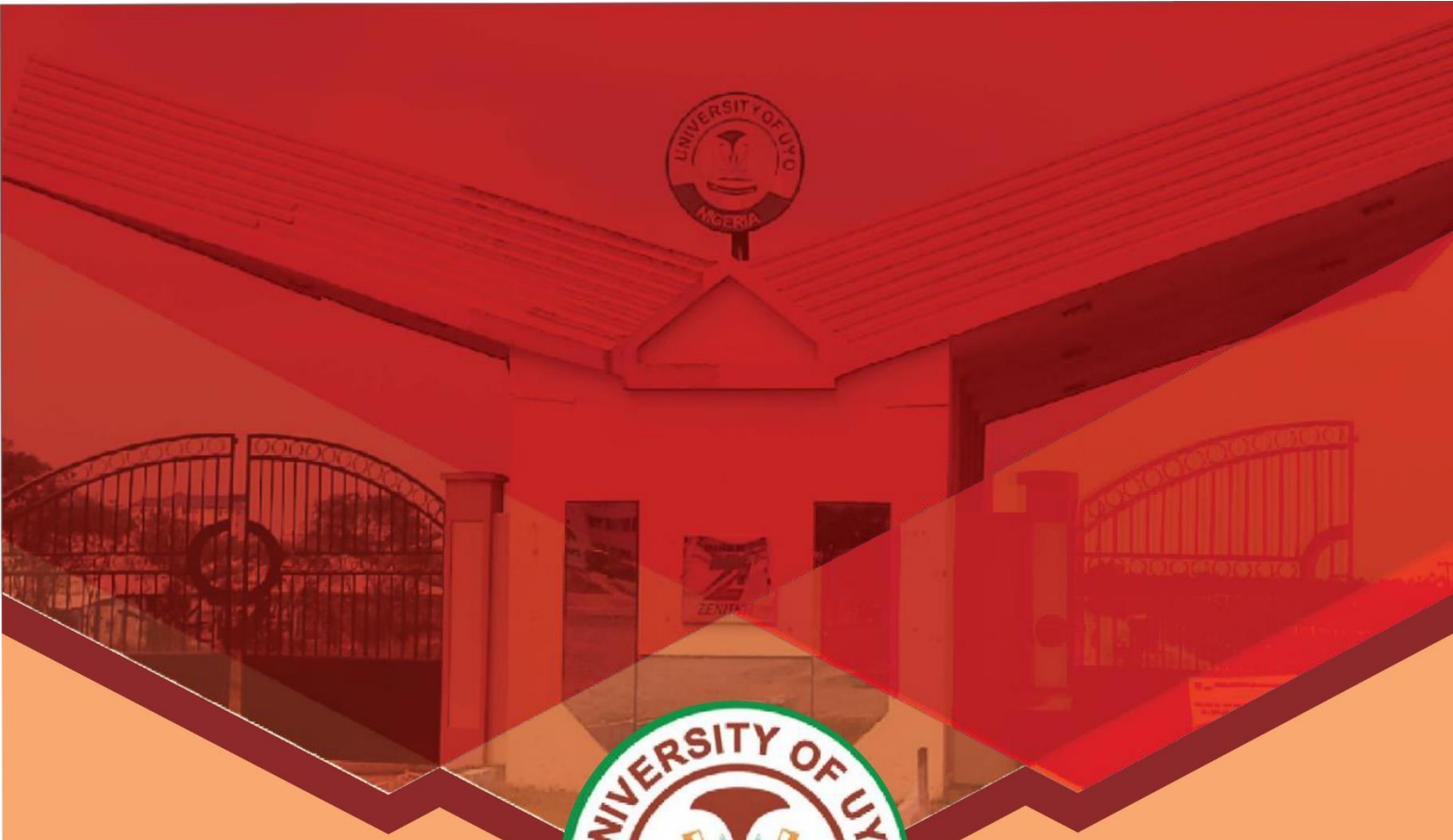

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An Examination of Surveillance Capitalism and The Erosion of Data Privacy in The Digital Economy in Nigeria

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Abstract

Surveillance capitalism, the commercial appropriation of personal data, presents significant challenges to privacy and autonomy in the digital economy. This article examines Nigeria's data protection framework in light of comparative legal regimes. It evaluates the Nigeria Data Protection Act 2023 against the European Union's General Data Protection Regulation (GDPR), the United States' sectoral approach and the African Union's Malabo Convention on Cybersecurity and Personal Data Protection. The analysis demonstrates that while the NDPA reflects global best practices, such as lawful bases for processing, recognition of data subject rights, and proportional obligations for controllers of "major importance", its efficacy is undermined by weak enforcement, limited public awareness, and broad national security exceptions. Nigerian case law, including Paradigm Initiative v National Identity Management Commission and Omotayo v Airtel Networks Ltd, signals judicial recognition of privacy rights, yet institutional and political constraints persist. The article argues that effective implementation of the NDPA, strengthened judicial oversight, and civil society engagement are essential to safeguarding data privacy in Nigeria's digital economy.

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1. Introduction

The digital economy is driven by the large-scale collection and monetisation of personal data. Search histories, location information, biometric identifiers and consumer behaviour are routinely harvested by corporations and governments. This business model, described by Shoshana Zuboff as "surveillance capitalism," transforms human experience into raw material for prediction and profit. Critics contend that such practices undermine individual autonomy, suppress democratic participation and erode the fundamental right to privacy.

In Nigeria, the constitutional guarantee of privacy in section 37 of the 1999 Constitution has long lacked effective legislative backing. The regulatory gap was partly filled in 2019 by the Nigeria Data Protection Regulation (NDPR), issued by the National Information Technology Development Agency (NITDA). However, the enactment of the Nigeria Data Protection Act 2023 (NDPA) marks the country's first comprehensive statutory regime for personal data.

This article evaluates Nigeria's data protection framework against international standards. It pursues three objectives. First, it defines the concept of surveillance capitalism and outlines its implications for the legal protection of privacy. Second, it situates Nigeria's framework within comparative perspectives, particularly the GDPR, the fragmented U.S. system, and the African Union's Malabo Convention. Third, it assesses the effectiveness of Nigeria's laws in addressing surveillance practices by corporate and state actors, drawing on case law and enforcement experience.

Methodologically, the article combines doctrinal legal analysis with a socio-legal perspective, focusing on the interplay between formal legal norms and surveillance practices in Nigeria. The central argument advanced is that although Nigeria's NDPA is formally aligned with global benchmarks, its impact will depend on robust enforcement by the Nigeria Data Protection Commission (NDPC), judicial willingness to uphold privacy rights and the active involvement of civil society.

2. Theoretical Overview of Surveillance Capitalism

The term "surveillance capitalism" was introduced by Shoshana Zuboff to describe an economic order in which human experience is

claimed as free raw material for commercial purposes.[1] Technology companies collect and analyse vast quantities of personal data, often without meaningful consent, to generate behavioural predictions and targeted advertising.[2] This practice represents a departure from earlier models of data exchange, where individuals consciously traded personal information for specific services.[3]

Surveillance capitalism erodes privacy and autonomy by normalising the covert extraction of personal data. It is not limited to online environments: smartphones, Internet of Things (IoT) devices, biometric technologies, and facial-recognition systems extend surveillance into physical spaces.[4] Data subjects often lack transparency regarding how their information is processed, and contractual consent mechanisms, typically embedded in lengthy terms of service, rarely afford genuine choice.[5]

Scholars have warned that surveillance capitalism confers "instrumentarian power," whereby corporations shape user behaviour through algorithmic nudges rather than overt coercion.[6] These subtle forms of influence compromise individual freedom and democratic participation. The aggregation of "behavioural surplus" enables the construction of detailed shadow profiles, which can be used not only for commercial targeting but also for political manipulation and state surveillance.[7]

The phenomenon has prompted significant calls for legal intervention. Data protection frameworks increasingly seek to restrict

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[1] Shoshana Zuboff, The Age of Surveillance Capitalism (PublicAffairs 2019) 8–9.

[2] Ben Wagner, 'Ethics as an Escape from Regulation: From "Ethics-Washing" to Ethics-Shopping?' in Emre Bayamlıoğlu, Irina Baraliuc, Lucie Klobučar and Mireille Hildebrandt (eds), Being Profiled: Cogitas Ergo Sum (Amsterdam University Press 2018) 84.

[3] Julie E Cohen, Between Truth and Power: The Legal Constructions of Informational Capitalism (OUP 2019) 35–36.

[4] Mireille Hildebrandt, Smart Technologies and the End(s) of Law (Edward Elgar 2015) 142–143.

[5] Daniel J Solove, 'Privacy Self-Management and the Consent Dilemma' (2013) 126 Harvard Law Review 1880, 1894–1897.

[6] Shoshana Zuboff, 'Big Other: Surveillance Capitalism and the Prospects of an Information Civilization' (2015) 30(1) Journal of Information Technology 75, 82.

[7] Frank Pasquale, The Black Box Society: The Secret Algorithms that Control Money and Information (Harvard UP 2015) 22–24.

unchecked data harvesting, impose duties of transparency and accountability on controllers, and empower individuals with rights of access, correction, and erasure.[8] The rise of surveillance capitalism thus provides both the context and the justification for the evolution of modern privacy law.

3. International Data Protection Frameworks

i. European Union: General Data Protection Regulation

The European Union General Data Protection Regulation (EU-GDPR 2016/679) establishes a comprehensive legal regime built around principles including lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, confidentiality and accountability.[9] It grants data subjects rights such as access, rectification, erasure ("right to be forgotten"), restriction of processing, data portability, objection to processing and protections in automated decision-making.[10] Controllers and processors have duties including carrying out data protection impact assessments, designating Data Protection Officers when required, and ensuring appropriate safeguards for cross-border transfers.[11] Supervisory authorities must be independent and have investigative, corrective and sanctioning powers.[12]

GDPR's penalties are significant: intrusions can trigger fines of up to 4% of global annual turnover or €20 million, whichever is greater.[13] The regulation also has strong extraterritorial reach; its obligations apply in many cases even if the data controller or processor is outside the European Union, so long as processing relates to offering goods or services to, or monitoring behaviour of, European Union residents.[14]

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[8] Paul M Schwartz and Karl-Nikolaus Peifer, 'Transatlantic Data Privacy Law' (2017) 106 Georgetown Law Journal 115, 117–119.

[9] European Union General Data Protection Regulation (GDPR) 2016/679, art 5(1)-(2).

[10] GDPR (EU) 2016/679, art 12-21.

[11] GDPR (EU) 2016/679, arts 33-39 (data breach, DPIA, DPO).

[12] GDPR (EU) 2016/679, art 51-59.

[13] GDPR (EU) 2016/679, arts 83 & recitals.

[14] GDPR (EU) 2016/679, art 3.

ii. United States: Sectoral and State-Level Patchwork

Unlike the European Union, the United States does not have a single comprehensive federal data protection law covering all sectors and jurisdictions. Instead, privacy protection is built through specific federal statutes (e.g. in healthcare, financial services, and children's online privacy) and via state laws.[15] Some states, most notably California (via the California Consumer Privacy Act and subsequent amendments), have adopted broader protections that approximate many GDPR rights.[16]

Major distinctions from GDPR include:

- *Scope of application:* U.S. laws often depend on the sector (e.g. health, finance), type of actor, or whether particular thresholds are crossed, rather than applying uniformly to all data processing.
- *Rights of individuals:* While some state laws provide rights similar to GDPR (access, deletion, opt-out), others lack certain rights, such as data portability or strong objection mechanisms.
- *Enforcement and penalties:* U.S. enforcement is spread across offices like the Federal Trade Commission (FTC), state Attorneys General and other regulatory bodies. Penalties tend to be lower and the power to impose them is more fragmented.[17]

iii. African Union: The Malabo Convention

The Malabo Convention, adopted in 2014 by the African Union, aims to harmonise African states' approaches to cybersecurity, e-transactions, and personal data protection.[18] Key obligations include:

- Every member state is required to establish a domestic legal framework for the protection of personal data, safeguarding

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[15] DLA Piper, 'United States: Data Protection Laws in the United States' (online) https://www.dlapiperdataprotection.com/index.html?c=US&t=law accessed 16 September 2025.

[16] Endpoint Protector, 'EU vs US: Differences Between Their Data Privacy Laws' (blog) https://www.endpointprotector.com/blog/eu-vs-us-what-are-the-differences-between-their-data-privacy-laws/ accessed 16 September 2025.

[17] UCLaw Review, Data Privacy in the Digital Age: A Comparative Analysis of U.S. and EU Regulations (2025) https://uclawreview.org/2025/03/05/data-privacy-in-the-digital-age-a-comparative-analysis-of-u-s-and-eu-regulations/ accessed 16 September 2025.

[18] African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) 2014.

fundamental rights (including privacy), and to institute a national independent data protection authority.[19]

- The Convention contains many data protection principles (e.g. consent, confidentiality, transparency) and rights similar to those found in GDPR.[20]

However, while the Malabo Convention has now entered into force, its ratification and implementation remain limited. Under Article 36, the Convention required fifteen instruments of ratification to enter into force, a threshold reached in May 2023, meaning it officially took effect on 8 June 2023.

Despite this milestone, only 15 out of the AU's 55 member states have ratified it, leaving the vast majority unbound. Many of the signatory states' domestic laws still fall short of the Convention's standards, particularly in definitions of key terms, enforcement capacity and institutional independence of data protection authorities.

4. Nigeria's Data Protection Regime

i. Constitutional Basis and Early Developments

Nigeria's 1999 Constitution expressly guarantees the privacy of citizens, including their homes, correspondence, telephone conversations and telegraphic communications.[21] Although this provision is broadly worded, it has provided the foundation for judicial recognition of privacy rights. In the absence of a dedicated data protection statute, regulatory and statutory provisions were fragmented. The National Identity Management Commission Act 2007 addressed biometric identity data, the Freedom of Information Act 2011 limited disclosure of private information, and the Cybercrime (Prohibition, Prevention, etc.) Act 2015 criminalised certain unlawful access to data.[22]

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[19] Data Protection Laws in Africa: A Pan-African Survey and Noted Trends (USITC, 2021) https://www.usitc.gov/publications/332/journals/jice_africa_data_protection_laws.pdf accessed 16 September 2025.

[20] Malabo Convention, arts 13-19 (data protection, rights of data subjects).

[21] Constitution of the Federal Republic of Nigeria 1999, s 37.

[22] National Identity Management Commission Act 2007; Freedom of Information Act 2011, s 14; Cybercrime (Prohibition, Prevention, etc.) Act 2015, ss 6–8.

The first comprehensive attempt at regulation came in 2019 when the National Information Technology Development Agency (NITDA) issued the Nigeria Data Protection Regulation (NDPR).[23] Modelled on the GDPR, it introduced principles of lawfulness, fairness, and purpose limitation; granted rights of access, correction, and erasure; and imposed obligations such as data security and breach notification. The NDPR also applied extraterritorially to controllers or processors outside Nigeria handling the data of Nigerian citizens.[24]

Despite these innovations, the NDPR faced significant limitations. As a regulation, its legal status was contested, and NITDA's enforcement capacity was limited. Compliance efforts often focused on awareness and voluntary audits rather than sanctions.[25]

ii. The Nigeria Data Protection Act 2023

The Nigeria Data Protection Act (NDPA), enacted in May 2023, repealed the NDPR and established the first statutory framework for personal data in Nigeria.[26] It created the Nigeria Data Protection Commission (NDPC), an independent regulator tasked with oversight, enforcement, and cross-border cooperation.[27]

The Act incorporates several GDPR-inspired provisions. Processing requires a lawful basis such as consent, contract, legal obligation, vital interests, public interest, or legitimate interest, subject to strict balancing. Data subjects have rights to access, rectification, erasure, portability, and objection.[28] The NDPA mandates privacy by design and data protection impact assessments, while controllers and processors must appoint Data Protection Officers where appropriate.[29]

The Act introduces novel features. Entities deemed "data controllers or processors of major importance" are subject to heightened obligations, including registration, annual compliance audits, and third-

[23] National Information Technology Development Agency (NITDA), Nigeria Data Protection Regulation 2019 (Regulation No 1 of 2019).

[24] ibid, art 1.2.

[25] Damilola Adeoye, 'Nigeria's Data Protection Regulation: An Appraisal' (2020) 11 Nigerian Journal of Technology Law 45, 53–55.

[26] Nigeria Data Protection Act (NDPA) 2023.

[27] NDPA, s 5.

[28] NDPA, ss 25–32.

[29] NDPA, ss 33–36.

party oversight by licensed Data Protection Compliance Organisations.[30] Children's data receives special protection, with processing requiring parental consent and restrictions on profiling.[31] The Act also imposes a statutory duty of care to ensure data security.[32]

iii. Enforcement and Implementation

The NDPC has the power to investigate, impose administrative fines, and collaborate internationally. Sanctions can reach up to ₦10 million or 2% of annual gross revenue.[33] In 2025, the NDPC issued the General Application and Implementation Directive (GAID), clarifying the extraterritorial scope of the NDPA and specifying compliance requirements for controllers of major importance.[34]

Despite these positive developments, challenges persist. Effective enforcement depends on the NDPC's independence, resources and technical expertise. Historically, Nigerian regulators have prioritised compliance promotion over sanctions, raising doubts about whether the NDPC will adopt a more assertive stance.[35] Public awareness remains low and many individuals are unaware of their rights under the NDPA.

5. Surveillance Capitalism in the Nigerian Context

i. Corporate Data Harvesting

Global technology companies such as Meta (Facebook), Google and TikTok have a significant presence in Nigeria, drawing millions of users. These platforms routinely collect data ranging from communication content and location histories to browsing behaviour and biometric

[30] NDPA, ss 44–48.

