rights of Persons 1765-1769) <https://lonang.com/library/reference/blackstone-commentaries-law-england/bla-308/> accessed 15 August 2024.

[13] Ibid.

express one's religion or belief. Article 18 of the ICCPR guarantees freedom of religion or belief, as well as freedom of thought, conscience, and expression. [14].

Furthermore, for the abolition of all types of racial discrimination, read Articles 5 of the CERD and 14 of the CRC. Nonetheless, as mentioned in article 18(3), the freedom to express religion or beliefs may be regulated in compliance with legislative requirements and in circumstances when such limits are required to protect public safety, order, health, morals, or the basic rights and freedoms of others. National security is not specifically mentioned among the grounds for permissible limitations, though other limitations may address it. The Human Rights Committee has underlined that limits must be proportionate to the need they serve and necessary to accomplish the intended goal. [15].

According to a study published in the Ghana Medical Journal, patients must be fully informed of all relevant facts in order to grant informed consent, and practitioners cannot rely on therapeutic privilege. The preceding article's reasoning was backed by the following decisions: Meyers Estate et al. v Rogers [16], in which a 37-year-old woman died after getting an intravenous injection of contrast material during a normal radiographic examination. The doctor intentionally withheld information about the hazards connected with contrast media. The Ontario court dismissed the radiologist's claim of therapeutic privilege as a defence for neglecting to warn the patient about the risks of intravenous contrast medium injection. In the previous case, the court used the case of Reibl v Hughes[17] to back up its reasoning and decided that "the therapeutic privilege exception to the doctor's duty of disclosure should not be part of Canadian law because of its potential to erode informed consent".

To show that a doctor performed a treatment or procedure without valid informed consent, the patient must typically demonstrate that if he or she had known about the specific risk, outcome, or alternative treatment that was allegedly not disclosed, the patient would not have chosen the chosen treatment or procedure, thereby avoiding the risk. In other words, the patient must show that the purported failure to disclose caused harm.[18]

The Ghana Patients' Rights Charter, which was released on May 4, 2018, states that healthcare facilities shall protect and respect the rights and obligations of patients/clients, families, health professionals, and other healthcare providers. Healthcare institutions must also consider patients' socio-cultural and religious backgrounds, age, gender, and other differences, as well as the needs of people with disabilities. The patient charter ensures that all care providers,

[14] *Schloendorf v Society of New York Hospit*. 1914105 NE 92
[15] Ibid.
[16] (1991) 78 DLR.
[17] [1980] 2 SCR 880
[18] C Ojumu 'An Examination of the Exceptions to Consent as a Requirement to Medical Treatments and Procedures' (2023) 19 (2) *UNIZIK, Law Journal* 10.

patients/clients, and their families are informed of their rights and responsibilities. [19]

**3. Principles of Biomedical Ethics**

Biomedical ethics are the sacred ideals that healthcare workers are supposed to respect in order to have seamless interactions with their patients. These principles include autonomy, beneficence, non-maleficence, and fairness. Autonomy, or the right to self-governance, has sparked controversy, particularly when self-governance by some patients leads to self-destruction. Medical practitioners are often allowed to be paternalistic. Simply said, this entails acting as a father figure. Fathers can overrule the decisions of children in their care, just as medical professionals can override the decisions of patients in their care if they potentially lead to self-destruction. In other words, "paternalism" happens when a physician or another healthcare professional takes decisions on behalf of a patient without the patient's explicit agreement.[20] The doctor believes that the decisions are in the patient's best interest. However, the physician has more influence in the relationship than the patient, just as the parents have more control in a family than the children. In the previous paternalistic approach, it was permissible for the physician to determine what to tell the patient about the actual diagnosis, and in cases of terminal disease, the patient was sometimes not told the full nature of the condition (maybe the family was informed instead). If the patient is informed of the diagnosis, the doctor may offer the prescribed treatment plan as the only option rather than mentioning alternatives that should be examined. Or, if the patient is presented with choices, the physician may make the recommended treatment plan appear plainly preferable in order for it to be chosen. [21]

Diverse scholars have advanced several arguments for and against paternalism. One common argument for paternalism in healthcare is that the physician or other provider has such vastly superior technical knowledge of the medical situation, the certainty of the diagnosis, the nature of the treatment options and potential benefits, and the risks involved—that it makes more sense for the provider to evaluate the options and make the decisions. Patients are easily overwhelmed by technical details and risk talk, so they are not in the best position to make the decision. [22] The patient suffering from an illness is frequently in a weakened and vulnerable state, and has come to the provider for expert advice, assistance, and judgement that the patient lacks. Furthermore, any

[19] *Schloendorf v Society of New York Hospit* 1914105 NE 92

[20] Patricia Imade Gbobo and Mercy Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services' (2018) (69) 17 *Journal of Law, Policy and Globalisation* 23.

[21] R Fernández-Ballesteros and others, 'Paternalism vs. Autonomy: Are They Alternative Types of Formal Care? Front Psychol' (2019) Jun 28; 10:1460. doi: 10.3389/fpsyg.2019.01460. PMID: 31316428; PMCID: PMC6611139.

[22] Iibid

decision should be made logically, based on an objective assessment of the facts, rather than emotionally.[23] The patient is usually very emotionally involved and possibly scared by all the talk about risks and uncertainties, which may impair the patient's judgement. The physician is less emotionally involved in the situation, allowing him to make the best decision. [24] In fact, upsetting information presented to the patient may harm him or her by causing sadness and depression, and the physician has a duty not to harm the patient. Some scholars argue that doctors' treatment of their patients is inherently paternalistic. This is because patients cannot potentially know all of the information about a procedure, including the potential advantages and hazards, and the physician's personal decisions about what to disclose with them will undoubtedly play a role in this decision-making process. [25]

Those who disagree with the concept of autonomy believe that patients should not be unable to make informed decisions owing to a lack of relevant information. According to this viewpoint, physicians should not be permitted to withhold critical information from their patients or subjects and then make life-changing decisions on their behalf. The critic of paternalism may argue that when a provider makes critical decisions for a patient or withholds important information in order to influence a patient's decisions without involving the patient in the process, the provider appears to be implicitly assuming to know everything about what type of life people in general should live and want out of life.[26]

Beneficence is an additional facet of biological ethics. The principle of beneficence requires physicians to act in their patients' best interests and supports a variety of moral standards aimed at protecting and defending others' rights, preventing injury, removing hazardous conditions, assisting those with disabilities, and rescuing those in danger. The principle focuses not only preventing harm, but also improving and boosting patients' well-being. While physicians' beneficence is moral and unselfish, it is also true that in many circumstances, it can be considered as a payback of the debt given to society for education (often subsidised by governments), ranks and privileges, and to patients themselves (learning and research). [27]

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[23] F O Emiri, *Medical Law and Ethics in Nigeria* (Malthouse Press Ltd 2012} 304.

[24] L Murgic and others, 'Paternalism and Autonomy: Views of Patients and Providers in a Transitional (Post-Communist) Country (2015) 16(1) *BMC Med Ethics* 65. doi: 10.1186/s12910-015-0059-z. PMID: 26420014; PMCID: PMC4589086.

[25] Murgic (n24).

[26] C Katsakou and S Priebe, 'Patient's Experiences of Involuntary Hospital Admission and Treatment: A review of qualitative studies (2007) 16(2) *Epidemiologia e Psichiatria Sociale*.172-178. doi:10.1017/S1121189X00004802.

[27] B Varkey, 'Principles of Clinical Ethics and Their Application to Practice' (2021) *Med Princ Pract* 30(1) 17-28. doi: 10.1159/000509119. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7923912/#:~:text=The%20principle%

Nonmaleficence, on the other hand, is a doctor's promise not to harm the patient. This principle supports a number of moral norms, including the prohibition on killing, causing pain or suffering, incapacitating, offending, or depriving others of the necessities of life. The practical application of nonmaleficence necessitates the physician weighing the benefits and burdens of all operations and treatments, avoiding those that are unduly burdensome, and selecting the best course of action for the patient.[28] This is especially important in difficult end-of-life care decisions like withholding and withdrawing life-sustaining treatment, medically administered food and hydration, and pain and symptom management. The obligation and intention of a physician to relieve a patient's suffering (e.g., refractory pain or dyspnea) by the administration of appropriate drugs, including opioids, supersedes the anticipated but unintentional detrimental effects or outcome (doctrine of double effect).[29]

Justice is frequently characterised as treating people fairly, equitably, and appropriately. Distributive justice is the most significant category of justice in clinical ethics. Distributive justice is the fair, equitable, and appropriate distribution of healthcare resources based on justifiable norms that set the boundaries of social cooperation. How is this done? There are a few viable distributive justice principles. These are: (i) an equal share for everyone, (ii) based on need, (iii) based on effort, (iv) based on contribution, (v) based on merit, and (vi) based on free market exchanges. Each concept is not mutually exclusive; they can and are routinely combined in practice. It's evident how difficult it is to choose, balance, and develop these concepts in order to create a unified and viable system for allocating medical resources. [30]

### 4. **Conflicts in Human Rights and Healthcare Administration**

The healthcare industry is constantly confronted with ethical quandaries in which human rights and the preservation of human life are in conflict. This contradiction is especially evident in cases involving blood transfusion, and

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20of%20beneficence%20is,and%20rescue%20persons%20in%20danger> accessed 10 June 2024

[28] Patricia Imade Gbobo and Mercy Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services'(2018) (69) *Journal of Law, Policy and Globalisation* 17.

[29] TL Beauchamp and JF Childress, *Principles of Biomedical Ethics.* (New York: Oxford University Press; 2009)162. See also, RA Mularski and others, 'Pain Management Within the Palliative and End-Of-Life Care Experience in the ICU' (2009) 135(5) *Chest* 1360.

[30] S Fleishacker, *A Short History Of Distributive Justice.* Cambridge ((MA): Harvard University Press; 2005).

patient autonomy. While both principles are vital, their reconciliation frequently necessitates a sophisticated and context-specific approach. [31]

As noted previously, respect for human rights in healthcare guarantees that patients are treated with dignity, that their preferences are honoured, and that their uniqueness is recognised. This also requires healthcare personnel to respect patients' choices, even if they differ from medical recommendations. on the other hand, preserving human life is healthcare's primary purpose. It is founded on the ethical principle of beneficence, which requires healthcare personnel to behave in patients' best interests by increasing their well-being and avoiding damage. This principle frequently necessitates medical measures aimed at preserving or extending life.[32]

To properly represent this area, various case studies need to be examined.

*Novak v Cobb County-Kennestone Hospital Blood Transfusions Authority*:[33] A 16-year-old Jehovah's Witness was injured in an auto accident. The injuries necessitated surgery. He informed EMS and hospital personnel that he was refusing blood transfusions. There were no blood transfusions administered during the operation. Regular blood tests revealed that the hemoglobin level was dropping. Physicians tried to persuade the patient and his mother (who is divorced and has custody of her son) to accept a blood transfusion, but they refused. After the surgeon stated that the patient was in immediate danger of death, hospital legal counsel filed a late afternoon petition in state court for guardian ad litem without notifying the patient or his mother.

The state judge held an informal hearing that evening, attended solely by the hospital's risk manager and two solicitors. The state judge has designated guardian ad litem. The next morning, the risk manager informed the state judge that the patient's condition had worsened. The judge ordered an emergency hospital hearing and said who should present. Both the surgeon and the second doctor confirmed the need for a transfusion. The guardian ad litem requested that the state judge issue a transfusion order. The judge granted the order and the patient was held and given three units of packed red blood cells. The patient was discharged 1.5 months after the transfusion and recovered successfully. On behalf of her son and herself, the mother filed a federal lawsuit against the hospital, the risk manager, the surgeon, the second treating physician, and two hospital attorneys. She also sued another doctor but eventually dropped the case.

The accusations were supported by a variety of culpability grounds under the Civil Rights Act of 1983 and other state statutes. The defendants filed for

[31] ED Pellegrino and D C. Thomasma, 'The Conflict between Autonomy and Beneficence in Medical Ethics: Proposal for a Resolution' (1985-2015) 3 (1) *Journal of Contemporary Health Law & Policy* 23.
[32] Ibid.
[33] Case number 849F. Supp. 1559, ND Ga 1994.

summary judgment on all federal civil rights complaints, claiming there was no debate over the facts. in command. After analysing each claim and theory, the federal trial court granted all defendants' summary judgment requests for the patient's and mother's cases. The court ruled that the risk manager, a 'state actor' under civil rights law, did not violate the patient and mother's fourteenth amendment right to noninterference with their familial relationship by engaging in "shocking and egregious conduct" that would be a substantive due process violation. No evidence contradicted the patient's or parent's emergency necessity to forego the pre-deprivation objective, hence the court found no infringement. Whether there is an emergency. The court acknowledged that children's religious freedom is protected, but it also determined that parents 'can and must' make treatment decisions, and that the court can order treatment despite religious objections, indicating that there was no substantive due process violation. As a minor (even if grown), the patient did not have a constitutional or common law right to refuse medical treatment.[34]

*Nicoleau v. Brookhaven Memorial Hospital:*[35] The New York Court of Appeals ruling expanded the right to decline potentially life-saving medical treatment. The court concluded that the state cannot compel treatment, even if a parent's refusal harms a child's interests.

In prior decisions, lower courts recognised reasons in favour of saving the child's life to justify forcing medical treatment on an unwilling patient. However, a recent order dated January 18, 1990, clearly states that this method is no longer authorised. The case in question concerned a Long Island lady who suffered a hemorrhage shortly after giving birth and was given a blood transfusion, which the hospital determined was essential to save her life. The woman, a 35-year-old Jehovah's Witness, objected to the transfusion for religious reasons, and the Court of Appeals found that her desires should have been respected. Previously, a lower court rushed to order the transfusion without a full hearing, and the woman survived.

Denise J Nicoleau, a Moriches, New York resident, sued Brookhaven Memorial Hospital in Patchogue because they failed to follow her directives. Chief Judge Sol Wachtler's opinion categorically rejected the notion that a minor's 'overriding interest' may be utilised to disregard a parent's wishes in a scenario where the child refused lifesaving care. This was the first time the Court of Appeals heard a case like this one. [36]

*Hay v B* [37]was a case in which a practitioner had to obtain a court order to authorise a life-saving blood transfusion for a Jehovah's Witness infant whose

[34] See also, Isaac Mesiha v South Eastern Health (2004) NSWSC 1061

[35] (from Hospital Ethics. 1990. March/April.)

[36] See also, Jehovah's Witness v King Country Hospital 278 F. Supp. 488 (ND Wash. 1967)

[37] 2003 (3) SA 492 (W)

parents refused one. However, this case was heard prior to the implementation of the Children's Act. According to the Children's Act, a medical practitioner may overlook a parent's reluctance to consent to a blood transfusion purely for religious or other reasons. This is true even if the parent can show proof of a medically suitable alternative.

Nigeria needs special courts with the power to bypass consent. Many people use religion as a crutch. What happens if opposing beliefs create irreversible harm? Religion is dynamic, and many people change their minds. [38]

Some Jehovah's Witnesses have been excommunicated or socially alienated from their religious group for knowingly undergoing blood transfusions, believing that getting blood violates God's will. This includes turning down blood transfusions, even if the donor's blood is their own. The treating physician must carefully inquire about the patient's attitude on this topic, as a minority of Jehovah's Witnesses do not believe that the Bible forbids blood transfusions and will thus accept them. Some Jehovah's Witnesses may believe it is appropriate to get blood plasma fractions or reinfusion of their blood.

Africa is a deeply religious continent where people do things they don't completely comprehend to please God. Africans are so fascinated with spirituality that they are eager to heed any command given by a spiritual leader, even if the instruction appears ludicrous to them. It's no surprise that Karl Max stated, "Religion is a protest against real suffering." Religion is the oppressed creature's sigh, the heart of a heartless world, and the soul of soulless situations. It's the opium of the masses." Interestingly, these allegiances shift as people transition from one religious group or denomination to another and believe they have gained a greater knowledge. This raises the question of what occurs when a permanent decision is based on a temporary religious conviction. For example, if a Jehovah's Witness refuses to transmit his child and the child dies, he may later alter his faith and convictions, but his child is no longer alive.

When evaluating people's rights to self-government, it is also critical to provide a comprehensive assessment of the absoluteness and exclusivity of those rights. Do humans own themselves entirely? A person is the principal owner of himself, but it should be remembered that someone else owns them, either as mother, father, child, or benefactor; should not the interests of the other co-owners be taken into account as well? Every patient means something to their relatives; in the case of children, many parents have refused blood transfusions for religious reasons and died, leaving their children to suffer immeasurable pain. It is also critical that the law intervene to extend self-governance in medical circumstances to protect the interests of dependents, particularly children, who would be directly affected by their parents' religious decisions.

[38] Okey Nnebedum and Oloruntobi Opawoye, 'A Doctor's Dilemma – Parent 's Right to Refuse Consent' (2021) *JEE Sector Thought Leadership Series* 4.

Article 3(1) of the Childs Rights Act of 2003 states that the best interests of the child must be the primary priority in all activities involving children, whether taken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies. Sub-section 2 states that States Parties undertake to provide the child with such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.

When a person makes a decision or performs an act that is known to endanger his life, it is common to mention that he tried suicide. In Nigeria, suicide is not a crime, but attempting suicide is. According to Section 327 of the Criminal Code Act, attempting to kill oneself is a misdemeanor punishable by one year in prison. Furthermore, section 231 of the penal code, which pertains to Northern Nigeria, stipulates that: Whoever attempts suicide and does everything to facilitate the commission of such offense shall be punished with imprisonment for a term of up to one year, a fine, or both. Although Nigerian law is silent on whether contrary medical decisions that endanger a patient's life should be considered attempted suicide. Nonetheless, there is no distinguishing element between euthanasia, which is illegal in Nigeria, and denial of treatment, which may potentially cost the patient's life. Euthanasia can be performed either actively or passively. Passive euthanasia occurs when a person is killed as a result of withdrawing or omitting medical treatment with the purpose of ending the patient's life. Refusal of medical care when it is clear that if medical treatment is not provided, the patient will die, and this conclusion is communicated to the patient, and the patient prefers to die rather than get treatment, the patient's decision is no different than attempting suicide. [39]

The main essence of law is justice, and justice is all-encompassing in order to protect all those who are impacted by the subject matter. Because Nigerian society is formed in families and families exist in units where all members are interdependent, a member of the family's action that is likely to adversely affect other members of the family, especially children, should be prevented in the interest of justice. [40]

## 5. Conclusion

The conflict between upholding human rights and preserving human life in healthcare is a long-standing and difficult ethical issue. Healthcare providers

[39] V Pelto-Piri and others, 'Paternalism, Autonomy And Reciprocity: Ethical Perspectives In Encounters With Patients In Psychiatric In-Patient Care(2013) *BMC Med Ethics* **14**, 49. https://doi.org/10.1186/1472-6939-14-49

[40] Patricia Imade Gbobo and Mercy Oke-Chinda, 'An Analysis of the Doctrine of Informed Consent in Nigeria's Health Care Services' (2018) (69) Journal of Law, Policy and Globalisation 17.

can effectively manage this issue by taking a balanced and context-sensitive approach. Respect for human rights and the urge to save lives do not have to be diametrically opposed; rather, they can be balanced via ethical deliberation, proportionality, shared decision-making, and supportive legal and regulatory frameworks.[41]

In Nigeria's complex healthcare administration landscape, the ethical challenge of balancing human life and human rights is a pressing issue that requires careful consideration and nuanced responses. Throughout this article, it has become obvious that the country has a number of challenges resulting from cultural and religious convictions, as well as systemic inadequacies. While the primary goal of healthcare is to protect and improve human life, it regularly violates individuals' fundamental rights and dignity. The conflict between these two imperatives highlights the significance of a balanced strategy that prioritises both life's sanctity and individual autonomy.

To maintain this delicate balance, the law should be utilised to establish whether life should be prioritized over rights, particularly when life is at risk merely because of religious beliefs or when the loss of life in such circumstances would have a negative impact on the dependents. Furthermore, hospital administrators must uphold ethical norms including beneficence, nonmaleficence, fairness, and autonomy. This includes ensuring equitable access to healthcare resources, advocating for culturally sensitive treatment approaches, and empowering people to make their own health decisions.

Furthermore, collaboration between governments, healthcare institutions, civil society organisations, and international partners is essential to address systemic concerns and advance the right to health for all persons. Stakeholders in Nigeria can work together to create a more just and equitable healthcare environment by strengthening healthcare systems, improving infrastructure, and expanding capacity-building programmes. Finally, while the ethical quandaries inherent in healthcare administration may be complex and numerous, they are not insurmountable. We can work towards a healthcare system in West Africa that cherishes both human life and human rights equally by sticking to ethical principles, adopting collaborative action, and respecting each individual's inherent dignity.

[41] Ibid.

# CONSUMER COMPLAINTS AND DEFAMATION LIABILITY IN NIGERIA: BALANCING FREE SPEECH AND REPUTATION PROTECTION TOWARDS NATIONAL DEVELOPMENT

Oluchukwu Precious Obioma* and Daniel Thomas Etim**

**Abstract**

*Consumer complaints are essential for maintaining transparency, accountability, and safeguarding consumer rights in Nigeria's marketplace. However, the exercise of free speech in the form of consumer feedback can sometimes intersect with defamation liability, posing challenges for both consumers and businesses. This paper analyses the intricate balance between free speech and reputation protection in the context of consumer complaints and investigates its implications for national development in Nigeria. Adopting the doctrinal research design, this paper examines Nigeria's legal framework regulating consumer complaints and defamation liability. Furthermore, the paper discusses the potential effect of defamation liability on consumer confidence, business reputation, and market dynamics. It considers the challenges consumers face in expressing complaints and opinions freely without fear of legal repercussions, as well as the responsibilities of businesses in managing their online reputation and responding to consumer feedback constructively. It focuses on the tension between protecting free speech rights and safeguarding the reputational interests of the producer. In light of these considerations, the paper proposes policy recommendations and legal reforms aimed at striking a balance between free speech and reputation protection in Nigeria. It advocates for the development of clearer guidelines for distinguishing between legitimate consumer complaints and defamatory statements, as well as the promotion of alternative dispute resolution mechanisms to resolve consumer grievances efficiently. This paper recommends maintaining a harmonious equilibrium between the rights of consumers to voice their grievances and the reputational concerns of firms and advocates for an innovative strategy in dealing with the potential hazards of defamation in consumer feedback. Ultimately, the paper argues that achieving a harmonious balance between free speech and reputation protection is essential for fostering consumer trust, promoting business accountability, and advancing national development goals in Nigeria's dynamic marketplace.*

**Keywords**: Consumer, Consumer Complaints, Consumer Protection, Defamation, Freedom of Expression, National Development, Nigeria, Reputation Protection, United States of America

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## 1. Introduction

Consumer feedback is crucial in the digital era since it significantly impacts market dynamics, influences purchase choices and holds firms responsible for their goods and services. Due to the widespread availability of online platforms and social media channels, consumers now have unprecedented chances to express their opinions, discuss their experiences, and file complaints regarding businesses, brands, and transactions. Nevertheless, the exercise of this essential entitlement to freedom of expression has legal and ethical obstacles, especially regarding the issue of liability for defamation. This highlights the importance of maintaining a balance in this digital era between the right to free speech and safeguarding the reputation of the producer/manufacturer in Nigeria.

The nexus between free speech and defamation laws is getting more and more attention in Nigeria due to the growing consumer activism and advocacy. Consumers, empowered by the influence of social media and online forums, are utilising these platforms to voice complaints, draw attention to matters of public concern, and insist on responsibility from businesses and service providers. However, engaging in criticism or complaints about a firm might subject consumers to defamation litigation, hindering their capacity to exercise their rights and advocate for change. Hence, consumers and businesses encounter legal and ethical challenges when dealing with the overlap between free speech and defamation laws while expressing grievances or addressing unfavourable feedback.[1]

This article examines the intricate interplay between consumer complaints and defamation liability in Nigeria, specifically addressing the challenge of balancing the preservation of free expression with the protection of reputational interests. This article analyses the legal framework for consumer complaints and defamation liability in Nigeria, consumer issues, and policy consequences related to this issue. It provides insight into the problem's complex nature and suggests practical solutions to enhance fairness, transparency, and accountability in interactions between consumers and businesses.

Following this introduction, part 2 analyses the legal framework for consumer complaints and defamation liability in Nigeria. Part 3 examines the challenges faced by consumers in exercising their right to complain in Nigeria while part 4 delves into the defamation laws and freedom of expression in Nigeria. Part 5 looks into a select jurisdiction and how they have balanced the consumer's right to complain and the protection of the reputation of producers/manufacturers so as to draw lessons for Nigeria. Part 6 provides recommendations and concludes the work.

[1] **Chiamaka Leslie Elezieanya, 'Analysis of Freedom of Expression and Online Defamation in Nigeria' (LLB Long Essay, Baze University Abuja 2023).**

## 2. **Legal Framework for Consumer Complaints and Defamation Liability in Nigeria**

### 2.1 **Consumer Complaints**

The exact definition of a 'consumer' is a topic of debate among authors and legal draftsmen, but one possible definition is someone who purchases goods or services for domestic, family, or personal use without planning to resell them; a natural person who uses goods for personal rather than business purposes.[2] Similarly, according to section 167(1) of the Federal Competition and Consumer Protection Act 2018[3] (FCCPA) which is the primary legislation governing consumer protection in Nigeria,

> A consumer includes any person who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or to whom a service is rendered.

This definition is deemed limiting, restrictive, and insufficient, thereby rendering it susceptible to criticism on three grounds. First, it seeks to restrict the definition of 'consumer' to individuals who buy products and services, hence excluding non-contractual consumers. It is implied that only a consumer who has entered into a contract is eligible for consumer protection. In addition, the transaction in question must adhere to contract notions such as invitations to treat, freedom, sanctity, and privity of contract. However, the application of these concepts is sometimes disadvantageous to the consumer. Furthermore, it is evident that the aforementioned definition specifically targets ordinary scenarios where the individual obtaining goods is a private person and the goods are needed for personal use, rather than for resale or use in the manufacturing of other goods intended for sale (it is worth mentioning that, according to the explicit language of the law, this limitation does not appear to be applicable in the case of services). Considering these considerations, an individual will not be considered a consumer if they are a business or if the commodities are not typically provided for personal use. Essentially, it restricts a consumer to an individual who buys products or services for personal use and does not engage in any business-related activities. In addition, it strongly emphasises the requirement of a 'purchase', indicating that the products must be obtained through a transaction involving the exchange of money. Therefore, items obtained by means other than a purchase, such as a gift or trade sample, are not included in the coverage, and if they are faulty, there may be no way to seek compensation. The restriction on the type of transaction that generates protection directly restricts the extent of the protection.

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[2] Bryan A Garner (ed), *Black's Law Dictionary* (7th edn, St Paul Minn: West Publishing Co 1999) 311.

[3] No 1 2019.

It is worthy of note that section 136(3) of the FCCPA, which holds undertakings liable for defective goods and services irrespective of their contractual relationship with the aggrieved consumer, is in fact in direct opposition to this provision. Additionally, it conflicts with section 137 of the FCCPA, which forbids the exclusion or limitation of liability for loss or damage in the event of defective goods used by consumers or caused by the negligence of the manufacturer or distributor. Moreso, the constraints imposed by the definition of the 'consumer' in section 167(1) of the FCCPA differ from the broader definition of a consumer in section 32 of the now-repealed Consumer Protection Council Act 1992. This Act, which was repealed by the FCCPA, defines a consumer as 'an individual who purchases, uses, maintains, or disposes of products or services'. Cases like *NBC v Ngonadi*[4] highlight the hardship this definition under the FCCPA would cause consumers. In that case, Constance Ngonadi was a beer and soft drink trader who also ran a beer parlour. She purchased a kerosene refrigerator from NBC Ltd, which exploded and injured her severely. The Supreme Court upheld her claim against NBC Ltd. By the definition of consumer under the FCCPA because she bought the refrigerator for purposes of her business, she would not qualify as a consumer, although she would under section 32 of the Consumer Protection Council Act 1992. Also, *Solu and Ors v Total Nigeria Ltd,*[5] involving a defective gas cylinder which exploded and caused serious injuries to members of the claimant's family. In both cases, damages were awarded in favour of the ultimate users.

Hence, a more desirable interpretation of 'consumer' involves both goods and services. It includes not just individuals who make purchases, but also those who ultimately use the product or service, as well as everyone who legitimately interacts with it. A consumer is defined as an individual, group, or organisation (excluding incorporated bodies) who receives or seeks to receive goods or services from another person in the context of their business. This definition also includes anyone who uses or is impacted by the use of these goods or services.

## 2.2 Consumer Complaints Framework in Nigeria

### *2.2.1 Consumer Protection Laws*

Nigeria has several laws and regulations aimed at safeguarding consumers' rights and interests. These include the National Communications Act 2003, Consumer Code of Practice Regulations 2007, Telecommunications Networks Interconnection Regulations 2007, General Consumer Code of Practice 2007, Standards Organization of Nigeria (SON) Act 2015, Electricity Act 2023, among others. However, Nigeria's principal legislation governing consumer protection is the Federal Competition and Consumer Protection Act (FCCPA)

[4] [1985] 1 WLR (Pt 4) 739 at 747.
[5] HC Lagos State, ID/619/85; 1988.