[31] NDPA, s 31.

[32] NDPA, s 33.

[33] NDPA, s 65.

[34] Nigeria Data Protection Commission, General Application and Implementation Directive 2025 (GAID/01/2025).

[35] Olumide Babalola, 'The Nigeria Data Protection Act 2023: An Analysis' (2023) 4 African Journal of Privacy and Data Protection 112, 118–119.

identifiers.[36] Such practices underpin targeted advertising and algorithmic recommendations but frequently occur without meaningful user consent.[37]

Domestic platforms and service providers have adopted similar models. E-commerce and fintech applications rely on behavioural analytics to profile users, adjust pricing, and market products. Ride-hailing and food delivery companies infer consumer preferences from geolocation data. Advertising agencies employ social media analytics to micro-target audiences based on religion, ethnicity, or political affiliation.[38] The opacity of terms of service means users often remain unaware of these practices.

Another dimension is the emergence of data brokers, including foreign firms, which aggregate information from multiple sources such as SIM registrations, mobile banking, and online activity. These profiles are sold to commercial actors without adequate legal safeguards.[39] Unlike the European Union, Nigeria does not yet recognise a "right to explanation" or algorithmic accountability in relation to automated decision-making.[40] This leaves consumers vulnerable to opaque scoring systems in contexts such as lending, insurance and recruitment.

ii. State Surveillance Practices

Alongside corporate actors, the Nigerian government has expanded digital surveillance infrastructures. The National Identity Management Commission administers the National Identity Number (NIN) scheme, which consolidates biometric data of over 150 million citizens.[41] The integration of NIN with telecommunications, banking, and public services raises concerns of centralised monitoring.

Instances of poor security underscore these risks. In *Paradigm Initiative v National Identity Management Commission* (2019), the Federal

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[36] Centre for International Governance Innovation, Nigeria's Digital Economy: Data Governance and Privacy Challenges (2023) https://www.cigionline.org accessed 18 September 2025.

[37] Solove (n 5) 1894–1897.

[38] Policy and Legal Advocacy Centre (PLAC), Data Protection in Nigeria: Issues and Prospects (Abuja, 2022) 14–15.

[39] Paradigm Initiative, Data and Digital Rights in Nigeria (2021) https://paradigmhq.org accessed 18 September 2025.

[40] GDPR (EU) 2016/679, art 22.

[41] National Identity Management Commission, NIN Enrolment Statistics (2024) https://nimc.gov.ng accessed 18 September 2025.

High Court in Abuja recognised that weak security in the NIN system posed a threat to citizens' constitutional right to privacy.[42] Civil society organisations have documented vulnerabilities that allowed unauthorised third parties to access personal data.[43]

Law enforcement agencies also deploy interception and surveillance technologies. The Cybercrime (Amendment) Act 2024 authorises broad interception powers on national security grounds, but oversight remains minimal.[44] CCTV systems with facial recognition have been installed in major cities, while investigative reports show instances of digital espionage against activists and journalists.[45] Such practices, in the absence of judicial authorisation and effective safeguards, risk transforming constitutional privacy guarantees into hollow protections.

iii. Socio-Economic Implications

Surveillance capitalism intersects with Nigeria's broader digital economy. Fintech platforms collect and analyse transactional data, ostensibly for fraud prevention but also for targeted marketing. Political campaigns increasingly rely on personal data analytics to sway voters, echoing concerns raised after the Cambridge Analytica scandal.[46]

These dynamics are amplified by low public awareness. Surveys reveal that most Nigerians lack confidence in their ability to control personal information online.[47] The imbalance between data-harvesting entities and citizens underscores the urgency of effective enforcement of the NDPA. Without such enforcement, the growth of Nigeria's digital economy risks entrenching exploitative models of surveillance capitalism.

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[42] Incorporated Trustees of Paradigm Initiative for Information Technology (PIIT) & Sarah Solomon-Eseh v National Identity Management Commission & Anor (Federal High Court, Abuja) Suit No FHC/ABJ/CS/58/2019, judgment delivered 28 June 2019 (unreported).

[43] Paradigm Initiative (n 39).

[44] Cybercrime (Prohibition, Prevention, etc.) (Amendment) Act 2024, s 23.

[45] Amnesty International, Nigeria: Digital Surveillance and Human Rights (2023) https://www.amnesty.org accessed 18 September 2025.

[46] Privacy International, Political Campaigning and Data Exploitation in Africa (2022) https://privacyinternational.org accessed 18 September 2025.

[47] Pew Research Center, Global Attitudes Toward Privacy and Data Security (2023) https://www.pewresearch.org accessed 18 September 2025.

6. Nigerian Case Law and Enforcement

i. Judicial Recognition of Privacy Rights

Nigerian courts have gradually begun to articulate the constitutional right to privacy in the context of data protection. In *Paradigm Initiative v National Identity Management Commission* (2019), the Federal High Court held that deficiencies in the security of the National Identity Number system could infringe section 37 of the Constitution.[48] Although the case was overtaken by regulatory developments under the NDPR, the judgment signalled judicial willingness to scrutinise state surveillance projects.

A more recent landmark case is *Omotayo v Airtel Networks Ltd* (2025), where the Court of Appeal held that telecommunications providers owe a duty to safeguard customers' personal data and must obtain consent before any disclosure to third parties.[49] The Court emphasised that privacy is not merely a contractual matter but a legal duty grounded in both statutory and constitutional principles. While remedies were not extensively elaborated, the judgment affirms that corporate actors may be held directly liable for privacy breaches.

ii. Enforcement by Regulators

Under the NDPR, enforcement was limited. NITDA primarily pursued compliance campaigns and voluntary audits, with few punitive measures.[50] With the NDPA in force, the Nigeria Data Protection Commission (NDPC) has statutory powers to impose fines, investigate breaches, and suspend unlawful processing.[51] Whether the Commission will exercise these powers robustly remains uncertain. Observers note challenges such as limited technical capacity, overlapping mandates with agencies like the Nigerian Communications Commission, and potential political interference.[52]

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[48] PIIT v NIMC (n 42).

[49] Omotayo V. Airtel Networks Ltd (2025) LPELR- 80012(CA).

[50] Damilola Adeoye, 'Nigeria's Data Protection Regulation: An Appraisal' (2020) 11 Nigerian Journal of Technology Law 45, 53–55.

[51] Nigeria Data Protection Act (NDPA) 2023, ss 5, 65.

[52] Olumide Babalola, 'The Nigeria Data Protection Act 2023: An Analysis' (2023) 4 African Journal of Privacy and Data Protection 112, 118–119.

iii. Barriers to Effective Litigation

Civil litigation in privacy matters remains underdeveloped. Plaintiffs face hurdles in proving both the existence of a breach and demonstrable harm.[53] Nigerian courts have not yet developed clear standards for quantifying damages in data privacy claims, nor have they established injunctive remedies as a routine response. The absence of Supreme Court precedent further limits doctrinal clarity.

Nevertheless, the trajectory suggests a slow but growing recognition of privacy as a justiciable right. The combination of constitutional guarantees, statutory rights under the NDPA, and emerging case law creates a foundation upon which stronger judicial oversight may be built.

7. Comparative Analysis and Emerging Trends

Nigeria's Data Protection Act (the NDPA) reflects deliberate borrowing from the European Union's General Data Protection Regulation (EU-GDPR). It enshrines principles of lawfulness, fairness, and transparency; establishes lawful bases for processing; and grants data subjects rights of access, erasure, portability, and objection.[54] Its extraterritorial scope mirrors Article 3 of the GDPR, extending obligations to foreign entities processing Nigerian data. The classification of controllers and processors of "major importance" echoes global efforts to impose proportional obligations on large data handlers, comparable to the EU's Digital Services Act.

Despite formal alignment, significant divergences remain. First, enforcement capacity is weak. Unlike EU supervisory authorities, the Nigeria Data Protection Commission (NDPC) lacks the technical infrastructure and resources required for consistent enforcement.[55] Second, exceptions for public interest and national security are broadly defined, raising risks of abuse. The Cybercrime (Amendment) Act 2024, for example, empowers interception without robust judicial oversight.[56] Third, Nigeria's legal environment is marked by pluralism and overlap:

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[53] Adebayo Shittu, 'The Emerging Right to Data Privacy in Nigeria: Prospects and Challenges' (2022) 8 Nigerian Law Journal 91, 102–103.

[54] Nigeria Data Protection Act 2023, ss 24–32.

[55] Data Protection Commission of Ghana, Comparative Enforcement Approaches in West Africa (2024) https://www.dataprotection.org.gh accessed 18 September 2025.

[56] Cybercrime (Prohibition, Prevention, etc.) (Amendment) Act 2024, s 23.

data protection provisions exist across the Freedom of Information Act, Cybercrime Act and sector-specific regulations, sometimes leading to conflict or duplication.[57]

Nigeria has not ratified the Malabo Convention, citing concerns about overlap with domestic law and the need to update its provisions.[58] Nevertheless, Nigeria's alignment with global benchmarks positions it as a leader in Africa's data governance debates. The African Continental Free Trade Area's Digital Trade Protocol is expected to pressure harmonisation across member states, making Nigeria's choices regionally significant.[59] At the global level, adequacy recognition from the European Union remains a possible but demanding objective, requiring demonstrable independence of the NDPC and effective remedies for individuals.[60]

Several emerging trends are likely to shape Nigeria's data protection trajectory. The European Union's proposed Artificial Intelligence Act and Data Governance Act, both emphasising algorithmic accountability and data sharing, will influence global standards.[61] Domestically, concerns about "digital colonialism," where foreign companies and donors shape Nigeria's digital policies, are gaining traction.[62] The balance between national security and civil liberties remains a recurring fault line, with surveillance powers often prioritised over rights. Unless carefully managed, these dynamics risk undermining the NDPA's promise.

8. Recommendations

To mitigate the risks posed by surveillance capitalism and to secure digital rights in Nigeria, the following recommendations are proposed:

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[57] Freedom of Information Act 2011, s 14

[58] African Union, Status List: African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) (2024) https://au.int/en/treaties accessed 18 September 2025.

[59] African Continental Free Trade Area Secretariat, Digital Trade Protocol (2023) https://afcfta.au.int accessed 18 September 2025.

[60] European Commission, Adequacy Decisions: Protecting Personal Data When It Leaves the EU (2025) https://commission.europa.eu accessed 18 September 2025.

[61] European Commission, Proposal for a Regulation on Artificial Intelligence (COM/2021/206 final).

[62] Nanjala Nyabola, 'Digital Colonialism: The Future of Data Governance in Africa' (2022) African Arguments https://africanarguments.org accessed 18 September 2025.

i. Consolidate and Strengthen Data Protection Law

While the Nigeria Data Protection Act 2023 provides a significant foundation, further legislative development is required to ensure comprehensive and enforceable protections. Parliament should adopt a framework equivalent in strength to the European Union's General Data Protection Regulation, explicitly embedding principles of consent, transparency, purpose limitation, data minimisation and accountability.

ii. Enhance Regulatory and Institutional Capacity

Regulatory agencies, including the Nigeria Data Protection Commission (NDPC) and the Nigerian Communications Commission (NCC), must be strengthened through adequate funding, training and technical resources. Inter-agency cooperation should be formalised to avoid duplication and create coherent governance. Capacity-building initiatives, including training of judges and regulators on emerging data practices, are essential.[63]

iii. Ensure Transparency and Algorithmic Accountability

Technology companies operating in Nigeria should be legally required to provide transparency on the design and functioning of algorithms deployed in areas such as advertising, credit scoring and content moderation. Algorithmic impact assessments, akin to data protection impact assessments under the GDPR, should be mandated to prevent discrimination and mitigate risks to vulnerable groups.[64]

iv. Protect Civil Liberties from State Surveillance

Existing surveillance powers must be revised to introduce explicit safeguards. Judicial warrants should be mandatory for all interception and monitoring activities. Independent oversight mechanisms, including parliamentary committees and civil society observers, are necessary to prevent abuse and ensure proportionality.[65]

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[63] OECD, Digital Economy Outlook 2022 (OECD Publishing 2022) 178.

[64] Lilian Edwards and Michael Veale, 'Slave to the Algorithm? Why a Right to Explanation is Probably Not the Remedy You Are Looking For' (2017) 16 Duke Law and Technology Review 18.

[65] Amnesty International, Nigeria: Digital Surveillance and Human Rights (2023) https://www.amnesty.org accessed 18 September 2025.

v. Promote Digital Rights Awareness and Civic Participation

Public education initiatives should be undertaken to increase digital literacy and awareness of data rights. Campaigns should focus on privacy tools such as encryption, Virtual Private Networks, and secure authentication. Civil society organisations must be supported to monitor compliance, advocate for user rights, and act as intermediaries between citizens and regulators.[66]

vi. Advance International Cooperation

Nigeria should engage more actively in regional and global digital governance. Ratification of the Malabo Convention, participation in the African Continental Free Trade Area's Digital Trade Protocol, and alignment with global frameworks will promote harmonisation and resist exploitative forms of data colonialism. Such cooperation will strengthen Nigeria's bargaining position in cross-border data flows and global policy negotiations.

9. Conclusion

Surveillance capitalism is not simply a technological development but a structural transformation of the digital economy, rooted in the commodification of personal data. Left unchecked, it undermines privacy, autonomy and democratic accountability. In Nigeria, the convergence of pervasive data-extraction practices and weak enforcement has created an environment where exploitation is normalised and resistance is limited.

The enactment of the Nigeria Data Protection Act 2023 is an important milestone, aligning domestic law with global standards and recognising key rights such as consent, access, and erasure. Yet the law's promise will depend on effective implementation, independent regulatory capacity and meaningful judicial oversight. Without these, the framework risks becoming a paper safeguard rather than a substantive protection. Addressing the challenges posed by surveillance capitalism requires not only legislative reform but a paradigm shift towards proactive, rights-based digital governance. National security exceptions must be narrowly construed and subject to judicial control; corporate and state actors must

[66] Policy and Legal Advocacy Centre (PLAC), Data Protection in Nigeria: Issues and Prospects (Abuja, 2022) 16.

be held accountable on equal terms; and civic awareness must be strengthened to empower individuals to exercise their rights.

Regionally, Nigeria should play a leading role in shaping continental norms through engagement with the Malabo Convention and the African Continental Free Trade Area Digital Trade Protocol. Globally, alignment with best practices, including the possibility of European Union adequacy recognition, will be essential to securing both cross-border interoperability and the protection of citizens. Ultimately, surveillance capitalism's expansion is not inevitable. Legal and institutional tools exist, but they must be sharpened and applied with resolve. Only by embedding privacy and accountability into Nigeria's digital economy can innovation and growth be reconciled with the dignity and freedom of its people.

Periscoping the Legal Frameworks on Climate Change and Renewable Energy in the Mitigation of the Impacts of Climate Change in Nigeria

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Abstract

The adverse impacts of climate change demand urgent actions towards reducing greenhouse gas emissions and mitigating its negative effects across the world. In Nigeria, renewable energy unarguably holds the reliable alternative in addressing climate change and has gained remarkable attention. Therefore, this article sets out to beam klieg lights on the institutional framework, legal regime, and policies surrounding renewable energy in Nigeria, x-raying their effectiveness in mitigating climate change impacts. Through the examination of notable governmental and non-governmental actors, including established institutions, energy policies, and climate action strategies, the article will look into the challenges and opportunities in implementing renewable energy solutions. The discussion will offer insights into how a viable renewable energy sector can contribute in the mitigation of climate change impacts in Nigeria. As noted above, this article shall provide workable recommendations for the improvement of Nigeria's legal and policy regimes for renewable energy, thereby establishing a foundation for a cleaner environment and sustainable development for the country.

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1. Introduction

Climate change has become a hydra-headed problem to the global community with Nigeria being bedeviled with its multi-faceted challenges. Interestingly, the Nigerian government has risen to the challenge by setting up institutions to regulate activities that could harm the environment. This move is based on the realization that air, land and sea as well as the things in or on them compose the environment.[1] They contain in them what human society needs for socio-economic development, providing the raw materials for scientific discoveries and technological advancement. The institutions set up by the government regulate human activities that could harm the environment and make policies to that effect.[2] In Nigeria, Institutions are usually established on the basis of an Act of National Assembly or Law enacted by the State House of Assembly. And in that wise, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007 was enacted to give birth to the National Environmental Standards and Regulations Enforcement Agency (NESREA). The Climate Change Act of 2021 was also brought into force to establish the agency known as the National Council for Climate Change. While the NESREA Act vests in the Agency the responsibility and function of ensuring that Nigeria has safe unpolluted environment, while the Climate Change Act provides for its Council to make policies on matters relating to climate change in the country.[3] Such other similar laws/legislative interventions aimed at protecting the environment and ensuring a sustainable future are discussed in this article. However, this article interrogates the challenges usually encountered in the enforcement of climate change legislations and proposes viable solutions as recommendations for the government.

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[1] F Anyogu and E Nyekwere, 'Appraisal of the Legal and Institutional Framework for Sustainable Environmental Management in Nigeria' (2021). The Nigerian Juridical Review 155-76.

[2] U Orji, 'An Appraisal of the Legal Framework for the Control of Environmental Pollution in Nigeria' (2012) 38 Commonwealth Law Bulletin 2.

[3] A Onwuemele, 'Appraising the Institutional Framework for Environmental Management in Nigeria' (2011) 2 Journal of Advanced Research in Management 254-60.

2. Conceptual Understanding of Climate Change and Renewable Energy

i. Climate Change

Climate change is the change in the state of the climate that can be identified (e.g., using statistical tests) by changes in the mean and/or variability of its properties, and that persists for an extended period, typically decades or longer.[4] Climate change may be due to natural internal processes or external forces such as modulations of the solar cycles, volcanic eruptions, and persistent anthropogenic changes in the composition of the atmosphere or in land use.[5]

Article 1 of the United Nations Framework Convention on Climate Change (UNFCCC) defines climate change as: "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods".[6] The state of the science of climate change is central to any discussion and assessment of the impacts of climate change on energy security and the global/domestic efforts to address climate change.[7] The work of the Intergovernmental Panel on Climate Change (IPCC) is the nearest the scientific community has come to evolving an extensive consensus on the present position of scientific knowledge on the cause of climate change, its impacts (observed and anticipated), and options for responding to the threats,[8] including appropriate measures for mitigation and adaptation. However, it has been acknowledged that the series of investigations and actions taken by IPCC to arrive at its conclusion has limitations.[9]

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[4] M L Parry and Others, Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press, 2007).

[5] Ibid.

[6] United Nations Framework Convention on Climate Change,

[7] The principal source of information on the science of climate change is the Assessment Reports of the IPCC.

[8] M Doelle, From Hot Air to Action? Climate Change, Compliance and the Future of International Environmental Law (Toronto: Thomson Carswell Limited, 2005) 30

[9] The Assessment Reports of the IPCC are not entirely comprehensive and there has been no consensus on the conclusions reached by the IPCC. There are existent and emerging scientific findings that shed new light on our knowledge of the causes of climate change,

Nonetheless, the IPCC remains the most tenable and reasonable authority on the science of climate change.[10]

ii. Renewable Energy

Renewable energy is that energy derived from natural sources which are naturally replenished at a higher rate than they are consumed. Sunlight and wind, for example, are such sources that are constantly being replenished by nature. Renewable energy sources are plentiful and all around us. In contrast to renewable energy, fossil fuels – coal, oil and gas – are non-renewable resources that take hundreds of millions of years to form.[11] Fossil fuels, when burned to produce energy, cause harmful greenhouse gas emissions, such as carbon dioxide. Generating renewable energy creates far lower emissions than burning fossil fuels. Transitioning from fossil fuels, which currently account for the lion's share of emissions, to renewable energy is key to addressing the climate crisis. Renewable energy, often referred to as clean energy, comes from natural sources or processes that are constantly replenished. For example, sunlight and wind keep shining and blowing, even if their availability depends on time and weather. While renewable energy is often thought of as a new technology, harnessing nature's power has long been used for heating, transportation, lighting, and more. Wind has powered boats to sail the seas and windmills to grind grain. The sun has provided warmth during the day and helped kindle fires to last into the evening. But over the past 500 years or more, humans increasingly turned to cheaper, dirtier energy sources, such as coal and fracked gas.[12]

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its impacts and the workable responses and measures. Some scientists have also doubted the level of certainties concerning the variations that have taken place in the climate system, etc; see P Chylek and Others, 1st International Conference on Global Warming and the Next Ice Age, Conference Proceedings, Halifax, Nova Scotia, Canada, 19-24 August 2001 (Dalhousie University, 2001)

[10] It is also the source on which the UNFCCC regime and the parties to it accepted to rely upon in their various activities to tackle climate change.

[11]United nations, 'What is Renewable Energy' <https://www.un.org/en/climatechange/what-is-renewable-energy#:~:text=Renewable%20energy%20is%20energy%20derived,plentiful%20and%20all%20around%20us.> Accessed 27 September, 2025.

[12] 'Renewable Energy: The Clean Facts' (2022) <https://www.nrdc.org/stories/renewable-energy-clean-facts#sec-whatis> Accessed 27 September, 2025.

3. Legal Framework on Climate Change in Nigeria

i. The Constitution of the Federal Republic of Nigeria, 1999 as Amended

Interestingly, the Constitution,[13] as the supreme national legal order in Nigeria, to a little extent, recognises the importance of improving and protecting the environment.[14] The constitution therefore makes infinitesimal provisions for the environment in section 20 which makes it an objective of the Nigerian state to improve and protect environmental components which include the air, land, water, forest and wildlife of Nigeria. It is however regrettable that these provisions fall under Chapter 2 of the Constitution[15] which are non-justiciable by virtue of section 6(6)(c) which provides:

> *The judicial powers vested in accordance with the foregoing provisions of this section … shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this constitution.*[16]

This provision of section 6(6)(c) has been construed as negating the court's authority to decide on any issue having to do with the enforceability of the provision of section 20 of the Constitution. That is, protection of the environment. This is because section 20 falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution, which by section 6(6)(c) are usually not

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

[14] Environmental Law Research Institutes 'A Synopsis of Laws and Regulations on the Environment in Nigeria' <http://elri-ng.org/newsandrelease2.html> accessed 27 September, 2025.

[15] Chapter 2 of the Constitution is on the Fundamental Objectives and Directive Principles of State Policy

[16] Section 6 (6) (c) of the Constitution of the Federal republic of Nigeria,1999 (as amended).

enforceable.[17] This provision was judicially interpreted in the case of *Okogie (Trustees of Roman Catholic Schools) and other v Attorney-General, Lagos State*[18] where the Court held that section 13 has not made Chapter II of the Constitution justiciable among other things. The view of the court in the above cited case further backs the contention that no court has power to entertain any question concerning the enforceability of the provision of section 20 and of other matters specified in Chapter two of the 1999 Constitution (as amended).[19] The collective reading of section 20 and section 6(6)(c) of the Nigerian Constitution shows that the Constitution does not contain any express provision for the right to a healthful environment. The conclusion from the foregoing is that the Nigerian Constitution, which is the highest law of the land, has no express provisions for justiciable environmental rights.

Meanwhile, section 12 of the Constitution also establishes, though impliedly, that international treaties (including environmental treaties) ratified by the National Assembly should be implemented as law in Nigeria.[20] The constitutional requirement for the ratification of treaties by the National Assembly however exposes the weakness of the Constitution in protecting the Environment in view of the importance of the environment to mankind and his sustainable development. This is particularly so because the provision slows down enforcement process. It does not also take into cognizance the hydra influence of globalization in all spheres of our life. Worst still, that provision simply stifles the promotion of international cooperation in environmental protection. However, it must be mentioned that Nigeria has ratified many International Treaties that protect the environment, such as the Paris

[17] A Abdulkadir and A Sambo, 'Human Rights and Environmental Protection: The Nigerian Constitution
Examined' (2009) Journal of Food, Drug and Health Law 61, 73; M Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women‟s Experiences' (2012) 5(1) Journal of Politics and Law 100, 108.

[18] 1981] 2 NCLR 337.

[19] The case decided under the regime of the 1979 Constitution remains relevant as the provision of Section 13 therein is impari materia with the provision of Section 20 of the 1999 Constitution.

[20] Environmental Law Research Institutes web page, 'A Synopsis of Laws and Regulations on the Environment in Nigeria' <http://elri-ng.org/newsandrelease2.html> accessed 30 September, 2025.

Agreement, Kyoto Protocol to the Framework Convention on Climate Change, amongst others. These ratified treaties are enforceable against Nigeria once they become domesticated.

ii. The Climate Change Act

Another beacon of legal framework for climate change in Nigeria is the Climate Change Act (abbreviated herein as "CCA") 2021, which came into force in response to Nigeria's commitment to complying with the minimum standard required of the country in anti-climate change efforts of the international community. The CCA aims to achieve low greenhouse gas emission (abbreviated herein as "GHG"), green growth and sustainable development.[21] The Act aims to ensure that Nigeria formulates programmes for achieving its long term goals on climate change mitigation and adaptation being part of the objects the legislature had in mind on enacting the CCA.[22] Long-term climate objective needed to be part of what the country would be doing from 2021 in reducing GHG.[23] However, climate change action plans are to be subject to national priorities; where the national priorities are over and above climate change issues, such national priorities would prevail.[24] Monies needed to combat climate change would be provided by the government.[25] Environmental integrity and socio-economic development will be product of policy and actions integration by the office charged with complying with Nigeria's GHG requirement.[26]Nigeria has set year 2050-2070 as its net-zero GHG emission target in line with Nigeria's international climate change obligation.[27]

Climate change is both an occurrence from natural phenomenon, and an aggression on nature by human activities which tend to pollute the environment beyond what the natural existences can accommodate. Therefore, nations are supposed and are expected to identify risks and vulnerable factors that encourage GHG emissions, build resilience against such weaknesses, and identify/strengthen existing adaptive capacities in

[21] Climate change Act, Section 1.

[22] ibid. 1(a).

[23] ibid, Section 1(b).

[24] ibid, Section 1(c).

[25] ibid, Section1 (d).

[26] ibid. Section1(e).

[27] ibid, Section1(f).

curtailing climate change.[28] Building resilience and risks ascertainment are actions based; a country must show in real terms what it has done, from what it can do would be verifiable, and detailed information of what it needs to accomplish resistance to climate change challenges in its immediate environment.[29] Then, the country should implement mitigation measures that promote low carbon economy and sustainable livelihood as well as ensure that private and public entities comply with stated climate change strategies, targets and National Climate Change Action Plan.[30] The CCA applies to everyone for the purposes of the development and implementation of mechanisms geared towards fostering low carbon emission, environmentally sustainable and climate resilient society.[31]

iii. National Environmental Standards and Regulation Enforcement Agency (NESREA) Act 2007

The NESREA Act[32] established NESREA in place of Federal Environmental Protection Agency (FEPA). The Act repealed the FEPA Act.[33]NESREA Act is essentially an embodiment of laws and rules which has the objective of protecting the environment and promoting sustainable development within the Nigerian space in line with global standards. The agency created by the Act has the mandate to enforce all environmental laws in Nigeria, including international agreements, and to enforce compliance with the international conventions, and protocols, subject, however, to the domestication of such conventions. The protection of the environment is the principal aim of this law. It established the National Environment Standards and Regulations Enforcement Agency to establish basic institutional machinery for environmental management in Nigeria. Section 8(f) of the Act set up mobile courts for the speedy trial of those that violate its provisions. One of the weaknesses of the Act is that section 8(g) bars the agency from enforcing hazardous waste regulations in the oil and

[28] ibid, section1(g).

[29] ibid, section1(g).

[30] ibid, section1(i).

[31] ibid, Section 2.

[32]This Act was officially gazetted by the Federal Republic of Nigeria on the 31st July 2007. See Government Notice 61, Act No.25 Vol. 94, pages A635-655. Now Cap N164 Laws of Federation of Nigeria 2010

[33] Cap F10 LFN 2004; NESREA Act, section 36.

gas sector. The agency cannot monitor, audit, or conduct investigations into the oil and gas sector's pollution.

Furthermore, the NESREA Act promotes corporate environmental responsibility.[34] Section 27 prohibits the discharge on the Nigerian land and into her waters or air, such harmful quantities of any hazardous substance except where such discharge is permitted or authorised under any law in force in Nigeria.[35] Violation of this provision by any person is an offence and such violator in Nigeria is liable on conviction, to a fine, not exceeding N1,000,000 or to imprisonment for a term not exceeding 5 years.[36] Another important provision in the NESREA Act is the power of the Minister of the environment among other things, to make regulations generally in order to give full effects to the functions of the agency under the Act.[37] Not less than 40 regulations have been made since the inception of the agency. It appears the major problem with the NESREA Act is the implementation of its provisions on enforcement. Without doubt, enforcement of the law is crucial to its efficacy. This requires adequate human capacity which appears lacking in NESREA. At this juncture, it must nevertheless be pointed out that the limited space for this article may not give room for elaborate discussions on other relevant acts and legal instruments which constitute the legal framework on climate change in Nigeria such as;

a. The Associated Gas (Continuing of Flaring of Gas) Regulation, 2018
b. The Associated Gas (Re-Injection) (Continued Flaring of Gas) Regulations of 1985
c. Petroleum Industry Act 2021
d. The National Oil Spill Detection and Response Agency (Nosdra) Act[38]
e. Oil Pipeline Act 2004
f. Climate Change Policy 2021 – 2030[39]

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[34] NESREA Act, Sections 20(4), 21(3), 22(4) and 23(4).

[35] Ibid, Section 27(1).

[36] Ibid, Section 27(1).

[37] NESREA Act, Section 34.

[38] The National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act, 2006.

[39] Federal Ministry of Environment, 'National Climate Change Policy in Nigeria 2021 - 2023' < https://climatechange.gov.ng/wp-

g. The National Policy on the Environment (Revised 2016)
h. Gas Flaring venting and Methane Emission (Prevention of Waste and Pollution) Regulation) 2023
i. Environmental Impact Assessment Act.

4. Legal Framework on Renewable Energy in Nigeria

In recent times, the Nigerian government has developed many policies directed at promoting the adoption and entrenchment of renewable energy sources so as to protect the environment against negative effects of climate change. Actually, the legal framework for renewable energy in Nigeria began with the Energy Commission of Nigeria Act[40] which established the Energy Commission of Nigeria for the formulation and coordination of national energy policies, overseeing the energy sector's adherence to government policies, and the utilisation of new energy sources.[41] The Commission formulated the National Energy Policy (NEP) 2003, which served as the basis for the development of the Renewable Energy Masterplan. The NEP offered concise directives on the application of renewable energy for production, utilisation, finance, research, development, training, planning, and implementation in Nigeria. Additional renewable energy initiatives include the Renewable Electricity Policy, Guidelines 2006, National Renewable Energy and Energy Efficiency Policy 2015, National Renewable Energy Action Plans (NREAP) 2016. Other legal framework for renewable energy include;

i. The Renewable Energy Master Plan (REMP) 2005

In November 2005, the REMP was developed with the help of the United Nations Development Programme (UNDP) to serve as a blueprint for the implementation of the renewable energy component of the Nigeria Electricity Plan (NEP). It constitutes a major element of the strategy to minimize GHG emission and promote cleaner and more sustainable power supply.[42] The REMP specifically sought to enhance the development of renewable energy resources in the country by outlining targets and goals

content/uploads/2021/08/NCCP_NIGERIA_REVISED_2-JUNE-2021.pdf> accessed 22 July 2025.

[40] Energy Commission of Nigeria Act, Cap. E10, Laws of the Federation of Nigeria, 2004.

[41] Ibid, Section 1.

[42] David O Obada, "A Review of Renewable Energy Resources in Nigeria for Climate Change Mitigation" (2024) 9 Case Studies in Nigeria for Climate Change Mitigation 100669.

in the short, medium, and long term. It also considered the policies, frameworks, technologies, and infrastructural and manpower capacities that will be required to achieve the set targets. Key objectives of the REMP include providing a clear plan for making renewable energy a main part of the energy mix, improve Research and Development (R&D), and ensure energy access to rural areas of the country.[43] The policy focused mainly on exploiting renewable energy technologies in wind power, Small Hydro Power (SHP), biomass (improved cooking stoves) and Photovoltaic Solar (PV solar). The Master Plan outlines the overall objectives for the electricity and non-electric sub-sectors.

ii. The Electricity Act 2023

The primary legislation governing renewable energy in Nigeria is the Electricity Act 2023.[44] The Act emphasises the significance of renewable energy in power generation. The Nigerian Power Regulatory Commission (NERC) and the Independent System Operator (ISO) are mandated to consistently advocate for the generation of power from renewable sources.[45] The Act also establishes measures to promote investment in renewable energy projects, including feed-in tariffs, a program that ensures a fixed price for renewable electricity fed into the grid, along with tax benefits.[46] The Act requires NERC to implement strategies to enhance the propagation of renewable energy in Nigeria's electricity mix. These encompass: i. simplifying the licensing and fee structure for the issuance of licenses to renewable energy service enterprises, ii. Providing regulations that delineate the roles of generation licenses, transmission service providers, and ISO distribution licenses in the integration of renewable energy capacity into the national grid and distribution network, among others.[47] A notable characteristic of the Act is a policy designed to promote the advancement of renewable energy. Section 3 of the Act empowers the Federal Government, via the Ministry of Power, to implement the National Integrated Electric Policy and Strategy Implementation Plan. It is crucial to note that policies have always

[43] Ibid.

[44] Nigerian Electricity Act, 2023 (No. 17 of 2023)

[45] Ibid, Section 70 (1)z

[46] Ibid, 71 & 72; F.Z. Taibi and S. Konrad, Pocket Guide to NDCs under the UNFCCC (ECBI 2018), at 1–2

[47] Ibid, Sections 29 (2), 45 (1), 47 (1), 70.

preceded the establishment of legislation in Nigeria. It was the National Energy Policy of 2003 that led to the establishment of the Electric Power industry Reform Act 2005, which served as the principal legislation for the industry until the enactment of the Electricity Act 2023.[48] The Act delineates the policy's scope to encompass the efficient use of various sources for power generation. The sources encompass renewable energy types like solar, hydroelectric, wind, and biomass. It also include provisions for mitigating the financial obstacles to sector development, such as waivers and subsidies. The Minister of Power is required to implement the National Integrated Electricity Policy and Strategic Implementation Plan (NIEPSIP) within one year of the enactment of the Electricity Act 2023. Review is also to be conducted every five year and the Federal Executive Council is mandated to approve the plan prior to publication in the Federal Government Gazette.