2018.[6] The FCCPA contains numerous sections pertaining to consumer rights, this includes **right to proper labelling and adequate trade descriptions,**[7] **right to disclosure of second-hand or reconditioned goods,**[8] **right to select suppliers,**[9] **right to return goods,**[10] **right pertaining to the quality and safety of goods and services,**[11] **and right to safe good quality goods.**[12] **The FCCPA also imposes the duty to** label goods properly and withdraw hazardous goods from the market[13] **on** manufacturers, importers, distributors, and suppliers of goods and services. They are also liable for the supply of defective goods, breach of implied obligations by law, and misrepresentation.[14] The Act establishes that the responsibility of proving the delivery of defective goods or services lies with the supplier. It states that 'where it is alleged that the goods or services are defective, the onus of proof shall lie on the undertaking that supplied the goods or services'.[15]

In order to administer the Act, the FCCPA creates two regulatory bodies. These are the Federal Competition and Consumer Protection Commission (FCCPC) and the Federal Competition and Consumer Protection Tribunal (FCCPT).[16] The FCCPC promotes and protects the interests and welfare of consumers by providing them with a wider variety of quality goods at competitive prices and ensuring the adoption of measures to guarantee that goods and services are safe for intended or normally safe use. The FCCPC also sets out consumer rights and responsibilities and these include to complain, here the consumer has the responsibility to inform businesses and appropriate regulatory authorities about their satisfaction with a product or service, in a fair and honest manner; consumers are also to share their experience, here they have the responsibility to inform other consumers about their experience with a product or service.[17] The FCCPC also has its complaint handling procedure. The FCCPT's function is to adjudicate over matters which arise from the operation of the Act and exercise the jurisdiction, powers and authority conferred on it under this Act or any other enactment.[18] More so, the Tribunal is also empowered to hear appeals from or review any decision from the exercise of the

[6] No 1 2019.
[7] FCCPA 2018 s 116.
[8] FCCPA 2018 s 117.
[9] FCCPA 2018 s 119.
[10] FCCPA 2018 s 122.
[11] FCCPA 2018 s 130.
[12] FCCPA 2018 s 131.
[13] FCCPA 2018 ss 134-135.
[14] Ibid ss 136-140.
[15] Ibid s 145.
[16] Ibid s 39(2).
[17] FCCPC, 'Rights and Responsibilities' <https://fccpc.gov.ng/consumers/consumer-rights-responsibilities/rights-responsibilities/#> accessed 21 April 2024.
[18] Ibid.

powers of any sector-specific regulatory authority in a regulated industry in respect of competition and consumer protection matters.[19] The Tribunal can impose administrative penalties for breaches of the Act,[20] and oversee forced divestments, partial or total, of investors from companies.[21]

The Sale of Goods Act 1893, an English Law, is the primary governing legislation for the sale of goods in Nigeria. It is one of the statutes of general application in the country. The Sale of Goods Act regulates the sale of goods in Nigeria and grants consumers certain rights and remedies for defective or substandard goods. Various states in Nigeria have gone ahead to enact their own Sale of Goods Laws. The Sale of Goods Laws of various states imply certain terms in every contract of sale. These include compliance with description,[22] fitness for purpose and merchantable quality,[23] and compliance with sample.[24] Hence, consumers are entitled to obtain goods that meet the standards of quality, are suitable for their intended use, and match the description provided by the vendor. If consumers discover that the goods are defective or do not meet the contract terms, they have the right to repudiate the contract, reject the goods, or pursue remedies such as repair, replacement, or a refund.[25]

### *2.2.2 Contract and Tort Law*

A. CONTRACT-BASED ACTIONS

The parties to the contract are entitled to contractual rights. A fundamental principle of contract law is that the individuals involved in a contract have the right to initiate legal action and be subject to legal action for any obligation specified in the contract. This principle applies to contracts made between consumers and suppliers of goods and services. In each situation, the rights and obligations of the parties are governed by the terms of the contract between them, as well as provisions inferred by law known as express or implied terms. Express terms are contractual provisions explicitly agreed upon by the parties, while implied terms are those that are inferred by the law governing the contract.[26] Therefore, a consumer who also purchased defective goods has the right to file a civil action in contract against the party responsible. A consumer has the right to file a lawsuit for any provision of the contract or the violation of any of the provisions implied by law. It is important to note that certain

[19] FCCPA 2018 s 47.
[20] Ibid s 51.
[21] Ibid s 52.
[22] Sale of Goods Law of Lagos State Cap S1 2014 s 12.
[23] Ibid s 13.
[24] Ibid s 14.
[25] Monye, *Law of Consumer Protection*, Vol 2 (n 23) 111.
[26] Felicia Monye, 'Synopsis of Consumer Protection Law in Nigeria' in Felicia Monye, Adedeji Adekunle, Festus Emiri, Hudu Ayuba and Nyitor Shenge (eds), *Compendium of Consumer Protection Law in Nigeria* (Princeton & Associates Publishing Co Ltd Lagos 2022) 55.

necessary circumstances must be met in order to apply implied terms. These standards are so strict that it might be challenging for the consumer who feels wronged to provide sufficient evidence to prove their case.[27]

Only parties to a contract may bring legal action or be sued under contract-based actions to enforce the rights and duties specified in the contract. This is the privity of contract principle, which forbids third parties from suing under a contract.[28] Nevertheless, although the law of privity of contract is basic, a court may have valid reasons to construe it more broadly in cases when individuals closely connected to one of the contract parties bring legal actions that are necessary for the case.[29] In general, if a case is proven successful, the consumer who has been harmed will have the right to repudiate the contract and reject the goods, or take legal action to seek compensation, depending on the specific term that has been violated. It is also important to note that subject to the principle of exclusion clauses,[30] terms implied by law apply irrespective of the intention of parties. Further, liability for contractual obligations is strict.[31] This means that due diligence will not absolve a defendant from liability.[32]

B. TORT-BASED ACTIONS

When the term 'tort-based action' is used in relation to product and service liability, it primarily refers to the tort of negligence. Nigerian courts have clearly established that suppliers of goods and services have an obligation of care to consumers.[33] Thus, a person who has been harmed by a defective product has the right to pursue a legal claim for negligence against any party involved in the

[27] Felicia Monye, *Law of Consumer Protection*, Vol 2 (2nd edn, Kraft Books Ltd Nigeria) 111.

[28] The primacy of this doctrine was re-iterated by the Supreme Court in cases like *Leonard Ezeafulukwe v John Holt Ltd* (1996) LPELR-1196 (SC); *Rebold Industries Ltd v Olubukola Magreola & Ors* [2015] 8 NWLR (1464) 210; and *Osoh v Unity Bank Plc* [2013] 9 NWLR (Pt 1358) 1 SC.

[29] *Mainstreet Bank Ltd v Lilian Chahine* [2015] 11 NWLR (Pt 1471) 479, 508.

[30] This is the practice by suppliers to use exclusion/exemption clauses to exclude obligations contained in the contract. However, the application of the exemption clause is subject to some established rules such as the requirement that the clause must be incorporated into the contract (*ABC Transport Co Ltd v Omotoye* [2019] 14 NWLR (Pt 1692) 197 (SC)); that it does not cover a case of negligence (*Narumal & Sons (Nig) Ltd v Niger/Benue Transport Co Ltd* [1989] 2 NWLR 730 SC); does not protect a third party (*Alfotrin Ltd v AGF* [1996] 44 LRCN 2376); may not protect a party in fundamental breach (*Eagle Super Pack (Nig) Ltd v ACB Plc* [2006] 19 NWLR (Pt 1013) 20; and the rule of *contra proferentem* (*Delmas & Ors v Sunny Ositez Int'l Ltd* [2019] 9 NWLR (Pt 1677) 305) which means that the words of an exclusion clause are to be construed against the person who inserted it if there is an ambiguity(this shows that the courts treat exclusion clauses with disfavour).

[31] *MTN Nigeria Communications Ltd v Ganiyu Sadiku* (2013) LPELR- 21105 (CA).

[32] Monye, *Law of Consumer Protection*, Vol 2 (n 23).

[33] Monye, 'Synopsis of Consumer Protection Law in Nigeria' (n 22) 73.

production and distribution of the goods. However, in order to achieve success, it is necessary to establish that the person being sued was responsible for the defect concerned. The plaintiff bears the burden of proving negligence against the defendant. The case of the plaintiff has now been boosted by the decision of the Court of Appeal in *NBC Plc v Ibrahim*[34] which has recognized the applicability of *res ipsa loquitur* (the fact speaks for itself)[35] to product liability cases. It is suggested that in addition to this positive judicial evolution, a strict product liability regime[36] be adopted as a means of getting around the onerous challenge posed by the burden of proof of negligence.

### 2.3 **Defamation Liability**

*The Supreme Court in Chilkied Security Services & Dog Farms Ltd v Schlumberger (Nig) Ltd & anr*[37] *defined defamation* as the injury occasioned to another person's reputation by either written or spoken words. Hence, defamation is said to be the intentional act of disseminating false statements about an individual, leading to harm or detriment to their reputation.[38] A defamatory statement can potentially diminish a person's reputation among other members of society, provoke hatred, contempt, or ridicule towards them, lead others to avoid or reject them, discredit their office, trade, or profession; or injure their financial credit. Thus defamation refers to the publication of a written or printed article about a person that lacks lawful justification or excuse. This publication tends to subject the person to public contempt, scorn, obloquy, ridicule, shame, or disgrace. Additionally, it aims to create a negative opinion of the person in the minds of reasonable individuals or harm their professional,

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[34] (2016) LPELR – 41943 (CA).

[35] This doctrine applies where the accident or injury speaks for itself so that it is sufficient for the plaintiff to aver the facts of the case and nothing more. Once the facts pleaded by the plaintiff disclose a *prima facie* case, the burden will lie on the defendant to prove that the accident arose without negligence. It is noteworthy that the accident must be such that does not ordinarily happen in the absence of negligence *National Electric Power Authority v Alli & Anor* [1992] 8 NWLR (Pt 259) 279 SC, *Alao v Inaolaji Builders Ltd* [1990] 7 NWLR (Pt 160) 36 CA. There is no doubt that this will be the case regarding many defective products, especially where the allegation is that of the presence of foreign substances. If it can be shown that the product reached the claimant in the condition in which it left the person being sued and that the defect was present all along, then a *prima facie* case would have been made.

[36] Here, the case does not depend on the respondent proving negligence by the appellants or the intent to harm but is based on the breach of an absolute duty to make something safe *MTN Nigeria Communications Ltd v Ganiyu Sadiku* (n 27); *Michael Adeyemo v The State* (2015) LPELR – 24688 SC.

[37] *(2018) LPELR-SC.85/2007.*

[38] Ebunoluwa Bayode-Ojo, 'Defamation and the Law in Nigeria' (Olisa Agbakoba Legal, 6 July 2022) <https://oal.law/defamation-and-the-law-in-nigeria/> accessed 27 April 2024.

occupational, or trade interests. Such defamatory publications are considered libellous and actionable, regardless of the writer's intention. The term does not necessarily imply that the plaintiff engaged in genuine disgusting behaviour; it is enough if it made him appear despicable and ridiculed. Section 4 of the Defamation Law[39] defines defamation as:

> a published matter concerning a person which tends to affect adversely the reputation of that person in the estimation of ordinary persons; to deter ordinary persons from associating or dealing with that person(s); or to injure that person in his occupation, trade, office, or financial credit.[40]

The comment must be defamatory to the general public, not simply 'a certain portion of the public' in order for a defamation lawsuit to proceed hence, that the plaintiff's reputation is lowered in the eyes of a particular segment of the public may not be considered defamation. In *Egbuna v Amalgamated Press of Nigeria Ltd*,[41] the term 'a particular section of the public' was defined as 'a body of persons who subscribe to standards of conduct which are not those of society generally'. More so, it is not only a human person that can be defamed. A company with a trading character, which is in law regarded as an artificial person, can also sue for defamation.[42]

There are two types of defamation in Nigeria: Libel and Slander. Libel is the act of spreading false and damaging statements about someone in a written or permanent form and it is actionable per se i.e. it is legally actionable without the need to prove specific harm. This can encompass various forms of communication, such as an email, a blog post, a tweet, a text or WhatsApp message, a newspaper article, a television or radio broadcast, a video clip posted to the internet, or even a handwritten letter. On the other hand, slander is temporary, usually expressed through gestures or spoken words. There is a saying that slander is directed at the ear, whereas libel is directed towards the eye.[43]

There are three elements of defamation. First, it must be established that the words were defamatory. During a trial, it is the responsibility of the judge to determine whether the words that are being complained are reasonably capable of being defamatory. In the case of *Omo-Osagie v Okutubo,*[44] Adefarasin J provided guidance on the method that a judge should employ when determining if certain words have the potential to be defamatory. Therefore, 'the judge… has

[39] Defamation Law, Cap39 Laws of Osun State of Nigeria 2002 s 4.
[40] Ibid.
[41] [1967] 1 All NLR 25 at 30.
[42] *Edem & Anor v Orpheo Nigeria Ltd & Anor (2003) LPELR-SC.171/199 (Pp 22-24, paras G-C).*
[43] Gilbert Kodinliye and Oluwole Aluko, *The Nigerian Law of Torts* (Ibadan: Spectrum Book Ltd 2001) 139.
[44] [1969] 2 All NLR at 179.

to consider what is the natural and ordinary meaning in which these words would be understood by reasonable men to whom they were published…' Second, it must be established that the words referred to the plaintiff. It is not obligatory for the words to explicitly identify the plaintiff by name. If the words may be interpreted by rational individuals as pertaining to him, then it is satisfactory. The criterion for determining whether words that do not explicitly mention a plaintiff actually refer to them is whether such words, under the given circumstances, would reasonably cause individuals who are familiar with the plaintiff to conclude that they are the person being referred to.[45] Third, the words must be published. In order to succeed, the plaintiff must prove that the defendant communicated the words in question to at least one individual other than the plaintiff. The act of publishing information solely to the plaintiff is not actionable, as defamation laws are designed to defend an individual's reputation among others, rather than their personal feelings about themselves. To succeed in a defamation lawsuit, the plaintiff must prove that the words were conveyed to individuals other than himself. [46] Also, each instance of repeating a defamatory statement constitutes a new dissemination and gives rise to a new cause of action.[47]

It is worthy of note that there is also commercial defamation. This is a false assertion that harms the reputation of another person's products, services, or business. The elements of commercial defamation include:

> that the statement was disparaging or damaging to his goods or services, the statement was false, the statement was published; and that damage was suffered by the plaintiff, especially financial loss.[48]

Under the Criminal Code defamation is defined as a 'defamatory matter likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by any injury to his reputation'.[49] By the provisions of Section 375 of the Criminal Code Act, any person who publishes any defamatory matter is guilty of a misdemeanor and is liable to imprisonment for one year; and any person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years. A defendant who publishes a defamatory matter with the intent to extort is guilty of a felony and is liable to imprisonment for seven years.

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[45] *Dalumo v The Sketch Publishing Co Ltd* [1972] 1 All NLR 130.
[46] *Okotcha v Olumesi* [1967] FNLR 174.
[47] *Truth (NZ) Ltd v Holloway* [1960] 1 WLR 997.
[48] Action4Justice Nigeria, 'Defamation and Freedom of Expression' \<https://nigeria.action4justice.org/legal_areas/right-to-freedom-of-expression-2/what-are-the-other-limitations-of-freedom-of-expression-under-nigerian-law/> accessed 28 April 2024.
[49] Criminal Code Act Cap C 38 LFN 2004 s 373.

The Penal Code also provieds that 'whoever, by words either spoken or reproduced by mechanical means or intended to be read by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said to defame that person'.[50] According to Section 392 of the Penal Code Law, any person who defames another shall be punished with imprisonment for a term that may extend to two years, or with a fine, or with both. The Penal Code Law further extends the punishment of any person who prints or engraves a matter knowing it to be defamatory with imprisonment for a term that may extend to ten years, a fine, or both, while the sale of printed or engraved material containing defamatory matter is punished with imprisonment for a term that may extend to five years, with a fine, or both.

The Cybercrime (Prohibition, Prevention) Act 2015 governs online defamation. Section 24 provides inter alia that:

> any person who knowingly sends a message or other matter by means of computer systems or that he knows to be false, for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent commits an offence under this Act and shall be liable on conviction for a fine of not more than ₦7,000,000.00 or imprisonment for a term of not more than three years or to both such fine and imprisonment.

It is well recognised that individuals who post content on social media platforms are considered publishers and can be subject to legal action if they make false statements or defamatory remarks. The standard of proof for online defamation is the same as the normal standard for defamation in general.[51]

These laws above provide criminal remedies for defamation. The civil remedies for defamation include damages and, in certain situations, injunctive relief and an offer of amends. The amount of damages awarded for defamation is primarily determined by two factors: the gravity of the defamatory statement and the reach of its dissemination. The principles guiding the assessment of damages for defamation are:

> (i) The station in the life of the plaintiff which includes his position and status, and in particular the geographical spread of his influence. (ii) The extent and level of damage done to the plaintiff by the defamatory publication. (iii) The nature of the defamation, i.e. the mode and spread of the publications. (iv) The totality of the conduct of the defendant. That is any apologetic or remorseful conduct of the defendant, his desires to make amends and possibly to settle out of court, any retraction, or apology if any.[52]

[50] Penal Code Law Cap P3 LFN 2004 s 391.
[51] Bayode-Ojo (n 34).
[52] *Williams v The West African Pilot Ltd* [1961] 1 All NLR 866.

Injunctive relief refers to a legal remedy that involves a court order requiring a party to either do or refrain from doing a specific action. At times, courts may grant injunctive remedies in order to stop the spread of further defamatory content. Interim injunctive relief may be granted in some cases to prevent the publication of defamatory content or to halt further publication if it has already begun while the trial is ongoing. In general, the award of damages is considered adequate. However, courts usually grant injunctive relief only in extraordinary circumstances when it can be proven that the right to free expression has been or will be misused.[53] Offer of amends usually involves the publication of a suitable retraction or correction of the defamatory story; an apology with or without payment of a token of damages, and so forth. An offer of amends is a form of accord and satisfaction. Criminal defamation, unlike civil defamation, does not treat libel and slander differently. Whether the statement is in transient or permanent form, it is criminal defamation with the same punishment.[54]

The defences available to a person sued for defamation are:

a) Justification (Truth)[55]: The publication of defamatory matter is not an offence if it is made for the benefit of the public at the time and is true. Unless it is definitively proven that a supposed defamatory statement is false, it cannot be determined that any right has been violated. When using a plea of justification, the defendant has the responsibility to prove that the accused defamation is true. Therefore, any relief sought by a party who sues for defamation is rendered null and void by a justification defence. Hence, truth is an absolute defence to any legal action for defamation.

b) Fair comment: It is a defence for a defendant in a defamation lawsuit to show that he made the statement complained of, in the interest of the public. A person who makes an allegedly defamatory statement can escape liability by showing that the statement he made was an honest comment on a matter of public interest. The requirements for this defence to succeed are:

> The matter commented on must be one of public interest. (ii) The statement must be a comment or opinion and not an assertion of fact. (iii) The comment must be based upon facts truly stated. (iv) The comment must be honestly made. (v) The comment must not be actuated by express malice.[56]

[53] Tamaraemi Jombai, 'Defamation and Privacy Law in the Federal Republic of Nigeria' (Nigeria Media Law Guide, January 2024) <https://www.carter-ruck.com/law-guides/nigeria-2/#:~:text=Defamation%20can%20take%20the%20form,words%20referred%20to%20the%20claimant> accessed 27 April 2024.

[54] Fatima Sulaiman Musa, 'A Critical Anaysis of Defamatiou under the Nigerian Tort Law' (LLB Long Essay, Baze University Abuja 2022) 24.

[55] Criminal Code Law s 377; Penal Code Law s 391(2)(i).

[56] *Makinde & Ors v Omaghomi* (2010) LPELR-4461(CA).

In the case of *Chilkied Security Services & Dog Farms Ltd v Schlumberger (Nig) Ltd & anor,*[57] the appellant claimed that the respondent's letter to the Commissioner of Police, which accused the appellant of employing armed robbers, was motivated by malice and therefore defamatory. The Supreme Court rejected the appellant's petition and determined that the respondent just requested the protection that was required of him by documenting all the accusations in the letter. Therefore, the statement was not motivated by malice and thus cannot be considered defamatory.

c) Privilege: [58] Privilege can be categorised as either absolute or conditional. The former protects the speaker or publisher regardless of their motives or whether the words are true or not. This assertion can be made concerning remarks made when fulfilling a political, judicial, social, or personal obligation. Conditional or qualified privilege provides legal protection to the speaker or publisher unless it can be proven that they acted with true malice and had knowledge that the statement was false. The matters which may enjoy qualified privilege:

> (i) Fair and accurate reports of the proceedings of the legislature. (ii) Fair and accurate reports of judicial proceedings. (iii) Statements made in the performance of a legal, moral, or social duty. (iv) Statements made in self-defence. (v) Statements made to the proper authorities in order to obtain redress for public grievances. (vi) Statements made between parties having common interests. (vii) Statements privileged under the Defamation laws (e.g. statement between solicitor and client).[59]

d) Unintentional defamation: Unintentional defamation is not a defence at common law against a lawsuit for libel or slander. The defendants in the case of *Hulton v Jones*[60] published a fictional story in their newspaper detailing the extramarital affairs of an individual named 'Artemus Jones'. Artemus Jones, an actual individual, filed a lawsuit against the defendants for defamation, and he was victorious in his legal action, even though the use of his name was purely unintentional. The English Legislature recognised the clear irrationality of decisions such as *Hulton v Jones* and implemented new legal protection in situations of unintended defamation. Section 6 of the Defamation Law of 1961[61] introduced this defence in Nigeria. In this context, if a defendant is ready to publish an acceptable correction and apology known as an 'offer of amends', they may avoid being held responsible for damages.

e) Public Interest Defense: The public interest defense permits persons to express things that may otherwise be considered defamatory, provided that these statements are made in the public interest and without malice. In Nigeria, like in

[57] (2018) LPELR-SC.85/2007.
[58] Criminal Code Law s 378 and Criminal Code Law s 379.
[59] Musa (n 50) 34-35.
[60] [1909] UKHL 591.
[61] Defamation Law, Cap 34 Laws of Lagos State 1973 s 6.

many legal jurisdictions, remarks regarding public concerns or interests are given enhanced protection under defamation law. If it can be determined that a statement in question was not motivated by malice, the defamation suit will not be successful. In the case of *Sketch v Ajagbomkeferi*,[62] the Supreme Court of Nigeria ruled that the defendant, who had made a statement on a religious issue, was eligible to claim this defence. The court determined that the religious topic on which the defendant spoke was of public concern, and as a result, the defendant was not held responsible. In order to effectively utilise the public interest defense, it is necessary to demonstrate that the remark is genuinely of significant public concern and was made without any deliberate intention to damage the subject's reputation.

### 3. **Challenges Faced by Consumers in Exercising Their Right to Complain in Nigeria**

When it comes to exercising their right to complain, Nigerian consumers confront various hurdles. These hurdles arise from a multitude of circumstances, encompassing legal, social, economic, and cultural obstacles. These are some of the primary challenges encountered by consumers in Nigeria:

i. Fear of Retaliation: Numerous consumers in Nigeria refrain from lodging complaints about products or services owing to the apprehension of retaliatory actions from businesses or service providers. They may have concerns about being placed on a blacklist, facing harassment, or experiencing additional mistreatment if they voice their opposition to apparent misconduct. When consumers are afraid of facing consequences, they may be less likely to stand up for their rights and seek resolution for valid complaints.

ii. Lack of Awareness of Rights: Consumers in Nigeria have a notable obstacle in the form of little knowledge of their rights and the options they have for resolving complaints. A significant number of consumers lack awareness regarding consumer protection legislation, regulatory authorities, and alternative dispute resolution processes that might assist them in resolving issues related to products or services. Consumers' lack of information exposes them to potential exploitation and mistreatment by unethical undertakings.

iii. Limited Access to Information: Nigerian consumers frequently encounter obstacles when attempting to obtain precise and dependable information regarding products, services, and consumer rights. Consumers may be disadvantaged while making purchasing decisions or lodging complaints due to information asymmetry between them and businesses. Insufficient availability of information regarding the quality of products, safety regulations, or warranty conditions might impede consumers' capacity to make well-informed decisions and seek compensation for unsatisfactory goods or services.

iv. Inadequate Consumer Protection Mechanisms: Despite the presence of consumer protection legislation and regulatory authorities in Nigeria, the

[62] [1989] 1 NWLR (Pt 100) 678.

efficacy of these mechanisms is frequently hindered by issues such as insufficient funds, inadequate staffing, and a lack of enforcement capability. Consumers may face bureaucratic obstacles, delays, or inefficiencies while attempting to file complaints with consumer protection organisations or seek compensation through legal means.

v. Financial constraints: This refers to economic conditions, such as poverty, unemployment, and limited disposable income, that can create substantial obstacles for consumers in Nigeria who are trying to address their grievances. Consumers may be financially unable to initiate legal proceedings, engage legal counsel, or utilise alternative methods of resolving disputes. Consumers may be discouraged from pursuing complaints, especially for minor or low-value conflicts, due to the expensive nature of litigation and the unpredictable results it might yield.

vi. Cultural and societal standards: This can affect consumers' inclination to voice their grievances in Nigeria. Consumers may have concerns about being seen as troublemakers or causing embarrassment to themselves or their families by making public complaints. The cultural aversion to expressing dissatisfaction can lead to a lower number of reported consumer complaints and sustain a culture of silence and acceptance.

Legal Implications: a trending case study and example of defamation claims brought against consumers in Nigeria for online reviews, social media posts, or other forms of consumer feedback is the case between Mrs Chioma Okoli and Erisco Foods Limited. On 17 September 2023, Chioma made a post on her Facebook profile stating that she bought a can of Nagiko Tomato paste and found that the product had an excessive amount of sugar. In her response to a message on Facebook, she subtly pointed out that the product was causing harm to consumers because of its high sugar content. Erisco Foods issued a statement refuting the veracity of her accusations, and she was subsequently apprehended, a course of action denounced by Nigerians, who characterised it as an act of intimidation. The Federal Competition and Consumer Protection Commission (FCCPC) intervened in the case and issued a summons to Erisco after the arrest. After a few days, Okoli was apprehended by members of the Nigeria Police Force in Lagos and then transported to Abuja in response to a complaint filed by the CEO of Erisco Foods Limited, Eric Umeofia. Both sides have been engaged in litigation since that time.[63]

Since this case is in court, this paper will not be analyzing it, however, it is clear that there is an urgent need for a proper balance between the consumer's right to complain and freedom of expression, and the right of businesses to protect their

**[63] Thisday, 'Chioma/Erisco Saga: When the Customer is "Not Always Right"' (*THISDAY,* 19 March 2023) <https://www.thisdaylive.com/index.php/2024/03/19/chioma-erisco-saga-when-the-customer-is-not-always-right> accessed 29 April 2024.**

reputation through defamation laws especially when it comes to posting online reviews.

## 4. **Defamation Laws and Freedom of Expression in Nigeria**

The concept of 'freedom of speech and expression' encompasses the actions of actively seeking, receiving, and sharing information or ideas, regardless of the medium employed. Freedom of speech encompasses various aspects, such as the right to express and share information and ideas, as well as the right to seek, receive, and communicate information and ideas. The significance of freedom of speech and expression resides in the realm of social interactions. The 2011 Report of the UN Special Rapporteur on Freedom of Opinion and Expression emphasises the significance of freedom of expression on the Internet. The Rapporteur underscores the necessity of unambiguous regulations, as opposed to the current state of arbitrariness, which permits the escalating surveillance and monitoring of communications.[64] Also, according to Section 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), every individual has the right to freedom of expression, which includes the right to hold opinions and to receive and share information without any interference. Hence, Nigeria's constitutional framework aligns with international standards. More so, the implementation of the Freedom of Information Act (2011) in Nigeria has significantly improved the ability of individuals to access information, consequently reinforcing their rights to freedom of expression and opinion.

Consumers have the fundamental right to freely share their thoughts and experiences about organisations, products, or services, using various means of communication such as word of mouth, social media, reviews, and more. Nevertheless, the right to freedom of speech and expression does not grant them the privilege to say or publish without being accountable. A person's reputation and good name are legally protected, and they are entitled to compensation when they are damaged without cause or explanation. The legislature has the authority to pass laws that put limitations on the right to speech and expression based on various justifications. Social media is susceptible to misuse, as it provides an easy platform for committing many cybercrimes.[65] Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR) provides limitations 'for respect of the rights of reputations of others and protection of national security, or public order, or public health or morals'. Also, sections 39(3) and 45 of the 1999 Constitution (as amended) allow for the restriction of the right to freedom of expression inter alia, 'in the interest of security, public safety, public order, public morality, and public health and to protect the rights and freedom of other people'.

Hence, although businesses have a right to protect their reputation, good name, and estimation in which they stand in society, they are also obligated to uphold

[64] Ibid.
[65] Ibid.

consumers' rights to freely express views and share their experiences. Businesses should make a conscious effort to actively interact with consumer input and resolve valid complaints or issues clearly and ethically. They should also refrain from misusing defamation laws as a means to stifle criticism or suppress true unfavourable reviews that are made in good faith. Regulatory bodies like the Federal Competition and Consumer Protection Commission (FCCPC) also have a part to play in balancing consumers' freedom of expression and businesses' reputation rights. In addition, when businesses and consumers have disagreements about online statements or reviews, alternative dispute resolution methods like mediation or arbitration can provide a friendlier and efficient way to resolve concerns without going to court.

Regarding consumer views on public concern or consumer interest, the defences to defamation uphold the rights to free expression and accountability. As long as the expressions are made in good faith, without malice, and in the public interest, consumers are given important safeguards that allow them to freely express their opinions, share their experiences, and participate in public discussions without the risk of being held legally responsible for defamation.

## 5. **Balancing Consumer's Right to Complain and Reputation Protection in Select Jurisdiction: Lessons for Nigeria towards National Development**

Here, this paper compares defamation laws and consumer protection frameworks in Nigeria with those of another jurisdiction to identify areas of convergence and divergence and draw lessons for legal reform and policy development so as to help foster consumer trust, promote business accountability, and advance national development goals in Nigeria's dynamic marketplace. The United States of America will be used because it has one of the best laws that protect the right to freedom of expression and free speech.

The United States of America is widely recognised for its defamation laws that strongly support the freedom of expression and speech. Freedom of expression is a fundamental right protected by the First Amendment of the Constitution, which holds significant constitutional priority. Courts consistently show reluctance to enforce decisions that violate the First Amendment Rights. The case of *New York Times Co v Sullivan*[66] is a locus classicus decision of the US Federal Supreme Court which established the supremacy of freedom of speech above the right to reputation (right to protect one's image) in the United States.

Defamation in the United States is governed by tort law, which is mostly state law, hence it varies to some extent throughout the fifty states and the District of Columbia.[67] American defamation law is primarily pro-defendant. In a wide spectrum of public interest cases, the United States has determined that free

[66] 1964 376 US 254 (USSC).

[67] Vincent R Johnson, 'Comparative Defamation Law: England and the United States' (2016) 24(1) *U Miami Int'l and Comp L Rev* 17.

expression and spirited public debate are frequently more important than compensating plaintiffs for harm caused by defamatory falsehood. It is not an overstatement to describe the United States as remarkable in its devotion to free speech as a right.[68] In the United States, the plaintiff bears the burden of establishing the truth or falsity of the defamatory remark; thus, there is no presumption that a defamatory statement is false. Rather, the plaintiff must prove that the claim is false; this makes it difficult for a libel or slander suit to prevail under American law.[69]

Defamation cases in the US are broken down into three categories.[70] Within the first category, which involves public officials or public personalities filing lawsuits regarding areas of public concern, such as their behaviour, suitability, or qualifications, the plaintiff is required to demonstrate 'actual malice'. Under American law, actual malice is a specific legal phrase that requires the plaintiff to demonstrate that the defendant acted with awareness of the falsehood of the defamatory statement or with a reckless disregard for its truthfulness.[71] In the second category of American cases—actions by private persons suing with regard to subjects of public concern—the federal Constitution demands proof that the defendant was at least negligent as to the falsity of the defamatory utterance.[72] States have the freedom to establish a more stringent standard for fault as to falsity, although courts rarely exercise this option.[73] Finally, in the third category of cases—actions involving any individual suing with regard to a subject of entirely private concern—the United States Supreme Court has yet to rule on what level of fault in terms of falsity is constitutionally necessary.[74] Without specific guidance from the Supreme Court, many states mandate the presentation of proof demonstrating the defendant's negligence regarding the falsity of the defamatory statement.[75] The constitutional requirement that a

[68] Kyu Ho Youm, 'Liberalizing British Defamation Law: A Case of Importing the First Amendment?' (2008) 13 *Comm L & Pol'y* 415.
[69] Johnson (n 67) 24.
[70] Vincent R Johnson, *Advanced Tort Law: A problem Approach* (2d ed. Carolina Academic Press 2014) 163.
[71] *New York Times Co v Sullivan* 84 S. Ct. 710, 726 (1964) (dealing with public officials); *Curtis Pub. Co v. Butts* 87 S. Ct. 1975, 1991 (1967) (dealing with public figures).
[72] *Gertz v Robert Welch, Inc.*, 94 S. Ct. 2997, 3010 (1974) ('[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual'.)
[73] *Poyser v Peerless* 775 N.E.2d 1101 (Ind. Ct. App. 2002) (requiring actual malice).
[74] The leading case on defamation involving matters of purely private concern is *Dun & Bradstreet, Inc v Greenmoss Builders, Inc.*, 105 S. Ct.
[75] See, e.g., *WFAA-TV, Inc v McLemore*, 978 S.W.2d 568, 571 (Tex. 1998) (holding a private individual suing a media defendant must prove that the defendant was negligent regarding the truth of the statement).

plaintiff in a defamation case must prove either actual malice or negligence as to falsity 'has, as a practical matter, made it necessary for the plaintiff to allege and prove the falsity of the communication, and from a realistic standpoint, has placed the burden of proving falsity on the plaintiff'.[76]

A case that serves as a message of caution for individuals who post internet reviews, emphasising the importance of ensuring the truth of their reviews while reminding businesses that pursuing legal action can be a lengthy process and does not guarantee success is the New Jersey appellate case of *Okeke v Anekwe*. On 12 July 2022, the Appellate Division considered online review defamation in *Okeke v Anekwe*.[77] For five years, plaintiff Joe Obi Okeke prepared defendant Chinedu Sani Anekwe's tax returns as his accountant. After the defendant discovered he owed the government money from a previous year's tax returns due to undeclared income, the relationship soured. Unreported income that year was not disputed, but who was responsible was. The defendant planned a meeting with the plaintiff who is an accountant to discuss possible solutions. The meeting never happened, and each party blamed the other. After a heated text exchange, the defendant took his file from the plaintiff. The defendant then posted on Facebook and left a one-star Yelp review. The Facebook and Yelp reviews accused the plaintiff of 'mess[ing] up [defendant's] tax returns'. The defendant also claimed plaintiff sent him profane texts. The plaintiff asserted that the defendant was 'only leaving [as plaintiff's client] to commit Fraud'. The defendant attributed many statements to the plaintiff in his reviews. The plaintiff sued the defendant for defamation. It went to trial. At the end of the plaintiff's case, the defendant moved for judgement under Rule 4:40-1. The trial judge upheld the motion, ruling that the defendant's speech was protected as being either truthful or opinion. The trial court also found that the plaintiff had failed to establish 'actual malice', i.e., that defendant deliberately published lies or behaved with reckless disregard, even though the statements were not defamatory as a matter of law. The Appellate Division upheld the dismissal of the defamation claim for the defendant's statement that his taxes were 'mess[ed] up', but reversed and remanded for further consideration whether the defendant's incorrectly attributed quotations and false allegation that the plaintiff cursed in the texts were defamatory. The court explained defamation law, starting with whether the speech is fact or opinion. If opinion, no defamation claim may lie, but if fact, the next question is whether the statement is true (meaning essentially true) or false, including false attribution of a quote. The court upheld the comment that the plaintiff had 'messed up' the defendant's tax records, ruling that it was an expression of opinion. Nevertheless, as per the appellate court, the defendant falsely attributed quotes to the plaintiff and made false allegations that the plaintiff cursed him in text messages. These statements have the potential to be considered defamatory.

[76] Restatement (Second) Of Torts § 613 cmt. J (Am. Law Inst. 1977).
[77] A-3391-20 (NJ App. Div. July 12, 2022).

The appellate court determined that in the event that fault is taken into account, the lower negligence standard, which applies to matters of private concern, should be utilised instead of the actual malice standard, which applies to matters of public concern. This decision was made even though the plaintiff is a licenced accountant.[78]

The determination of the legal standard is a question that requires careful consideration of the facts. In the above case of *Okeke*, the court concluded that the matter was of private concern, leading to the application of a less burdensome negligence standard. This decision could potentially discourage negative reviews, as businesses find it easier to prove negligence rather than actual malice. However, well-known companies may argue that their claims are of public concern, which would subject them to the more challenging actual malice standard. This is especially true if they have previously been involved in public controversies related to the products or services being criticised. Similarly, businesses that engage in activities that impact public health or safety may also be considered matters of public concern.[79] A recent ruling by a New York appellate court in the case of *Aristocrat Plastic Surgery v Silva*[80] determined that an online review of a medical provider was a matter of public interest under New York law.

Furthermore, the US enacted the Consumer Review Fairness Act 2016 to protect the credibility and value of consumer reviews. The Act protects the consumer's right to leave critical reviews and makes it more difficult for businesses to bring lawsuits over negative reviews. It was crafted in response to the growing prevalence of 'gag clauses', or 'non-disparagement clauses', which prevent consumers from sharing their honest views about a seller's actions, products, or services. The advantages of crowdsourced reviews are hampered by these non-disparagement clauses, which limit the public's access to accurate and helpful information about businesses and goods.[81] Hence, by establishing that without the need for drawn-out legal proceedings non-disparagement clauses are unlawful and unenforceable, as well as giving users of online review platforms more comprehensive information to enable them to make well-informed decisions regarding goods and services, the right of consumers to complain is protected.

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[78] Ibid.

[79] Carolyn Conway Duff, 'How Defamation Law Impacts Online Reviews' (New Jersey Law Journal, 18 August 2022) <https://www.law.com/njlawjournal/2022/08/18/how-defamation-law-impacts-online-reviews/> accessed 29 April 2024.

[80] 169 N.Y.S.3d 272 (App. Div. 2022).

[81] Jim Rosenfeld and Diana Palacios, 'Protecting the Right to Complain: The Consumer Review Fairness Act of 2016'
(Davis Wright Tremaine LLP, 20 December 2016) <https://www.dwt.com/insights/2016/12/protecting-the-right-to-complain-the-consumer-revi> accessed 29 April 2024.

In response to allegations that certain companies attempt to restrict consumers from providing honest evaluations of goods or services they have received, the Consumer Review Fairness Act was enacted. Certain corporations included clauses in contracts, such as their online terms and conditions, that gave them the right to penalise or sue consumers who left unfavourable evaluations. People who rely on reviews to help them make purchasing decisions are harmed by contracts that forbid honest reviews or threaten legal action over them. However, companies that put a lot of effort into obtaining positive evaluations also suffer when others attempt to suppress truthful negative reviews.[82]

Unlike American law, Nigerian law which is modelled after English law is pro-plaintiff. Thus although the consumer in Nigeria is protected under the defences to defamation, it is the duty of the consumer(defendant) to prove that the statement/review.comment was honestly made, is genuinely of significant public concern, and was not motivated by malice. More so, the Nigerian consumer protection legislation does not have specific provisions protecting consumers when they provide honest reviews and complaints. Nevertheless, both the American and Nigerian laws protect honest comments, hence, malicious, inaccurate, and dishonest comments will not be protected under both jurisdictions.

## 6. **Way forward**

Ensuring a balance between the freedom of expression of consumers and the rights of businesses to safeguard their reputations necessitates a meticulous examination of legal concepts, ethical norms, and regulatory frameworks as stipulated by Nigerian law. It is thus essential to adopt a balanced approach to tackle defamation risks in consumer feedback in Nigeria. Achieving the appropriate equilibrium entails maintaining the values of unrestricted expression while simultaneously offering legal remedies for businesses affected by dishonest or malicious comments, all while fostering transparency, impartiality, and responsibility in consumer-business engagements. Consumers should feel confident in sharing honest and critical reviews online, but they should also exercise caution to avoid making false claims about their interactions with a business. Businesses should exercise caution as winning an action for defamation can be challenging, and mere emotional distress is insufficient grounds for success. Both parties may find it more convenient to resolve their disagreements outside of court and away from online platforms.

The following is therefore recommended:

[82] Federal Trade Commission, 'Consumer Review Fairness Act: What Businesses Need to Know' (February 2017) <https://www.ftc.gov/business-guidance/resources/consumer-review-fairness-act-what-businesses-need-know> accessed 29 April 2024.

i. Legal Protections for Consumers: There is a need for Nigeria to enact a law to protect consumers who give their honest review or exercise their right to complain. On the other hand, the Federal Competition and Consumer Protection Act 2018 could be amended to contain specific provision(s) that protects the consumer's right to complain including protection for online reviews especially as we are in the digital era. Nigeria should also enact anti-SLAPP (Strategic Lawsuit Against Public Participation) legislation. This is a vital tool to help consumers fight against lawsuits based on speech. As of September 2023, 33 states and the District of Columbia in the US, have enacted these laws that are particularly intended to safeguard freedom of expression. The most comprehensive of these laws enables defendants in lawsuits related to speech to promptly have their cases dismissed and recover the costs of their legal representation. It is also vital to promote alternative dispute resolution mechanisms and enhance consumer education and awareness.

ii. Business Practices and Ethical Standards: Businesses should develop strategies to respond to consumer complaints in a transparent, accountable, and responsible manner, including engaging in constructive dialogue, addressing grievances promptly, and refraining from retaliatory legal action.

iii. There is a need for collaborative efforts among policymakers, businesses, consumer advocates, and legal experts to ensure that consumers can exercise their right to complain without fear of defamation liability while promoting fairness, transparency, and accountability in consumer-business interactions.

# ANALYSIS OF TRUST IN THE ADMINISTRATION OF COMMUNAL LAND IN NIGERIA

Abubakar Mohammed Bokani*

**Abstract**

*Communal ownership of land is one of the fundamental principles of customary land law in Nigeria. Under customary law, the communal land is held and managed by the head on behalf of the members, and no member has right to alienate a part of the land without the consent of the head. Unfortunately, the problem of insecurity of customary land title has become perennial despite the enactment of the Land Use Act, 1978.This article therefore, analysed the application of trust in the administration of customary land in Nigeria, and also utilised the doctrinal research methodology to address the challenges posed by insecurity of communal land ownership. The article found that it is rarely difficult for the community to alienate a part of the communal land which belongs to entire members of the community. More so, the rule that alienation of land by community head is subject to the concurrence of principal members has caused untold hardship and injustice to innocent purchasers of community land even though the rule is no longer suitable and effective for administration of communal land so as to guarantee security to title to land. Thus, it is recommended that the rule governing alienation of communal land should be jettisoned, and trustee(s) of the village or community be appointed or constituted in accordance with the provisions of Companies and Allied Matters Act to administer the communal property with power to alienate the communal land or portion of it on behalf of the community.*

**Keywords**: trust, trustee, communal land, customary law, village head.

## 1. Introduction

The importance of land to socio-economic development of any society cannot be over-emphasized. Government requires land for infrastructural development and provision of social amenities to the citizenry as the individuals also depend on land for sustenance, farming and shelter. Ownership of land provides capital, economic strength, liberty, and freedom, and the lack of it connotes the absence of these attributes of land.[1] Therefore, any government that has unlimited access to land can pursue socio-economic developments but any state that does not have access to vast land will invariably be unable to achieve its objectives of providing social amenities to the citizens. Unfortunately, the customary land tenure system did not guarantee certainty of title and government faced problem in acquiring

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[1] I Abdulkarim 'Trust Law and the Administration of Real Property in Nigeria' [2011] 2 (1) *International Journal of Advanced Legal Studies and Good Governance,* 210.

land for development. Thus, the Land Use Act was enacted to ensure security of customary title and make it easy for the state to acquire land for socio-economic development by vesting land in the Governor of the State.[2]

Communal ownership of land is still characterised by insecurity of title holding because alienation of land is done by the head of the community with the concurrence of principal members of the family or community. It is thus difficult to ascertain the status of the head and principal members in relation to the communal land. The question therefore is, how can security of customary holding be ensured for effective land administration under customary law? The aim of the research is to analyse the application of trust to the administration of customary land in Nigeria and the objective is to proffer answer to the research question.

Trust enables an owner of property who enjoys the right of its possession, use, enjoyment, reversion, management and control to exercise these rights through the agency of another person.[3] Thus, the main characteristic of a trust is that property is vested in the trustees not for their own benefits, but for the benefit of the beneficiaries; instead of giving the property directly to the beneficiaries, the donor creates or establishes a trust (a management institution) which will not only manage and safeguard the trust property and apply it in the manner directed, but will also make it productive.[4]

## 2. The Concept of Trust in Customary Land Law

The concept of family or communal ownership of property is a unique feature of customary land law which means that every member of the community has certain claim, powers, privileges and immunities in or over the land. However, a member of the community or family does not have separate individual title or ownership to the whole or any part of the communal land.[5] Some basic characteristics of family property include: the land belongs to the family as a distinct perpetual legal entity; the members do not possess any separate interests in the property; and no transaction affecting interests in the land is valid unless done by or with the consent of the family head and principal members of the family.[6]

Customary land tenure is a form of land holding indigenous to the ethno-cultural groups in Nigeria, and its principles appear uniform throughout Nigeria.[7]Thus, it

[2] Adefi MD Olong, *Land Law in Nigeria*, (2nd edn, Malthouse Press Ltd, 2011)116.
[3] Abdulkarim (n 1) 211.
[4] Ibid.
[5] BO Nwabueze, *Nigerian Land Law* (Nwamife Publishers Limited, 1974)53.
[6] AA Kojajo, *Customary Law in Nigeria Through the Cases* (revised edn, Spectrum Books Limited, 2000)77.
[7] O Onakoya, 'Family Head Versus Family Members: Legal Issues in Management of Family Land under Yoruba Customary Law' [2015] 39 *Journal of Law, Polciy and Globalisation* 219.

is a basic principle of customary land tenure that land belongs to the village or community, and every member is entitled to the use and enjoyment of the natural gifts growing on the land and to the use of a portion of the land for cultivation, building, grazing or hunting,[8] and can also sue with respect to communal land.[9] This is however different from joint tenancy whereby all beneficiaries of the un-partitioned land have only life interest in the land and by virtue of the doctrine of survivorship, the sole survivor becomes the sole owner of the property.[10] Under customary law, land belongs to the community and the chief or family head holds it in trust on behalf of the members (living and yet unborn) of the community.[11] Land was conceived as a sacred institution given by God for the sustenance of all members of the community, and as such it belonged to the dead, the living, and the unborn.

Ehi Oshio opined that since the living merely held land as a kind of 'ancestral trust' for the benefit of themselves and generations yet unborn, it was inconceivable for any individual to claim ownership of the land or part of it.[12] In *Amodu Tijjani v Secretary, Southern Nigeria,*[13] Lord Viscount Haldane said:

> …the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have equal right to the land, but in every case the chief or Headman of the community or village or head of the family, has charge of the land and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee and as such holds the land for the use of the community or family...

This position of the Privy Council is that land belongs to the village or community whose members have equal rights over the land but the head of the family or the community is responsible for the management and control of the communal land for the benefit of the members. The principle that the head is a representative of community or family with regard to communal or family land is of universal application in Nigeria.[14]Thus, in *Amodu Tijjani's case*, the head of family or community has been described as 'trustee' because the family property system is in the nature of trust. It ensured that great attention is paid to the

[8] MG Yakubu, *Land Law in Nigeria* (Macmillan Publishers Ltd, 1985) 60.
[9] *Regd Trustee, CAC v Dada* (2017) 2 NWLR (Pt 1548) 61, 83, para E.
[10] *Udok v Udoekong* (2020)12 NWLR (Pt 1739) 492, 522-523.
[11] SO Imhanobe, *Legal Drafting and Conveyancing* (3rd edn, Temple Legal Consult, Abuja, 2010) 388-389.
[12] P Ehi Oshio, 'The Indigenous Land Tenure and Nationalisation of Land in Nigeria', [1990] 10 (1) *Boston College Third World Law Review Journal* 46.
[13] [1921] 2 AC 399, 404.
[14] TO Elias, *Nigerian Land Law and Custom*. (3rd edn, Routledge & Kegan Paul Ltd, 1962) 22.

consolidation of the family as an important unit of the society.[15] However, this position has generated divergence of opinions amongst writers on whether a family or community head is a trustee or not. Many opinions have drawn an analogy between the head of the family and the trustee under English law in considering the former's rights and duties. Abdulkarim submitted that control and management of communal land is vested in the chief as trustees of the community hence the relevance of trust law to communal land.[16]

Land under customary law has also been considered as a kind of 'ancestral trust' for the benefit of members of the family or community and generations yet unborn, and it is thus inconceivable for any individual to claim ownership of the land or part thereof to sell it.[17] There are judicial authorities such as *Abioye v Yakubu*[18] where Karibi-Whyte, Jsc observed that the trust concept in land holding in Nigeria is not new, and it is the recognized traditional concept accepted by the courts and applied in all family or community holding. In *Omagbemi v Numa*[19], Webber, J said: "now the *Olu* never owned jekri land as an individual. The land belonged to the community and the *Olu* was trustee. In him as trustee was vested the land". Similarly, in *Ajao v Ikolaba*[20], Ademola, C.J.N. stated obiter:

> The concept of land tenure in native law and custom is clear. Land belongs to all members of the community or village where everyone has a right. The head Chief holds all the land in trust for the community or the people. He gives portions of the land to a deserving member of the community who asks for it. In a loose sense, he is called the owner as he controls over the land.

These decisions of the Court are authoritative because they are primary sources of law,[21] and they represent a judicial approach to many attempts to define the status of family or community head under customary law. They demonstrate that the family or community head is a trustee in relation to the family land, and these cases strengthen the position that trust is well recognized under native law and custom, and that the family village head is a trustee. Usman posited that before the reception of equity into Nigeria, the customary law of various communities had the principle of trust, especially on land.[22] The author argued that it was this customary rule that inspired the position of Viscount Haldane in *Amodu Tijani's case* and similar views that the family or community head holds the land in trust

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[15] O Adigun, *Cases and Materials on Equity, Trusts and Administration of Estate* (Ayo Sodimu Publishers Ltd, 1987) 276-277.
[16] Abdulkarim (n 1) 219.
[17] Oshio (n 12).
[18] (1991) 5 NWLR (Pt 190) 130, 231-232.
[19] (1923) 5 NLR 17, 19.
[20] (1973) 5 NLR 17, 69.
[21] Y Aboki, *Introduction to Legal Research Methodology* (3rd edn, Ajiba Printing Production, 2013)16.
[22] AK Usman, *Law and Practice of Equity and Trust.* Malthouse Press Limited, 2014)147.

for himself and other family or community members.[23]It has been submitted also that in respect of community land, the Chief is a trustee or administrator.[24] Odubunmi also concurred that the headman (chief) exercises the power of a trustee but he is strictly not a trustee but the courts have continued to describe the head as trustee of the communal land.[25]

## 3. **The Communal head as a Trustee**

The position of the head of the community in relation to communal land has been subject of controversy. There are writers who have argued that the head of the family or community is not a trustee. Nwabueze stated that although the head of the family or community is considered to be in the position of a trustee, there is nothing sacrosanct about the idea of trusteeship. The confusion about the head's position by analogy to the trustee will be understood if the differences between the head of community and trustee are ascertained.[26] Perhaps the most fundamental of these differences is that although a trustee of land has the legal title vested in him, and he is therefore the legal owner of it, the legal title to communal land is vested in the community or family and not in the head individually.[27] It thus appears that Nwabueze misunderstood the basis of the position of the community head as trustee. Nwabueze's position can be criticised on the ground that the community is not a corporate entity and thus cannot be vested with the legal interest. To fill this vacuum in the communal ownership, the head of the family or community is considered as a trustee who is vested with the legal title for the benefit of the members of the family or community.

Fabunmi argued that although some attributes of family or communal head are similar in some respect to that of the trustee under the received English law, there is no doubt that they are products of two different systems and cannot be put in the same compartment.[28]It will therefore be unfair to subject customary law to the rules of English law of Trust. Yakubu opined that that the trusteeship position of the family head is not to be confused with a trustee as it is understood under English law.[29]According to Yakubu, the most important difference is that the trustee under English law has a legal title to the subject matter of the trust, while the legal title is vested in the community under customary law.[30] More so,

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[23] Ibid 148.
[24] TO Elias, *Nigerian Land Law.* (Sweet and Maxwell, London, 1971) 78.
[25] O Odubunmi, 'An Examination of the Competing Layers of Rights in Communal and Family Land' . [2017] 8 (1) *The Gravitas Review of Business and Property Law*130.
[26] BO Nwabueze, *Nigerian Land Law* (Nwamife Publishers Limited, 1974)149.
[27] Ibid 49.
[28] JO Fabunmi, *Equity and Trusts in Nigeria* (2nd edn Obafemi Awolowo University Limited, Ile-Ife, 2006) 199-200.
[29] MG Yakubu, *Land Law in Nigeria* (Macmillan Publishers Ltd.,1985) 61,
[30] Ibid.

Lloyd posits that although the family head has jurisdiction over all family land, he is not a trustee.[31]

However, there are writers who have taken a middle course, and argued that whatever name is used to describe the family or community head, the trusteeship is in a special sense of the word; it signifies only that he is required to exercise his powers not for his own private advantage but for the benefit of the family.[32] Fekumo thus concluded that the family head can be described as "trustee-beneficiary" of the family land.[33] Perhaps, the preferable position is that of Fekumo which is that the community head is a trustee in a special sense of the word. The relation between the family head and members of the community is such that the family head is expected to administer the land for the benefit of the family members. Although there is a remarkable difference between the trusteeship position of the chief under customary law and trustee under English Law, it can be submitted that such a distinction has no practical relevance in employing trust towards achieving effective administration of communal land.[34]

The essence of trust lies in existence of two interests in a property, and the distinction of the interests by way of the separation of the benefits of enjoyment from the burden of management. An examination of the characteristics of modern trust reveals that the community head falls under the definition of a trustee based on certain considerations. First, a trust can only exist in relation to specific property; secondly, the property must be held by trustees subject to mandatory obligations governing how it should be used and applied; thirdly, the trustees must owe these mandatory obligations to legal persons who are entitled to enforce them.[35] These elements all appear in the definition of 'trust' in the Hague Convention on the Law Applicable to Trusts and their Recognition which was incorporated in the English Law by the Recognition of Trusts Act.[36]

It has been argued that the idea underlying trusteeship position of the village head is that community does not have the corporate legal capacity to manage the family or communal land.[37] Therefore, someone who is a member of the community has to manage the land on behalf of the other members. Consequently, it is submitted that the family or community head holds the community land as a trustee and owes certain obligations to the family members.

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[31] PC Lloyd, *Yoruba Land Law* (Oxford University Press Ltd,1962) 83.
[32] FJ Fekumo, *Principles of Nigerian Customary Land Law* (F & F Publishers, 2002)177.
[33] Ibid.
[34] Abdulkarim (n 1) 219.
[35] R Pearce and Stevens, *The Law of Trusts and Equitable Obligations.* Oxford University Press, 2006) 111.
[36] Article 2 of the Hague Convention on the Law Applicable to Trusts and their Recognition which was incorporated in the English Law by the Recognition of Trusts Act 1987.
[37] MT Ladan, *Introduction to Jurisprudence: Classical and Islamic* (Malthouse Press Ltd, 2006)160.

More so, the office of the trustee is not held in perpetuity.[38] It is important to state that the concept of trust under customary law is not a product of the received English law; it is rather a product of the operation of customary law on the ownership of land. Therefore, while trust is regarded as a product of equity, the designation of the family head as a trustee is a product of customary law. Designating the family head as a trustee is probably the only way of ensuring that he performs his role, and he will be liable in the event of breach. The fact that the family head also benefits from the land does not affect his position since a trustee's rights as a beneficiary is not inconsistent with the existence of a trust.[39]

One interesting example of the application of trust in customary land law is obtainable under Benin native law and custom. It is clear from decided cases[40] that land in Benin is not vested in the family but in the *Oba* of *Benin* because the *Oba* is the only authority competent under *Bini* customary law to make allocation or grant of *Bini* lands in or outside Benin City.[41] Before the promulgation of the Land Use Act, title to lands in Benin was vested in the Oba of Benin who was the trustee or legal owner thereof, and holds it on behalf of all the Benin people who were beneficiaries.[42] Therefore, under the Benin native law and custom, land was held on trust for the benefit of the members of the community who could apply and be allotted portion for use. This manifestation of trust in Benin is not distinctly different from the trustee under the English law. In *Chief Omagbeni & ors v Chief Numa,*[43] the plaintiffs who were also Jekri Chiefs, asked for declaration that they, as descendants of the *Olu Akenghuwa*, who was the last ruling chief of his dynasty and known as *Olu Jekri*, are owners of the disputed land in Warri, and entitled to profits arising from such land. It was held that the Jekri land was vested in the *Olu* as trustee for the *Jekri* people and that the position of *Olu* was not a prerogative of the *Akengbuwa* or any other family. Similarly, in *Imade v Otabor*[44], it was stated that all lands in Benin are owned by the community for whom the Oba of Benin holds same in trust, and it is only the Oba who can transfer to any individual the ownership of such land.

However, Smith canvassed that the headman or chief in the exercise of his powers of control and management of the land is regarded as a trustee but title to land is not vested in him but in the corporate unit.[45] The head of the community is comparable to a corporation sole which never dies; the inanimate institution

[38] *Ebosie v Phi-Ebosie* (1976)7 SC (119),127.
[39] Ibid, 112.
[40] *Nwagboe v Evbuomwan* (1959) 4 FSC 91, 127; *Arase v Arase* (1981) 5 SC 58
[41] AA Kojajo, *Customary Law in Nigeria through the Cases* (revised edn, Spectrum Books Limited,2000) 128.
[42] IO Smith, *Practical Approach to Law of Real Property in Nigeria* (Ecowatch Publications Nig. Limited, 2013) 90-91.
[43] (1923)5 NLR 19.
[44] (1998)3 SCNJ 19, 25-26.
[45] Ibid 64.

remains while the mortal incumbents come and go.[46] . Jegede submitted that the concept of trusteeship is well founded in customary land law.[47] For example, ownership of family property under customary law is vested in the family as a unit, but the power of management and control is vested in the head of the family, and he is strictly enjoined to exercise the power for the benefit of himself and other members of the family.[48] . Jegede further submitted that the position that the head of a community holds communal property in trust for himself and other members of the community is not derived from the received English law of trust; it is rather a composite designation of a traditional system of property holding by which system customary law creates unique specie of trust.[49]

However, there is only one ownership of family property under customary law which is vested in the community as a group. Such ownership can only be transferred by the head of the family with the consent of the principal members of the family.[50] In *Onyekuluje v Animashaun*[51], it was held that under Yoruba customary law, the conveyance, sale, or transfer of family land requires the consent of the head of the family to be valid. This restricted power of the head of family under customary law to dispose of family property indicates a very significant distinction between powers of head of a community as trustee of communal land and those of a trustee under the received English law.