5. The Impact of Climate Change and its Remediation Through Renewable Energy

Nigeria, as a developing country with a high dependence on climate-sensitive resources, faces a broad range of direct and indirect impacts from climate change. These effects cut across environmental, economic, and socio-political dimensions, posing a significant threat to national development and human security.

i. Environmental Impacts

One of the most visible manifestations of climate change in Nigeria is the intensification of desertification and drought, particularly in the northern regions. The Sahelian zone of northern Nigeria has witnessed progressive desert encroachment, leading to the loss of arable land and vegetation cover.[49] Rainfall patterns have become increasingly erratic, and the length of the rainy season has diminished, directly affecting the hydrological cycle and ground water recharge. In contrast, the southern parts of Nigeria, especially the Niger Delta region, are experiencing more

[48] Olukayode Olalekan Aguda,'Constitutional and Institutional Governance of Electricity Sector in Nigeria' (2023) 14 Journal of Energy Research and Reviews (4) 32 – 44.

[49] Esther Shupel Ibrahim and Others, 'Desertification in the Sahel Region: A product of Climate Change or Human Activities? A Case of Desert Encroachment Monitoring in North-Eastern Nigeria Using Remote-Sensing Techniques' (2022) 2 (2) Geographies 204 – 226.

frequent and severe flooding events.[50] Rising sea levels, coupled with poor drainage systems and rapid urbanization, have led to the inundation of coastal areas, displacement of communities, and degradation of critical ecosystems such as mangroves and wetlands.

ii. Economic Impact

Climate change poses substantial economic threats to Nigeria's key sectors. Agriculture, which employs about 70% of the rural workforce and contributes roughly 24% to the national GDP, is particularly vulnerable.[51] Changes in temperature and precipitation patterns affect planting cycles, crop yield, and livestock productivity. Moreover, global shifts away from fossil fuels in response to climate goals threaten the long-term viability of Nigeria's oil-dependent economy.[52] In the health sector, climate-sensitive diseases such as malaria, cholera, and meningitis have become more prevalent due to higher temperatures, stagnant floodwaters, and changing ecological conditions.

iii. **Social and Political Impacts**

Socially, climate change exacerbates existing vulnerabilities, particularly among women, children, and low-income groups. Environmental degradation has led to increased rural-urban migration, swelling the population of informal settlements with poor access to basic services. Moreover, the depletion of natural resources has intensified competition and conflict, especially between herders and farmers in the Middle Belt. These conflicts have often escalated into violence, contributing to national insecurity.

6. Remediating Strategies Through Renewable Energy

In response to the multifaceted impacts of climate change, renewable energy emerges as a strategic and sustainable solution. By

[50] S O Enokela, OM Akwenuke and Uguru, 'Review of Flood Disaster events in Delta State of Southern Nigeria' (2025) 11 (8) International Journal of Engineering and Modern Technology

[51] Kehinde Samuel Alehile, 'Climate Change Effect on Employment in the Nigeria's Agricultural Sector' (2023) 11 (3) Chinese Journal of Urbana and Environmental Studies

[52] Ukeyima Adams, 'Climate Change and the Future of Nigeria's Oil-dependent Economy' (2024) 24 (2) Global Journal of Management and Business Research: B Economics and Commerce

reducing greenhouse gas emissions, diversifying the energy mix, and enhancing adaptive capacity, renewable energy can significantly contribute to climate in Nigeria.

i. Renewable Energy for Mitigation

Nigeria possesses abundant renewable energy resources, notably solar, hydro, wind, and biomass. Large-scale solar farms, decentralized mini-grids, and rooftop solar systems can offer clean, affordable electricity to both urban and rural populations. The deployment of solar photovoltaic (PV) systems has already seen traction in rural electrification projects, such as those championed by the Rural Electrification Agency (REA). Hydropower remains a key contributor to Nigeria's energy supply, accounting for approximately 20% of electricity generation.[53] Small and medium-sized hydro projects hold potential for expansion, especially in riverine communities where grid access is limited. [54] Wind energy, though underutilized, has significant potential in the northern regions, particularly in states like Katsina and Sokoto. These technologies can reduce dependence on fossil fuels and improve Nigeria's carbon footprint.

ii. Renewable Energy for Adaptation

Beyond mitigation, renewable energy enhances adaptive capacity, particularly in agriculture, health, and education. For instance, solar-powered irrigation systems enable farmers to maintain crop production despite erratic rainfall. Solar dryers and cold storage units reduce post-harvest losses, thus improving food security and rural incomes. In the health sector, renewable energy supports the electrification of clinics and the preservation of vaccines, enhancing health outcomes in remote areas. Education and digital inclusion also benefit from electrification.

iii. Economic, Policy, and Institutional Frameworks

The economic potential of renewables includes job creation in manufacturing, installation, and maintenance of renewable energy systems. At the policy level, Nigeria has developed several strategic frameworks, including the Renewable Energy Master Plan (REMP), the Nationally Determined Contribution (NDC), and the Energy Transition Plan

[53] Johnson Nchege and Chijindu Okpalaoka, 'Hydroelectric Production and Energy Consumption in Nigeria: Problems and Solutions' (2023) 219 Renewable Energy 119548.
[54] Ibid.

(ETP) which outlines a pathway to net-zero emissions by 2060. These plans emphasize scaling up renewables, improving energy efficiency, and fostering private sector participation. However, implementation remains a challenge due to regulatory bottlenecks, inadequate financing mechanisms, and weak institutional coordination.

7. Challenges of the Mitigation of Climate Change in Nigeria

Nigeria plays a crucial role in international initiatives to address climate change. Nigeria, with a population over 200 million and an economy significantly reliant on fossil fuels, is susceptible to the effects of climate change. Nonetheless, the nation's legislative structure for climate change regulation encounters several obstacles that impede the efficient execution of climate change policy. This article exposes some significant limitations inherent in the current legislative system regulating climate change in Nigeria to include:

i. Weak Institutional Framework for Environmental Management

The execution of climate change measures in Nigeria is inherently weakened by the wanton duplications of agencies and departments tasked with managing the issues. As the saying goes, too many cooks spoil the broth. The current response to climate change concerns in Nigeria is predominantly assigned too many government departments and agencies, many of which exhibit operational inefficacy.[55] There is also the issue of inadequate enforcement of existing environmental protection laws and standards, and this has intensified the climate change crisis in Nigeria.[56] The multitude of entities engaged in climate change response results in incoherence in decision-making processes and obstructs the accurate evaluation of the efficacy of climate change policies in mitigating emissions and facilitating adaptation.[57]

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[55] David G Ogunkan, 'Achieving Sustainable Environmental Governance in Nigeria: A review for Policy Consideration' (2022) 2 (1) Urban Governance 212 – 220.

[56] C A Ogunbode, and Others, 'Climate change legislation in Nigeria: A critical review of the challenges and opportunities' (2019) Journal of Climate Policy, 3(2), 1018-1031.

[57] M T Ladan, 'Climate change regulations in Nigeria: A critical analysis of the challenges and

Opportunities' (2019) 10 (1) Journal of Sustainable Development Law and Policy 1-32.

ii. Non-domestication of International Climate Change Treaties

Section 12 of the Constitution mandates that treaties ratified by Nigeria are not legally enforceable unless they are domesticated and integrated into Nigerian law. Regrettably, only two of the climate change treaties approved by Nigeria have been implemented domestically.[58] Thus, under Nigerian domestic law, only the domesticated treaties may be enforceable, while the numerous non-domesticated ones lack binding jurisdiction over the nation.[59] This scenario poses a considerable problem in ensuring governmental accountability for its commitments under international climate change treaties. In the absence of domestication, treaties cannot be successfully deployed as legal instruments to enforce compliance and tackle climate change-related challenges in Nigeria.[60]

iii. Ineffective Enforcement and Implementation of existing Legislation and Policies

Nigeria has numerous laws and policies that could be indirectly utilised to tackle the urgent issue of climate change, such as, the Land Use Act, the Electricity Power Sector Reform Act, 2005 etcetera. The current legislations, while not specifically intended for climate change mitigation and adaptation, include provisions and policies that may aid in addressing the issues presented by climate change in the country. Nonetheless, the paramount concern that emerges is the absence of the political will to implement these legislations effectively. It is discouraging to note that some laws, which possess significant potential for addressing climate change, remain unexecuted and neglected, existing only as written text.

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[58] Muhammed Taofeek Ladan 'National Practice on Domestication of Treaties in Nigeria (1960 – 2023)' (A Presentation being made at the 2 day Seminar on Asian- African Treaty Law and Practice, 14 – 16 April 2023).

[59] Ekweremadu, I. (2015). Why Amendments failed during constitutional review. A Public Lecture of the
Faculty of Law, Nnamdi Azikiwe University, Awka delivered at the University Auditorium With the theme: The Politics of Constitutional Review in a Multi-Ethnic Society. On 19 October 2015.

[60] C Nriezedi-Anejionu, 'Could the Non-domestication of Nigerian treaties affect International Energy Investments attraction into the Country?' (2020) 2 (1) African Journal of International and Comparative Law 1-25.

8. Conclusion

It is a given that it is impossible for man to stop the natural causes of climate change, however, the human causes can be drastically reduced with the right approach. It is noteworthy to point out that a number of human activities have contributed and are still contributing to the depletion of the ozone layer, which causes global warming. The objective of this article has been to highlight a number of these human activities and how it is contributing to climate change in Nigeria. Currently, Nigeria's energy sector is fossil fuel dominated and its associated processes lead to Green House Gases (GHG) emissions and ultimately, climate change.[61] If the current trend continues unabated, then climatic variability currently being experienced is definitely going to increase and intensify and the resultant impact will be catastrophic for the future of the country. The argument frequently bandied that Nigeria's contribution to global warming is insignificant when compared to that of developed countries is unsupported given the current trend that threatens to spare no one.

To this end, the Nigerian government has to encourage the deployment of renewable energy sources in stand-alone capacities as well as grid-based to boost energy security and its availability. This article has highlighted laws and policies that have been put in place by the government to encourage the transition to renewable energy. However, it is doubtful whether these laws and policies have actually reduced the effects of climate change to any encouraging extent. To reduce the emission of GHGs, clean and environment-friendly technologies are required. Automobiles can be upgraded to operate on modern fuels such as ethanol, solar engines, electric or hybrid engines. Gas flaring being perpetrated by oil producing companies should immediately be halted, harnessed and defaulters made to pay penalties where necessary. Regulators of the energy sector should encourage operators and consumers to adapt to or adopt energy efficiency measures in both the supply and consumption of energy respectively.

[61] Udochukwu B Akuru, Ogbonnaya I Okoro, and Edward Chikuni, 'Impact of Renewable Energy Deployment on Climate Change' (2015) 26(3) Journal of Energy in South Africa.

9. Recommendations

The following recommendations would be worthwhile towards the transition to sustainable energy practices in Nigeria, *viz:*

i. Strengthening Climate Governance and Policy Frameworks in Nigeria

Enhancing climate governance and policy frameworks is essential for Nigeria to effectively tackle climate change and attain its climate objectives. It is of positive note that Nigeria has made substantial advancements in enhancing climate governance and policy frameworks in recent years. A significant step was the creation of the National Climate Change Policy and Response Strategy in 2012, which offers a comprehensive framework for tackling climate change concerns.[62] By improving governance frameworks, including the delineation of explicit roles and duties among pertinent parties, Nigeria may guarantee efficient coordination and execution of climate policy. Comprehensive policy frameworks are essential to establish a strong basis for the formulation and execution of climate action, encompassing mitigation methods, adaption measures, and sustainable development initiatives. These frameworks must include systems for monitoring, reporting, and verifying advancements towards climate objectives, together with provisions for addressing any potential issues or obstacles that may emerge. Nigeria must actively collaborate with foreign partners and engage in global climate initiatives to use resources, knowledge, and expertise for effectively addressing climate change. By doing so, Nigeria can augment its ability to tackle climate challenges holistically and attain its climate objectives promptly.

ii. Investing in Renewable Energy Sources

Increasing renewable energy capacity is a crucial aspect of Nigeria's efforts to catch up with its climate goals. As of 2021, Nigeria's renewable energy sources contributed to approximately 13% of the country's total energy consumption.[63] However, it is important to note that there is still significant room for improvement, as the Nigerian government aims to

[62] H Haider, 'Climate Change in Nigeria: Impacts and Responses' (2019) The Institute of Development Studies and Partner Organisations.

[63] A Ijiwole, 'Employment Generation and Poverty Alleviation in Nigeria: The Role of Social Entrepreneurship' (2019) 4 Asian Journal of Education Social Studies 1–8.

increase the share of renewable energy to 30% by 2030.[64] This commitment reflects Nigeria's recognition of the importance of transitioning towards sustainable energy systems to mitigate climate change and enhance energy security. By investing in and expanding the use of renewable energy sources such as solar, wind, and hydropower, Nigeria can significantly reduce its reliance on fossil fuels and decrease greenhouse gas emissions.

iii. Investing in Green Infrastructure Projects

Investing in green infrastructure projects, such as green buildings and renewable energy installations, not only helps reduce greenhouse gas emissions but also presents a significant opportunity for job creation and economic growth. According to a report by the Nigerian Investment Promotion Commission, the investment in green infrastructure projects in Nigeria has been steadily increasing over the years. In 2019 alone, the country witnessed a significant investment of USD 2.7 billion in renewable energy projects.[65] This demonstrates a growing commitment towards sustainable development and reducing carbon emissions in Nigeria. By prioritizing these projects, Nigeria can tap into the potential of its renewable energy sector, attract investments, and create a skilled workforce specializing in sustainable technologies.

[64] G Nemet, 'Addressing Policy Credibility Problems for Low-Carbon Investment' (2017) Glob. Environ. Chang 47–57.

[65] ibid.

Rethinking Terrorist Designation amidst Emerging Issues on Accountability under International Criminal Law

Dr. Michael Dominic Hanson[*]

Abstract

In combating terrorism globally, affected States have adopted various mechanisms, including the use of proscription orders or terrorists designation, to curb terrorist activities and promote accountability under International Criminal Law. However, the persistent absence of a universally acceptable definition of terrorism continues to undermine these efforts. Consequently, while many countries and international institutions have designated certain organisations and individuals as terrorists, inconsistencies in recognition and enforcement persist across jurisdictions. A major concern arises when designated terrorist groups or individuals successfully seize and exercise control over state apparatus, as such situations often confer de facto legitimacy on them, thereby frustrating mechanisms of accountability and justice. This paper rethinks terrorists designation as a mechanism for combating terrorism amidst these emerging challenges to accountability under international law. Using a doctrinal methodology, it finds that the lack of a universal definition of terrorism has led to fragmented responses and selective treatment of terrorist actors. It further observes that validation of terrorist entities following their takeover of state power entrenches impunity and weakens international criminal accountability. The paper recommends cautious application of proscription orders, enhanced interstate cooperation, and collective denial of legitimacy or recognition to terrorist groups that usurp lawful governments.

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1. Introduction

Terrorism is one of the world's most challenging phenomenon that continues to wreck havocs in different countries, causing indiscriminate destruction of lives and property as well as threatening global security and world order.[1] Many countries of the world including, Nigeria, Chad, Somalia, US, France, Israel, Afghanistan, Syria, Iraq, India, Yemen and Lebanon have been grappling with terrorism. These countries have responded to it using different mechanism including the legislative, judicial, military, political and socio-economic and diplomatic mechanisms.[2] The designation/ proscription order is an example of the legislative mechanism used by many of these countries and organisations in combating terrorism.[3] It has been shown to be one of the most important tools of counterterrorism in the world.[4] With this mechanism, many individuals or groups have been designated as terrorists and proscribed as such by various governments and organisations.[5] Groups such as, Hamas, ISIS, al-Shabaab, al-Qaeda, Indian Mujahedeen (IM), Boko Haram, Islamic Movement of Nigeria (IMN), Islamic State of West Africa Province (ISWAP)

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[1] Shreya Goswami and Kriti Bhatia, 'International Terrorism: The Conceptual Dimension' (2020) The Journal of International Issues (24) (3) 110.

[2] Seth Loertscher and others, 'Terrorists List: An Examination of the U.S Government's Counter terrorism Designation Efforts' (2020) Combating Terrorism Center 70. Also available at www.ctc.usma.edu

[3] See for instance the Antiterrorism and Effective Death Penalty Act of 1996, which gives the US Secretary of State authority to designate foreign terrorist organizations whose terrorist activity threatens the security of United States nationals or the national defense, foreign relations or economic interests of the United States. Pub. L. 104-132, § 302, 110 Stat. 1214, 1248; Section 219 of the Immigration and Nationality Act (8 U.S.C. § 1189).

[4] Keenan, Patrick J. 'The Changing Face of Terrorism and the Designation of Foreign Terrorist Organizations' (2020) Indiana Law Journal (95) (3) (4) 791.

[5] Hyeran Jo, Brian J. Phillips and Joshua Alley, 'Can Blacklisting Reduce Terrorist Attacks'? The Case of the US Foreign Terrorist Organization (FTO) List from Part III - Beyond and Within State. (Judith G. Kelley and Beth A. Simmons edn. Cambridge University Press, 2020).

and Hezbollah as well as particular individuals associated with them have been designated as terrorists.[6]

Terrorist designation mechanism has been used in combating terrorism, notwithstanding the continuous absence of a universally acceptable definition of terrorism. Accordingly, many countries of the world and international institutions have designated certain organisations and individuals as terrorists in order to, amongst others, curtail their activities and ensure accountability. Sadly, many designated organisations or individuals that have taken over the instrument of force of the State, through their terrorist acts, have remain in power in those States and such governance has been validated or legitimised by other countries of the world including the world community. Humanitarian assistance has also been given to these states while people and countries are undertaking unhindered political and economic transactions with them. Example of such states include Afghanistan and Syria.[7] In Afghanistan, the Talibans were designated as terrorist organisations by United States of America (US), Russia, New Zealand and other countries of the world as well as international organisations such as the United Nation (UN).[8] Sadly, when they took over the control of instrument of force of the state and govern Afghanistan, their governance became validated, with co-operations and collaborations with other countries including Pakistan and Russia, while they govern Afghanistan till date.[9] Also, in Syria, Hayat Tahrir al-Sham (HTS), a terrorist organisation designated as such by the US in 2018, formerly known as Jabhat al-Nusra or the al-Nusra Front, which was al-Qaeda's official wing in Syria until breaking ties in 2016, fought and obtain

[6] US Department of States, Foreign Terrorists Organisations, Bureau of Counterterrorism< https://www.state.gov/foreign-terrorist-organizations > accessed 20 October 2025.