Although strictly constrained by the instrument creating a trust, the power of an English trustee to confer good title on the purchaser has never been in doubt, if the exercise of his power does not amount to breach of trust.[52] According to Aboki, in African customary land law jurisprudence, the role of the family head is that of a trustee who holds land for the benefit of his community.[53] Aboki further stated that communal ownership of land is akin to the situation in feudal England where the various lords and barons held land in trust for the king.[54] Thus, the analogy of the family head to the trustee is based on the fiduciary position of the head and his position in relation to other members of the family because he

[46] Ibid

[47] MI Jegede, *Law of Trusts, Bankruptcy and Administration of Estate* (MIJ Professional Publishers Ltd, 1999) 13.

[48] Ibid 13.

[49] Ibid 14.

[50] *Ekpendu v Erika* (1959) 4 FSC 79; *Babalola v Akinsinde* (2018)17NWLR (Pt 1649) 577; *Offodile v Offodile* (2019)16 NWLR (Pt 1698)189.

[51] (2019) 4 NWLR (Pt1662242) 258-259, paras. E-A.

[52] Jegede (n 47)14.

[53] Y Aboki, 'The Land Use Act and Foreign Investment in Nigeria' *Contemporary Issues in Nigerian Law,* (Faith Printers International, Zaria,2005) 14.

[54] SI Orji, 'The Nigerian Land Use Act, 1978 in Historical Perspective' in SMG Kanam and AM Madaki, (eds) *Contemporary Issues in Nigerian Law: Legal Essays in Honour of Hon. Justice Umaru Faruk Abdullahi,CON* (Private Law Department, 2006) 490.

must act in good faith in carrying out his duties.[55] The office of the family or community head is gratuitous, but he is re-imbursed for expenses incurred in managing the property in the same way as a trustee, and like a trustee, if he incurs unnecessary or speculative expenses, he is personally liable.[56]

There are concerns or dissatisfaction with systems of land tenure prevailing in sub-Saharan Africa, and the view is widely held that the traditional institutions which govern land rights operate in a manner obstructive to land development, especially agricultural development.[57]Furthermore, it has been contended that the customary tenure in Northern Nigeria is feudal in nature under which the Fulani *jihadists* claimed over-lordship of the land after the Islamic conquest.[58] However, with regard to the Muslim emirates of Northern Nigeria, the Emirs and other native rulers were never lords and masters of the land; they were merely political, religious and military rulers of their respective emirates.[59]

It is canvassed however that despite the diverse ethnic groups, tribes and customs, the native communities have one common feature of ownership of land which depends on membership of community.[60] However, the power of management and control of the land was vested in the family or community head. In this way, they were regarded as trustees of the people to whom the land belonged. Therefore, they could not give away by treaties any rights in land of a proprietary character.[61] The trustee analogy in relation to the position of the head of the family has been further justified on the premise that:[62]

> [he] is in charge and control of the family property; he collects the revenue of the family property; he has to make certain disbursements out of the family revenue for family purposes, upkeep of the family property, funeral, marriage and Baptism, ceremonial expenses of the members of the family, education of children… the head of the family has very considerable and onerous duties to perform, varying in degree of course according to the size, wealth and importance.

This shows the scope of power of control and management which the community head exercises for the benefit of the members of the family. However, the right to alienate it resides in the community as a group acting corporately and not individual members although an owner of land under native law and custom is

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[55] RW James, *Modern Land Law of Nigeria* (University of Ife Press,1973)81-82.
[56] Ibid 85.
[57] K Bentsi-Enchill, 'Do African Systems of Land Tenure Require Special Technology?' [1965] 9 *Journal of African Law* 114.
[58] Jegede (n 47) 46.
[59] TO Elias, *Nigerian Land Law and Custom* (Routledge & Kegan Paul Ltd, London).31.
[60] CM McDowell, 'An Introduction to the Problems of Ownership of Land in Northern Nigeria' [1962] The *Nigerian Law Journal* 205.
[61] Elias (n 59) 31.
[62] DJ Bakibinga, *Law of Trusts in Nigeria* (Department of Law, University of Ilorin, 1989)3.

entitled to transfer his absolute interest in the land to another and grant exclusive possession of same.[63]

### 4. **Alienation of Communal Land**

The law is that all members of family cannot alienate family land without the consent of the family head, and any alienation inconsistent with this principle is regarded as void *ab initio*.[64] In *Offodile v. Offodile*,[65] the court held that it is an essential customary element that the head of the family must join in the sale of family property together with the principal members of the family for such transactions to be valid. The implication is that an intending purchaser must see that he obtains not only the consent of the majority (not even all members if it were possible) but also that of the head of the Community.[66]

Therefore, where the head of the family alone executes a conveyance of Community land as a grantor, the sale is prima facie voidable and the family can set aside such a sale if the other members acted timeously. This principle only applies where the head of the family executes the conveyance for and on behalf of the family and not where he purports to convey the property in his personal capacity as the beneficial owners thereof. In the latter case, the applicable principle *nemo dat quod non habet*[67]applies as such family head, not being the absolute owner of the land, cannot alienate that which does not belong to him. Consequently, such transactions would be void *ab intio*.[68] However, according to Oluyede, there is no justification for this proposition particularly in view of the changes in customary law as a result of the modern changes because the distinction between the alienation by community head and principal members cannot stand logical reasoning.[69] Oluyede argued that the rule is capable of being interpreted to mean that there can never be sale of family land against the wishes of the family head whether he is alone or not. [70]More so, it seems the community head can make either valid sale or a voidable sale without the necessary authority of the community.[71]

The weakness in the rule that family head alone can sell land becomes obvious when the rule is critically considered. For example, despite the fact that a purchaser of family land was not able to identify the head at the time of the sale, it seems that if the sale was done by someone who purports himself to be the family head, the purchasers should be regarded as having acquired the title to the

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[63] *Kolo v Lawan* (2018)13 NWLR (Pt 1637) 495, 517, paras.B-C.
[64] PA Oluyede, *Modern Nigerian Land Law* (Evans Brothers Ltd, 1989)275.
[65] (2019)16 NWLR (Pt 1698)189.
[66] Ibid 276.
[67] The Latin maxim means 'No one can give what they do not have'.
[68] *Odekilekun v Hassan (*1997)12 SCNJ 119, 127.
[69] Ibid.
[70] Ibid.
[71] Ibid.

family land [72] However, where it is established that there was fraudulent misrepresentation, then the conveyance will be liable to be set aside by the family as void on the ground of fraud on the part of the vendor who falsely claimed the authority.[73]The Supreme Court in *Malami v Ohikhuare*[74] held that where an act or anything is void it is in law a nullity and not only bad, it is incurably bad. Consequently, Oluyede concluded that because of the hardship that the rule is likely to work in actual practice and because of the fact that it is alien to all notion of customary land tenure in Nigeria, it is better to treat the transactions whether head of the family is privy to them or not as merely voidable and not void. Thus, it is argued that in all cases, the sale should be capable of being ratified by the members of the family whether they have been defrauded or not.[75] The difficulty associated with this rule on alienation of family land results to insecurity of title to land held under customary law and this difficulty appears to defy attempts to solve the problem of insecurity of title arising from disputes on multiple transactions relating to community land. This is even so inspite of the enactment of the Land Use Act which was meant to address this perennial problem.

The land Use Act introduced the system of individualisation of land holding by which only an individual can be granted a right of occupancy. This was aimed at addressing the perennial problem of insecurity of title associated with customary land holding. The implication is that a group of individuals cannot be granted right of occupancy under the Land Use Act. However, the Kaduna State Land Use Regulations contains provisions that allow members of a family or community to be issued with Certificate of Occupancy and all their names shall be listed on the Certificate of Occupancy.[76] The implication is that a Certificate of Occupancy over a community will list all the names of members of the community. Thus, this provision is arguably contrary to the objectives of the Land Use Act and tends to promote the communal ownership of land which exists under customary law. More so, the provision has not addressed the problem of insecurity of title posed by the rule of alienation of customary law which provides that alienation can only be effective where it is done by the family head with the consent of principal members. Thus, where there are multiples owners of land listed on a Certificate of occupancy, it is difficult to ascertain the family head from the principal members of the family. This makes system of communal ownership unwieldy and unsuitable for administration of land under customary law and the land Use Act.

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[72] Ibid 277.
[73] Ibid.
[74] (2019)7 NWLR (Pt 1670) 132, 171, paras F-H.
[75] Ibid.
[76] Rule 10(2) of the Kaduna State Land Use Regulations,2022 made on 31st December,2022

Notwithstanding the above, the concept of trust was adopted by Communal Land Rights (Vesting in Trustees) Law of 1958[77] which was an attempt to provide a solution to the problems arising from the exercise of rights in communal land on behalf of a community.[78] By virtue of this law, *Obas* and chiefs could be appointed as trustees to exercise those rights traditionally exercised by the *Obas* and chiefs on behalf of the Community. Any failure by an Oba and chiefs to fulfill the duties imposed on them as trustees constitutes a breach of trust, and legal action can be taken by the Attorney- General to recover any money lost, or to remove them from their trusteeship.[79] This trusteeship model was applied in Oyo, Ogun, Ondo, and Bendel States to Heads or Chiefs of the communities under the Communal Land Rights (Vesting in trustees) Law.[80] In *Esi v. Chief Secretary*[81], the Supreme Court held that by the combined effect of the provisions of the Communal Land Rights (Vesting in Trustees) Law, 1958 and the Warri Division (*Itsekiri* Communal Lands) Trusts Instruments, 1959, all rights previously vested in and exercisable by the *Olu* of Warri in respect of *Itsekiri* Communal Land in Warri Division are now vested in and exercisable by the *Itsekiri* Communal Land Trustees.

However, it is difficult and ironical to expect the traditional or customary land holding system to guarantee title to land when the customary law is largely unwritten. More so, the issue of legal personality of the chiefs acting on behalf of the village or community affects their competence to manage the family or communal land. The law is clear that the only permissible way of proving the legal personality of incorporated Trustees under Part C of Companies and Allied Matters Act is by production of the certificate of incorporation issued by the Corporate Affairs Commission.[82] Therefore, proof of trusteeship of the community head will not be simple because such appointments under customary law are not usually documented. Unfortunately, communities are not corporate entities and evidence of incorporation as corporate entity is necessary to prove otherwise,.

Finally, it can possibly be posited that an alternative approach to overcome the hurdle in applying trust to customary law is to attribute legal personality to the community. This is achieved by treating the community separate from its members. In English law, the inability of the community to own property was overcome by instrument of trust.[83] It is worthy to note that the Nigerian legal system is comprised of local legislation, custom and received English Law. Consequently, the English law ideas of law and justice are administered along

[77] No 46 of 1959 (Western Region)
[78] Lloyd (n 31) 361.
[79] Ibid.
[80] AA Utuama, *Nigerian Law of Real Property* (Shaneson CI Limited,1989)1.
[81] (1973)11 SC 189, 216-217.
[82] *Dairo v Regd. Trustees, TAD, Lagos* [2018]1 NWLR (Pt 1599) 62, 84, paras. B-C.
[83] Lloyd (n 31) 305.

with the native law and customs in Nigeria.[84] Therefore, the same principle may be adopted in the customary law to designate the head as trustee of the community land.

## 5. Conclusion

Communal ownership of land is a unique feature of customary land law which makes it difficult to alienate the community land or part of it. Unfortunately, one of the shortcomings of communal ownership title is lack of security of customary title which encourages multiples transactions over the same land. The Land Use Act was enacted to address the problem of insecurity of customary title in customary land tenure system. However, this noble objective of the Land Use Act is far from being achieved as the problem of insecurity of title has also infiltrated the Customary Right of occupancy. Under Customary law, communal belongs to the community and a part of the land can only be alienated by the head with the consent of the Principal members. Consequently, it is difficult for an individual or government to purchase or acquire a part of the communal land which belongs to entire members of the community.

This article finds that the rule that alienation of land by community head is subject to the concurrence of principal members has caused untold hardship and injustice to innocent purchasers of community land. This is because the rule is not in tune with current socio-economic realities and is no longer suitable to regulate transactions relating to community land. Unfortunately, the rule is the means through which the community can alienate communal land since the community does not have legal personality to alienate land in a corporate capacity.

It is therefore, recommended that the rule governing alienation of communal land by the head with concurrence of principal members should be jettisoned, and trustee(s) of the village or community be appointed or constituted in accordance with the provisions of Companies and Allied Matters Act to administer the communal property with power to alienate the communal land or portion of it. Thus, every community or village should be required to register as an association to enable the communal land to be vested in the trustee(s) for the benefit of the community. In this respect, it will be easy for innocent buyers or investors to determine the status of the trustees.

[84] CS Rhyne, *Law and Judicial Systems of the Nations* (The World Peace Through Law Centre, Washington, (1978)) 542.

# IMPROVING NIGERIA'S POOR HEALTH INDICES: WHAT ROLE FOR THE LAW?

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## Abstract

*Health is a fundamental driver of economic growth and development and is believed, along with education, to be an important factor for human capital development and the basis of an individual's economic productivity and poverty reduction. Because of this prime position occupied by health in the life of man, international governmental and non-governmental organizations periodically assess the performance of states in the area of health care provision for their citizens. Nigeria has consistently posted abysmally poor indices in these periodic evaluations. This paper seeks to find out whether and how the law can change this narrative and reverse the unenviable trend. Adopting the doctrinal method of research, the paper critically analyzes the major legal frameworks on health in Nigeria. It finds that, though Nigeria has laws that can help her improve on her performance in the area of health care, certain in-built clogs in these law as well as extra-legal operational problems may make this difficult, if not out-rightly impossible, unless they are adequately addressed.*

**Keywords:** health, health law, health indices, role of law, Nigeria

## 1. Introduction

When the United Nations Development Programme (UNDP), in 2011, ranked Nigeria 156 out of 187 countries analysed in the area of health and healthcare, many Nigerians, would have seen it as yet another of the devices of the developed countries to present Nigeria in bad light[1]. However, when this poor rating was reaffirmed in 2012-2013 by the World Economic Forum (WEF) which ranked Nigeria 142 out of 144 countries in terms of her health and primary education performance, it would have gradually begun to dawn on Nigerians that the 2011 diagnosis was probably correct and that the health sector

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[1] UNDP, 'Human Development Report: Health Index 2011' < hdr.undp.org/en/content/health-index> accessed on 20 March 2022.

needed some more therapeutic attention than it was then receiving[2]. Then, when a report by the World Health Organisation[3] showed that as at 2015, the life expectancy of the average Nigerian at birth was 53 years, in males, and 54 years, in females, a figure that was lower than the Sub-Saharan Africa's average of 56 years, it probably became clear to most Nigerians that the health sector was, literarily already bed-ridden. It is worthy of note that the World Economic Forum subsequently ranked Nigeria 146th out of 148 countries in 2013-2014, 143rd in 2014-2015[4] and, again, 143rd in 2017-2018.[5] With a cumulative maternal mortality ratio for the period, 1990 to 2015, standing at 814 per 100,000 live births, Nigeria prides herself with the unenviable position of having the second highest maternal mortality ratio in the world, with 800 women dying every day during pregnancy or childbirth, while 800 new born babies die during their first month of life. This reveals an infant mortality ratio of 88 deaths per 1000 live births, and child mortality of 143 deaths per 1000 live births, the highest in Africa and second highest in the world[6]. It goes without saying that this startling statistics does not speak well of the state of health and health care in Nigeria, in spite of her parade of an avalanche of laws and policies for the realization of right to health.

The World Health Organisation (WHO) identified Nigeria as one of the 46 African countries that had failed to meet the Abuja Declaration[7], 13 years after the Declaration, and one of the 38 countries that were off-track in meeting the health-related Millenium Development Goals (MDGs) by 2015[8]. Much earlier, in the year 2000, Nigeria was ranked187 out of 191 countries under the WHO Report on Health Care Delivery while, in the area of human development (which includes healthcare delivery for the citizens), the Human Development

[2]See World Economic Forum (WEF), Global Competitiveness Report (GCR): Nigeria <reports.weforumm.org/global-competitiveness/report-2012-2013/#section=country-economy-profiles-nigeria> accessed on 28 December 2023.

[3]WHO, World Health Statistics 2015 [2015]131.

[4] WEF, 'Global Competitiveness Report 2013-2014: Sub-Saharan Africa' <reports.weforum.org/global-competitiveness-report-2014-2015/sub-saharan-africa/> accessed 28 December 2023.

[5] WEF, 'Global Competitiveness Report 2017-2018' <www.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017-2018.pdf.> accessed 28 December 2019.

[6] WHO, Health in 2015: From MDGs to SDGs <http://apps.who.int/iris/bitstream/10665/200009/1/ 9789241565 110_eng.pdf?ua=1>accessed 20 September 2023.

[7]Adopted by the African Union in April 2001 to increase government's annual funding for health to at least 15%.

[8] IW Oyeniran and SO Onikosi-Alliyu, 'An Assessment of Health-Related Millenium Development Goals in Nigeria', *Asian Journal of Rural Development,* 5:12-18. <http://scialert.net/abstract/?doi=ajrd.2015.12.18>. accessed 21/5/2023.

Report of 2007/2008 ranked Nigeria158 out of 177 countries assessed.[9] It has equally been reported that in 2005, only about 48% and 35% of children aged between zero to one year in Nigeria received full immunization against tuberculosis and measles, respectively, while only 28% of Nigerian children aged 5 years who suffered from diarrhea between 1998 and 2005 had access to adequate treatment. Also, only 35% of births in Nigeria between 1997 and 2005 were attended to by qualified health professionals.[10] Akingbade[11] writes that in 1986, well over 1,500 health professionals left Nigeria for foreign land and ten years later, the UNDP reported that 21,000 Nigerian medical personnel were plying their trade in the United States of America and the United Kingdom while Nigeria was experiencing acute shortage of these professionals. Poor sanitation, acute food insecurity and HIV/AIDS prevalence were also common features in the health sector of Nigeria within the period, 1990 to 2004[12].

Pharm Access Foundation's Nigerian Health Sector Market Study Report[13] reveals that the estimated total health care expenditure in 2014 was USD 18.3 billion and that household out-of-pocket expenditure remained the major source, constituting 70.3% of the total healthcare expenditure (THE) in 2009. Government expenditure as a percentage of GDP was reported to be below the average for Sub-Saharan Africa while less than 5% of Nigerians were covered by any form of social insurance at the end of 2013. It is submitted that the foregoing situation does not appear to have changed. In the area of maternal health, it has been reported[14] that Nigeria loses about 145 women of child-

[9] AMO Agba and EM Ushie and NC Osuchukwu, 'National Health Insurance Scheme (NHIS) and Employees' Access to Healthcare Services in Cross River State, Nigeria' [December 2010](10)(7) *Global Journal of Human Social Science* 9.

[10]See generally, UNICEF, *State of the World's Children 2007* ( New York: UNICEF 2007); World Bank, *World Development Indicators* (Washington DC: World Bank, United Nations Educational, Scientific and Cultural Organisation 2007), and UNDP, *Human Development Report 2007/2008 on Fighting Climate Change: Human Solidarity in a Divided World* (New York: Palgram Macmillan 2008), all cited in Agba AMO *et al, (*n 11).

[11] B Akingbade, 'Meeting the Challenges of Human Capital Development in Nigeria-The Case for Reforms in the Educational Policies and System', being a paper presented at the Alumni Convocation Lecture of the University of Nigeria, Nsukka in 2006.

[12] The UNDP Report (note 12) also stated that only 39%(in 1990) and 44%(in 2004) of Nigerians had access to sanitation while during the periods, 1990-1992 and 2002-2004, 13% and 9%, respectively, were undernourished.

[13] Pharm Access Foundation, 'Nigerian Health Sector Health Market Study Report', (Pharm Access Foundation, Report of a Study of the market of the Nigerian health sector carried out by Pharm Access Foundation for Dutch companies and published in March 2015. The aim of the study was to understand the needs of the health providers and other stakeholders within the Nigerian health sector and provide insight into possible investment opportunities for Dutch health companies.

[14] Nigeria Health Watch, 'Giving Birth in Nigeria: The Staggering Odds Facing Pregnant Women' [August 16, 2017] *Nigeria Health Watch*. See also Society for

bearing age every day, making her the second largest contributor to the global rate at which mothers die. At 576 deaths per 100,000 live births, according to the 2013 Nigeria Demographic Health Survey, Nigeria parades one of the worst maternal date statistics in the world, second only to India. According to a joint report by the WHO, UNFPA, UNICEF, and the World Bank, 58,000 Nigerian women lost their lives to pregnancy and childbirth- related causes in 2015 alone.[15] In Nigeria, health insurance, which is, unarguably, the fastest way to achieve Universal Health Coverage (UHC), does not seem to be making the required impact on the health sector since its establishment in 2005.[16] In contrast to the 50% growth which it's contemporary, the Ghanaian National Health Insurance Scheme[17] has achieved, Nigeria's National Health Insurance Scheme had achieved only about 3% coverage before the introduction of compulsory health insurance under the new National Health Insurance Authority Act 2022. Researches have also shown that out-of-pocket expenditure has continued to top the list of sources of health financing in Nigeria[18]. At well over 72% of the total health expenditure (THE), Nigeria's out-of-pocket (OOP) expenditure is the highest in the continent and one of the highest in the world,[19] with even poorer Sub-Saharan African countries,[20] and those afflicted with conflicts[21] doing better than Nigeria. Earlier in 2013, the World Bank had reported that life expectancy at birth in Nigeria was 52 years, which was below the Sub-Saharan Africa's average of 56 years. The report also showed infant mortality rate as 39 in every 1,000 live births, under-five mortality rate as 124 in every 1,000 live births, while maternal mortality rate was estimated at 630 in every 100,000 live births.[22] The COVID 19 pandemic[23] which ravaged the whole world further

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Family Health, Nigeria, 'Maternal and Child Health' <www.sfhnigeria.org/maternal-and-child-healthcare/> accessed on 18/6/2018.

[15] Punch Editorial Opinion, 'Nigeria and the Challenge of Universal Health Coverage' *The Punch Newspaper, Newspaper*, (Lagos, 11 April, 2018) 10.

[16] Ibid.

[17] Which started the same year as that of Nigeria. See also *ThisDay Newspaper* [Lagos 21 December 2017].

[18] Ibid. See, also Pharm Access Foundation,( n 16).

[19] AI Okpani and S Abimbola, 'Operationalizing Universal Health Coverage in Nigeria through Social Health Insurance. [2015 Sep-Oct] (56) (5) *Niger Med J* 305 <http://www.nigerianmedj.com/text.asp? 2015/56/305/170382>. accessed on 19 May 2019.

[20] Such as Kenya and Gabon which post 26% and 22% coverage, respectively. See Okpani and Abimbola (n 22.)

[21]Ibid. Such as South Sudan (54% coverage) and Sierra Leone (61% coverage).

[22] The World Bank, 'The World Databank: Sub-Saharan Africa (developing only), 2012' http://data.worldbank.org/indicator.

[23]See DJ Cennimo, 'What is COVID 19?' <www.medscape.com> , accessed on 22 February 2021, where the author states that COVID 19 is an illness caused by a novel coronavirus now called severe acute respiratory syndrome coronavirus2(SARS-CoV 2), which was first identified in Wuhan City, Hubei Province, China. It was reported to the

exposed the embarrassing inadequacies in the Nigerian health sector, such as grossly inadequate infrastructural facilities and health human capital as well as poor health governance. As at 18 February 2021, Nigeria had recorded 149, 860 confirmed cases of COVID 19 infections and 1,787 deaths. It should be noted that Nigeria was grossly under-tested as a result of the gross inadequacy of testing facilities[24].

Today, this ugly situation can hardly be said to have changed substantially. The current life expectancy as at 2024 is 56.05 years, slightly above the 55.75 years figure of 2023, which itself was grudgingly above the 2022 figure of 55.54 years. In 2023, Nigeria was, again, ranked 157th out of 167 in Health and Health Systems Ranking of Countries Worldwide. Singapore topped the global list while Seychelles came first among African countries, followed by Algeria and Cape Verde who came 2nd and 3rd, respectively. Earlier, in 2017, the WHO ranked Nigeria 187th out of 190 in World Health Systems, only ahead of the Democratic Republic of Congo, Central Africa Republic and Myanmar. France, Italy, San Marino, Andora, and Malta topped the list, in a descending order. The Performance Indicators used were: Overall level of health, Distribution of Health in Populations, Responsiveness, and Distribution of health Finance. Later, in 2018, a Lancet Study of Global Health Access and Quality ranked Nigeria's health system 142 out of 195 countries. In this article, 'health' is used as provided in the Preamble to the Constitution of the World Health Organisation 1946 which sees it as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity[25] 'Indices' is used to mean the measures, figures or positions assigned to something after an assessment or evaluation or in comparison to other things either of the same class or of different classes. 'Health indices' means the measures, figures, or positions returned by the various aspects of the health sector after evaluation, assessment, or comparison. By 'role' this article refers to the part, or function, or duty. The law is used here to mean statutes, legislation enacted by the National Assembly and includes international legal instruments to which Nigeria is a signatory.

## 2. Factors Responsible for Nigeria's poor health indices

Researches have shown that the factors responsible for Nigeria's poor showing in the periodic assessment of country performances in the various aspects of health and healthcare include; inadequate government financing for health, inadequate and skewed provision of health infrastructure, gross inadequacy and

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World Health Organisation on 31 December 2019. The WHO on 30 January 2020 described it as a global health emergency and on March 11 2020, it declared COVID 19 a global pandemic.

[24] See generally, KO Akinyemi and others, 'Intrigues and Challenges Associated with COVID 19 Pandemics in Nigeria' [2020](12) *Health* 954. < https:doi.org/10.4236/health.2020.128072.> Accessed 22 February 2021.

[25] Preamble to the Constitution of the World Health Organisation 1946.

skewed distribution of health human capital, poor health service delivery, poor implementation of health policies and programmes, weak health governance, insufficient public knowledge and awareness of the National Health Act 2014.

Health care in Nigeria is poorly funded. Government expenditure on health as a percentage of total government expenditure (budget) has averaged at about 7% over the years. This is, by far, less than the 15% stipulated by the Abuja Declaration, to which Nigeria is a chief-signatory.[26] This meager government spending on health amounts to just about $118 per capita annually (lower than that of Sudan ($130), and much less when compared to those of South Africa ($570), United Kingdom ($3,935), Norway ($2,698), United States ($9,403) and Switzerland ($9,674). Nigeria spends less than 6% of its Gross Domestic Product(GDP) on health care, lower than those of many other African countries: South Africa (>7.5%); DR Congo(7.9%); Sierra Leone(22.9%); Gambia(14.9%); Malawi(12.8%); Rwanda (11%), and Namibia(8.3%). The following are the respective budgetary allocations to health by Nigeria from 2014 to 2018: 2014=N264bn(5.63%); 2015=N260bn(5.78%); 2016= N267bn(4.23%); 2017=N340bn(4.15%); and 2018= 20340bn(3.95%). The 2024 budget is not any different from the previous budgets, in terms of inadequate provision for the health sector. With a budget of N1,228,100,390,7659 (only 4.47%) of the total budget inclusive of N125,737,146,031sum set aside for the Basic Health Care Provision Fund.

Nigeria's health financing is principally borne by out-of-pocket (OOP) expenditure which constitutes about 73% of the total health expenditure (THE).[27]

Corruption has also been identified as one of the serious problems confronting the health sector in Nigeria.[28] As a result of corruption, health policies are not properly implemented as the officials responsible for the implementation of such policies may be people who are unqualified for such jobs but who were employed either because they are related to the people responsible for the recruitment of health human capital or they have bribed their way through to get the jobs.[29] Policies are poorly monitored and hardly ever effectively evaluated. Funds meant for the provision of health equipment and infrastructure often find

[26] World Health Organization, 'Global Health Observatory Data Repository 2015' < http://www.apps.who.int/gho/data/node.country.country-NGA> Accessed on 26 August 2023.

[27] See generally, Tunji Olaopa, 'Health Financing and the Crisis of Healthcare System in Nigeria' *This Day*, March 15 2019.

[28] II Omoleke and BA Taleat, 'Contemporary Issues and Challenges of Health Sector in Nigeria' [October/December 2017(5)(4) *Res. J. of Health Sci.* <https://www.ajol.info.article>view> accessed on 15 May 2023.