[7] US Department of the Treasury, Office of Foreign Asset Control, 'Do U.S. sanctions on the Taliban and the Haqqani Network prohibit the provision of humanitarian assistance to Afghanistan?'

[8] See List of US Specially Designated Global Terrorist (SDGT) under Order 13224; Terrorism Suppression Act 2002 of New Zealand; United Nation Security Council Resolution (UNSCR) 1267/1989/2253 and 1988.

[9] The ministry of Foreign Affairs of the Russian Federation, 'Press release on suspending the terrorist status of the Taliban movement', 17 April 2025 < https://mid.ru/en/foreign_policy/news/2009744/>accessed 20 October, 2025.

a transition from a terrorist organisation to a governing body.[10] This occurs after the organisation, headed by its leader Ahmed al-Sharaa, led a coalition that successfully ousted the Syrian government of President Bashar al-Assad on 8 December 2024.[11] This organisation has now received international recognition and cooperation from the UN, US, Saudi Arabia, Qatar, Lebanon, United Arab Emirate, Turkiye and other countries some of whom have sent delegations to Syria, opened consulates in Damascus and reinstated diplomatic missions to Syria.[12] The leader of this organisation who is now the President of Syria attended the 80th UN General Assembly meeting held in New York, US in September 2025 and addressed the world community.[13] Thus when an organisation designated as a terrorist group overthrows a nation's government and assumes control, it presents a challenge to the international community as a consequent of legitimisation of such regime by the international community and other countries of the world. This constitutes serious emerging issues under international criminal law bothering on accountability and calls for concerns on rethinking the use of proscription orders in dealing with terrorism.

This paper analyses the validity given to designated terrorists organisations or individuals after they have successfully taken over control of state apparatus through their acts of terrorism, which frustrates their accountability. The paper is divided into five parts. Part one is the

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[10] Vision of Humanity, 'What happens next when a terrorist group overthrows a government'? February 11, 2025< https://www.visionofhumanity.org/what-happens-next-when-a-terrorist-group-overthrows-a-government> accessed 29 June, 2025; Maziar Motamedi, 'Syrian President al-Sharaa sits down with US general who arrested him' <https://www.aljazeera.com/news/2025/9/23/syrian-president-al-sharaa-sits-down-with-us-general-who-arrested-him>accessed 28 September, 2025.

[11] Sinem Adar and others, 'The Political Transition in Syria: Regional and International Interests' Stiftung Wissenschaft und Politik Publikationen <https://www.swp-berlin.org/publikation/the-political-transition-in-syria-regional-and-international-interests>accessed 28 September 2025.

[12] Sam Heller, 'Why Amed al-Sharaa's U.N Debut Matters' Time (Beirut, 23 September 2025) < https://time.com/7319571/syria-sharaa-united-nations/>accessed 23 October 2025.

[13]Faisal Ali, 'President al-Sharaa is first Syrian leader to visit UNGA in six decades'<https://www.aljazeera.com/news/2025/9/22/president-al-sharaa-is-first-syrian-leader-to-visit-unga-in-six-decades> accessed 28 September, 2025.

introduction and part two concerns itself with understanding terrorism. Part three undertakes an analysis of terrorist designation as a mechanism for combating terrorism and its implications on designated terrorist organisations. Part four deals with the emerging issues of concern on terrorist designation and accountability when a designated terrorist organisation takes over the control of government of a state through acts of terrorism while part five is the conclusion and recommendation.

2. Perspectives on the Definition of Terrorism

In spite of a long historical origin of terrorism, which is traceable to the Romans Sacarii men in the 12th century, what constitutes terrorism today, still remains contestable.[14] This is so because, as shown elsewhere, the old adage 'One man's terrorist is another man's freedom fighter' is very much alive and well till today.[15] The word, 'terrorism,' has been shown to come from the word 'terror', which is shown by Habibu Rahman to have been derived from the Latin word '*terrere*,' which means 'to frighten'.[16] It is a complex term with a long history and has been revealed as having different meanings, depending on the context and the user.[17] Consequently, there has been proliferation of what terrorism means. Thus, many scholars, organisations as well as states have engaged themselves in providing a definition of what constitutes terrorism.[18] B. Ganer, defines terrorism as the use or threat of violence to intimidate or cause panic, especially as a means of affecting political conduct.[19] Brigitte Nacos, defines it as a political violence or the threat of violence by groups or individuals who deliberately

[14] Keenan, Patrick J. (2020) 'The Changing Face of Terrorism and the Designation of Foreign Terrorist
Organizations," (2020) 95 (3) (4) Indiana Law Journal, 817.

[15] Michael Hanson, 'The Crime of Terrorism in Nigeria: Questioning the Constitutionality of Amnesty for Boko Haram Terrorists' (2015) Juris in Sight. Journal of the Department of Jurisprudence & International Law, Faculty of Law University of Uyo (2) 109.

[16] H ur. Rahman, 'Rising Trends of Terrorism: Causes, Dynamics and Remedies' (2009 The Dialogue) (4)(3) 410.

[17] M. K. Afridi, 'Military Operation as a Response to Terrorism: A Case Study of Malakand Division Pakistan' (2014) Mediterranean Journal of Social Sciences (5) 2002.

[18] A Schmid and A Jongman, 'Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature' (1988) N.J. Transaction 1–38.

[19] B Garner, Black's Law Dictionary, (9th edn. St. Paul, MN; West) 1611.

target civilians or non-combatants in order to influence the behaviour and actions of targeted publics and governments. Bruce Hoffman, holds the position that terrorism is an act of violence for the achievement of political interests, which has sweeping psychological implications and is committed mostly by non-state entities as well as revolutionary groups.[20] Boaz Ganor defines terrorism as the intentional use of, or threat to use, violence against civilians or against civilian targets, in order to attain political aims.[21] To A. A. Akani, terrorism is a deliberate and systematic use of violence designed to destroy, kill, maim and intimidate the innocent, in order to achieve a goal or draw national/international attention to demands, which ordinarily may be impossible or difficult to achieve under normal political negotiation.[22] O'Niel, defines terrorism as the use of violence by non-state actors against civilians in orders to achieve a political goal.[23] According to Manzoor, terrorism is the methodical and systematic use of terror, particularly as a means of compulsion or force.[24]

Apart from individual scholars, states and international institutions have also provided wide-ranging definitions of terrorism. According to the United State Department of Defence, terrorism is defined as the calculated use of unlawful violence or threat of violence to inculcate fear; intended to coerce or to intimidate government or societies in the pursuit of goals that are political, religious, or ideological.[25] Also in Title 22 of the United States Code, terrorism is defined to mean premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.[26] Similarly, Title 18 of the United States Code has

[20] B Hoffman, 'The logic of suicide terrorism' (2003) The Atlantic Monthly (291) (5)1-10.

[21] B Ganor, 'Defining Terrorism: Is One Man's Terrorist Another Man's Freedom Fighter?' (2002) Police Practice and Research (3) (4) 294.

[22] A Akanni, 'History of Terrorism, Youth Psychology and Unemployment in Nigeria' (2014) The Journal of Pan African Studies (7) (3) 66.

[23] P. H. O'Neil, Essentials of Comparative Politics, (New York: W. W. Norton & Company, 2007).

[24] M. K. Afridi (n 17).

[25] U.S. Department of Defence, Terrorism: Defining "Terrorism" (2015, September 03)< http://www.jewishvirtuallibrary.org/jsource/Terrorism/terrordef.html > accessed 15 August 2018. For more on the definition of terrorism see A. P. Schmid and A. J. Jongman (n 18)1–38.

[26] 22 U.S.C. § 2656f.

also provided a definition for international terrorism.[27] These definitions of terrorism in US as well as others, do not represent the definition in Britain and Russia because of the variations associated with it.[28] Similar situation is obtainable with regards to the definition within existing legal regimes of international organisations. Thus the UNSCR 1566 (2004), defines terrorism as criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act. The European Union defines terrorism for legal/official purposes as follows: Terrorist offences are certain criminal offences set out in a list comprised largely of serious offences against persons and property which: given their nature or context, may seriously damage a country or an international organisation where committed with the aim of: seriously intimidating a population; or unduly compelling a government or international organisation to perform or abstain from performing any act; or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.[29] The UN General Assembly Resolution 49/60, adopted on December 9, 1994 and titled 'Measures to Eliminate International Terrorism,' defines terrorism as criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes, which are in any circumstance unjustifiable, whatever the considerations of a political,

[27] 18 U.S.C. § 2331(1).

[28] U. S. Department of Defence Terrorism, Defining "Terrorism" <http://www.jewishvirtuallibrary. org/jsource/ Terrorism/terrordef.html>assessed 10th March, 2016); British Prevention of Terrorism Act (BPTA) 2000 s 20; See Federal Law No. 36-FZ 2006< https://english.garant.ru>2006/03/13> accessed 19 December 2017.

[29] UNSCR 15566 of 2004 < https://www.refworld.org/legal/resolution/unsc/2004/en/35952> accessed 31st August, 2025; Art. 1 of the Framework Decision on Combating Terrorism (2002).

philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.[30]

The above disparity in the definition of terrorism shows that in the world community there is no universally acceptable legally binding criminal law definition of terrorism. However, in general, specific acts have been identified as constituting terrorism when committed by non-state actors with particular intent and/or purposes. These acts are those violent and brutal acts which are proposed to create fear or terror, for a religious, political, economic, social or, ideological objective, and deliberately target or ignore the safety of non-combatants.[31] This has influenced the world community in working out treaties on specific acts constituting terrorism to enable state parties corporate in dealing with terrorism wherever perpetrators are found. Some of these treaties, which have been adopted, signed, ratified and re-enacted into domestic laws by some States include: 1963 Convention on Offenses and Certain Other Acts Committed On Board Aircraft; 1970 Convention for the Suppression of Unlawful Seizure of Aircraft; 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; 1979 Convention on the Physical Protection of Nuclear Material; 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation; 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; 1991 Convention on the Marking of Plastic Explosives for the Purpose of Identification; 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism and; 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.

In spite of clear identification of acts constituting terrorism in these treaties together with obligations of states to ensure the prosecution of perpetrators of terrorism, the identification has not still cured the problem of what constitutes terrorism, which is universally acceptable for use in dealing with terrorism. Thus, whereas people who disagree with the course

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[30] UN General Assembly Resolution 49/60 <https://www.refworld.org/legal/resolution/unga/2006/en/69545> accessed 31st August 2025.

[31] M Hanson, 'An Examination of the Security Sector Response to Combating Terrorism in Nigeria' (2019) Uyo Bar Journal (6) 17-31.

of those who commit political violence against civilians or non-combatants with identified acts, condemn them as terrorists, those who share or sympathise with the grievances of the perpetrators with same acts condemned by others, consider them as freedom fighters, militants, revolutionaries, rebels, warriors, and the likes.[32] This is why in some countries they are considered terrorists while in others they are freedom fighter'.[33] Accordingly, many individuals and states who are sympathetic towards their course or interested in such course for political, religious or economic gains provide them with support having not consider them as terrorists. The idea also emboldens many individuals and groups to go under the guise of self-determination agitation to carry out acts of violence involving wanton destruction of lives and property including kidnappings, hostage taking and certain other crimes against humanity. With these supports, they remain in incessant perpetration of terrorism until they bring down the government, take over the control of such state and secure validation of their governance thereafter. It is this situation that frustrates international efforts in combating terrorism till today.

3. Terrorists Designation and the Implications

The Global War on Terror has witnessed an increasing use of designation of terrorist organisations, as well as militants, rebel movements and non-state armed groups as a viable mechanism for combating terrorism. Terrorist designation has been shown to consist in the act of listing an armed group as a designated terrorist organisation.[34] Designation is not limited to armed groups but individuals, organisations and institutions who are associated with the acts of such groups by way of taking part in their activities or providing support of any kind to such groups. It involves the identification of an organisation, which is involved in or associated with terrorism and the labeling or designation or listing of such organisation as a terrorist organisation with attendant

[32] B Nacos, Terrorism and Counterterrorism (4th ed., Pearson Education, London, Inc: 2012)11.

[33] W Laqueur, The Age of Terrorism (Little, Brown and Company: 1987) 302. See also B. Ganor (n 21) 287.

[34] S. Haspeslagh, '"Listing terrorists": The impact of proscription on third-party efforts to engage armed groups in peace processes – A practitioner's perspective' (2013) Critical Studies on Terrorism (6) (1)189.

consequences.[35] It has been shown that the process of designation of an organisation as a terrorist organisation varies from country to country.[36] And that such designation has implications. These implications constitute the legal consequences of designation and have huge applicability.[37] Thus, once an organisation is designated as terrorist organisation, the implications are enormous.

The first implication of terrorist designation is that it operates to criminalise the existence of the organisation, membership, activities as well as other persons, groups or institutions dealing with it. It makes it a criminal offence for anybody to belong, or profess to belong, to the proscribed organisation; solicit, invite or render support for the organisation; harbour or hinder the arrest of the members; provide training or instruction to the organisation; conceal information about acts of terrorism of the organisation; incite or promote membership into such organisation or solicits property for the benefit of the organisation; provide devices to them; recruit persons to be members or take part in their activities; and to finance them.[38] Thus once designated, the operation of such organisation or individual is completely proscribed by law with accompanying punishment. In view of this, International Organisations and states have been identified to have developed lists of proscribed organisations that are designated as 'Foreign Terrorist Organisations' and deals with them accordingly.[39] It is in this list that are usually found names of persons and organisations designated as terrorists. Some of such named individuals and leaders of such organisations are sometimes declared wanted and ransom placed on their head for their arrest. This was the case with many terrorists and leaders of designated terrorist organisations such as Ahmed al- Sharaa, the current President of Syria, who was the leader of the Hayat Tahrir al-Sham (HTS), a terrorist group designated as such by the

[35] Michael D. Hanson, 'Examining the Effectiveness of the Use of Proscription Orders in Combating Terrorism in Nigeria' (2020) African Journal for the Prevention and Combating of Terrorism (10) (2) 121-134.

[36] For a brief comparative analysis of the designation process in the US, Britain and Nigeria, see Michael D. Hanson, ibid.

[37] Patrick J. Keenan 'The Changing Face of Terrorism and the Designation of Foreign Terrorist Organizations' (2020) Indiana Law Journal (95) (3) (4) 807, where he identified three principal consequences of designation of terrorist organisations.

[38] See for instance, the Nigerian Terrorism (Prevention and Prohibition) Act, 2022.

[39] S. Haspeslagh (n 34).

US, who was declared wanted by the US government with a ransom of $10m on his head, which has now been dropped.[40]

Secondly, terrorist designation makes it possible for the identification and prosecution of individual members of the organisation who continue with the activities of the group after designation as well as those who provide material support to such designated organisation.[41] The hallmark of international criminal law is to ensure accountability for perpetrators of international crimes. This is usually achieved where such perpetrators as well as those providing support for them are arrested, prosecuted, convicted and punished. As long as people, organisations and institutions are not allowed to continue doing business with terrorist groups, such groups would not be able to continue to perpetrate terrorism without the requisite resources. This has remained one of the cornerstones of counterterrorism policies of many countries, particularly the US, which has been shown to be - to deny terrorists the resources they need to plan and carry out attacks.[42] Thus, prosecution for material support for terrorism has been shown to become one of the US government's most potent mechanism in its counterterrorism strategy.[43] Thus using the material support statute, prosecutors may charge any individual, group and institution with providing support for terrorism for virtually any assistance to a designated terrorist organisation. Accordingly, individuals who translate documents, engage in social media campaigns, or otherwise help any designated terrorist organisation are therefore open to prosecution.[44] However, for any person to be held guilty of providing material support to a terrorist organisation, it must be shown that such

[40] Aref Tammawi, US drops $10m reward for arrest of Syria's new leader after Damascus talks' Aljazeera <https://www.aljazeera.com/news/2024/12/20/us-officials-on-first-diplomatic-trip-to-syria-since-al-assads-removal> accessed 25 November, 2025.

[41] Patrick J. Keenan (n 37).

[42] Ibid.

[43] Ibid.

[44] See, e.g., United States. v. Mehanna, 735 F.3d 32, 47–49 (1st Cir. 2013) (describing defendant's role in translating materials and posting the translations online); Matt Zapotosky, Northern Virginia Teen Sentenced to 11 Years for Aiding Islamic State, WASH. POST (Aug. 30, 2015), https://www.washingtonpost.com/local/crime/a-sophisticated-terrorist-supporter-or-atroubled-teen/2015/08/27/9138cb6e-4c1e-11e5-bfb9-9736d04fc8e4_story.html

person had the knowledge that the organisation is a designated terrorist organisation.[45] This also, is what makes terrorist designation significant.