[29] J Chinawa, 'Factors Militating against Effective Implementation of Primary Health Care(PHC) System in Nigeria' [2015] *Annals of Tropical Medicine and Public Health*. <https://www.semanticscholar.org> accessed on 4 December 2022.

their way into the private pockets of public officials and the hospitals are left without the necessary infrastructural facilities.[30] There have also been cases of the theft of drugs by health service workers. Corruption, ineptitude, indolence and general lack of knowledge leads to poor health governance.[31] Health care resource allocation in Nigeria is inequitably skewed in favour of secondary and tertiary care as against primary health care. By this is meant that the provision of the necessary health resources (human and infrastructural ) is done in favour of the secondary and tertiary health care outfits to the gross disadvantage of the primary health care institutions. As a result of this, many people bypass primary healthcare facilities to seek primary care at secondary and tertiary facilities. The organisation of the health system in Nigeria is such that certain services and health issues are necessarily left for the primary health care facilities to attend to. It is only when there is the need for the services of a secondary health facility, with respect to any patient, that such a patient, through a well-coordinated referral system is referred to a secondary health facility for attention. In the event that a secondary health facility is faced with a health issue that can only be handled at a tertiary level, a referral is made for the patient to go to a tertiary health facility to receive the required attention. A situation where people bypass primary care facilities and move straight to either secondary or tertiary facilities for health issues that should, ideally, be handled at the primary level is both inefficient and promotes inequities. This is because the cost of primary care provision at secondary and tertiary level is higher. This amounts to economic inefficiency. It also leads to overcrowding of the tertiary institutions and promotes inefficiency at such tertiary centers. It is submitted that people take such decisions because primary healthcare centres are ill-equipped, poorly staffed, and are mainly patronized by poor people (especially in rural areas) who can either not access or afford care at higher health facilities.

There is, also, a deficiency in qualified health professionals, particularly in the poor rural communities. Because of poor conditions of service, Nigeria has been losing hundreds of thousands of health human capital to brain drain yearly.[32] The Medical and Dental Council of Nigeria has reported that only 58,000 out of the 130,000 registered medical doctors in Nigeria renewed their practice licence in 2023, constituting only 45%. The Registrar of the Council, Dr. Fatima Kyari who disclosed this, attributed it to the brain drain in the health sector.[33] As a

[30] S Tumba, 'Addressing Health Challenges in Nigeria' <https:// minervastrategies.com>blog>accessed on 25 July 2024.

[31] B Aregbeshola, 'Health Care in Nigeria: Challenges and Recommendations' [7 February 2019] <https://socialprotection.org>blog> accessed on 20 April 2024.

[32] Joyce Imafidon, 'One Way Traffic: Nigeria's Medical Brain Drain, A Challenge to Maternal Health and Public Health System in Nigeria?'[2018] <https://escholarship.org/item>accessed on 26 January 2019.

[33] *Punch*, "58,000 out of 130,000 Doctors renewed licence in 2023" says Medical and Dental Council of Nigeria. *Punch* 27 April 2024. <punchng.com> accessed 8 July 2024.

result of this, the health system has a dearth of health professionals to provide the highly needed health services for Nigerians both in urban and rural areas.[34] The doctor-to-person ratio in Nigeria as at 2021 was put at 0.395 per 1,000 people. What this means is that Nigeria, the world's most populous black nation has only between 55,000 and 58,000 medical doctors to cater for the health needs of her well over 220,000,000 population. Also, large disparities, in terms of infrastructural facilities, exist between urban and rural areas(in favour of the urban areas) and health professionals are usually more favourably disposed towards taking up jobs with better-paying Federal and State health facilities located in the urban areas to the detriment of the majority poor rural populace who bear a greater burden of disease. In 2019, the Nigerian Health Facility Register, produced by the Federal Ministry of Health, put the total number of health facilities in Nigeria (primary, secondary, and tertiary) at 40,821, broken down into 34,675 primary health facilities; 5,780 secondary care facilities; and 166 tertiary care facilities. Out of these, only 28,448 primary facilities, 1,232 secondary facilities, and 105 tertiary facilities were government-owned (public health facilities). The rest were owned by various faith-based organizations and private outfits. It is submitted that this is grossly inadequate, given the geographic character and demographic size of Nigeria.

Nigeria is signatory to the global mandate for universal access to quality health care devoid of risk of financial catastrophe, otherwise called universal health coverage(UHC). A vital feature of this mandate is the availability of prepayment for health care costs. Nigeria's National Health Insurance Scheme (NHIS), which was the operative social health insurance programme in Nigeria before 2022 when the current health insurance regime came into effect, was only able to cover about 3% of the population. The NHIS, through Health Maintenance Orgaisations (HMOs) and other stakeholders of the scheme, provided health coverage to only Federal public sector workers, their families and workers of large organizations in the organized private sector. As a result of this limited coverage, the large majority of Nigerians, especially in the informal sector, remained without any form of coverage. In addition to this, there was little or no social security for vulnerable groups and state governments were hesitant in the uptake of social insurance regulated by NHIS.

As a result of this, the bulk of health expenditure in Nigeria (over 70%) comes from household and personal pockets. More than 75% of Nigerians work in the informal sector and about 40% live below the poverty line[35]. In this situation of prevalent poverty and informal employment, the currently high health financing

[34] CN Okolo and others, 'Challenges of Establishing Universal Health Coverage in Enugu, South East Nigeria' (2019) 9(4) *Developing Country Studies* < https://www.researchgate.net> accessed on 27 June 2020.

[35] The World Bank, 'Nigeria Releases New Report on Poverty and Inequality in Country' [May 28 2020] <https://www.worldbank.org/brief> accessed 5 September 2020.

burden on the Nigerian household is a recipe for further impoverishment and denial of proper health care services. Out-of-pocket payment is the most expensive, least equitable, least efficient and least inclusive health financing method. It weighs heavily on household budgets and forces many into poverty due to unpredictable catastrophic health expenditure. It has been shown severally that poor health and poverty are two intertwined bedfellows whose relationship leads ultimately to a vicious cycle of further impoverishment and eventual death. While poor health limits the ability to escape the poverty trap, the existence of poverty hinders access to good health. This situation is made even more complex by the factor of distrust on the part of the people. In a situation where trust is lacking, the willingness to prepay for health care remains low among the largely uninformed populace because people are unsure of the benefits from a product or service in the future against a payment today.

## 3. The Law to the Rescue?

Analyses of the requisite provisions of the National Health Act 2014, the National Health Insurance Authority Act 2022, the African Charter on Human and People Rights(Ratification and Enforcement) Act, the Constitution of the Federal Republic of Nigeria 1999(as amended) and other health-related ancillary laws reveal that a proper application and effective implementation of these provisions will surely take Nigeria to the top on the various global lists on the assessment of country performances in the various departments of the health sector.

### 3.1 The National Health Act 2014 and the National Health Insurance Authority Act 2022

The National Health Act 2014 which makes no pretensions, through its various provisions, about its express recognition of the right to health as provided in the foremost international human rights instruments, is made up of seven parts with a total of 65 sections. Part I of the Act, entitled 'Responsibility for Health, Eligibility for Health Services and Establishment of National Health System' provides for the establishment of the National Health System which is conferred with the authority to define and provide a framework for standards and regulation of health services in the country.[36] The National Health System encompasses public and private providers of health services[37] and shall provide the best possible health services within the limits of available resources for persons living in Nigeria.[38] It can, therefore, be seen that, from the onset, the National Health Act 2014 leaves no one in doubt about the quality of health services it mandates the National Health System to provide for the citizens and the fact that it recognizes health as a human right in Nigeria. It is noteworthy that section 1(1)(c) of the Act echoes the provisions of Article 2 of the

[36] The National Health Act 2014 s 1(1).
[37] Ibid s 1(1)(a).
[38] Ibid s 1(1)(c).

International Covenant on Economic, Social and Cultural Rights(ICESCR) 1966 with respect to the role of resource availability to the realization of the right to health. While it is hoped that Nigeria will not hide under the excuse of resource unavailability to shy away from fulfilling her duty under this Act, it should be noted that a lack of resources cannot justify a state's failure to take steps to realise the right to health by providing quality health care services to its citizens or to fulfil the minimum core obligations placed on it by the International Covenant on Economic, Social and Cultural Rights as interpreted by the UN Committee on Economic Social and Cultural Rights under the General Comment No. 14. Another interesting feature of this section is the provision that the beneficiaries of the best available health services shall be 'persons living in Nigeria'. What this means is that the health services shall be extended to all persons living in Nigeria without distinction as to their nationality or on any other ground. It is submitted that this provision speaks to the requirements of article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

It may appear, however, that residency in Nigeria is a condition precedent for qualification to benefit from the various services which the National Health System will provide. The question may then be posed whether a patient on medical tourism from any other country can successfully enforce a right of action in a Nigerian court against the System or any of its components that fails in its obligation under this Act. In addition to setting out the rights and obligations of health care providers, health workers, health establishments and users[39], the National Health System shall, importantly, give adequate protection, promotion and fulfilment to the rights of Nigerian people to have unhindered and unimpeded access to health care services[40]. Section1(1)(e), again, echoes the interpretation of the duties of States Parties under the ICESCR as stated by the UN Committee on Economic and Social Rights in General Comment No. 14, identifying three levels of obligations for the States Parties. This provision is very important as it has a very strong bearing on the realization of the right to health. The provision, however, raises another curious question: whether the duty to protect, promote and fulfil the right to access to health services applies only to 'the people of Nigeria' or whether it extends to foreigners in Nigeria. If it applies to only the people of Nigeria, to the exclusion of foreigners in Nigeria, Nigeria would be contravening the provisions of article 5 of CERD. It is submitted that 'the people of Nigeria', should be interpreted to include not only people living in Nigeria(including non-Nigerians) but also persons , though not resident in Nigeria, but who are in Nigeria on medical tourism. It is further suggested that the Act be amended to reflect this interpretation.

[39] Ibid s 1(1)(d).
[40] Ibid s 1(1)(e).

The composition of the National Health System is another commendable feature of the Act which speaks to comprehensive inclusivity of all health stakeholders. It provides that the National Health System shall be composed of the Federal Ministry of Health;[41] the Ministry of Health in every state and the Federal Capital Territory Department responsible for Health;[42] parastatals under the federal and state ministries of health;[43] all local government health authorities;[44] the ward health committees;[45] the village health committees[46] private health care providers;[47] traditional health care providers[48]; and alternative healthcare providers[49]. Worthy of mention is the comprehensive character of the composition, especially as it includes traditional and alternative health care providers. In addition, the inclusion of ward and village health committees in the composition of the System implicates grass-root representation and speaks to an improvement in the Primary Health Care system, a section of the national health system that has, for a long time received poor attention from government. It has been noted that the growth, development, efficacy and reliability of the Indian, Chinese and Brazilian health care systems are traceable to their combination of traditional systems with orthodox medical practice.[50] It is hoped that Nigeria will learn from the experiences of those countries.

The Act also makes elaborate provisions for the functions of the Federal Ministry of Health, which include ensuring the development of national health policy and issuing guidelines for its implementation,[51] promoting adherence to norms and standards for the training of human resources for health,[52] ensuring the continuous monitoring, evaluation and analysis of health status and performance of the functions of all aspects of the National Health System.[53] Ensuring the provision of tertiary and specialized hospital services[54], promoting availability of good quality, safe and affordable essential drugs, medical commodities, hygienic food and water,[55] and issuing guidelines and ensuring the

[41] Ibid s 1(2)(a).
[42] Ibid s 1(2)(b).
[43] Ibid s 1(2)(c).
[44] Ibid s 1(2)(d).
[45] Ibid s 1(2)(e).
[46] Ibid s 1(2)(f).
[47] Ibid s 1(2)(g).
[48] Ibid s 1(2)(h).
[49] Ibid s 1(2)(i).
[50] P Ukeyima and M Emmanuel and KF Aondona, 'Health Care Policies in Nigeria Since Independence: Issues, Challenges and Prospects' [June 26 2016] *Katsina – Ala Multidisciplinary Journal* 67.
[51] Ibid s 2(1)(a).
[52] Ibid s 2(1)(d).
[53] Ibid s 2(1)(e).
[54] Ibid s 2(1)(i).
[55] Ibid s 2(1)(l).

continuous monitoring, analysis and good use of drugs and poisons including medicines and medical devices [56] are also among the functions of the Federal Ministry of Health. All these provisions and many others in the Act have profound implications for the improvement of the poor health indices which has been the bane of Nigeria over the years.

With the intention of making health care services available to even the most vulnerable in Nigeria, the Act provides for people who can be exempted from paying for health services in public health outfits in Nigeria as well as the conditions which such people will satisfy in order to be eligible for such benefits[57]. It provides that, in addition to the fact that a basic minimum package of health care services is, by this Act, a statutory entitlement of all Nigerians, the Minister of Health has the power, after consulting with members of the National Council on Health, to come up with conditions which certain other people will satisfy to qualify them to be further entitled to free medical services in Nigeria's public health institutions.[58] In prescribing such conditions, the Act makes it mandatory for the Minister to, among other considerations[59], have regard to the needs of the groups of people who are usually regarded as vulnerable people. These groups include disabled persons, old persons, women and children[60]. It is noteworthy that the new National Health Insurance Health Authority Act 2022 makes provision for the free provision of health insurance for the vulnerable groups.[61] These are very laudable lofty provisions which, if properly implemented, will be a good step towards the realization of the right to health, achieving Universal Health Coverage (UHC), realising the health and health-related sustainable development goals(SDGs) and, ultimately improving Nigeria's performance on the global assessment of national health systems, as this solves the problem of access to basic health care by Nigerians.[62] The National Health Act is, however, silent on what constitutes that basic minimum package of health care services to which all Nigerians are entitled. It can be argued that such an omission may be deliberate, bearing in mind that the Minister, by the powers conferred upon him by the Act can define the basic minimum package in regulations drawn up under the Act. This article is of the view that the Minister should be required to make wide consultations with, and receive informed inputs from, stakeholders each time such regulations are to be made or amended. This Part also provides for the establishment and

[56] Ibid s 2(1)(m).
[57] Ibid s 3(1).
[58] Ibid. s 3(1).
[59] Ibid s 3(2)(a)(b)(c) Such considerations include the range of exempt health services currently available; the categories of persons already receiving exemption from payment for health services; and the impact of any such condition on access to health services.
[60] Ibid s 3(2)(d).
[61] National Health Insurance Authority Act 2022 ss. 25(1) and 26.
[62] C Onyemelukwe-Onuobia, 'Nigeria's National Health Act and the Promise of Universal Health Coverage' [March 20 2015] C*held,* 14.

composition of the National Council on Health[63] which shall be the highest policy making body in Nigeria on matters relating to health[64] and whose major functions include, inter alia,(a)the protection, promotion, improvement and maintenance of the health of the citizens of Nigeria, and the formulation of policies and prescription of measures necessary for achieving these responsibilities;[65] (b) ensuring the delivery of basic health services to the people of Nigeria and prioritize other health services that may be provided within available resources; [66] (c) issuing, and promoting adherence to, norms and standards, and provide guidelines on health matters, and any other matter that affects the health status of people;[67](d) ensuring that children whose ages are between zero and five years as well as women who are pregnant receive immunization immunized with vaccines against infectious diseases;[68] and (e) coordinating health services rendered by the Federal Ministry with health services rendered by the States, Local Government, Wards, and private health care providers and provide such additional health services as may be necessary to establish a comprehensive national health system[69]. The foregoing duties of the National Council on Health are particularly related to the realization of the right to health as they bear much semblance to the obligations to ensure the protection, promotion and fulfillment of the rights of the Nigerian people as provided under Article 2 of the ICESCR and as interpreted in the UN CESCR's General Comment No. 14. It is strongly hoped that if the foregoing provisions are strictly applied and implemented, the disappointing health indices repeatedly posted by Nigeria will be reversed.

Another major innovation introduced into the Act, with direct implications for achieving success in the efforts to reverse the current trend of unenviable health indices and for the realization of the right to health, is the provision for the establishment of a National Basic Health Care Provision Fund[70] which is to be funded from Federal Government Annual Grant of not less than one per cent of its Consolidated Revenue Fund[71]; grants by international donor partners[72]; and funds from any other source.[73] Using the instrumentality of the National Health Insurance Scheme (NHIS), 50% of the fund shall be expended on providing the statutory basic minimum health care package to the people in all primary or

[63]Ibid s 4(1).
[64] Ibid s5(1).
[65] Ibid s 5(1)(a).
[66] Ibid s 5(1)(c).
[67] Ibid s 5(1)(e).
[68] Ibid s 5(1)(i).
[69] Ibid s 5(1)(j).
[70]Ibid s 11 (1).
[71] Ibid s 11(2)(a).
[72] Ibid s 11(2)(b).
[73] Ibid s 11(2)(c).

secondary health care outfits that are eligible to be used[74] while 20% of the fund shall go to qualified primary health care facilities through the provision of the necessary and required drugs and vaccines as well as other consumables needed in those primary health care facilities[75]. Also, eligible primary health care facilities shall be provided with facilities, equipment and transportation, using 15% of the fund,[76] while 10% shall go into the development of health human capital for Primary Health Care[77] and the remaining 5% of the fund shall be used for Emergency Medical Treatment to be administered by a Committee appointed by the National Council on Health.[78] To ensure that the funds are effectively distributed among the requisite Local Government and Area Council Health Authorities, the National Primary Health Care Development Agency shall, through the State and Federal Capital Territory Primary Health Care Boards, disburse the funds to provide for the required drugs, vaccines and other consumables for use in qualified primary healthcare facilities and for the maintenance of the facilities, equipment as well as transportation for eligible primary healthcare facilities. It will also be used for the development of Human Resources for Primary Health Care.[79]

Importantly, the Act provides that the National Primary Health Care Development Agency shall not disburse funds to any Local Government Health Authority if it is not satisfied that the money earlier disbursed to that authority was applied judiciously as provided in the Act.[80] Also, any State or Local Government that fails to contribute its counterpart funding shall not benefit from the funds[81]. States and local governments that fail to implement the national health policy, norms, standards and guidelines prescribed by the National Council on Health shall be denied the enjoyment of the funds[82]. The National Primary Health Care Development Agency is further mandated to develop appropriate guidelines for the administration, disbursement and monitoring of the fund with the approval of the Minister. It is submitted that the establishment of the National Basic Health Care Provision Fund is a great milestone towards improving the poor health indices that Nigeria keeps posting to the whole world as it is aimed at achieving universal health coverage and the resultant realization of the right to health in Nigeria. Among several other benefits of the National Health Act, individuals and families will have more disposable income through reduction in catastrophic health expenditure

[74] Ibid s11 (3)(a).
[75] Ibid s 11(3)(b).
[76] Ibid s 11(3)(c).
[77] Ibid s 11(3)(d).
[78] Ibid s 11(3)(e).
[79] Ibid s 11(4).
[80] Ibid s 11 (6)(a)
[81] Ibid s 11(6)(b) The counterpart fund required from the State or Local Government shall not be less than 25% of the total cost of the projects.
[82] Ibid s 11 (6)(c).

occasioned by very high out of pocket expenditure when the mandatory social health insurance scheme provided under the National Health Insurance Authority Act 2022 and supported by the NHA, especially as it affects the vulnerable groups, is implemented. Worthy of mention, also, is the fact that the provisions of section 11(6) (a) (b) and (c) of the National Health Act are intended to ensure probity, accountability and transparency in the use of public funds. These are important attributes of good governance which are very essential for the realization of the right to health and the ultimate reversal of the poor showing by the Nigerian health sector in comparison with those of other countries of the world.

However, this article is of the view that the provisions on the National Basic Health Care Provision Fund are not without some shortcomings. First, the basic minimum package of health services to which 50% of the National Basic Health Care Provision Fund is allocated is not defined by the Act. Rather, what constitutes that package is left at the discretionary decision of the Minister of Health. Second, the said 50% shall be expended through the National Health Insurance Scheme (NHIS). What this implies is that it is only those covered under the NHIS that can enjoy the basic minimum health services to be provided with the 50% of the NBHCPF meant for all Nigerians. Meanwhile, only a negligible class (workers) of the Nigerian population was covered under the previous National Health Insurance Scheme. The new National Health Insurance Authority Act 2022, which makes health insurance compulsory in Nigeria, specifically requires the following to get health insurance: all employers and employees in the public and private sectors with five staff and above[83], informal sector employees[84], and all other residents in Nigeria.[85] Even under the said 2022 Act, there is no assurance that all Nigerians will be covered under the scheme given the level of poverty in Nigeria, the difficulty in getting those in the informal and private sector to key into the programme, as well as the unwillingness or reluctance of State governors to establish their own State Insurance schemes as mandated by the NHIA Act 2022. This amounts to nothing short of inequity and discrimination. Third, the implementation of the requirement for counterpart funding by states and local governments under the NHA 2014 may prove problematic. This article expresses the fear that the requirement for counterpart funding by both the state and Local Government Councils in order for them to be entitled to disbursement of money from the National Health Care Provision Fund will work against the delivery of health care services to all Nigerians, particularly the large population of the poor in the rural areas. It is doubtful that the states will be able to promptly satisfy this condition precedent. It is even more doubtful that the local government councils will be able to raise such amounts, given the fact that it is the least financially

[83]Ibid s 14(2)(a).
[84] Ibid s 14(2)(b).
[85] Ibid s 14(2)(c).

comfortable of the three tiers of government.[86] The immediate past arrangement whereby states and local government councils ran joint accounts which were principally controlled by the states made dimmer the hope of a local government meeting that requirement. The recent judgement of the Supreme Court of Nigeria granting financial autonomy to local government councils is of great relief. It is hoped that this decision of Nigeria's apex court will be immediately enforced and implemented by the requisite authorities. Also, the present governmental structure of the country can present a ready excuse for an unwilling state government to resist to be controlled by the mandatory provisions of the NHA 2014 and the NHIA Act 2022, such as the one under discussion. Nigeria runs a Federal structure of government and health is in the Concurrent Legislative List. Corruption and lack of the political will can make an unwilling state find excuse in the so-called federalism and autonomy of executive and legislative competences to renege on the duty imposed on it by some provisions of this NHA. Unfortunately, the Act is silent on what punishments shall befall states and local government councils that fail to contribute their own counterpart funds to the National Basic Health Care Provision Fund. It is submitted that, given the foregoing shortcomings, the NBHCPF may, eventually not be able to achieve its purpose, that is, making basic health services available to all Nigerians, particularly the rural and urban poor, who constitute the majority of the beneficiaries of primary health care and among whom are the most vulnerable members of society: women, children, old people and the disabled. By necessary implication, the dream of achieving universal health coverage (UHC) and the health-related Sustainable Development Goals (SDGs) for Nigerians may never be realized, unless, among other things, the present provisions in the laws regarding the size, disbursement and use of the NBHCPF are amended to adequately take care of the overall health interests of all Nigerians.

Part II of the NHA which is entitled 'Health Establishment and Technologies' sets out a process for regulating health establishments and technologies and ensuring quality and standards. For the purpose of regulating and monitoring the practice in health establishments, the Act empowers the Minister-in-Council to, by regulation, classify all health establishments and technologies into such categories as may be appropriate, based on a number of specified criteria[87] To ensure the maintenance of standards in health care provision, the Act provides that health establishments will now need to have a Certificate of Standards which defines how many beds and what technologies they can have [88] . According to the Act, any person, entity, government or organization who

[86] K Obembe, 'National Health Act and Other Challenges before Political Parties' (Text of a press conference at the Nigerian Medical Association's National Secretariat, Abuja on February 4 2015).
[87] The National Health Act 2014 s 12(1)(a) and (b).
[88] Ibid s 13(1)(a),(b),(c),(d).

operates a health establishment without a Certificate of Standards 24 months after the Act has been passed is guilty of an offence and shall be liable, on conviction, to a fine of not less than N500,000.00 or, in the case of an individual, to imprisonment for a period not exceeding two years or both.[89] It is noteworthy that the Act, in establishing, by the foregoing provisions, a system for ensuring quality of healthcare services in public and private facilities through the certification of standards will reduce quackery, ensuring that appropriate and acceptably-equipped healthcare establishment with adequate facilities and personnel attend to the needs of users. Part II also provides mechanisms for public hospitals to retain a proportion of the revenue they generate (subject to minister and in states, commissioner discretion). According to the Act, the Minister, in respect of a tertiary hospital, and the Commissioner, in respect of all other public health establishments within the State in question, may determine the range of health services that may be provided at the relevant public health establishments and, in consultation with the relevant Treasury(Federal or State), determine the proportion of revenue generated by a particular public health establishment classified as a hospital that may be retained by that hospital, and how those funds may be used[90]. This provision appears to have aimed at ensuring that revenues generated by public health establishments are judiciously utilized and that the establishments have enough funds for the day-to-day running of the services. It also provides that the minister, in consultation with the National Council, may come up with certain conditions which certain people may be required to fulfill in order to qualify for free health care services in public health outfits[91]. Subsection 3 of this section goes on to reiterate that all citizens of Nigeria shall receive a basic minimum package of health services as a matter of rightful entitlement. To further guarantee quality and high standards in health care services at locations other than health establishments, such as schools and other public places, the Act authorizes the Minister-in-Council to prescribe minimum standards and requirements for the provision of health services in such locations[92]as well as penalties for any contravention of or failure to comply with any such standards or requirements[93]. This authority extends to traditional health practices to ensure the health and well-being of persons who are subject to such health practices[94]. This reflects some of the important features and characteristics of the right to health. Importantly, the Act provides for the evaluation of services of health establishments to ensure that they comply with the quality requirements and standards prescribed by the National Council on Health[95] relating to human

[89] Ibid s 14
[90] Ibid s15(1)(a) and (b).
[91] Ibid s 15(2)
[92] Ibid s 16(1)(a)
[93] Ibid s 16(1)(b)
[94] Ibid s 16(3).
[95] Ibid s 19(1).

resources, health technology, equipment, hygiene, premises, the delivery of health services, business practices, safety and the manner in which users are accommodated and treated.[96] It is submitted that this is one of the major provisions in this Act that have the capacity to work towards the realization of the right to health and the elevation of Nigeria's position on the health indices list of the world. One of the essential elements of the right to health is quality with respect to human resources for health, infrastructure, drugs, and delivery of health services. It may, therefore, be correct to say that, having put adequate mechanism in place for ensuring the maintenance of quality in health establishments, the Act may well have taken a positive step towards the realization of the right to health and achievement of universal health coverage in Nigeria, all things being equal.

Part III of the Act, entitled 'Rights and Obligations of Users and Health Personnel', provides for the criminalization of refusal by any health worker or health establishment to avail a patient emergency medical services for any reason whatsoever[97]. The punishment for such an offence is a fine of N100,000 or 6 months imprisonment or both. However, except for psychiatric patients, a health care provider may refuse to treat a user who is physically or verbally abusive or who sexually harasses him or her, and in such a case the health care provider must report the incident to the appropriate authority.[98] This section is a great innovation and a welcome development as against the hitherto practice whereby health workers refused to treat patients, even on emergency, unless and until specified amounts of money had been paid by the patients. Also, it is now mandatory for health establishments to attend to gun-shot or accident victims and other cases of emergency without, first, insisting on the production of police reports or fulfilment of other conditions before attending to such victims. It is, however, humbly submitted that the provision for the circumstances under which a health care provider may refuse to treat a patient possesses the potential of being flagrantly abused by lazy, decidedly-wicked and pathologically-irritant health care providers.

This part also sets out the rights of healthcare personnel and indemnifies them from claims where they have not been negligent.[99]

Healthcare workers are now under an obligation to give users relevant information (health status, diagnosis and treatment options and risks and benefits, right to refuse treatment)as to their state of health and treatment, unless there are exceptional circumstances.[100].It should be noted that the obligation under this section is not a function of, or, dependent on, a formal request or

[96] Ibid s 19 (2).
[97] Ibid s 20(1) and (2).
[98] Ibid s 21(3).
[99] Ibid s 22.
[100] Ibid s 23(1)(a-d).

demand by the user. In addition to the foregoing, health establishments are now under an obligation to clearly define their services, complaints processes and timetables[101] and to keep records on each user, maintaining high confidentiality standards.[102]

Part IV of the Act, entitled 'National Health Research and Information System' establishes the National Health Research and Information System[103] with a 13 member National Health Research Committee established to promote research and ensure that it aligns to priorities.[104] Section 32 of the Act provides the conditions to be satisfied before any research experimentation using living human subjects can be carried out. One of such conditions is the prior consent of the subject or his representative.[105] Commendably, the Act establishes a National Health Research Ethics Committee[106] with 17 members, one of whom must be a woman[107], and any institution, health agency or establishment carrying out research is required to have an ethics committee.[108]

This Part also requires the Federal Minister of Health to facilitate the creation of a comprehensive National Health Information Management System and to prescribe data for collection at every level of the health system.[109] Public and private establishments are required to establish and maintain a health information system, which will be a requirement for the award of certificate of standards.[110] The Minister and commissioners of health are required to publish annual reports on the state of the health of the citizenry and the health system.[111]It should also be noted that the Act mandates the National Council on Health to ensure the widest possible catchments for the National Health Insurance Scheme throughout the Federation.[112] This is very important, if Nigeria intends to achieve universal health coverage (UHC) as well as realise the health-related sustainable development goals.[113]

Part V makes elaborate provisions on human resources for health and requires the National Council on Health to develop policy and guidelines for the training

[101] Ibid s 24.
[102] Ibid ss. 25 and 26.
[103] Ibid s 31(1).
[104] Ibid s 31(2)(a). Section 31(5) defines the duties of the Committee.
[105] Ibid s 32(1) and (2).
[106] Ibid s 33(1).
[107] Ibid s 33 (2).
[108] Ibid s 34.
[109] Ibid s 35(1) and (2).
[110] Ibid s 38 (1)(a) and (b).
[111] Ibid s 35(3).
[112] Ibid s 40.
[113] It does not appear that the Council has made any visible effort to realise this statutory mandate.

and distribution of health workers[114]. In relation to strikes, health services are classified as essential services [115] and the Minister is required to apply all reasonable measures to ensure return to normalcy after disruption within 14 days.[116] This speaks to the years of persistent industrial disputes bedeviling the health sector. The Act, therefore, provides for zero tolerance for all manner of disputes that result in total disruption of health services delivery in public institutions of health throughout the country. This part also bars all public officers from medical check up, investigation or treatment abroad at public expense, except in exceptional cases approved by a medical board and Minister or Commissioner.[117]

Part VI which is entitled, 'Control of Use of Blood, Blood Products, Tissue and Gametes in Humans' establishes the National Blood Transfusion Service,[118] outlines procedures for obtaining consent before the removal of tissue, blood or blood products from humans[119] and provides that a person who contravenes the provisions of this section or fails to comply therewith is guilty of an offence and liable on conviction as follows: (a) a two-year term of imprisonment or a N1,000,000 fine or even both the term of imprisonment and the fine; and (b) in the case of blood or blood products, a N100,000 fine or, in the alternative, an imprisonment for a term not exceeding one year or both the fine and the imprisonment.[120] It also bans the sale of blood and tissue and prohibits the manipulation of genetic material ("cloning")[121].In addition to the provisions on the removal and transplantation of human tissues in hospitals,[122] this Part also makes provision on payment in connection with the importation, acquisition or supply of tissue, blood or blood product, [123] allocation and use of human organs[124] and donation of human bodies and tissues of deceased persons[125]. This Part specifies that transplantation can only be done with the approval of a medical practitioner[126] and also establishes a process for living wills for organ donation.[127]

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[114] Ibid s 41(1).
[115] Ibid s 45(1).
[116] Ibid s 45 (3).
[117] Ibid s 46.
[118] Ibid s 47(1),(2), and (3).
[119] Ibid s 48(1) and (2).
[120] Ibid s 48(3)
[121] Ibid s 50(1) Note that any person who contravenes a provision of this section or who fails to comply therewith is guilty of an offence and is liable on conviction to imprisonment for a minimum of five years with no option of fine.
[122] Ibid ss. 51 and 52.
[123] Ibid s 53.
[124]Ibid s 54.
[125] Ibid s 55.
[126] Ibid s 52.
[127] Ibid s 55.

It is the view of this research that this Part raises a lot of very critical ethical issues some of which may even seem to violate some fundamental human rights and work against the realization of this right.[128] Part VII concerns itself with regulations and miscellaneous provisions[129].

One key provision in this Part of the Act capable of improving standards and outcomes is the provision for an annual National and State Stakeholders Consultative Forum for health to discuss health outcomes, challenges, prospects and policies. This is made mandatory and the stakeholders are expected to include user groups, civil society groups, donor groups and healthcare providers[130]. Such a forum will provide opportunities for interaction and user inputs, advocacy, enlightenment and policy impact assessment. This makes it possible for the public to participate in discussing issues related to their health, a very vital feature of all human rights, in general and the right to health, in particular.

### 3.2 The Constitution of the Federal Republic of Nigeria 1999 (as amended) and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap 10 LFN 1990.

One of the major reasons usually adduced by scholars and stakeholders for Nigeria's poor health indices is the apparent non-justiciability status that health enjoys along with the other so-called fundamental objectives and directive principles of state policy provided under Chapter Two of the 1999 Constitution(as amended). It is the view of this article that not only is health adequately provided for and recognized as a human right under the law in Nigeria, it is also judicially enforceable. Section 17 of the Constitution which provides for a cluster of Economic, Social and Cultural Rights, including the right to health, generally entitled "Social Objectives", among other things, enjoins the government to ensure that its policies are geared towards protecting and safe-guarding the health, safety and welfare of all workers,[131] as well as ensuring that adequate medical and health facilities are provided for the people.[132] Nigeria domesticated the African Charter on Human and Peoples' Rights (ACHPR) via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[133] which makes equally justiciable all the rights therein contained (including the right to health) without discriminating between civil and political rights and ESC rights[134] The combined application of

[128] This assertion shall be discussed in details subsequently.
[129] Ibid ss.59-65.
[130] Ibid s 61(1).
[131] Sec. 17 (3)(c).
[132] Sec. 17(3)(d).
[133]Cap 10 Laws of the Federation of Nigeria 1990
[134] This view has been given judicial recognition by Bello CJ in Peter *Nemi v The State* [1994] 1 LRC 376 at 385 C-D where he stated that in so far as the Charter had become part of our domestic law, the enforcement of its provisions like all other laws, falls

section 4(2) of the Constitution of the Federal Republic of Nigeria 1999(as amended), the exception clause of section 6(6)(c) of the Constitution of the Federal Republic of Nigeria 1999(as amended), and Item 60(a) of the Exclusive Legislative List, Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly reveals that provisions of Chapter 2 of the Constitution are capable of being enforced by the courts. Justice Niki Tobi held as much in *Federal Republic of Nigeria v. Alhaji Mika Anache & Ors,*[135] when he stated that the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the sub-section provides a leeway by the use of the words 'except as otherwise provided by this Constitution' The National Assembly has exploited this leeway and enacted statutes which provide for the judicial enforcement of the provisions of Chapter 2 of the 1999 Constitution(as amended).[136] It is, therefore, no longer in doubt that the right to health and indeed, all the other so-called fundamental objectives and directive principles of state policy provided under Chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are justiciable rights under the Nigerian law. The rights status enjoyed by health is of great advantage in the efforts to reverse Nigeria's poor health indices, if the Nigerian Bar will become more courageous and the Bench, less timid.

**4. Shortcomings of the Laws**

It is not clear whether it was a product of innocent inelegant drafting or a function of deliberate dubious inclusion that the sections of the National Health Act 2014 that have to do with the removal, use, transplantation and sale of tissue, blood or blood products from a living human being are couched the way they are. It would appear that section 48(1)(b) of the Act permits a person to remove the tissue, blood or blood product from another living person without his informed consent for medical investigations and treatment in emergency cases. Interestingly, the phrases 'medical investigations' and 'treatment in emergency cases' are not specifically interpreted in the Act. It is also not clear whether the 'medical investigations' or 'treatment in emergency cases' are for the benefit of the person from whom the tissue, blood, or blood product is

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within the judicial powers of the courts in Nigeria .See also, F Viljoen, *Application of the African Charter on human and Peoples' Rights by Domestic Courts in Africa*[1999](43 ) *J AFR L* 10.

[135] (2004) 14 WRN 1 – 90, 61.

[136] These statutes include the Independent Corrupt Practices and Other Related Offences Commission Act, which justicializes section 15(5) of the Constitution; the National Human Rights Commission of Nigeria Act, which makes justiciable all the human rights provided under the Constitution as well as all the rights recognised under any international human rights instrument to which Nigeria is a signatory; the African Charter on Human and Peoples Rights(Raification and Enforcement) Act, which provides for the equal judicial enforcement of all the three generations of human rights therein contained; and the National Health Act 2014 which expressly sees health as a fundamental right of Nigerians.

removed or for the benefit of any other person. It is submitted that because of its vagueness and the resultant ambiguity, this provision can provide a criminal leeway for dubious practitioners who, hiding under the cover of carrying out "medical investigations" or 'treatment in emergency cases' could forcefully remove the tissue, blood, or blood product of a non-consenting living person and use same for the treatment of any other person and for a fee.[137]. Similarly, section 48 (2) of the Act provides that "a person shall not remove "tissue" which is not replaceable by natural processes from a person younger than 18-years", implying that a person can remove tissue (whether replaceable or non-replaceable by natural processes) from persons who are 18 years and above. In the characteristic ambiguity of this Part of the Act, section 49 states that a person shall use "tissue" removed or blood or a blood product withdrawn from a living person, even without his or her consent (as long as reasonable payments are made in the appropriate health establishment for the procurement), only for such medical or dental purposes as may be prescribed. Again, the interpretations of the word "tissue" and phrase "medical or dental purposes" are not provided in the interpretation section of the Act neither is it made clear who should make the prescription. Sections 51, 52 and 53 are equally controversially couched. Section 53 specifically authorises the sale or trade in human tissues provided that 'reasonable payments are made in an appropriate health establishment for the procurement of tissue, blood or blood products". This article holds the view that sections 48(1) (b), 48(2), 49, 51, 52 and 53 of the National Health Act 2014 which permit, inter alia, the removal of the tissue, blood or blood product from another living person without his or her informed consent for "medical investigations" and "treatment in emergency cases" and the sale of and trading in human tissues and blood products are in violation of the constitutionally-protected human rights to life;[138] dignity of the human person;[139] privacy[140] -protected human rights to life;[141] dignity of the human person;[142] privacy[143] and freedom of thought, conscience and religion.[144] They also violate Articles 2, 4, 5, 6 and 8 of the African Charter on Human & Peoples Rights (Ratification Enforcement) Act.[145] Since all hospitals and other medical establishments have been mandated to admit and treat all persons in emergency situations, the National Assembly may have inadvertently licensed medical personnel to engage in unauthorized surgical operations for the purpose of

[137] Sonie Ekwowusi, 'Why the National Health Act is Unconstitutional' *The Guardian* (Lagos, 9 March 2015) 24; F Falana *Nigerian Law on Socioeconomic Rights* (2017) 12.
[138] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33.
[139] Ibid s 34.
[140]Ibid s 37
[141] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 33.
[142] Ibid s 34.
[143]Ibid s 37
[144]Ibid s 38.
[145] Cap 10 Laws of the Federation of Nigeria 1990.

removing vital organs of living persons. Even though there are penalties for commercializing any organs removed from any living person, why should the consent of the donor be dispensed with?

These provisions should therefore be amended, as allowing them to continue the way they are presently presented means doing great violence and harm to the overall intention of the National Health Act 2014.[146] Other pitfalls of the National Health Act 2014 include: loose provision on medical tourism abroad in section 46, which makes it prone to abuse and encourages official corruption; multiplicity of committees and duplicity of functions; very poor penalties for offences under the Act; no clearly defined roles for the lower tiers of government; difficulty in the payment of counterpart funds for the National Health Care Provision Fund and; the Minister of Health's enjoyment of the sole prerogative of prescribing what constitutes the basic minimum package of health services. It is submitted that, in the last case, to be able to capture the actual disease burden that should make the list on the minimum package of health services, based on the prevalence, cost and seriousness of such diseases, the National Council on Health should take over that responsibility from the Minister.

## 5. Conclusion

In conclusion, it is suggested that Nigeria should adopt the rights-based approach in the implementation and enforcement of laws, policies and programmes that have to do with health. That approach is more productive, more effective, and faster in achieving the required results. In addition to the various suggestions made in the main text of this article and in order to see that they are put into effect, it is suggested that the relevant and offending provisions of the National Health Act 2014, the National Health Insurance Authority Act, 2022, and the National Human Rights Commission Act, 2004 be amended so that they will be better equipped to be used in reversing Nigeria's unenviable trend of posting poor health indices. Importantly, health, and indeed all the other socio-economic rights are too fundamental to human life and the overall existence of man to be left in a cold and obscure corner of the Constitution, as mere 'directive principles'. Chapter 2 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should, therefore, be amended to make all the rights thereunder contained as justiciable as those under Chapter 4. That way, Nigeria will be on the right path towards improving her poor health indices.

[146] Falana (n 137) ; Sonnie Ekwowusi (n 137).

# EVALUATING THE ECONOMIC DYNAMICS OF THE NIGERIAN TRADEMARKS REGIME

Kennedy Ikechukwu Onwusi*

**Abstract**

*Adequate Trade Mark regime will contribute to Nigerian economic renaissance. A robust Trademark regime will discourage infringement of trademarks thus providing benefits to trademark owners in the form of economic rights thus helping in improving the economic dynamics of the Nigerian depressed economy. Nigeria is having financial turmoil. Creators need to control and make use of their marks to obtain an appropriate economic reward. The objective of this paper is to evaluate the economic dynamics of Nigerian Trademark in Nigeria's depressed economy. This paper adopted a doctrinal methodology because it has the potential to help in achieving the objective of this research. In tandem with the objective of this research, the paper found that the Nigerian Trade Mark needs to be repealed. The provisions of the Act are inadequate and insufficient to protect trade mark in the digital space. Criminalization alone is not a viable solution to stopping Trademark infringement. The paper found that the Nigerian Trademark because of the economic depression in Nigeria should only protect types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular trademarks, the Act should focus more on Collective trademarks, Well-known marks, and Certification Marks. The paper recommends that the National Assembly should amend the Trade Mark Act to make the Act more effective and to make Nigeria an economic destination for foreign trademark proprietors.*

**Keywords:** intellectual property; trademarks; trademark and the economy, Nigerian trademark regime.

## 1. Introduction

Nigerian Trademark regime is not adequate enough to enhance enormous economic benefits to Trademark right holders.[1] In developed and developing countries like Nigeria, an adequate Trademark regime can play important role in the process of industrialisation and economic growth. Apart from increasing per capita income and output, trade mark registration will create employment opportunities enhance regional economic balance. A robust Trademark regime in Nigeria has the potential of employment generation and wealth creation in any economy.

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[1] OS Adesina, 'The Negative Impact of Globalization on Nigeria' (2012) 2(15) *International Journal of Humanities and Social Science* 193-201.

Yet in Nigeria, we have a Trade Mark regime that is stagnated and remains relatively small in terms of its financial reward to the owner of the Trademark and its contribution to Nigerian economy.

It is no longer news that Nigeria's economy is experiencing total collapse and if nothing is done to put the peg in the right spot something worse than what we are witnessing may soon be on sight.[2] Thus to ensure greater effectiveness, the Nigerian Trademark regime should also protect types of trademarks with real effects in commerce that go beyond merely generating income for the Trade Mark Registry. Thus, apart from regular trademarks, the Act should focus more on collective trademarks, well-known marks and certification marks.

Each of these marks has practical implications. For instance, collective trademarks are employed to distinguish the goods and services of the registering association and its members from those of non-members; Well-known marks confer protection on marks which, even though they may not be registered in Nigeria, have acquired a protectable reputation in Nigeria; while certification marks serve the purpose of indicating that the goods or services carrying them have been certified by the proprietor in respect of origin, quality or other indicia. It is, however, difficult to see the practical implications of Separate trademarks, Associated trademarks and Resembling trademarks which are registered as a series.

For in-stance, what is the legal effect of protecting a separate trademark? By s 24 Act, if a proprietor wants protection for a particular part of his mark, he must register that part separately. But, in reality, this mark is not being used on goods as a trade mark. It is the entire mark as registered that is employed on registered goods or services. There is therefore no basis for keeping unused marks on the register simply because a proprietor desires additional monopoly. The same argument goes for associated trademarks. The registration of mark(s) as associated trademarks hinders the freedom of a proprietor to deal with his property in the mark as he wishes. For instance, his decision to assign the marks either in part or as a whole is taken away from him because associated trademarks are compulsorily assigned or transmitted as a whole.

Resembling trademarks as a series is not of any significance to the trade mark proprietor; it is only of importance to the Trademark Registry. These three types should therefore be reviewed.

Two major international agreements with trade mark obligations signed by Nigeria are the Paris Convention and the Agreement on the Trade-related Aspects of Intellectual Property Rights ('the TRIPS Agreement').[3] The first

[2] Ibid.

[3] Agreement on Trade-Related Aspects of Intellectual Property Rights(adopted 15 Apr. 1994, entered into force 1 Jan 1995) 1869 UNTS 299, art 16(2)–(3) ('TRIPS Agreement').

requires Nigeria to protect Convention (trademark) applications, further, even though s 44 Nigerian Trade Mark Act provides for Nigeria's Paris Convention obligation requiring that Nigeria to protect Convention applications and recognize priority rights, this protection has remained inchoate for more than 50 years of the existence of the Act. This is due to the failure of the Nigerian Presidents to explicitly declare which Convention countries can benefit from including Convention applications and priority rights in Nigeria.

Also, despite the fact that the Paris Convention requires Convention countries to protect collective trademarks under Article 7bis this class of trade mark currently enjoys no statutory protection in Nigeria. In addition to the existing international trade mark obligations, Nigeria should ratify and domesticate both the Madrid Agreement and its accompanying Protocol, or one of the two, as a way of harmonising trade mark laws. The advantages of this would be enormous for Nigeria. It would mean that a single application for the registration of a trade mark at the International Bureau would confer protection on an applicant in Nigeria if he so wished, without him having to make a separate application in Nigeria.[4] All in all, to make the Act more effective and to make Nigeria an economic destination for foreign trademark proprietors, the various sections of the Act identified above must be amended to give effect to the country's international obligations such as protection of well-known marks, collective marks, Paris Convention applications and recognition of priority rights. The Madrid Agreement and Protocol should also be ratified and domesticated so as to make it easier for foreign trade mark owners to register their marks and do business in Nigeria.

Is there any justification for retaining the division of the Register into Parts A and B? This dichotomy is artificial, unclear, useless and should be removed. It only creates confusion, rather than indicating superiority of marks registered in one part over those in the other. It is thus imperative that the two parts be unified by defining trademarks in terms of their capability to distinguish and to be graphically represented. This is contrary to the current position where marks must either be inherently distinctive or must have acquired distinctiveness through long use to be registered in Part A or Part B of the register.

Constitutionally, Nigeria is composed of 36 states and federal capital territory with sub-nested 774 Local Government Areas (L.G.A). The Bi-camera legislative arm of government is unruffled of 109 Upper/ Red Chamber legislators (Senate), and 360 Lower/Blue Chamber legislators (House of Representative) that are saddled with policy formulation and enactment of law

[4] Olugbenga Ajani Olatunji, 'Fundamentals of the Nigerian Trade Marks Act' *ARTICLE 137 University of Witwatersrand* on February 11, 2016. <http: //jiplp.oxf or djournals. org /> accessed on 18/05/2024.

among many others.[5] The judicial system and its setting as well as security architectures were also visible at all levels of the federation for upholding law as pronounced by the constituted authorities for check and balancing and to restores peace and order respectively in the democratized nation.[6] The executives arms is saddled with the responsibilities of running the affairs of the country through the nation established Ministries, Agencies and diplomatic constellate for effective management.[7] Pursuant to the above Nigerian Trademark regime should be adequate to protect owners of trademark in Nigeria.

In nutshell the above forms the basis for the call to extend the Scope of Trade Mark protection in Nigeria. Trade mark law in Nigeria is out dated and restrictive when compared to what is obtainable in more advanced trade mark jurisdictions. For instance, infringement will only occur under the TMA if a person, not being the proprietor or registered user of the mark, uses a mark identical to, or closely resembling, the registered mark in relation to any goods for which the mark is registered. This kind of definition ignores the need to protect some marks which have acquired reputation over a long period of time. It also fails to recognize other nuances of trade mark infringement. Under the UKTMA 1994,[8] for instance, infringement will occur in any of the following circumstances:

> Where a mark identical to the registered trade mark is used on identical goods or services: there is no need to prove likelihood of confusion in this situation as the existence of confusion is presumed; or where either a mark identical to the registered trade mark is used on similar goods or services, or
>
> a mark similar to the registered trade mark is used on identical or similar goods or services: in which case likelihood of confusion non the part of the public must be proved to succeed; or

[5] I Dialoke, FO Ukah, IV Maduagwun, 'Policy Formulation and Implementation in Nigeria: The Bane of Underdevelopment'. *International Journal of Capacity Building in Education and Management* (IJCBEM). 2017; 3(2): 22-27. Retrieve from Website: ISSN: 23502312(Online) ISSN: 2346 7231 (Print); Samson E.A. Stanley, 'Public Policy Failures in Nigeria: Pathway to Underdevelopment' *Journal of Public Policy and Administration Research* (2014) 4(9): 38-43. ISSN 2224-5731 (Paper), ISSN 2225-0972 (Online).

[6] CI Nwagboso, 'Security Challenges and Economy of the Nigerian State' (2007 - 2011). *American International Journal of Contemporary Research*. (2012) 2(6) 244-258; I Okorie, 'Insecurity Consequences for Investment and Employment' *The Punch*, Thursday. 2011 September 9: 37-38.

[7] LN Chete, JO Adeoti, FM Adeyinka and O Ogundele, 'Industrial Development and Growth in Nigeria: Lessons and Challenges' *Nigerian Institute of Social and Economic Research* (NISER) Working paper No 8 *Ibadan* 2014.

[8] UKTMA 1994, ss 10(1)–(3).

> where a mark identical or similar to the registered trade mark is used on dissimilar goods: it must be proved that the registered mark has a reputation in the UK, the mark is used without due course and the use takes unfair advantage of, or is detrimental to, the distinctive character or repute of the registered mark.

The above expression of what amounts to infringement under the UK jurisdiction is wide enough to cover cases of normal infringement and other special cases of infringement such as dilution (by blurring or tarnishment) and cyber-squatting. A similarly extensive and pro-proprietor position is contained in the Australian Trade Marks Act which protects well-known marks against infringement and recognizes infringement by dilution.[9]

Protection of these special-case infringements is, however, not available under the Nigerian Trade Mark Act with the result that reputable trademarks belonging to foreign proprietors are susceptible to dilution and cyber-squatting. Equally important is the issue of comparative advertising which is completely prohibited under the TMA of Nigeria, unlike other jurisdictions where a balanced position is legislated. For instance, the UK TMA allows comparative advertising, provided it is done in accordance with honest practices of the industry.[10]This balanced position encourages healthy competition among traders and benefits consumers by making it possible for them to choose one product over another because an honest comparative advertising clearly indicates that the former product is better than the latter. To ensure efficiency and encourage more foreign economic presence in Nigeria, the scope of infringing acts should be extended to accommodate dilution, cyber-squatting and the adoption of a balanced position on comparative advertising. Nigerian should properly domesticate Nigeria's international trade mark obligations. Two major international agreements with trade mark obligations signed by Nigeria are the Paris Convention and the Agreement on the Trade-related Aspects of Intellectual Property Rights ('the TRIPS Agreement'). The first requires Nigeria to protect Convention (trade mark) applications, [11] well-known marks, [12] collective marks, [13] and recognize priority rights for those applications; [14] whereas the second reiterates the need to protect well-known marks, among other general obligations. The Nigerian government has, however, completely failed to comply with the above expectations.

[9] Australian TMA, s 120(3)(a) and (b).
[10] UKTMA 1994, n 15, s 10(6).
[11] Paris Convention, Art 4.
[12] Ibid, 6bis.
[13] Ibid, 7bis.
[14] Ibid, 4.

**2. Trademark Infringement**

For an action for infringement to succeed in court, the unauthorized use of the mark must be one likely to cause confusion in the minds of the consumers. Section 9 of the Trade Marks Act provides for distinctiveness required for registration of a trademark. By that section, in order for a trademark to be registrable under part A of the Act, it must contain at least one of the following particulars:

1) the name of a company, firm or individual presented in a special manner;

2) a word that has no direct reference to the character or quality of the goods and not being according to its ordinary signification a geographical name or surname; and

3) any other distinctive mark.

Following the provision of section 5 of the Act, an infringement of a registered trademark cannot be maintained unless the court finds that the defendant is engaged in the use of the mark identical with the registered trademark.

There are factors to be considered by the court before the action for infringement of a trademark in Nigeria can succeed, they include the followings:

i The marks do not need to be identical before infringement can occur, rather there must be a similarity so great as to create a likelihood of confusion to a reasonable man.

ii The court will consider how widely known and recognized the plaintiff's infringed mark is? And what strength does the plaintiff's mark carry?

iii There must be evidence that the defendants mark caused confusion

iv The location of the business of the plaintiff and defendant and how careful consumers might be when considering both businesses. Is a consumer in the marketplace likely to be confused by similar marks?

v The court will consider the commercial value of the infringed mark and how it is likely to affect the brand of the plaintiff.

vi The court will also consider the intention of the defendant because the defendant could intentionally copy the plaintiff's mark to divert their business. The court will consider if the defendant was aware of the mark before infringing on it.

This test for determining an infringement of trademark was enunciated in the Supreme Court case of *Ferodo Limited v Ibeto Industries Limited*[15] where the

[15] *2004 LPELR.*

plaintiff, an English company are the manufacturers of FERODO brand of brake linings for motor vehicles and it is sold in cardboard packages. They claimed in their suit that they had been marketing the product in Nigeria for 10 years preceding the suit. The defendant is a Nigerian company that manufactures brake lines in the brand of UNION SUPA brake lines. The claim by the plaintiff was that the packaging of the defendant's product was so similar to theirs, thereby constituting an infringement to their registered trademark. It was observed that the defendant's cardboard package was painted in red, black and white combination so closely resembling that of FERODO cardboard packaging. The defendant in their defence stated that their design box was not distinctive to the plaintiff alone but that the colour combination was traditional to the trade of brake linings. They also denied ever using the plaintiff's mark to pass off their product.

The trial judge held that the defendant was far off the plaintiffs FERODO and does not in any way resemble the plaintiff's mark and thereby found that there was no infringement. The matter was taken to the Court of Appeal, which also affirmed the decision of the trial judge stating that it is wrong to take two marks side by side to determine whether they are identical but rather the true test is whether a person who sees it or has seen the mark is likely to confuse it with an existing one, as to confuse and create the impression that the new one trademark is same as the existing one.

The Appellant still not satisfied with the judgment further appealed to the Supreme Court where it was held in a leading judgment by Justice Dahiru Musdapher, JSC that the appellants had not discharged the burden of proof placed on them by procedural law after dealing with the exhibits brought forward, the appeal lacked merits and that the appellant cannot succeed because there are clear differences between the two trademarks. The Supreme Court subsequently dismissed the appeal.

Where a trademark has been infringed upon, the owner has several options available to enforce his rights. According to the provision of the Evidence Act, the burden of proof lies on the plaintiff to prove that the trademark of the defendant is an infringement of its own. One of the processes of registering a trademark is that it must be published in the journal so that opposition to the registration of a mark similar to it can be raised timeously, within 2 months after the publication.

The owner of a trademark who wishes to enforce its rights can explore the following options, but must do so timeously and aggressively. Firstly, the proprietor of the mark can file for opposition within 60 days of the publication in the trademark journal against the registration of a similar or identical mark, which is likely to cause confusion. This can be done by filing a Notice of Opposition and statutory declaration; the responding

party will file a counter statement and the matter will be determined at a hearing before the Registrar.

Where the owner of a mark is aware of a likely infringement on its mark, the owner can apply to the court for a grant of search and seize orders. It gives the owner the right to raid the premises of the infringer without notice to seize all infringing goods found. The owner can collaborate with law enforcement agencies, NAFDAC or Nigerian Customs.The owner can also enforce its rights by writing a cease and desist letter to the infringer. The owner can also enforce its trademark by alerting the general public and consumers through the newspaper and various media forums, on who the real owners of the trademark are and how to recognize their genuine products.

The Trade Marks Act grants a proprietor a civil right of action to sue for any infringement made on its mark. The court that has the right to adjudicate on infringement related matters is the Federal High Court of Nigeria. The following remedies may be sought by and be granted to the proprietor whose trademark is infringed:

i The owner can seek injunctive reliefs restraining the infringement and unauthorized use or sale of the trademarked items. Before this remedy is granted the court will consider the followings:
   a) whether the plaintiff can succeed based on the merit of the case;
   b) whether the plaintiff has suffered irreparable damage;
   c) How the injunction will affect both the plaintiff and the defendant; and
   d) if it is in the interest of the public to grant the injunction.

ii The proprietor can seek for damages for compensation on the loss suffered resulting from the infringement and passing off based on the actions of the infringing party, where the violation of their mark impacted negatively on the reputation of the plaintiff's business. For damage to be awarded, the burden of proof is on the plaintiff to prove that harm was caused by the infringement that led to consumers' confusion and deception and sales were diverted from the plaintiff's business. This can be backed by direct evidence of a consumer, testimony from the public or by circumstantial evidence.

iii The owner of the mark can seek an Anton Pillar Court order, which is also an injunctive relief made by an ex-parte application, to enable access into the defendants' premises for the purpose of taking possession of the infringed products or documents.

iv Another remedy granted to a plaintiff in an infringement matter is an order of account of profit to recoup all the profits made by the infringer from the unauthorized use of the trademark, especially in a commercialized industry where the defendant has made profits from

using the trademark of the plaintiff to pass off products and the plaintiff suffered a gross loss of profit as a result of that act.

## 3. Registration of a Trade Mark in Nigeria

The requirements for an application to register a trademark include details of the applicant/proprietor – including name, nationality, prints or a representation of the proposed trademark, class and specification of goods or services for which the trademark is to be registered; authorisation of Agent (Power of Attorney) signed by the applicant and where the applicant is a body corporate, by an officer duly authorized to do so. No legislation or notarization of this document is required.

It is advisable that searches be conducted to determine the availability of a trade mark before any application for registration is made. On receiving the application, the Registrar will issue an Acknowledgement Form confirming the receipt of the application by the Registry and the temporary number allocated to the trademark, pending registration and allocation of a permanent registration number.

The Trademarks Registrar will conduct an examination of the Trademarks Register to confirm that there is no earlier conflicting trademark which may preclude the registration of the mark. The Registrar's examination shall also extend to whether the mark is distinctive, deceptive, scandalous or in any way disallowed as containing names of single chemical substance, prohibited words, Arms of Nigeria or state, national flag, 'President', 'Governor' , Arms of City, Town, Place, Society, Names of living persons or persons recently dead except with permission.