The third implication of terrorist designation is that the government would freeze such organisation's assets and its financial transactions from the time of such designation. This action operates to frustrate, if not halt, transactions hitherto undertaken without hitches and makes it illegal for anyone to continue to undertake any further transactions with the designated organisation or help them in doing so. In the US, upon such designation, the Secretary of the Treasury may freeze the designated organisation's assets and block its financial transactions.[46] Such measure has been shown to essentially close the US financial system to the designated organisation and makes it illegal for individuals to conduct transactions with the organisation. Thus once an organisation is designated as a terrorist organisation, all rights and benefits hitherto accruable to it or to others doing business with it become barred from the time of such proscription.

The fourth implication of designation is that the leaders of designated organisation as well as individuals associated with such organisations face travel bans and other restrictions within and outside their states.[47] Thus designation operates to prevent members of such organisation from travelling across national and international borders. This is so because such travel ban operates to confine affected individuals to a particular geographical limits where their arrest could be easy and also opens the floodgate to extradition or prosecution of such individuals in cases where they are found outside the country where the offence was committed.[48] This is more so when such individuals have been declared wanted for prosecution. Where such designation is made by the US, such persons are barred from entering the US and non-citizens face removal if they are in the United States.[49]

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[45] See for instance, 18 U.S.C. § 2339B (a)(1) (2012).

[46] See Department of the Treasury-Office of Foreign Assets Control, Sanctions Programs and Country Infomation, < https://www.treasury.gov/resource center/sanctions/Programs/Pages/Programs.aspx > accessed 23 July 2021.

[47] Patrick J. Keenan (n 37).

[48] Michael Hanson and Amanim Akpabio, 'Extradition and State Responsibilities on the Protection of Rights of Requested Persons' (2023) International Journal of Research and Innovation in Social Science (IJRISS) (7) (6) 356.

[49] Patrick J. Keenan (n 37).

Finally, designation of a terrorist organisation communicate government's political stance of condemnation of the activities of such organisation to other countries of the world. It is such action of government that strengthens global efforts to annihilate common threats presented by the designated organisationsby activating the laws of the country in that regard against them. It also operates to activate policing powers, which targets the proscribed organisations, active sympathisers, sponsors and supporters; and to augment government's diplomatic relationship with other states of the world.[50]

4. Emerging Issues on Terrorists' Accountability and the Concerns

Terrorist organisations' designation has been shown to have numerous implications, one of which is to criminalised their activities, membership, subjects them to condemnation and expose them to be arrested, prosecuted and punished in accordance with the law, wherever they are found. These highlight the essence of accountability, which is the hallmark of international criminal law. There is however serious concerns when a particular organisation is designated as a terrorist organisation by one country yet the same organisation is not considered by other countries or institutions as a terrorist organisation. This stems from the absence of a universally acceptable definition of terrorism, which opens the floodgate to variations of what constitutes terrorism in one country as it is considered differently in another country. This makes the implications of the designation ineffective in achieving the purpose of such designation. For instance, in countries where such organisations are not considered as terrorist organisation, they are not criminalised, the presence of their members, movement and financial transactions are not restricted, supporters and financiers not disturbed and they are not arrested, extradited or prosecuted in accordance with the law. This is contrary to existing international legal regimes on terrorism which have robust provisions on accountability of perpetrators of terrorism. These legal regimes condemn terrorism and places obligations on states to arrest, extradite or prosecute and punish terrorists where ever they are found and to freeze their funds. For instance, the 1999 International Convention for

[50] L. Jarvis and T. Legrand. 'The proscription or listing of terrorist organisations: understanding, assessment, and international comparisons (2018) Terrorism and Political Violence (30) (2) 204.

the Suppression of the Financing of Terrorism commits states to hold those who finance terrorism criminally, civilly or administratively liable for such acts and to identify, freeze and seize funds allocated for terrorist activities.[51] Also, in the 1979 International Convention against the Taking of Hostages, member states agreed to prohibit and punish hostage-taking.[52] The 1997 International Convention for the Suppression of Terrorists Bombings detects the prosecution of terrorists by relevant authorities. Article 33 of Geneva Convention (GC) IV provides that all measures of intimidation or of terrorism are prohibited. The 1977 Additional Protocols both explicitly prohibit terrorism. In the conduct of hostilities, the provision in Article 51(2) of Additional Protocol I (AP I) and Article 13(2) of Additional Protocol II (AP II) is identical. Here, acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Resolutions used by the UN, which insist that terrorists be punished, include Resolutions 1267 of 1999 and 1333 of 2000, used against Osama Bin Laden, Al-Qaeda and the Taliban, which affected Iran, Iraq and Afghanistan[53] and Resolutions 1368 and 1377 all of 2001.[54]

Notably, in all existing conventions on terrorism, states are obliged to either prosecute an offender or send the individual to another state that requests their extradition for prosecution and punishment.[55] But the contrary has been the case because of the absent of a universal acceptable definition of terrorism. The case of Hamas is in point here. It is no news that Hamas has long been designated as a terrorists organisation by many countries including the US, UK, Australia, Canada, Japan, and New Zealand.[56] Accordingly, their officials are wanted and could be arrested, extradited and prosecuted for terrorism perpetrated by the organisation by any of these states. Sadly, countries such as Iran, Turkey, Lebanon and

[51] (2178 U.N.T.S. 197)

[52] T.I.A.S. No. 11081, 1316 U.N.T.S. 205.

[53] S/RES/1333/2000.

[54] S/RES/1368/ 2001.

[55] Michael D. Hanson, 'Ditching The Laws And Freeing Terrorists: An Unsafe Approach In Combating Terrorism in Nigeria' (2023) African Journal for the Prevention and Combating of Terrorism (13) (1)122.

[56] Maya Lester KC and Michael O'Kane, 'Hamas and PIJ sanction Regime', Global Sanctions, Law, Practice and Guidance< https://globalsanctions.com/region/hamas-pij/>accessed 10 July, 2025.

Qatar do not consider them as such.[57] Thus, Qatar has provided safe haven for the officials of Hamas for decades where they stay and enjoy a life of luxury and privilege while coordinating numerous acts of terrorism activities against Israel, such as the October 7, 2025 attack.[58] This explained why Israel conducted a strike in Qatar on 9th September 2025 to kill Hamas Officials.[59] Thus, this absent of a universally accepted definition of what constitutes terrorism has made a designated terrorist organisation in one country, a freedom fighter in another country, thereby frustrating meaningful efforts in combatting their acts of terrorism in the world. This is more so where such terrorist organisation takes over the government of the state and begins to use state powers, such as we have today in Afghanistan and Syria today.

The validity or legimisation given to designated terrorists organisations or individuals after successful take-over of the government of the state, which keeps them in power constitutes an emerging issue of serious legal concern under international criminal law. When a terrorist organisation takes over a state, such event, usually leads to multiple crisis within the state, particularly human rights abuses. Internationally, such takeovers is usually expected to trigger diplomatic isolation, economic sanctions and none international cooperation or collaborations. This is so because such organisation having been designated a terrorist organisation before taking over government, remains clothed with the implications of such designation and should be treated accordingly. But the events in recent times such as the cases of the Taliban in Afghanistan and HTS in Syria, as shown earlier in this work, have presented themselves as 'new normal' in the world community in relation to how to combat terrorism when a terror group takes over the government of the state through their act of terrorism. Thus, instead of demanding for arrest, prosecution or extradition for prosecution and accountability as well as increased sanctions and isolation of such terrorist government, the world community is pushing for validation of the government, removal of ransom placed on the heads of the terrorists, delisting the terrorist organisation from the list

[57] Seth J. Frantzam, Thirty years of Hamas privilege ends in Doha – analysis. The Jeruselem Post< https://www.jpost.com/middle-east/article-866913> accessed 10 July, 2025

[58] Ibid.

[59] Ibid.

of Foreign Terrorists Organisation and accommodating such organisation within its fold.[60] In Syria, when the HTS took over government the leader Ahmed al-Sharaa sought international recognition from all states of the world and international organisations, many of whom have designated it as terrorist and demanded for his arrest and prosecution. Sadly, during his first few weeks in power, it has been shown that 'the new Syrian government' welcomed delegations from Jordan, Turkiye, Qatar, Saudi Arabia, France, Germany, United Kingdom, US, and EU.[61] These countries immediately commenced diplomatic relations with his government. The US lifted sanctions hitherto placed on Syria to enable the terrorist government to function well.[62] The ransom placed on the head of the terrorist leader, now, the President, was lifted by the US and his terrorist organisation delisted from the lists of Terrorists Organisation by Russia. His request for economic support to the UN met no resistance as he was warmly received and allowed to address the UN General Assembly with ease.[63] Also, some of these countries, including Turkiye, Egypt, Saudi Arabia, Jordan, Lebanon as well as some EU Member States, the Arab League, UN bodies, human rights and humanitarian organisations called for the lifting of sanctions on Syria in order to support the country's economic recovery and facilitate the delivery of humanitarian aid and the return of refugees.[64] Sadly too, their

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[60] Aref Tammawi, US drops $10m reward for arrest of Syria's new leader after Damascus talks' Aljazeera <https://www.aljazeera.com/news/2024/12/20/us-officials-on-first-diplomatic-trip-to-syria-since-al-assads-removal> accessed 25 November, 2025.

[61] Carmen-Cristina Cirlig, 'Upheaval in Syria: The Emerging Order Post-Assad' (2025) European Parliamentary Research Service, 2.

[62] Patricia Karam, 'Lifting of US Sanctions on Syria: A New Chapter for Damascus and Beirut?' July 18. 2025< https://arabcenterdc.org/resource/lifting-us-sanctions-on-syria-a-new-chapter-for-damascus-and-beirut/>accessed 10 August, 2025.

[63] Joseph Stepansky and Alastair McCready, 'UN General Assembly updates: Syria's al-Sharaa urges end to all sanctions' (24 September 2025: Aljazeera News)< https://www.aljazeera.com/news/liveblog/2025/9/24/un-general-assembly-2025-live-zelenskyy-pezeshkian-al-sharaa-to-address> accessed 28 September 2025.

[64] IOM UN Immigration, 'IOM Welcomes EU and US Decision to Lift Sanctions on Syria' 27 May 2025 < https://www.iom.int/news/iom-welcomes-eu-and-us-decisions-lift-sanctions-syria>accessed 20 July 2025; Khaled Yacoub Oweis, 'Saudi Arabia calls for lifting of sanctions on Syria in boost for post-Assad order' (MENA NEWS: 12 January, 2025)< https://www.thenationalnews.com/news/mena/2025/01/12/arab-and-western-powers-discuss-syrias-future-post-assad-in-riyadh/>accessed 10 July, 2025.

efforts to ease sanctions have been shown to be driven by economic and strategic reasons, as they hope to enhance their own investment in post-Assad Syria.[65] With these drive, the pursuit of accountability for acts of terrorism committed by the HTS terrorist organisation, led by Ahmed al-Sharaa who is now the President of Syria, is waived into oblivion.

Another concern, which calls for consideration is the question of accountability of terrorists who have seize state power and remain in control of the government of the state. The Rome Statute has clearly provided for crimes that are classified and proscribed as international crimes, which are the concerns of international criminal law, with International Criminal Court (ICC) having the complimentary jurisdiction to prosecute.[66] These crimes include the crime of genocide, crime against humanity, war crimes and the crime of aggression.[67] Terrorism is not specifically listed in this Statute as one of the international crimes. This is what usually opens the floodgate of arguments on whether terrorism is an international crime or not. Thus, it has been stated that the questions whether terrorism is recognised as an offence during armed conflict and whether it constitutes an offence in customary international law that may be criminally enforced against individuals remain unsettled.[68] Notwithstanding this position, there is no doubt that several acts, which constitutes terrorism and expressly prohibited and specifically listed in many national legislation, are also the acts expressly identified and listed in the Rome Statute as acts constituting war crimes or crimes against humanity.[69] Also, it has been shown that the list of war crimes for the putative jurisdiction of the International Criminal Tribunal for Rwanda (ICTR), drawn up by the UN Secretariat included 'acts of terrorism' in Article 4(d) of the ICTR Statute, as well as threats to commit terrorism in Article 4(h).[70] It has similarly been shown that under the Special Court for Sierra Leone (SCSL), the authorities successfully prosecuted several

[65] Ibid, 8.

[66] Rome Statute, art. 5.

[67] Ibid, arts. 6, 7, 8 and 8 bis.

[68] Stuart Casey-Maslen, 'The Prosecution of Terrorism as a War Crime' (2025) Lieber Institute, West Pointhttps://lieber.westpoint.edu/prosecution-terrorism-war-crime/accesed 13 October 2025.

[69] Michael D. Hanson, 'Accountability for War Crimes and the Question of Immunity Under International Criminal Law' (2025) AEFULJ (2) 54-56.

[70] Stuart Casey-Maslen, (n. 65).

accused for acts of terrorism because the SCSL Statute, adopted in 2002 as an annex to an agreement between the UN and the Government of Sierra Leone, similarly provided the hybrid court with material jurisdiction over the war crimes of acts of terrorism and threats to commit terrorism, under Article 3(d) and Article 3(h) respectively.

Notably, designated terrorist organisations are non-state actors usually involved in a non-international armed conflict. The killing tactics usually adopted by these designated terrorist organisations during armed conflicts are without doubt accommodated by the Geneva Conventions of 1949 and its additional Protocols of 1977 together with other international legal instruments. These instruments limit parties in armed conflict to the means and methods employed in the prosecution of armed conflict and also place obligations on state parties to ensure that perpetrators are held accountable. Notably, Article 3 in all four Geneva Conventions prohibits the inhumane treatment of civilians and prohibits violence to life and persons, in particular murder of all, kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; sentencing and executions without judgment pronounced by a regularly constituted Court. It provides for universal jurisdiction for the trial of perpetrators of these crimes. All these crimes are usually the crimes committed by designated terrorist organisations. Under Articles 49 and 50 of Geneva Conventions I and II, Articles 129 and 146 of Geneva Conventions III and IV, and Additional Protocol I, Article 85, every state that is bound by the Conventions is legally obligated to enact laws, arrest, prosecute and punish those in its territory who are suspected of committing these crimes that are accommodated in the Conventions, regardless of the nationality of the suspect or victim, or the place where the act was allegedly committed. Such State is also required to extradite the suspect to another State or surrender to an international tribunal for trial if it fails to prosecute. Additionally, the crime of terrorism have also been expressly domesticated in the *corpus juris* of many countries of the world where punishment of perpetrators after prosecution remains the basis. Therefore, the failure or inability of the state in holding perpetrators accountable ought to ignite the complementary jurisdiction of ICC to do so as accommodated by law.[71] Not doing so, has

[71] Rome Statute, art. 17.

established the 'new normal' and this jettisons the rationale for designation of organisations as terrorists, which calls for a rethink in that regard.

5. Conclusion and Recommendations

Different mechanisms in combatting terrorism, including terrorist designation, has been shown to be adopted by many states affected by terrorism. In adopting this mechanism, terrorist organisations are listed and proscribed by many countries of the world, who are not in agreement over what constitutes terrorism. This absence of a universally acceptable definition of terrorism has made many countries and international institutions, which have designated certain organisations and individuals as terrorists in order to curtail their activities and ensure accountability, fail to achieve such aim. Thus, when such designated organisations or individuals take over the instrument of force of the State, their stay in power becomes validated while accountability becomes frustrated, in spite of existing implications of terrorist designation. Accordingly, the co-operation and collaboration of the world community and countries all over the world with a designated terrorist organisation that has usurp state powers have now constituted serious issues of concern, which frustrated accountability of the designated terrorist organisations. This therefore provides a rethinking of terrorist designation as a mechanism for combating terrorism amidst the emerging issues affecting accountability under International Criminal Law.

One of the problems identified in this work is that the absent of a universally acceptable definition of terrorism has caused some designated terrorist individuals or organisations not to be treated as terrorists by some countries of the world, which ultimately affects the war on terrorism. In order to deal with this problem, this work recommends that existing laws on terrorism in national states should be employed in dealing with terrorist designated organisations, its membership and dealings. Interstate cooperation should be strengthened to enable states ensure that designated terrorist organisations are treated as such through mutual legal assistance in prosecution or extradition where such state fails to prosecute. Also, it is time that the definition of what terrorism mean should no longer be allowed to operate as a barrier to the prosecution of perpetrators of terrorism by the ICC. This is so because there is no argument that specific acts committed by terrorists are those acts that are also accommodated in the Rome Statute as constituting war crimes and crimes against

humanity.[72] As such, whenever national states genuinely fail or are unwilling to prosecute perpetrators of such acts, the international community should do so through the ICC in accordance with the principle of complementarity and state cooperation as accommodated in the Rome Statute.[73] Notwithstanding this, the absent of a universally acceptable definition of terrorism should not be ignored as it seriously affects the global fight against terrorism. Accordingly, it is time that great effort should be made by the world community in addressing this concern if global fight against terrorism must attain any success. While this is yet not done, there should be a restraint in designation of individuals and organisations as terrorists, particularly, where they are not involved in perpetration of terrorism and the designation is a mere decoration to stifle their demands.

The validity usually given to designated terrorists organisations or individuals after successful take-over of control of state apparatus helps keep them in power and frustrates accountability of the terrorists. It is recommended that there should be improved interstate as well as international cooperation and collaborations against designated terrorist organisations to deny them access to state power. Thus, once a designated organisation usurps state powers such organisation should be pressurized by the international community and countries world over to surrender such power to a legitimate government and not to validate such government. This could be done by severance of relationships with international community through sanctions, assets freezing, travel bans and continuous demand for arrest and prosecution of the members wherever they are found. Delisting of such designated terrorist organisations from FTO lists, lifting of existing sanctions and validation of the government of such organisation should not be an option. Total denial of cooperation and clampdown on such organisation and holding them accountable for terrorism and other identified crimes under international criminal law, where states fail or are unable to do so, would help deter other similar designated organisations from continuing to wage the war of terror targeted at usurping state power and remaining not accountable in that regard. The continuous validation of the government of such organisation is sending a wrong signal as 'the new normal' and this would

[72] Ibid, art 7 and 8.

[73] Rome Statute, art 17.

encourage similar organisations instead of deterring them. This has been witnessed in the incident of Syria now that follows that of Afghanistan.

An Examination of the Legal and Institutional Frameworks for Financing of Social Projects in Nigeria

Nsidibe Umoh[*]

Abstract

Promoting innovation for social project financing in Nigeria involves government policy support, encouragement of partnerships and capacity building through training for both innovators and investors. This paper interrogates, primarily, the existing mechanisms for financing social projects, assessment of their adequacy, and suggestions for reforms that will promote sustainable, inclusive, and innovative funding approaches. Key legislative enactments such as Constitution of the Federal Republic of Nigeria, 1999 (as amended), Banks and Other Financial Institutions Act, 2020, Infrastructure Concession Regulatory Commission Act, 2005, and other sector-specific regulations provides the impetus for the analyses of the legal framework relevant to this discourse. It is also within the ambit and contemplation of this paper to evaluate the role of institutional actors such as Federal Ministry of Finance, Budget and National Planning, Central Bank of Nigeria, Bank of Industry, Nigeria Sovereign Investment Authority, and development international and regional financial institutions such as World Bank and African Development Bank. Institutional capacity gaps, political interference, and low public awareness have been mirrored as constraints to the effectiveness of existing structures. This paper recommends strengthening legal provisions to explicitly promote innovative financing; building institutional capacity for policy design, monitoring, and evaluation; fostering public-private partnerships; as well as leveraging fintech solutions.

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1. Introduction

Economic stagnation, poverty, social inequalities, and inadequate infrastructure are amongst the challenges buffeting developing countries like Nigeria in the sphere of social projects.[1]Amidst these challenges, social projects, which are organized initiatives aimed at solving societal problems,[2] play a crucial role in national growth and transformation. These projects often target critical sectors such as education, healthcare, youth empowerment, and poverty alleviation, offering sustainable models of inclusive development.

According to the World Bank,[3] the act of making strategic investments in infrastructure projects such as roads, energy, and water supply, can enhance connectivity and create an enabling environment for economic activities, underscores the important role projects play in reshaping the foundational elements of the progress of a country like Nigeria. Improved infrastructure not only facilitates trade and attracts investments, it also enhances the overall quality of life for the populace.

Historically, Nigeria's approach to financing social projects is traceable to the colonial period, when social services were mainly funded through missionary efforts and minimal state intervention.[4] During the post-independence era (1960s–1970s), the Nigerian government, buoyed by oil revenues, embarked on numerous development plans, such as the First and Second National Development Plans (1962–1974), which included public investment in health, education, and rural infrastructure.[5]

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[1] A Ukelyma, 'The Importance of Project in Underdeveloped Countries' (2024) 16(1) *Journal of African Studies and Development* 10–24 <https://academicjournals.org/journal/JASD/article-full-text-pdf/59601C071804> accessed 27 October 2025.

[2] John- Paul Crofton-Biwer, 'What is a Social Project? How to Fight Wickedness in the World' (LinkedIn, February 2023) <https://www.linkedin.com/pulse/what-social-project-how-fight-wickedness-world-crofton-biwer/> accessed 27 October 2025.

[3] World Bank, Infrastructure for Development*: A Global Perspective* (World Bank Publications 2021) <https://www.worldbank.org/en/topic/infrastructure> accessed 27 October 2025.

[4] A Irele, 'The Evolution of Social Welfare and Social Work in Nigeria' (2011) 8(3) *A Journal of Contemporary Research* 238-252 <>https://www.ajol.info/index.php/lwati/article/view/79506/69794 accessed 27 October 2025.

[5] Central Bank of Nigeria, *The Changing Structure of the Nigerian Economy: Second Edition* (2011)

These plans were largely state-led and top-down, with minimal community participation or private sector involvement.

However, from the 1980s, under the pressure of Structural Adjustment Programme (SAP) [6] imposed by international financial institutions, Nigeria began to scale back its public spending on social services. This withdrawal created a vacuum that was only partly filled by international donor agencies and Non-Governmental Organizations. It marked the beginning of Nigeria's increasing dependence on external aid to finance social development initiatives. The SAP period also introduced neo-liberal policies that promoted privatization and reduced the government's role in direct social service provision.

The 2000s and early 2010s witnessed a global shift toward innovative financing mechanisms, with countries exploring new tools such as Public-Private Partnerships (PPPs), social impact bonds, and impact investing. Countries have developed robust legal and institutional frameworks to promote domestic financing for social projects. India,[7] for example, mandates qualifying firms to allocate 2% of their net profits to Corporate Social Responsibility projects, thereby legally integrating social responsibility into the corporate agenda. Similarly, South Africa,[8] ensures legal accountability in the allocation and disbursement of funds toward social development, particularly at provincial and municipal levels.

However, in Nigeria, despite the efforts to develop relative frameworks like what is obtainable on a global scale, the lack of sustainable funding models and legal reforms continues to limit long-term impact. Many social initiatives are implemented on *adhoc* basis, often tied to political cycles rather than institutionalized through law or policy.

Legal and institutional frameworks are pivotal to enabling these innovations. Regulatory clarity, effective institutions, and an enabling policy environment can incentivize private capital flow, promote

<https://www.cbn.gov.ng/out/2011/pressrelease/gvd/the%20changing%20structure%20of%20the%20nigerian%20economy%20second%20edition.pdf> accessed 27 October 2025.

[6] Central Bank of Nigeria, 'The Structural Adjustment Programme: The Journey So Far' (2023) 60(4) *Economic and Financial Review* https://dc.cbn.gov.ng/cgi/viewcontent.cgi?article=1828&context=efr accessed 27 October 2025.

[7] India's Companies Act 2013.

[8] South Africa's Public Finance Management Act (PFMA).

accountability, and reduce the risk of project failure. In Nigeria, however, these frameworks are often fragmented, outdated, or under-enforced, stifling the development and scalability of innovative financing models. Nigeria's financing of social projects remains volatile, donor-dependent, and legally unstructured, preventing scale and sustainability.

Despite the reported fact that Nigeria has the largest financial system and Gross Domestic Product (GDP) in Sub-Saharan Africa, the country remains heavily reliant on external debt to fund critical social and infrastructure projects. In recent years, Nigeria's borrowing from multilateral institutions such as the World Bank,[9] African Development Bank and Paris Club to mention a few, have intensified, raising concerns about debt sustainability and long-term economic sovereignty.

The debt overhang limits fiscal flexibility, crowds out essential domestic investments, and underscores the urgent need for sustainable alternatives. Moreover, many of these foreign-funded projects lack the legal accountability and continuity required for measurable impact. Without robust domestic financing strategies underpinned by strong legal and institutional frameworks, Nigeria risks perpetuating a cycle of donor-dependence, policy inconsistency, and short-lived development interventions.

2. Concept and Nature of Social Projects

Social projects refer to organised efforts or initiatives aimed at promoting the welfare of communities, particularly in areas where markets fail to provide essential services or infrastructure. These projects are typically undertaken to address social inequalities and promote inclusive development. In the Nigerian context, social projects often target key sectors such as healthcare, education, water and sanitation, rural electrification, affordable housing, and youth employment. They may take the form of government-funded interventions, non-profit initiatives, or donor-supported programmes, and are typically designed to deliver public goods or essential services with long-term social impact.

The defining feature of social projects is their non-commercial orientation; their value lies not in profit generation, but in the social return on investment, namely, the improvement of quality of life and reduction in

[9] World Bank, 'Nigeria Overview' (The World Bank Group, 2025) <https://www.worldbank.org/en/country/nigeria/overview> accessed 27 October 2025.

multidimensional poverty. This distinguishes them from conventional economic projects, as they prioritise equity and access over revenue. In Sub-Saharan Africa, particularly Nigeria, where a vast majority of the populace live below the poverty line, social projects have become central to national development strategies.[10]

The United Nations Sustainable Development Goals (SDGs) have strongly influenced how social projects are conceptualised and evaluated.[11] Social interventions in Nigeria are increasingly designed with reference to specific SDGs, such as SDG 3 (Good Health and Well-being), SDG 4 (Quality Education), and SDG 6 (Clean Water and Sanitation).[12] These goals provide a globally recognised framework for structuring interventions and measuring outcomes. As such, social projects are not only localised responses to community needs, but also vehicles for meeting international development targets.

Social projects are often multi-stakeholder in nature, involving collaboration between government bodies, civil society, private sector entities, and international development partners. This underscores the complex and interdependent character of social project execution, especially in contexts where institutional capacity or funding gaps hinder state-led development. In recent years, community-based organisations and local NGOs have played an increasingly vital role in both designing and implementing context-specific social interventions, supported by actors such as the World Bank, United Nations Children's Fund, and the African Development Bank. In essence, social projects are a response to socio-economic challenges that require coordinated, inclusive, and impact-oriented solutions. Their structure may vary depending on the implementing institution, the funding mechanism, and the scope of intended outcomes, but they all share a commitment to addressing human needs and fostering social justice.

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[10] National Bureau of Statistics (NBS), *Poverty and Inequality in Nigeria: Executive Summary* (NBS 2020) <https://nigerianstat.gov.ng/elibrary?queries[search]=poverty%20and%20inequality> accessed 27 October 2025.

[11] ibid.

[12] United Nations Development Programme (UNDP), *The SDGs in Action: Nigeria Country Report 2022* <https://www.ng.undp.org> accessed 27 October 2025.

3. Concept of Financing and Financing Mechanism

Financing refers to the provision, allocation, and management of funds to support specific activities, investments, or projects. In the context of social development, financing is the lifeblood of social projects, as it ensures the sustainability, scalability, and effective delivery of programmes designed to promote public welfare.[13] The financing of social projects is particularly critical in developing countries like Nigeria, where structural inequality, budgetary constraints, and infrastructural deficits demand innovative and diversified funding approaches. Unlike commercial ventures, social projects do not necessarily offer direct financial returns, thus requiring mechanisms that balance public good with financial viability.

The concept of financing encompasses both capital mobilisation and the deployment of resources. It includes a broad range of sources, public, private, bilateral, multilateral, and philanthropic, as well as instruments such as grants, loans, guarantees, equity, and bonds.[14] In practice, financing mechanisms determine the mode through which these funds are accessed, disbursed, and monitored. Mechanisms such as direct government funding, donor grants, Public-Private Partnerships (PPPs), and more recently, impact investing and social bonds, are increasingly being used to support social interventions across Nigeria.

In the Nigerian development finance landscape, conventional financing mechanisms have historically been dominated by annual budgetary allocations and development assistance. However, these sources are often inadequate, delayed, or mismanaged due to bureaucratic inefficiencies and weak accountability structures. This has led to the emergence of innovative financing mechanisms, such as blended finance, results-based financing, and crowdfunding platforms, which seek to attract private capital and enhance resource efficiency while maintaining a focus on developmental outcomes.[15]

A particularly notable mechanism in recent years is impact investing, which involves investments made with the intention to generate

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[13] J Stiglitz and J Rosengard, *Economics of the Public Sector* (4th edn, WW Norton & Company 2015) 109.

[14] African Development Bank, *Innovative Approaches to Financing Africa's Development* (AfDB 2017) 7 <https://www.afdb.org> accessed 27 October 2025.

[15] OECD, *Blended Finance Principles for Unlocking Commercial Finance for the Sustainable Development Goals* (OECD 2018) 6 <https://www.oecd.org/dac/financing-sustainable-development/blended-finance-principles/> accessed 27 October 2025.

measurable social and environmental impact alongside financial return. This model aligns social objectives with investor interests, thereby mobilising capital for health, education, affordable housing, and climate-focused projects.[16] Similarly, social impact bonds, a form of pay-for-success contract between the public sector and private investors, are being explored in Nigeria's development financing ecosystem, though they remain at the pilot or conceptual stage.

4. Understanding Innovation in the Financing of Social Projects

Innovation in the financing of social projects refers to the creation and application of novel strategies, instruments, and structures designed to mobilise and optimise financial resources for social impact. Unlike conventional models that rely heavily on government budgetary allocations or donor funding, innovative financing mechanisms seek to diversify funding streams, improve efficiency, attract private capital, and ensure measurable social outcomes.[17] This approach has become increasingly critical in the Nigerian context, where fiscal constraints and governance challenges have limited the effectiveness of traditional financing routes.

At the heart of innovative financing lies the convergence of financial engineering, technological tools, and developmental impact models. It includes approaches such as blended finance, social impact investing, crowdfunding, green bonds, and development impact bonds, all of which introduce performance metrics, risk-sharing models, and stakeholder alignment to the financing process.[18] These models create opportunities to bridge financing gaps by leveraging commercial capital for socially beneficial initiatives, particularly in sectors like education, healthcare, water access, and climate adaptation.[19]

5. Existing Sources of Financing for Social Projects in Nigeria

Financing social projects in Nigeria has historically relied on an admixture of public and private sources. The main sources which include

[16] Global Impact Investing Network (GIIN), *Annual Impact Investor Survey 2023* https://thegiin.org accessed 22 July 2025.
[17] United Nations, *Innovative Financing for Development: Scalable Business Models that Produce Results* (UNDP 2012) <https://www.undp.org> accessed 27 October 2025.
[18] OECD, *Social Impact Investment 2020: The Impact Imperative for Sustainable Development* (OECD Publishing 2020) 31.
[19] ibid.

government allocations, foreign aid and funding from NGOs are as hereunder considered *viz:*

i. Government Funding

Government funding remains the primary source of financing for many social projects,[20] especially in areas like education, healthcare, and infrastructure. Such funding is typically derived from annual budgetary allocations at the federal, state, and local levels. Through ministries, departments, and agencies (MDAs), the government channels resources into capital and recurrent expenditures aligned with the National Development Plan or other policy instruments.

Institutions such as the Federal Ministry of Finance, Budget and National Planning oversee the preparation and execution of these budgets, while specialized agencies like the Tertiary Education Trust Fund (TETFund), created under the Tertiary Education Trust Fund Act, utilize a 2% education tax on the profits of Nigerian companies to finance educational infrastructure and services across tertiary institutions.[21]

In the health sector, government intervention is channelled through mechanisms like the Basic Health Care Provision Fund (BHCPF), established under section 11 of the National Health Act 2014, which seeks to ensure access to primary healthcare services, especially in underserved communities.[22] Other significant agencies include the Universal Basic Education Commission (UBEC), which implements the Compulsory, Free Universal Basic Education Act 2004[23] and provides funding to support universal access to basic education.

ii. Foreign Aid

Foreign aid represents a significant supplementary source of financing for social projects in Nigeria, particularly in sectors such as

[20] Investopedia, How a Government Grant Works and How to Apply <https://www.investopedia.com/terms/g/government-grant.asp> accessed 27 October 2025.

[21] Tertiary Education Trust Fund Act, Cap T3 LFN 2011.
[22] National Health Act 2014, s 11.
[23] Free Universal Basic Education Act 2004. Z004 ACT No. A 115.

health, education, agriculture, and humanitarian relief. [24]It consists of grants, concessional loans, and technical assistance provided by foreign governments, bilateral donor agencies, and multilateral institutions. Notable contributors include the United States Agency for International Development (USAID), the United Kingdom's Foreign, Commonwealth & Development Office (FCDO), the European Union (EU), and global institutions like the World Bank and the African Development Bank (AfDB). These actors often fund large-scale programmes aimed at poverty reduction, sustainable development, and institutional strengthening.

Foreign aid in Nigeria is generally governed by international cooperation agreements and Memoranda of Understanding (MoUs) signed between the Nigerian government and donor partners. At the national level, the Federal Ministry of Finance, Budget and National Planning plays a coordinating role, while line ministries and implementing agencies are responsible for project execution. The Nigerian Foreign Aid Policy (though still evolving) seeks to streamline aid flows and align donor interventions with national development priorities as captured in frameworks like the National Development Plan (2021–2025).[25]

Moreover, aid delivery increasingly adheres to global standards of effectiveness, as encapsulated in the Paris Declaration on Aid Effectiveness 2005 and the Accra Agenda for Action 2008, which emphasize national ownership, alignment with domestic strategies, and mutual accountability.[26]

iii. Non-Governmental Organizations (NGOs)

Non-Governmental Organizations (NGOs) constitute a vital channel for the financing and implementation of social projects in Nigeria.[27] These

[24] Taylor & Francis Online, Impact of Foreign Aid on the Nigerian Economy <https://www.tandfonline.com/doi/full/10.1080/23311886.2024.2316585> accessed 27 October 2025.

[25] National Development Plan 2021–2025 (Federal Government of Nigeria, December 2021).

[26] OECD, *Paris Declaration on Aid Effectiveness and the Accra Agenda for Action* (2008) <https://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm> accessed 27 October 2025.

[27] Robert Eze, 'The Role of Non-Governmental Organizations in the Development of Nigeria' (2023) 3(2) *Journal of Social Theory and Research* https://publications.jostar.org.ng/role-non-governmental-organizations-development-nigeria accessed 27 October 2025.

organizations, both international and local, mobilize financial and technical resources to address social issues such as poverty alleviation, education, healthcare delivery, environmental sustainability, gender equality, and access to clean water. NGOs often fill governance and service delivery gaps, especially in rural or underserved communities where public sector reach is limited. International NGOs such as ActionAid, Oxfam, and *Médecins Sans Frontières* (Doctors without Borders), as well as domestic NGOs like the Civil Society Legislative Advocacy Centre (CISLAC) and the African Centre for Leadership, Strategy and Development, have contributed substantially to social innovation in Nigeria through community-driven projects.