If the Registrar is satisfied that the mark may be registered, an Acceptance Form will be issued. This is usually within 3 weeks after the issuance of the Acknowledgment. Otherwise, a Refusal Form will be issued. After acceptance, the application will be published in the Trademarks Journal to notify any interested party who may have an objection to the registration. Publication of mark in trademark journal is usually within 12 -18 months after the issuance of Letter of Acceptance.

Any interested party may file an objection by giving a notice of opposition within two months of the publication in the trademark journal. It is important to note that this period is non-extendible. The opposition hearing takes place before the Registrar, who shall after hearing the parties and considering evidence take a decision. The decision of the registrar in this regard, may be appealed to the Federal High Court.

Where there are no third party objections to the registration of a trademark within the opposition period or where the objections are resolved in favour of the applicant, the Registrar shall issue the applicant with a Certificate of Registration. The registration of a trademark takes effect retrospectively from

the application/filing date. Thus, although an applicant's rights start upon registration, same take effect retrospectively. The registration of a trade mark shall be for a period of seven years but may be renewed from time to time for a period of fourteen years.

Trademarks are registered for an initial period of seven years from the date of the application for registration. After this, they can be renewed for subsequent periods of fourteen years.

The Act allows for assignment and transmission of registered trademarks either in connection with the goodwill of a business or not. It is also assignable and transmissible in respect either of all the goods in respect of which it is registered or was registered, as the case may be, or of some of those goods. Every assignment of a registered mark must be recorded in the Trademark Registry.

**4. Application of International Conventions**

Though Nigeria is a signatory to the Paris Convention, the executive order which will designate the relevant convention countries to which claims for priority are applicable has not been made. Consequently, the Trademarks Registry does not recognize trade mark applications claiming priority from other countries.

An International Registration (frequently referred to as an IR) is the designation for a registration secured under the Madrid System. Following the Brexit transition period, as with the conversion of the UK portion of an EUTM into a separate and independent UK registration, the UKIPO will automatically and free of charge convert the UK portion of a IR designating the EU into a separate and independent UK trademark registration with the same filing date as the EUTM designated under an IR. For EUTM applications that are still pending as of January 1, 2021, the trademark applicant will have nine months from December 31, 2020 to file a new and separate UK trademark application that will take the same filing date.

As trademark rights generally are geographic in scope, it is possible for a trademark to be registered in different jurisdictions by different owners. Consequently, trademark owners should consider obtaining protection for their marks in all jurisdictions or regions of interest in order to secure their rights in the marks and prevent others from obtaining them. In a few jurisdictions, there can be more than one registration for a trademark, with each registration covering a different geographical region of the jurisdiction.

If you are planning on using your trademark in several countries, it is a good idea to use the international application system known as the Madrid Protocol. By filing one application you can apply for trademark registration in many countries at the same time.

The Madrid Protocol system is administered by the World Intellectual Property Organization (WIPO) in Geneva. Individuals or companies in any of the

member countries of the Madrid Protocol may apply for registration of a trademark in other member countries on the basis of a national application or registration of a trademark.

You file an international application to WIPO via the Madrid e-Filing service on the WIPO website. The Industrial Property Office will validate the application you have filed to WIPO before it is processed and distributed to those countries you have selected. Each country will then assess whether it is possible to register the mark in that country.

Processing time in each country may vary, but is not normally longer than 18 months. If the trademark is not rejected within this period, it is considered registered in the country concerned.

It is easier and cheaper to submit one international application under the Madrid Protocol than to apply in each country separately. You may broaden your international registration to include additional countries at a later date.

Renewals and other changes to a registered international trademark (via the Madrid Protocol) must be made directly to WIPO. Only the initial examination takes place at NIPO. Other changes may be, for example, transfers and name changes.

Like other intellectual property rights, trademark rights are, as a whole, considered to be distinct in each country or jurisdiction in which they are obtained. Each jurisdiction is entitled to recognize and protect trademark rights in a manner that fulfills its policy goals. Although the term 'international trademark rights' refers to a set of trademark rights across a number of jurisdictions, the existence and enforceability of these rights are unique to each jurisdiction and, generally, not interdependent.

Notwithstanding differences in recognizing and enforcing trademark rights, many jurisdictions have agreed upon common procedures or protocols for filing trademark applications. The EUTM system offers trademark owners a unified system of protection throughout the EU with the filing of a single application. If successful, this one application results in an EUTM registration, which is recognized in all the EU member states. As new member states are added to the EU, the coverage of existing EUTMs automatically expands, without any action or payment required of the trademark owner; the protection of an extended EUTM in a new member state, however, dates from the admission date of the member state to the EU rather than the filing date of the EUTM. The initial registration period is 10 years from the date of filing of the EUTM application. The registering authority is the European Union Intellectual Property Office (formerly the Office for Harmonization in the Internal Market), in Alicante, Spain.

An EUTM registration may be beneficial for several reasons, including: it is a time-saving and cost-effective procedure; having to maintain just a single trademark registration results in administrative efficiencies; and, perhaps most important, and; genuine use in one EU member state may be sufficient to protect an EUTM in all member states from cancellation on the ground of non-use. There is a risk that if a ground for rejection exists in just one of the member states, then the mark cannot be registered as an EUTM, although conversion to national applications is possible in some cases.

Following the end of the Brexit transition period on 31 December 2020, effective 1 January 2021, the UK Intellectual Property Office (UKIPO) will automatically and free of charge convert the UK portion of a registered EUTM into a separate and independent UK trademark registration with the same filing date as the EUTM. For EUTM applications that are still pending as of January 1, 2021, the trademark applicant will have nine months from 31December 2020 to file a new and separate UK trademark application that will take the same filing date as the EUTM. The EUTM will no longer extend trademark protection to the UK after 31 December 2020.

The Paris Convention for the Protection of Industrial Property is an international treaty concerning the protection of intellectual property. It has been adopted by 177 countries. The countries to which the Paris Convention applies constitute the Paris Union. The main principle of the Convention is that nationals of any country of the Union are afforded the same advantages with respect to intellectual property protection and enforcement that the national law of any country of the Union grants its citizens.

The right of priority under the Paris Convention provides that, on the basis of a trademark application filed in one of the countries in the Paris Union, the applicant may, within six months of that filing, apply for protection in any of the other countries in the Union. These subsequent applications will be regarded as if they had been filed on the same day as the first application; that is, they have priority over applications for the same mark filed by others during that six-month period.

Some jurisdictions allow for multiple and partial priority applications, which mean that priority can be claimed from more than one basic application (multiple priority application) or for only part of the basic application (partial priority application). The representation(s) of the mark(s) must be identical to the trademark that is the subject of the basic application(s), and the list of goods and services must not exceed the scope of the goods and/or services defined in the basic application(s). In most countries, an application may include the list of goods and/or services both within and outside the scope of the basic application(s) and be filed as one. Some countries, however, require that an application be filed strictly within the initial scope.

The Madrid System is a system for the international registration of marks. It provides a means to simultaneously seek protection for a trademark in a large number of jurisdictions. The system is governed by two separate international treaties, the Madrid Agreement (Agreement) and the Madrid Protocol (Protocol). Under the Agreement, nationals of any signatory may secure protection of their trademark, registered in the country of origin, in all other states that are parties to the Agreement. Under the Protocol, nationals of any signatory may secure protection in countries and jurisdictions that are contracting parties to the Protocol based on a pending application or registration in the country or jurisdiction of origin.

Both the Agreement and the Protocol are administered by the International Bureau of the World Intellectual Property Organization (WIPO). As of 1 September 2008, for countries bound by both the Agreement and the Protocol, only the provisions of the Protocol apply. Consequently, from that date, International Registrations are governed exclusively by the Protocol (1) in all jurisdictions that are party only to the Protocol and (2) in those jurisdictions that are party to both the Protocol and the Agreement. The Agreement governs only those jurisdictions that are bound solely by the Agreement.

**5. African Regional Intellectual Property Organisations**

The African Regional Intellectual Property Organization (ARIPO) was formed by members of certain English-speaking African nations. The organization enables applicants to file a single application for the protection of a trademark in designated jurisdictions that are contracting states to the Lusaka Agreement, which created ARIPO.

The contracting states are Botswana, Eswatini (formerly Swaziland), Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, the Sudan, United Republic of Tanzania, Uganda, Zambia, and Zimbabwe. Nigeria is yet to be a member.

The African Intellectual Property Organization (French: *Organisation Africaine de la Propriété Intellectuelle* (OAPI)) was formed by members of certain French-speaking African nations. The organization enables applicants to file a single application for protection of a trademark in designated jurisdictions that are contracting parties to the Bangui Agreement, which created OAPI. The contracting parties are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Republic of the Congo, Côte d'Ivoire (Ivory Coast), Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, the Niger, Senegal, and Togo.

For an applicant wishing to file a trademark application in multiple jurisdictions, filing an application for an International Registration may have advantages over filing individual national applications. An International Registration allows trademark owners to register their trademarks in multiple jurisdictions (contracting parties) with a single, uniform application filed

through a centralized filing system administered by the WIPO International Bureau. WIPO checks formal requirements, including the accuracy of the goods and services specification and the relevant fees payment, and directs the International Registration to the designated jurisdictions.

The intellectual property office of each designated country has 12 or 18 months (under the Madrid Protocol) to grant or refuse protection under the International Registration and to communicate its decision to the trademark owner. Fixed examination periods make the application examination process predictable and, in some cases, shorter than examination by national trademark offices. International Registrations can be subsequently extended to countries not originally designated. International Registrations also may be renewed in all designated countries with one electronic filing through the Madrid System. Because there can be significant downsides to filing an International Registration, for example, the dependence of the International Registration on the status of the basic national application or registration for a limited period, trademark owners should consult with trademark counsel for more information on International Registrations before filing under the Madrid System.

International registrations have a five-year dependency period, within which they depend on a national basic application or registration. If the national application or registration lapses within a period of five years following the date of the International Registration; or as a result of an action begun before the expiration of the five-year period, the protection resulting from the International Registration may no longer be invoked. Despite the dependency, the holder is vested with the right to transform its International Registration into respective national applications within three months from the date on which the International Registration was cancelled, thus benefiting from the IR date and the priority date, if applicable.

The holder of an International Registration can subsequently designate additional jurisdictions that are contracting parties to the Madrid Agreement or the Madrid Protocol to its existing International Registration. In that case, the term of protection of a subsequent designation is not an independent 10-year period, but coincides with the registration date of the International Registration.

The Nice Classification is an international system for classifying goods and services administered by WIPO. It was established by the Nice Agreement.

Where a jurisdiction is party to the Nice Agreement, it is bound to use the Nice Classification in connection with the registration of marks. Currently, the Nice Classification consists of 45 classes of goods and services (Classes 1–34 cover goods and Classes 35–45 cover services). It is regularly revised and updated to remove inconsistencies and to add new entries. The list of goods and services is organized in class order and in alphabetical order, allowing the applicant to search for and properly classify goods and services.

Each class comprises a class heading, an explanatory note, and a list of specific entries. The class headings describe the nature of the goods or services in the class. The explanatory note explains which goods or services fall under the class heading. The list of goods or services is grouped according to characteristics they share, within the meaning of the class heading.

Although some jurisdictions interpret a class heading to identify all goods or services in the class, other jurisdictions interpret a class heading to identify only those goods and services included in a literal reading of the class heading.

**6. Conclusion**

This paper focused on evaluating the economic dynamics of Nigerian trademarks regime. The scope and economic dynamics of Nigerian Trademark regime was evaluated. All hands therefore should be on desk to move Trademark regime in Nigeria, forward because it will help boast employments and enhance Nigerian economy.

The Trademark Registry because of the numerous applications received daily can sometimes make mistakes in the process of registering trademarks, thereby leading to double applications or a situation where the Registrar accepts a mark identical to an existing trademark. As a result of this, it is important to emphasize that trademark goes beyond registering the mark and obtaining the Certificate of Registration; the proprietor must be alert and be on the lookout for any possible infringement likely to occur on its mark. Where an infringement occurs, the owner of the mark shall have a right to enforce its mark and may be entitled to the remedies or reliefs stated above.

The economic dynamics of Nigerian trademarks regime makes it a necessity why Nigerian Trademark laws and regulations should also focus more on types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular trademarks, the Act should focus more on, Collective trademarks, Well-known marks and Certification Marks.

A robust and efficient Nigerian Trademarks regime will play substantial roles in improving Nigerian economy. Furthermore, robust Trademarks regime will discourage infringement of Trade Mark thus providing economic benefits to Trademarks owners and improving Nigerian economic status.

Nigerian Trademark should have adequate protection on types of trademarks with real effects in commerce that go beyond merely generating income for the Trademark Registry. Thus, apart from regular Trademarks, the Act should focus more on, Collective trademarks, Well-known marks and Certification Marks. The paper recommends that the National Assembly should amend the Trademark Act to make the Act more effective and to make Nigeria an economic destination for foreign Trademark proprietors. The Act must be amended to give effect to the country's international obligations such as

protection of well-known marks, collective marks, Paris Convention applications and recognition of priority rights. The Madrid Agreement and Protocol should also be ratified and domesticated so as to make it easier for foreign trade mark owners to register their marks and do business in Nigeria.

# ESSENTIAL SERVICE NOTION AND ITS LEGAL IMPLICATIONS UNDER NIGERIAN LABOUR LAW

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**Abstract**

*The essential services provision of the Trade Dispute Act 2004 appears to have restricted the ability of Nigerian workers to exercise fundamental rights pertaining to work-related issues, including freedom of expression and freedom of association. Consequently, Nigerian workers appear to have become susceptible to the whims and caprices of their employers, thereby infringing upon specific fundamental rights. This paper undertakes a critical examination of the notion of essential services as it pertains to labour law in Nigeria. In doing so, it questions underlying assumptions and investigates the legal ramifications, delineating intricate aspects and possible drawbacks. The paper contends, through the use of a doctrinal design, that the existing categorisation of essential services might be excessively general and susceptible to abuse. Although this designation is meant to protect the public interest, it frequently results in limitations on workers' rights, such as the right to engage in strikes and the balance of power between employers and employees. By analysing Nigerian legislation and labour laws in other pertinent jurisdictions through the lens of the Nigerian Labour Act and other pertinent provisions, the primary objective is to disprove the concept of essential service. In its conclusion, the paper recommends that policymakers consider implementing a more all-encompassing legal structure that protects the fundamental rights of employees and promotes enhanced reciprocal rights between employees and employers. Through legal reforms and dialogue, it is possible to achieve a more just and equitable balance between the needs of essential services and the rights of workers in Nigeria and beyond.*

**Keywords:** labour law, industrial law, essential service, rights of workers, Nigerian labour law

## 1. Introduction

All human beings have inalienable rights as provided by the constitution. These rights are God given rights which ought not to be denied except in critical situations. Some of these rights are right to life, freedom of expression, freedom of association to mention but a few. As a consequence of their employment and services rendered, certain individuals are unable to exercise certain fundamental rights. These individuals are referred to as essential service workers. Essential services are those that society depends on for fundamental functionality and security. Health care, law enforcement, emergency response, utilities (such as

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water and electricity), transportation, food supply, and public health functions are often included.[1]

## 2. Conceptualisation of Essential Services

Essential services may be defined differently in various countries, regions, or contexts. During a public health emergency such as the COVID-19 pandemic, for instance, it may be deemed necessary to provide supplementary services such as supply stores, pharmacies, and delivery networks.

Essential services means services, by whomsoever rendered, and whether rendered to the Government or to any other person, the interruption of which would endanger the life, health or personal safety of the whole or part of the population.[2]

These are essential services for maintaining public health, safety, and welfare as well as the smooth operation of society. Healthcare, public transit, emergency services (fire, police, ambulance), and utilities (water, electricity) are typical examples.

The primary objective of essential services is to prevent the loss of life, as their interruption would jeopardise the safety and well-being of the entire or a portion of the population. Essential services has evolved through the years. Its development can be traced through various phases, including ancient civilizations, the Middle Ages, the Industrial Revolution, urbanization, World Wars, post-war periods, regulation and privatization, and the digital revolution[3]. All these periods witnessed the display of certain sectors of the economy and their importance to the entire wellbeing.

Essential services are critical for daily life, require high reliability, and are typically regulated and protected to ensure accessibility, affordability, and resilience against disruptions. Examples of essential services include healthcare, public safety, utilities, transportation, communication, and sanitation. The COVID-19 pandemic underscored the critical nature of essential services, particularly healthcare, logistics, and communications. Governments worldwide implemented measures to protect these services and ensure their continuity during lockdowns and restrictions[4]. Essential services remain a cornerstone of

[1] Timo Knäbe and Carlos R Carrión-Crespo, 'The Scope Of Essential Services: Laws, Regulations and Practices,'(2019) International Labour Office, Sectoral Policies Department (Working paper : WP 334)
<International Labour Organisation https://www.ilo.org>media accessed 30 July 2024.

[2] Digest of the Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO 5 (revised) edition (Geneva: International Labour Office, 2006) p 116 para 564.

[3] IOE International Policy Paper on Essential Services.

[4] Essential health care service disruption due to COVID-19: Lessons for sustainability in Nigeria. Brazzaville: WHO Regional Office for Africa; 2022. Licence: CC BY-NC-SA

societal stability and development, reflecting the evolving needs of societies and the increasing complexity of urban and technological development.

Essential services are crucial for public safety, health, and welfare, especially during emergencies or pandemics. Labour rights, economics, public health, and emergency management often focus on essential services.[5]

Theories of Essential Services: Essential services theories are typically derived from economic, ethical, and legal frameworks. The following are the primary theories and perspectives on the concept of essential service-

Public Interest Theory - This theory posits that essential services are those that are essential for the well-being of society and serve the broader public interest.[6] Services such as healthcare, transportation, water, and power are classified as essential under this theory due to the potential negative impact on public health, safety, and social stability if they are disrupted. They are required for the protection of public health, safety, and welfare. The moral imperative of governments to guarantee the continuity of these services and the state's responsibility to regulate or provide these services in order to prevent disruption are all geared towards the interest of the public. Examples include police, fire departments, emergency medical services, and sanitation services.

Critical Infrastructure Theory - This theory concentrates on the notion that critical infrastructure, which encompasses systems and networks that are essential for national security and economic stability, includes essential services[7]. They are critical to economic stability and national security. They involve the interdependence of numerous sectors, such as telecommunications, water, and energy. These infrastructures are vulnerable to disruptions, including those caused by strikes, natural disasters, or cyber-attacks thus they are critical infrastructure. Examples include financial services, water supply, telecommunications, and power infrastructures.

Labour Relations Theory - The essential services concept in labour relations frequently involves the restriction of the right to strike in sectors that are considered to be of significant public welfare. This theory investigates the equilibrium between the necessity of ensuring uninterrupted services and the rights of workers, such as the right to strike. Defining specific industries as

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3.0 <https://iris.who.int/bitstream/handle/10665/363668/9789290234821-eng.pdf?sequence=3> accessed 31 July 2024.

[5] World Health Organisation, 'Maintaining Essential Health Services During Emergencies' <https://www.who.int/teams/primary-health-care/health-systems-resilience/essential-services-during-emergencies> accessed 30 July 2024.

[6] Grace Sharon and 3 others,' Depiction of Public Interest Theory Based on the Welfare Economic Concept on Indonesia Regulations (2022) 11(2) *Yustisia* 136.

[7] Jonathan Gordon, Critical Infrastructure Protection in Modern Society {2024} <https://industrialcyber.co/analysis/critical-infrastructure-protection-in-modern-society/> accessed 10 September 2024.

essential is important to restrict labour actions (such as strikes) that could endanger public health or safety[8] so as to create legal regimes in critical sectors that facilitate the resolution of labour disputes through arbitration rather than strikes. Examples include labour disputes involving healthcare personnel, public transportation workers, and teachers. Considering how the restriction of right to strike hampers the fundamental rights of the workers is very important.

Public Goods Economic Theory -This theory establishes a connection between the concept of public goods and essential services. Public goods are goods or services that are non-excludable and non-rival, meaning that they can be used by all without affecting the use of others. In accordance with this theory, essential services are public commodities that must be provided by the government or regulated entities to guarantee equal access,[9] non-excludability and non-rivalry (everyone benefits without exclusion), the justification for government intervention or regulation to ensure that these services are provided equitably.

The function of public funding in the preservation of these services is important. Examples include environmental protection services, public roads, fundamental education, and national defence.

Human Rights Theory - This theory posits that essential services are a fundamental human right. It maintains that access to specific services, including healthcare, sanitation, and education, is indispensable for the fulfilment of fundamental human rights, and such access should be guaranteed regardless of the circumstances.[10] There is a connection between the right to life, dignity, and well-being and essential services. The responsibilities of governments to guarantee universal access to these services, particularly for vulnerable populations, assure them of their access to human rights. Those workers are essential service workers.

### 3. Legal Framework of Essential Service

The Nigerian civil war of 1967-70 led to the enactment of revolutionary legislation on disputes in essential services.[11] The government aimed to end the war while preserving unity, as class action was seen as anti-government and unpatriotic. The Trade Disputes Emergency Decrees of 1968 and 1969 aimed to bring unions under strict control, circumscribing their freedom in the labor-

[8] Bernard Gernigon, Albert Odero and Horacin Guido, *ILO Principles Concerning the Right to Strike* (international Labour Office Ed. 2000, Switzerland) 24.

[9] RG Holcombe, Public Goods Theory and Public Policy In Narveson J Dimock S (eds) *Liberalism.* (*Springer, Dordrecht 2009)* https://doi.org/10.1007/978-94-015-9440-0_8

[10] United States Institute of Peace, 'Provisions of Essential Services'https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance/provision-esse accessed 10 September 2024.

[11] Taoy Fasoyin, 'Regulation of Trade Dispute in Essential service' (1981)36(1) Relations Industrielles/ Industrial Relations 207-222

management relationship. The economic factor was also significant, with rapid economic activity due to oil wealth and reconstruction programs after the war. The government established the Adebo Wages and Salaries Review Commission to ensure uninterrupted implementation of developments and improve wages and conditions of service. However, the commission's awards produced more strikes than demanded, leading to unexpected strikes in both public and private sectors.

The government was concerned about the activities of some poorly organized and poorly led unions who were unwilling to educate their followers on the need for constructiveness in presenting demands and recognizing the essentiality of services provided to the public.[12] This led to the announcement of a revolutionary National Labour Policy in December 1975, emphasizing the government's commitment to monitor and control trade union activities.

The Trade Disputes Decree (No 7) promulgated in 1976 delineated essential services, which could be deemed essential depending on how the service came to be rendered. The law provides legalistic conditions for any service in Nigeria to be regarded as essential, depending on the particular circumstances.

The Trade Dispute Essential Services Act in its interpretation section describes essential services as:

a) the public service of the Federation or of a State which shall for the purposes of this Act include service, in a civil capacity, of persons employed in the armed forces of the Federation or any part thereof and also of persons employed in an industry or undertaking (corporate or unincorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces of the Federation or any part thereof;

b) any service established, provided or maintained by the Government of the Federation or of a State, by a local government councillor any municipal or statutory authority, or by private enterprise -

(i) for, or in connection with, the supply of electricity, power or water, or of fuel of any kind;

(ii) for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications;

[12] Ibid.

(iii) for maintaining ports, harbours, docks or aerodromes, of for, or in connection
with, transportation of person, goods or livestock by road, rail, sea, river or air;

(iv) for, or in connection with, the burial of the -dead, hospitals, the treatment of the
sick, the prevention of disease, or any of the following public health matters, namely, sanitation, road-cleansing and the disposal of night-soil and rubbish;

(v) for dealing with outbreaks of fire;

(vi) for or in connection with teaching or the provision of educational services at primary, secondary or tertiary institutions;

*(c)* service in any capacity in any of the following organisations -

(i) the Central bank of Nigeria;

(ii) the Nigerian Security Printing and Minting Company Limited;

(iii) any body corporate licensed to carryon banking business under the Banks and Other Financial Institutions Act;

Section 48(1) of the Trade Disputes Act[13] defines essential service as 'any service mentioned in the First Schedule to this Act'. Paragraph 2 (c) of the first schedule to the Act listed the services that qualify as essential services to include; any service established, provided or maintained by the government of the federation or a state, by a local government council or any municipal or statutory authority or by private enterprise for maintaining ports, harbours, docks or aerodromes or for, or in connection with transportation of persons, goods or livestock's by road, rail, sea or river qualifies as essential service.

Above definitions of essential services appear too wide and cumbersome. Scholars[14] have concurred to this view by asserting that the definition of essential services under the Act covers a whole gamut of workers that when brought alongside the definition of essential services by the Freedom of Association Committee of the Governing Body of the ILO; 'the services the interruption of which would endanger the life, personal safety or health of the whole or part of the population' are essential services, they will seem ordinarily unnecessary to be in the list[15].

## 4. Problems with Essential Services

The services of essential service workers demand that they work to maintain tranquillity in the wider society at the expense of their exercise of their human

[13] Cap T8 LFN 2004

[14] BU Chukwuma, 'Legal Framework and Challenges of the Right to Strike in Nigeria,' (2019) 25(3) *Labour Law Review,* 112-128 accessed 14 July 2024.

[15] Ibid.

rights. Their freedom of association deprived from them denies them the right to strike and freedom of expression which deprives them of the fundamental right to express their demands to their employers are hampered. The ILO principles concerning the right to strike asserts that without autonomous, independent, representative employers and workers' organizations, tripartism's principle would be impaired, leading to prejudiced opportunities for social justice and the advancement of common welfare.[16] More so, the Trade Union (Amendment) Act provides that section 30(6) (a) of the Trade Unions (Amendment) Act[17] provides that; No person, Trade Union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless:

> the person, Trade Union or employer is not engaged in the provision of essential services Consequently, the aforementioned provisions of the Act prohibit individuals employed in the essential services sector from participating in strikes, and the consequence for doing so is a fine of N10,000, six months of imprisonment, or both.[18]

This provision clearly shows that the Nigerian employees in essential services are almost crippled as to their rights to strike or freedom of association to form trade unions and engage in collective bargaining.

Trade Dispute Essential Service Act[19] empowers the president to proscribe any trade Union or association that the president believes that its members in essential services have:

*(a)* been engaged in acts calculated to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service; or

*(b)* where applicable, wilfully failed to comply with the procedure specified in the Trade Disputes Act in relation to the reporting and settlement of trade disputes.

It is not in doubt that essential service providers are limited in the exercise of some of the fundamental rights. However because of the expedient services they offer they deserve to be given special option to ventilate their grievance anytime there is a dispute. This is in line with the provision of ILO's Committee on Freedom of Association as was cited in ILO's Principles Concerning the Right to Strike[20] where the Committee stated that a exclusion to strike in such situations should be 'accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take

[16] (n10)
[17] 2005
[18] Trade Dispute Act 2004, s42(1)
[19] (Trade Dispute (Essential) Services) Act s(1).
[20] (n10) 23.

part at every stage and in which the awards, once made, are fully and promptly implemented'[21]

The trade Union Amendment Act [22] provides that before resorting to a strike, the Act underscores the significance of resolving disputes through negotiation, conciliation, or arbitration. Also the Act prohibits strike during arbitration.[23] Labour Act section 46[24] also provides for arbitration and conciliation. The Trade Dispute Act also makes provision for appointment of a conciliator and reference to an Industrial arbitration Panel[25]in case of industrial dispute that involves essential workers.. It is not in doubt that the essential workers in Nigeria can only resort to arbitration to resolving industrial dispute that might emanate in labour matters.

The legal implication of the aforementioned is that the essential service workers are not entitled to freedom of association, which also includes the right to join trade unions and freedom of expression, under the provisions of Nigerian labour laws. They are subject to the vagaries and caprices of their employers solely because they are essential workers, and the laws seem to be ineffective in alleviating the adverse effects of the provisions. The situation in a wider sense may be referred4. to as muzzling the Ox where it threshes the grain. Thus where the Ox works let it not enjoy the rights and privileges that accrue to it.

**5. Essential Service Notion in other Jurisdictions**

In Africa, South Africa appears to be one of the countries with good labour relations laws.[26] South Africa like Nigeria is also an African country. The essential services are governed by Labour Relations Act (LRA) no 66 of 1995. The law is flexible that it does not classify all workers as essential service but reviews each sector that should be classified as essential. The constitution provides for workers right to strike[27] and collective bargaining.[28]

France has a robust Employment and Labour relation laws with right to strike and collective bargaining as fundamental components.[29] Nigeria is in economic

[21] Ibid.
[22] Trade Dispute Act 2004, s42(1)
[23] Ibid s8(g).
[24] Labour Act LFN 2004.
[25] The Trade Dispute Act, s18.
[26] Cindy Ross, 'How south African Labour Laws Compare to Other Developed Countries' *Art of Woman Magazine(*Johannesburg,2 May 2022) accessed 30 September 2024.
[27] The Constitution of the Republic of South Africa 1996, section 23(2) c
[28] Ibid, section 25.
[29] European Public Service Union.' The Right to Strike in the Public Sector <France' Contrat D' Edition Et De Publication> accessed 30 July 2024.

relation with France. She is the France leading trading partner in sub-saharan Africa and the four largest in Africa.[30]

The right to strike is a fundamental right in France, allowing workers to collectively withhold labor to defend their interests. The French labour code (Code du Travail) governs strike rules, including notification requirements, legal criteria for strikes, and protection against dismissal. [31] Collective bargaining in France is regulated by national and sectoral agreements, with levels of bargaining at national, sectoral, company, and social dialogue levels. Major trade unions, such as the *Confédération Générale du Travail* (CGT), *Confédération Française Démocratique du Travail* (CFDT), and Force Ouvrière (FO), are key actors in representing workers' interests in collective bargaining.[32] Since 2017, the French government has encouraged decentralization in collective bargaining[33].

## 5. Leeway and Judicial Responses to Essential Service Notion

The judiciary has expressed its perspective on the provision of essential services. In the case of *NAPPS and others v NUT*[34], the court declared that an individual has the right to establish or join any trade union of their choice in order to safeguard their interests without any restrictions. The court maintains that any action that is contrary to this is a violation of the constitutional right to freedom of association.[35]

The provisions of the law that workers do not have the right to strike appear to be upheld by the previous court decisions in the interpretation of essential services provisions under sections 41(1) of the Trade Dispute Act and Section 1(1) [36] of the Trade Dispute Essential Services Act. The court in *Aero Contractors v Nigeria Association of Aircraft Pilots and Engineers* stipulated the definition of essential services, including electricity, water supply, and hospital sectors. He cautions that a strike restriction may not be justifiable. The court differentiated between essential and non-essential services, such as television, binding in order to ensure clarity. Consequently, the court contradicts

[30] Ministe're De L'europe Et Des Affaires Estrangeres, 'France Diplomacy' <https://www.diplomatie.gouv.fr/en/country-files/nigeria/france-and-nigeria-65149/#:~:text=Nigeria%20is%20France's%20leading%20trading,deficit%20of%20%E2%82%AC2.3%20billion.> accessed 30 July 2024.
[31] (n29)
[32] Ibid
[33] Ibid.
[34] 2012] 28 NLLR (Pt. 81) 483 at 489
[35] The Constitution of the Federal Republic of Nigeria as amended
[36] Trade Union Amendment Act 2005, section 8(c)

the provisions of the law regarding essential services having established between essential service and non-essential service.[37]

In a more recent case,[38] the National Industrial Court vehemently voids - sections 7(1)(b)(vi) & 8(b) of the Trade Dispute Essential Services Act. The court maintains that collective agreements are no longer gentlemen agreements, but now enforceable in Court. The National Industrial Court in Nigeria has declared that teachers in Enugu State public primary schools, members of the National Union of Teachers (NUT), are not in essential services as classified by sections 7(6)(a) and 8(2) of the Trade Dispute Essential Services Act (TDESA) and section 48(1)(b) of the Trade Disputes Act. This is due to the Constitution and the ILO Convention, which prohibit strikes in essential services.

By virtue of section 40 which provides for freedom of association and section 45(1)(a)&(b) provides for restriction on derogation of fundamental rights and other provisions. Section 254C-(1)(f)-(h)&(2) of the Constitution and all other laws on that behalf, as well as the ILO Convention, especially, clearly shows that the public primary school teachers in Enugu state are entitled to exercise their labour rights, including the right to strike, through the NUT, provided that they comply with the issuance and service of the requisite notices. The court also ruled that the conducts of the Enugu State Government to the public primary school teachers were clearly discriminatory, unfair, and not in tune with international best practices in labour relations, contrary to provisions of the Constitution and the ILO Convention. The court dismissed the case for lack of merit and ordered parties to go back to the negotiation table in line with SS 14&20 of the National Industrial Court Act and the ILO Convention.

## 6. Conclusion and Recommendations

Presently, the above decision has led to rest the previous position of essential services as provided by Nigerian labour laws as collective agreements are no longer gentleman's agreement but they are now enforceable as provided by the Constitution. The implication of this decision is that policy makers take into consideration the possibility of putting into effect a legislative framework that is more comprehensive, safeguards the fundamental rights of workers, and encourages the development of greater reciprocal rights between workers and employers.

It is hereby recommended that Nigeria should work towards making the right to strike a fundamental rights like nations like South Africa and France to give the essential service workers in particular and all workers in general exercise their fundamental rights as other citizens even as they work.

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[37] *Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners* (NAGGMDP)

[38] The case was decided in March 2022. *Government of Enugu State v NUT* NICN/EN/012022.

The legislative arm of government should promulgate more flexible laws regarding essential services, ensuring that only the services that are truly essential are included, rather than a broad category of services that encompasses nearly all Nigerian workers. They can borrow a leaf from South Africa.

Furthermore, it is essential that the government create supplementary channels for essential service workers to express themselves and communicate their grievances in order to inform them of their concerns and develop solutions.

In addition, it is imperative that essential service workers be motivated to work by offering them substantial financial incentives, promotions, and awards, rather than suppressing their fundamental rights to work.

Also, there should be protection for workers in essential services in the event of harm, as well as enough retirement and insurance benefits, in order to entice and retain workers in essential services.

A holistic protection of Nigerian workers to ensure that they can experience the dignity of their work and to minimise the frequent occurrence of strikes and confrontations between the government and workers, is an imperative.

It is feasible to establish a more just and equitable balance between the requirements of basic services and the rights of workers in Nigeria and worldwide through the implementation of policies garnered through concerned stakeholders' agreement.

# TRADE AND INVESTMENT LAW AS CATALYSTS FOR ECONOMIC GROWTH AND NATIONAL DEVELOPMENT IN NIGERIA

Winnerman Odinakachi Ugwuezi[*] and Festus Okechukwu Ukwueze[**]

Abstract

*Trade and investment are pivotal drivers of economic growth in any nation. The hallmark of a country's development is measured by the gross domestic product (GDP), thus affects the country's national development. In modern times, commercial activities or trade and investment have taken several dimensions, particularly with the advent of Electronic Commerce models, which have made business more accessible and robust. Trade agreements such as free trade agreements (FTA) and regional trade agreements (RFA) are instrumental in reducing trade barriers and promoting economic growth. Through foreign direct investment, cross-border trade, and agreements, countries have led to sustained growth of countries. Recourse is further made by analysing and appreciating the result of trade and investment and its consequent interrelationship with selected countries of the world as points of reference. China in the international market has made inroads in the world in recent times, especially in Africa. International trade favours the more advanced countries based on their technological know-how. Most developing countries export more of primary products. Nigeria, as a developing nation, is a key player in international trade, with its primary income coming from crude oil exports. Despite its abundant resources, the impact on the lives of its citizens has been limited. This can be attributed to Nigeria's challenging economic environment, characterized by political instability, poor government policies, and inadequate implementation of existing laws. The paper offers recommendations for policymakers and legal practitioners to enhance the role of trade and investment law in promoting national development. It emphasizes the need for greater transparency, inclusivity, and flexibility in trade and investment agreements to ensure they effectively support economic growth and development goals.*

**Keywords:** trade law; investment law, economic growth; national development; Nigeria

## 1. Introduction

Trade and investment laws are vital tools for fostering economic growth and national development. In the context of Nigeria, these laws play a crucial role in shaping the economic landscape, attracting foreign direct investment (FDI), facilitating trade, and promoting a competitive business environment. Nigeria, as Africa's largest economy and most populous country, has significant potential

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for growth and development. However, realizing this potential requires a robust legal framework that supports and regulates economic activities.

Nigeria's trade and investment policies have evolved over the years, reflecting the country's commitment to integrating into the global economy and creating an enabling environment for business. The Nigerian Investment Promotion Commission (NIPC) Act, the Federal Competition and Consumer Protection Act, and various bilateral and multilateral trade agreements are examples of legal instruments designed to boost economic activities.

Despite these efforts, Nigeria faces numerous challenges, including infrastructure deficits, regulatory uncertainty, and security concerns. Addressing these issues through effective trade and investment laws is essential for creating a stable and attractive environment for investors. By improving legal certainty, protecting investor rights, and promoting fair competition, Nigeria can enhance its economic prospects and achieve sustainable development.

This paper explores how trade and investment law can serve as a catalyst for economic growth and national development in Nigeria. It examines the existing legal framework, the impact of these laws on different sectors, and the challenges that need to be addressed to maximize their benefits. Through a comprehensive analysis, the paper aims to provide insights into the critical role of trade and investment laws in shaping Nigeria's economic future.

## 2. Historical Development of Trade and Investment Laws in Nigeria

The development of trade and investment laws in Nigeria began under British colonial rule (1861-1960), where the legal framework was largely influenced by English common law. Key legislations during this period included the Companies Ordinance of 1922 and the Banking Ordinance of 1952, which regulated company formation and banking activities. After gaining independence in 1960, Nigeria started crafting its own trade policies, leading to the enactment of the Companies Decree of 1968 and the Nigerian Enterprises Promotion Decrees of 1972 and 1977, aimed at increasing Nigerian participation in the economy.[1]

The 1970s oil boom brought significant revenue but also economic challenges, prompting regulatory measures like the Exchange Control Act of 1962 and the Nigerian Investment Promotion Decree of 1977. The mid-1980s saw the introduction of the Structural Adjustment Program (SAP) to liberalize the economy. [2] The 1990s marked a significant shift towards economic liberalization, with the Nigerian Investment Promotion Commission (NIPC) Act

[1] Okonjo-Iweala Ngozi, *Reforming the Unreformable: Lessons from Nigeria* (The MIT Press, 2012).

[2] Aina Olakunle, 'Legal and Regulatory Framework of Investment in Nigeria: The Past, Present and Future' (2006) 4(1) *Journal of Business Law and Ethics* 23-34.

of 1995 and the Foreign Exchange Act of 1995 facilitating foreign investment and easing restrictions on foreign exchange.

In the 2000s and beyond, Nigeria continued to modernize its trade and investment laws to attract foreign direct investment and align with global standards. Notable legislations included the Companies and Allied Matters Act (CAMA) of 2020 and the Investment and Securities Act of 2007. Recent initiatives, such as the Presidential Enabling Business Environment Council (PEBEC) and the Finance Acts (2019-2022), aim to improve the business environment and diversify the economy beyond oil, focusing on sectors like agriculture, technology, and manufacturing. These developments reflect Nigeria's ongoing efforts to create a conducive environment for economic growth and sustainable development.[3]

## 3. Overview of Nigeria's Trade and Investment Legal Framework

Nigeria's trade and investment legal framework is designed to create a conducive environment for both domestic and foreign investors, with laws, regulations, and institutions that foster trade, attract investment, and ensure international compliance.

The Companies and Allied Matters Act (CAMA) 2020 governs company formation, operation, and corporate governance, including provisions for foreign companies on registration and local law compliance. The Nigerian Investment Promotion Commission (NIPC) Act 1995 establishes the NIPC, responsible for investment promotion, granting incentives, and supporting investors.[4]

The Investment and Securities Act (ISA) 2007 regulates Nigeria's capital market, ensuring transparency and investor protection. It also oversees mergers and acquisitions to maintain fair competition.[5] The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 grants the Central Bank of Nigeria (CBN) authority to monitor foreign exchange transactions and regulate certain activities.

The Nigerian Export Promotion Council (NEPC) Act supports the development of Nigeria's export trade, offering incentives like tax reliefs and grants to encourage non-oil exports.

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[3] Olufemi Aluko, *Nigerian Law: The Legal Framework of Business Operations* (Spectrum Books, 2003).

[4] Franklin Chinagorom Ogbu, 'Investment Framework in Nigeria' (SSRN, 6 Feb 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4703595> accessed 25 May 2024.

[5] Chike Obianwu, 'Why the Central Bank is Legally Wrong on Dollarisation' (Templers, August 2015) <https://www.templars-law.com/app/uploads/2015/08/Why-the-Central-Bank-is-Legally-Wrong-on-Dollarisation.pdf> accessed 25 May 2024.

Key regulatory bodies include the NIPC, which facilitates investment and negotiates investment treaties; the Securities and Exchange Commission (SEC), which ensures fair capital market practices; the CBN, which supervises the banking sector and regulates foreign exchange operations; and the Nigerian Customs Service, which enforces trade policies and facilitates international trade.

This framework highlights Nigeria's commitment to fostering a dynamic and investor-friendly economy aligned with global trade and investment standards.

Bilateral and multilateral trade agreements like ECOWAS (Economic Community of West African States) and AfCFTA (African Continental Free Trade Area) play pivotal roles in promoting economic cooperation and growth in Africa. ECOWAS, established in 1975, aims to enhance economic integration among its 15 West African member states by creating a free trade area, customs union, and single market. This regional focus facilitates the removal of trade barriers, increases intra-regional trade, and promotes economic activities, thereby contributing to political stability and economic growth in the region.[6]

AfCFTA, operational since January 2021, seeks to create a single continental market for goods and services among 54 African Union nations. It aims to eliminate tariffs on 90% of goods, significantly boosting intra-African trade, encouraging economic diversification, and attracting foreign direct investment. While both ECOWAS and AfCFTA aim to enhance trade and economic development, AfCFTA's broader scope encompasses the entire continent, offering greater potential for economic benefits. However, both agreements face challenges such as infrastructure deficits, political instability, and the need for harmonized policies and capacity building to fully realize their potential.

## 4. Foreign Direct Investment (FDI) in Nigeria

The Nigerian Investment Promotion Commission Act of 1995 (as amended)[7] and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act of 1995 (as amended) are the primary laws regulating foreign investments in Nigeria, particularly on grounds of national security and public order.

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[6] Aregbeshola Rafiu Adewale and Osarumwense Yvonne Uwakata, 'The Impact of Multilateral Trade Agreements on Intra-Regional Trade: The Case of the Economic Community of West African States (ECOWAS)' (2023) 12(2) *Journal of African Union Studies* 121-143 <https://www.researchgate.net/publication/373041703_The_Impact_of_Multilateral_Trade_Agreements_on_Intra-Regional_Trade_The_Case_of_the_Economic_Community_of_West_African_States_ECOWAS> accessed 25 May 2024.

[7] Mary-cynthia Okundaye, 'Foreign Direct Investments in Nigeria' (OAL, 18 November 2022) < https://oal.law/foreign-direct-investments-in-nigeria/> accessed 22 May 2024.

The role of foreign direct investment (FDI) in economic growth remains a topic of debate. While some studies argue that FDI significantly contributes to economic[8] development, others contend that its impact is modest. Nevertheless, the importance of FDI in any economy cannot be overstated.[9] It involves investments by corporate entities or individuals from a foreign country in establishing businesses or acquiring assets in another country.[10] FDI is a vital channel for transferring technology, capital, management expertise, and entrepreneurship across borders.[11]

Nigeria ranks as the third-largest host for FDI in Africa, following Egypt and Ethiopia. Major investing countries in Nigeria include the United States, the United Kingdom, China, the Netherlands, and France.[12] However, FDI inflows into Nigeria dropped by 21% in 2017, reaching $3.5 billion. This decline was attributed to factors such as political instability, a lack of transparency, widespread corruption, and poor infrastructure quality.[13]

Foreign Direct Investment (FDI) in Nigeria has had both positive and negative impacts. One positive impact is the infusion of capital, technology, and managerial expertise into the economy. For example, when MTN, a South African telecommunications company, entered Nigeria's market, it brought significant investments in infrastructure and technology, improving communication services in the country.[14]

However, FDI has also had negative impacts, such as the potential for exploitation of natural resources without adequate benefit to the local economy. For instance, some oil companies operating in Nigeria have been accused of

[8] EO Adegbite, and FS Ayadi, 'The Role of Foreign Direct Investment in Economic Development: A Study of Nigeria' (2011) 6 *World Journal of Entrepreneurship, Management and Sustainable Development* 133-147.
[9] N Ali and H Hussain, 'Impact of Foreign Direct Investment on the Economic Growth of Pakistan' (2017)7 *American Journal of Economics* 163-170.
[10] EI John, 'Effect of Foreign Direct Investment on Economic Growth in *Nigeria'* (2016)2 *European Business & Management* 40-46.
[11] R Farrell, 'Japanese Investment in the World Economy: A Study of Strategic Themes in the Internationalisation of Japanese Industry' (Edward Elgar, Britain 2008). <https://doi.org/10.4337/9781848442825> accessed 24 May 2024.
[12] UNCTAD, (2018) United Nations Conference on Trade and Development. World Investment Report.
<https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf> accessed 25 May 2024.
[13] Ibid.
[14] Christopher Obilikwu Obute, Victor Ushahemba Ijirshar and Ashifa Tersugh, (2018) 'Impact of Foreign Direct Investment in Telecommunication on Economic Growth in Nigeria'
<https://www.researchgate.net/publication/371001359_Impact_of_Foreign_Direct_Investment_in_Telecommunication_on_Economic_Growth_in_Nigeria > accessed 20 May 2024.

environmental degradation and not contributing enough to local development despite the significant revenues generated from oil extraction.

Overall, while FDI can bring benefits like job creation and economic growth, it also requires careful management to ensure that it contributes positively to the host country's development.

Trade and investment laws in Nigeria have a significant impact on the economy, offering various benefits and challenges.

Nigeria's trade and investment laws have significantly contributed to the nation's economic development, fostering growth, infrastructure advancements, and international trade. The Nigerian Investment Promotion Commission (NIPC) Act has facilitated foreign direct investment (FDI), as seen in the Lekki Free Trade Zone. The Companies and Allied Matters Act (CAMA) 2020 has streamlined business operations and enhanced the business environment.[15]

Public-private partnership (PPP) frameworks have supported key infrastructure projects like the Lagos-Ibadan Expressway and Abuja-Kaduna Railway. The Nigerian Export Processing Zones Authority (NEPZA) has promoted export zones such as the Calabar Free Trade Zone, encouraging investments in non-oil sectors.

However, challenges persist, including complex regulations that have delayed projects like the Ajaokuta Steel Company. Corruption, exemplified by the Malabu Oil Scandal, remains a deterrent to investors, and investment benefits are often concentrated in urban centers, creating regional disparities.

In the oil and gas sector, the Petroleum Industry Act (PIA) has attracted investments despite environmental concerns. The Agricultural Promotion Policy (APP) has boosted local food production with initiatives like the Dangote Rice project.[16] Manufacturing investments, including Dangote Cement, have reduced import dependence and increased exports.

To improve the business climate, initiatives like the Presidential Enabling Business Environment Council (PEBEC) and investment incentives such as the Pioneer Status Incentive (PSI) have been introduced. Nigeria's participation in the African Continental Free Trade Area (AfCFTA) has also expanded market access and attracted investments across Africa.

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[15] Ibrahim Hassan, Jacob Olufemi Fatile and Victoria Hunga, (2024) 'Sino-Africa and Technological Transfer: Implication on Sustainable Development in Nigeria' < https://www.researchgate.net/publication/381168399_SINO-AFRICA_AND_TECHNOLOGICAL_TRANSFER_IMPLICATION_ON_SUSTAINABLE_DEVELOPMENT_IN_NIGERIA> accessed 5 May 2024.

[16] Sunday Abayomi Adebisi and Kelechukwu Nodirim Ezebuiro, 'Analysis of the Petroleum Industry Act and its impact on the Nigerian Oil and Gas Sector' *Gusau International Journal of Management and Social Sciences* (2023) 6(3) 293-312.

*Shoprite*: In 2020, Shoprite, a South African retail giant, announced its plans to exit the Nigerian market.[17] The decision was reportedly influenced by economic challenges, including currency devaluation and supply chain disruptions.

*Mr Price:* Another South African retailer, Mr Price, closed its Nigerian stores in 2019. The company cited challenges related to supply chain disruptions and difficulties in repatriating profits due to Nigeria's foreign exchange policies.

*Konga:* Konga, an e-commerce company, was acquired by Zinox Group in 2018, leading to a restructuring of its operations. While the company did not completely exit Nigeria, the acquisition marked a significant change in its business strategy.[18]

*Etisalat (Now 9mobile):* Etisalat, a telecommunications company, faced financial challenges in Nigeria and defaulted on a loan repayment in 2017. This led to its exit from the Nigerian market, and the company was subsequently rebranded as 9mobile.

The challenging economic environment in Nigeria, characterized by factors such as inflation, currency devaluation, and regulatory uncertainties, has also led some businesses to reconsider their operations in the country.

## 5. Challenges and Barriers to Effective Trade and Investment Laws in Nigeria

In the context of Nigeria, the challenges and barriers to effective trade and investment laws are particularly pronounced due to several specific factors. Here are the key challenges:

*Regulatory Uncertainty and Inconsistency*: Nigeria's regulatory environment is often marked by frequent changes and a lack of consistency in policy implementation. This unpredictability can deter both domestic and foreign investors who seek a stable and predictable legal framework for their investments.[19]

*Corruption:* Corruption remains a significant challenge in Nigeria, affecting various sectors, including trade and investment. Corrupt practices can distort market conditions, lead to unfair competition, and increase the cost of doing

[17] Oladehinde Oladipo, (2021) 'Shoprite's exit, like 10 others, signals more job crisis for Nigerians' *Business Day* (Lagos, 8 April 2018) 1.

[18] Lawretta Egba, 'Mr. Price plans to exit Nigeria, closes stores in the country' (Nairametrics, 2020) < https://nairametrics.com/2020/06/27/mr-price-plans-to-exit-nigeria-closes-stores-in-the-country/>accessed 22 May 2024.

[19] Nlerum Sunday Okogbule, Bariyima Sylvester Kokpan and Chibuzo Ndupuechi Bartholomew, 'Examination of the Legal barriers to international trade in Nigeria: Lessons from UK and China' (Researchgate, 2024) <https://www.researchgate.net/publication/377308151_EXAMINATION_OF_THE_LEGAL_BARRIERS_TO_INTERNATIONAL_TRADE_IN_NIGERIA_LESSONS_FROM_THE_UK_AND_CHINA> accessed 25 May 2024.

business. Investors may be required to pay bribes to expedite processes or secure favorable outcomes.[20]

*Political Instability and Security Concerns*: Nigeria faces challenges related to political instability, including conflicts, civil unrest, and changes in government policies. Additionally, security concerns such as terrorism, insurgency (particularly in the North-East), and kidnappings can deter potential investors due to the perceived risks.

*Weak Legal and Judicial Systems*: The enforcement of trade and investment laws in Nigeria is often weak due to an inefficient judicial system. Delays in court proceedings, lack of expertise, and sometimes partial judgments can undermine the protection of investor rights and discourage investments.

*Customs and Trade Barriers*: High tariffs, complex customs procedures, and other non-tariff barriers can make it difficult for businesses to import and export goods. These barriers increase the cost of doing business and limit market access.[21]

## 6. Trade and Investment in Other Selected Jurisdictions

### 6.1 Singapore

Singapore's economy is a highly developed mixed market economy known for its openness, low tax rates, and pro-business environment.[22] It consistently ranks among the least corrupt and most competitive economies globally, with the highest per-capita GDP based on purchasing power parity (PPP).[23]

State-owned enterprises, including Temasek Holdings, significantly contribute to the economy, alongside major companies like Singapore Airlines and Singtel. Singapore is a leading destination and financier for foreign direct investment (FDI) due to its stable political environment.[24]

The nation's strategic port supports a high trade-to-GDP ratio of 320% as of 2020.[25] Its transformation into a high-income economy under Prime Minister

[20] Štefan Šumah, 'Corruption, Causes and Consequences' (IntechOpen, 21 February 2018) < https://www.intechopen.com/chapters/58969 > accessed 28 May 2024.
[21] Helen Orji, 'How weak judicial, arbitration systems undermine Nigeria's investment drive' *The Guardian* (Lagos, 7 November 2022).
[22] WG Huff, 'What is the Singapore model of economic development?' (1995) *Cambridge Journal of Economics* 1464-3545 <doi:10.1093/oxfordjournals.cje.a035339> accessed 25 May 2024.
[23] World Economic Forum, 'Global Enabling Trade Report' on 29 July 2012.
[24] 'Country Rankings' (2013) Index of Economic Freedom. The Heritage Foundation < Ibidhttps://www.heritage.org/index/> accessed 24 May 2024.
[25] 'World Investment Report, Chapter 1: Global Investment Trends' (2012) United Nations Conference on Trade and Development. Archived from the original (PDF) <unctad-docs.org> accessed 24 May 2024.

Lee Kuan Yew is often viewed as an economic 'miracle'.[26] SMEs play a key role, contributing 48% of nominal value-added and employing 71% of the workforce.

A corruption-free government, skilled workforce, and advanced infrastructure have attracted over 3,000 multinational corporations (MNCs), dominating the manufacturing and export sectors.

### 6.2 United Arab Emirates

The UAE is a high-income developing market economy and the fourth-largest in the Middle East, with a GDP of US$415 billion between 2021 and 2023.[27] Tourism remains a key non-oil revenue source, while construction, manufacturing, and services drive economic diversification, supported by US$350 billion in active construction projects. The UAE is a member of the World Trade Organization and OPEC, contributing significantly to global trade and energy markets.[28]

Dubai has spearheaded efforts to diversify the economy with initiatives like the Dubai International Financial Centre (DIFC), offering 55.5% foreign ownership and a specialized regulatory framework. Free zones have also attracted leading ICT and media companies with tax-free and foreign-ownership-friendly policies.[29]

The UAE's liberal property ownership policies have spurred real estate growth with developments like Palm Islands and Dubai Marina. On sustainability, the country has advanced renewable energy initiatives, highlighted by the Barakah nuclear power plant, operational since August 2020 as the Arab world's first.

### 6.3 Rwanda

Rwanda is a rapidly developing East African country recognized for its post-1994 economic transformation.[30] With strong governance and market reforms, it has become one of Africa's fastest-growing economies, focusing on agriculture, technology, tourism, and manufacturing. Known for its business-friendly environment, Rwanda ranks highly in Africa for ease of doing business and attracts investments through the Kigali Special Economic Zone.

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[26] 'Singstat – Singapore Economy'

[27] 'Report for Selected Countries and Subjects'. IMF Accessed 24 May 2024.

[28] 'United Arab Emirates - Oil and Gas' <https://www.trade.gov/energy-resource-guide-united-arab-emirates-oil-and-gas > accessed 30 May 2024.

[29] 'Dubai Free Zones | Setup your Business easily' (Damac, 20 Aug, 2024) < https://www.damacproperties.com/en/blog/dubai-free-zones-setup-your-business-easily-2378 > accessed 27 May 2024.

[30] Marina Popa And Daniela Betco, 'Rwanda's Prosperous Economic Upgrade: From Genocide To A Fast-Growing Economy' (2020) CSEI Working Paper Series 3444, 15 <https://csei.ase.md/wp/files/issue15/WP_Issue15_34-44_POP.pdf > accessed 28 May 2024.

Tourism plays a key role, with Volcanoes National Park as a major attraction. Rwanda is also noted for its environmental sustainability efforts, including a ban on plastic bags. Its stability and development strategies have made it a model for growth in Africa.

## 7. How to Improve Nigeria's Trade and Investment Law to Enhance National Development

Several lessons can be drawn from other jurisdiction for Nigeria to enhance its trade and investment framework.

Rwanda has made significant progress in improving its business environment through regulatory reforms and anti-corruption initiatives. The Rwanda Development Board (RDB) acts as a one-stop center for investors, simplifying business processes. Key lessons for Nigeria include prioritizing transparency, streamlining the ease of doing business, and strengthening institutional frameworks to attract and retain investors.

The UAE offers a highly favourable business environment with free zones, tax exemptions, and world-class infrastructure. Its legal framework provides strong protections for property rights and contract enforcement, creating an attractive landscape for investment. Nigeria can learn from the UAE's focus on infrastructure development, efficient regulatory processes, and the strategic use of free zones to attract diverse investments.

Singapore, renowned for its efficient legal and regulatory environment, strong intellectual property protections, and strategic position as a global trade hub, actively promotes investments through the Economic Development Board (EDB).[31] Nigeria can adopt Singapore's best practices by enhancing intellectual property rights, improving regulatory efficiency, and fostering a more pro-business environment.

To improve on Nigeria's trade and investment landscape, a number of measures are imperative. These include: diversifying the economy; creating a tax free or minimal tax for foreign investment; and putting a permanent stop to insecurity, as no country can progress economically with such level of insecurity. Other measures include favourable bilateral and multilateral trade agreements, [32]

[31] Poh Kam Wong, Yuen Ping Ho and Annette Singh, 'Singapore as an innovative city in East Asia : an explorative study of the perspectives of innovative industries' (Researchgate, May 2005) <https://www.researchgate.net/publication/23549790_Singapore_as_an_innovative_city_in_East_Asia_an_explorative_study_of_the_perspectives_of_innovative_industries> accessed 27 May 2024.

[32] Corinne C Delechat and others, 'Economic Diversification in Developing Countries – Lessons from Country Experiences with Broad-Based and Industrial Policies' (IMF E-Library, 30 Jul 2024)

improvement in power situation to drive industrial production, human capital empowerment through creating favourable environment to small and medium enterprises (SMEs) to thrive, and opening up our sea ports and creating viable free economic/trade zones across the country.

There is a need strengthen relevant regulatory frameworks and ensure consistent policy implementation to build investor confidence; invest in infrastructure development to improve logistics and connectivity and enhance access to finance for SMEs through targeted financial instruments and support programs. Furthermore, Implementing anti-corruption measures and streamline bureaucratic processes would create a more transparent and efficient business environment.

Trade and investment laws are crucial for Nigeria's economic growth and national development. While Nigeria has a comprehensive legal framework, challenges such as regulatory inconsistencies, inadequate infrastructure, and corruption need to be addressed. Learning from the best practices of countries like Rwanda, UAE, and Singapore can provide valuable insights for enhancing Nigeria's trade and investment environment. By strengthening regulatory frameworks, improving infrastructure, enhancing access to finance, implementing anti-corruption measures, and promoting sustainable development, Nigeria can create a more conducive environment for trade and investment. These reforms will ultimately contribute to sustainable economic growth and national development, positioning Nigeria as a competitive and attractive destination for global investors.

<https://www.elibrary.imf.org/view/journals/087/2024/006/article-A001-en.xml> accessed 1 August 2024.