These organizations rely on a variety of funding sources, including foreign aid, philanthropic donations, private foundations, and increasingly, results-based financing models such as social impact bonds. NGOs frequently operate through grants from institutions like the Ford Foundation, the Bill & Melinda Gates Foundation, and the Open Society Initiative for West Africa (OSIWA), which are known for supporting advocacy, service delivery, and policy reform initiatives. Moreover, NGOs often work in partnership with development finance institutions (DFIs), governments, and private actors to scale impact.

6. Theoretical Perspectives of Financing of Social Projects in Nigeria

The financing of social projects in Nigeria can be better understood through the lens of relevant theoretical frameworks that explain the motivations, mechanisms, and outcomes of public and private investments in socially driven initiatives. These theories provide a foundation for analyzing how various actors, governments, donors, private investors, and development institutions, approach the funding of projects aimed at social welfare and public good.

i. Public Goods Theory

Public Goods Theory[28] is rooted in classical economic thought and asserts that certain goods and services, such as education, healthcare, public sanitation, and basic infrastructure, are non-excludable and non-rivalrous, meaning individuals cannot be excluded from their use, and one

[28] Julian Reiss, 'Public Goods' (Stanford Encyclopedia of Philosophy, 21 July 2021) <https://plato.stanford.edu/entries/public-goods/> accessed 27 October 2025.

person's use does not diminish availability to others.[29] In this regard, public goods tend to be underprovided in a free-market system due to the 'free rider' problem, thereby necessitating public or collective intervention through government or donor-funded social projects.

This theory supports the argument that financing social projects in Nigeria is a legitimate function of government and a societal imperative. For instance, the National Health Insurance Act 2022, which aims to provide universal healthcare coverage in Nigeria, is consistent with public goods logic, as healthcare access benefits society as a whole. Furthermore, donor agencies and multilateral development banks often channel resources into Nigeria's public sectors because they recognise these as domains where market forces alone are insufficient to meet social needs.[30]

ii. Innovation Diffusion Theory

Innovation Diffusion Theory provides a valuable framework for understanding how new ideas, practices, and technologies are adopted within a social system over time.[31] This theory becomes especially relevant in the financing of social projects when considering novel mechanisms such as social impact bonds, crowdfunding platforms, ESG-aligned investments, and blended finance. In Nigeria, the adoption of such innovative financing approaches has been slow but gradually increasing. The Central Bank of Nigeria (CBN)'s regulatory sandbox and fintech initiatives have encouraged experimentation with digital financial inclusion models that align with this theory. By understanding the categories of adopters, innovators, early adopters, early majority, late majority, and laggards, policy designers can tailor strategies to promote wider acceptance of innovative financing mechanisms.[32]

iii. Social Return on Investment Theory

The Social Return on Investment framework emphasises measuring the social, environmental, and economic value created by social

[29] R Musgrave, *The Theory of Public Finance: A Study in Public Economy* (McGraw-Hill 1959).
[30] World Bank, *Nigeria Public Finance Review: Fiscal Adjustment for Better and Sustained Results* (2022) https://documents.worldbank.org accessed 27 October 2025.
[31] E Rogers, *Diffusion of Innovations* (5th edn, Free Press 2003).
[32] Y Adegoke and others, 'Fintech and the Future of Financial Inclusion in Nigeria' (2023) *African Development Review* 35(2) 89.

interventions, going beyond traditional financial metrics[33]. It aligns with the growing demand for transparency, accountability, and performance-based financing in development projects. SROI methodologies involve stakeholder engagement, impact valuation, and financial proxies to assess whether the value generated justifies the resources invested.

This theory is increasingly relevant in Nigeria's development space, particularly with the rise of social enterprises, impact investing, and ESG-financed projects. Institutions like the Bank of Industry (BOI) and Nigeria Sovereign Investment Authority (NSIA) have begun adopting impact measurement indicators to evaluate developmental outcomes. Additionally, frameworks like the UN Sustainable Development Goals (SDGs) have reinforced the importance of aligning financing strategies with measurable social impact, making SROI a central consideration in public-private partnerships and donor-funded programmes.

7. Emerging Concepts in Support of Social Projects in Nigeria

Emerging concepts like social entrepreneurship and social impact hubs are now shaping how social projects are initiated, structured, and sustained. These concepts provide innovative, scalable, and community-rooted alternatives to traditional donor or state-led interventions, especially in health, education, gender inclusion, and financial access. They are as looked into thus:

i. Social Entrepreneurship

Social entrepreneurship can be understood as the application of innovative, entrepreneurial strategies to identify and implement sustainable solutions to pressing social challenges.[34] Unlike traditional entrepreneurship, which primarily focuses on profit maximization, social entrepreneurship prioritizes social impact as its core objective, while still maintaining financial viability. It involves the creation, organization, and management of ventures that aim to address issues such as poverty,

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[33] J Nicholls and others, *A Guide to Social Return on Investment* (Cabinet Office, UK 2012).

[34] R Raman and others, 'Social Entrepreneurship and Sustainable Technologies: Impact on Communities, Social Innovation, and Inclusive Development' (2025) 4 *Sustainable Technology and Entrepreneurship* 100110 <https://www.sciencedirect.com/science/article/pii/S277303282500015X#:~:text=SE%20involves%20applying%20entrepreneurial%20practices,et%20al.%2C%202023)>accessed 27 October 2025.

inequality, education, healthcare, and environmental sustainability. Social entrepreneurs are driven by a mission to effect systemic change, often working in sectors or communities underserved by the market or government. Their initiatives combine the resourcefulness of traditional business practices with a deep commitment to social value creation, leveraging innovation and partnerships to scale their impact in meaningful and lasting ways.[35]

ii. Social Impact Hubs

Social impact hubs refer to innovation-driven incubators or collaborative platforms that support early-stage social enterprises and mission-oriented organisations. These hubs provide a suite of services designed to accelerate the development of social ventures, including access to capital, mentorship, legal and policy advisory, co-working spaces, and structured capacity-building programmes. Their primary function is to foster a nurturing ecosystem where social innovation can thrive through shared infrastructure and collaborative networks.[36]

Functioning as both incubators of ideas and accelerators of social transformation, impact hubs serve as convergence points for entrepreneurs, investors, development practitioners, policymakers, and grassroots communities. They facilitate co-creation processes, piloting of community-based interventions, and resource mobilisation for scalable solutions to pressing socio-economic challenges.[37]

Their role in ecosystem development is particularly significant in emerging economies, where institutional support for innovation is still nascent. By lowering barriers to entry for youth-led enterprises and socially conscious start-ups, these hubs help mitigate early-stage risks. Additionally, many are supported by multilateral organisations and philanthropic institutions, allowing them to act as decentralised nodes of

[35] Gregory Dees, 'The Meaning of Social Entrepreneurship' (2001) Centre for the Advancement of Social Entrepreneurship <https://centers.fuqua.duke.edu/case/wp-content/uploads/sites/7/2015/03/Case_Dees_MeaningofSocialEntrepreneurship_2001.pdf> accessed 27 October 2025.

[36] Jenny Hodgson and Barry Knight, *The Role of Philanthropy in Strengthening Social Innovation* (Global Fund for Community Foundations 2016) <https://www.globalfundcommunityfoundations.org> accessed 27 October 2025.

[37] OECD, *Social Impact Investment 2019: The Impact Imperative for Sustainable Development* (OECD Publishing 2019) <https://doi.org/10.1787/9789264311299-en> accessed 27 October 2025.

development excellence. They contribute directly to the advancement of civic technology, digital inclusion, and community resilience, feeding into broader national and international development frameworks.[38]

8. Legal Framework for Financing of Social Projects in Nigeria

The financing of social projects in Nigeria operates within an established but evolving legal framework that defines the parameters for state obligation, fiscal responsibility, public-private engagement, and social investment governance, and are as examined thus:

i. Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)[39] forms the bedrock of all laws in Nigeria, and provides the foundational basis for public finance, social development, and economic intervention in the country. It establishes, under Chapter II, the Fundamental Objectives and Directive Principles of State Policy,[40] which articulate the government's responsibility to promote the welfare and prosperity of its citizens. Specifically, Section 16(1)(b)[41] mandates the state to "control the national economy in such manner as to secure the maximum welfare, freedom, and happiness of every citizen..." and Section 16(2)(d)[42] urges the state to provide suitable and adequate shelter, suitable and adequate food, a reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits, and welfare for persons with disabilities.

While these provisions are non-justiciable (i.e., not enforceable in court) as *per* Section 6(6)(c),[43] they nonetheless serve as normative guideposts for policy direction and legislative interventions. This includes the development of legal and institutional frameworks for financing social projects such as housing, education, healthcare, and youth empowerment. Therefore, though the Constitution does not explicitly regulate

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[38] Anna Davies and Julie Simon, *Innovation for Social Impact: How Social Innovation Hubs Build Ecosystems for Social Change* (Nesta 2020) <https://www.nesta.org.uk/report/innovation-social-impact/> accessed 27 October 2025.

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

[40] ibid, Chapter II, the Fundamental Objectives and Directive Principles of State Policy.

[41] ibid S.16(1)(b).

[42] ibid 16(2)(d).

[43] ibid S. 6(6)(c).

mechanisms for financing social projects, it legitimizes government-led and facilitated efforts towards such outcomes, laying a legal and moral foundation for laws and policies that drive social innovation and impact financing.

In addition, Section 162–168 of the Constitution[44] provides for revenue allocation, which is critical in understanding how resources may be directed toward social projects at the federal, state, and local government levels. Through these provisions, the Constitution facilitates the financial flows necessary for the implementation of socially impactful programmes and projects in Nigeria.

ii. Banks and Other Financial Institutions Act (BOFIA), 2020

The Banks and Other Financial Institutions Act, 2020 (BOFIA 2020)[45] is a key legislation that governs the operation, supervision, and regulation of banks and non-bank financial institutions in Nigeria. It repealed the earlier BOFIA 1991 and introduced critical updates to align Nigeria's financial regulatory regime with global standards, particularly around digital finance, consumer protection, and systemic risk oversight.

The Act, plays a significant role in the financing of social projects by ensuring that Nigeria's financial institutions operate within a sound legal environment that encourages innovation, accountability, and financial inclusion. For example, the Act empowers the Central Bank of Nigeria (CBN) to license and regulate various categories of financial service providers, including microfinance banks, fintechs, and development finance institutions. This regulatory control has a direct bearing on how financial institutions mobilize and allocate capital, including socially-driven investments such as low-interest loans for affordable housing, education, health, or sustainable agriculture.

Section 2 of the Act[46] mandates that no entity shall carry on banking business without a licence from the CBN, ensuring that only vetted and capable institutions are entrusted with deposit-taking and credit functions. This legal framework establishes the credibility of intermediaries that might be engaged in delivering social finance instruments like impact investing, green bonds, and social loans.

[44] ibid Section 162–168.
[45] Banks and Other Financial Institutions Act 2020 (Nigeria) Cap B3, Laws of the Federation of Nigeria 2020.
[46] ibid Section 2.

Moreover, BOFIA 2020 introduces provisions to encourage innovation in financial products and services, particularly through regulatory sandboxes (though not explicitly termed in the Act, it aligns with CBN innovation support). This provides a legal foundation for testing new models of financing social impact, such as digital micro-lending platforms targeted at women-led small businesses or social enterprises.

The Act also imposes prudential requirements and consumer protection obligations on financial institutions,[47] helping to foster trust in financial services and protect low-income or vulnerable groups who are often the target of social investment schemes. This is crucial for ensuring that the financing of social projects does not become predatory or exclusionary. In effect, while BOFIA 2020 is not tailored exclusively for social finance, it serves as a foundational legal infrastructure upon which Nigeria's financial sector can safely innovate and expand access to capital for socially beneficial projects.

iii. Public Procurement Act (PPA), 2007

The Public Procurement Act 2007 (PPA)[48] is a fundamental legal instrument governing the process through which public funds are expended for goods, works, and services in Nigeria. Enacted to ensure transparency, accountability, and value for money in public procurement, the Act is vital to the financing of social projects, especially those executed through government contracts or public-private partnerships (PPPs). The law establishes the Bureau of Public Procurement (BPP) as the regulatory authority responsible for monitoring and oversight of procurement practices by Ministries, Departments, and Agencies (MDAs) of the federal government.

One of the key implications of the PPA 2007 for the financing of social projects lies in its promotion of competition and efficiency. Social projects, particularly in education, healthcare, water, sanitation, and other public infrastructure sectors, are often financed or co-financed by public funds. The Act mandates competitive bidding procedures, which helps reduce cost and increase quality outcomes, thereby maximising the social return on public investment. For example, the Act[49] outlines the

[47] ibid Sections 47–50.
[48] Public Procurement Act 2007 (Nigeria) Cap P44, Laws of the Federation of Nigeria 2007.
[49] ibid Section 16.

fundamental principles for procurement including value for money, competition, efficiency, and accountability, all of which are essential in achieving sustainable and innovative social outcomes.

Moreover, the Act indirectly influences innovation in the financing of social projects by making provision for special and emergency procurement procedures. These mechanisms can be leveraged to accelerate delivery of social interventions in urgent or underserved contexts, such as disaster response or remote healthcare delivery. Through the legal certainty provided by the Act, investors and development partners, such as DFIs and donor agencies, are also more inclined to co-finance projects due to reduced risk of procurement-related corruption or maladministration.

Additionally, the Act promotes transparency and citizen engagement through the mandatory disclosure of procurement plans, contract awards, and project monitoring. This transparency is especially important in social project financing where public accountability is crucial. As a result, the legal framework helps foster a climate of trust among stakeholders, including the government, private investors, civil society organisations, and the general public.

iv. Infrastructure Concession Regulatory Commission (ICRC) Act, 2005

The Infrastructure Concession Regulatory Commission (ICRC) Act 2005[50] is a landmark legislation that establishes the legal framework for public-private partnerships (PPPs) in Nigeria. It was enacted to harness private sector expertise and financing to support infrastructure development, including projects with strong social impact. Given the chronic infrastructure deficits in sectors such as education, health, water supply, and rural electrification, the ICRC Act provides a structured avenue for leveraging private capital in delivering social services traditionally handled by government.

The Act establishes the Infrastructure Concession Regulatory Commission (ICRC) to regulate, monitor, and supervise the implementation of infrastructure projects through concession agreements or other forms of PPPs. According to section 1 of the Act,[51] its objective is

[50] Infrastructure Concession Regulatory Commission Act 2005 (Nigeria), Cap I25, Laws of the Federation of Nigeria 2007.
[51] ibid Section 1.

to 'establish a legal framework for the participation of the private sector in financing, construction, development, operation, or maintenance of infrastructure or development projects.' This includes both hard infrastructure (like roads and schools) and soft infrastructure (such as ICT platforms for public service delivery).

One of the significant contributions of the ICRC Act to the financing of social projects is its provision for Viability Gap Funding (VGF)[52] and project bankability frameworks. In many cases, social projects, especially those in underserved or low-income regions, may not be commercially viable without government support. The Act encourages collaboration that blends public support with private financing, making social infrastructure projects more attractive to investors while ensuring they remain affordable for citizens.

Furthermore, the ICRC, pursuant to its powers under the Act, has developed National PPP Guidelines, PPP contract templates, and sector-specific toolkits, all of which provide clarity and confidence for private investors interested in social-impact ventures. These guidelines ensure that projects adhere to key principles of value for money, transparency, accountability, and sustainability, all of which are essential in the development and financing of social infrastructure. Importantly, the ICRC Act allows Ministries, Departments, and Agencies (MDAs) to enter into concession agreements with private sector actors, subject to regulatory oversight.

This has led to the emergence of several social PPPs, including healthcare diagnostic centres, school hostel construction, and solar mini-grids for rural electrification, among others. The ICRC's role in project screening, risk assessment, and regulatory monitoring ensures that social projects financed through PPPs not only meet development goals but also remain financially and legally sustainable. This institutional framework is especially critical in protecting public interest while also creating a stable investment climate for social project development.

[52] H Möykkynen and A Pantelias, 'Viability Gap Funding for Promoting Private Infrastructure Investment in Africa: Views from Stakeholders' (2021) 24 *Journal of Economic Policy Reform* 253 accessed 27 October 2025.

v. Central Bank of Nigeria Guidelines

The Central Bank of Nigeria (CBN) plays a pivotal regulatory and policy-shaping role in the financing of social projects through various development finance guidelines, intervention funds, and regulatory instruments.[53] Although the CBN is primarily mandated to maintain monetary and price stability and supervise banks and financial institutions, it also actively drives financial inclusion, development financing, and economic empowerment, core elements in the ecosystem for financing social projects in Nigeria.[54]

A key aspect of the CBN's contribution is the issuance of development finance guidelines and frameworks, such as the Guidelines for the Establishment and Regulation of Payment Service Banks (PSBs), the Anchor Borrowers' Programme, and more notably, the Framework for Non-Interest Financial Institutions, which provide opportunities for ethical finance mechanisms such as sukuk that can be used to fund social projects in health, education, and microenterprise support. Through such guidelines, the CBN enables both traditional and non-traditional financing models to co-exist and operate legally in Nigeria's financial landscape.

Additionally, the Guidelines for the Regulation and Supervision of Microfinance Banks (MFBs)[55] empower small-scale financial institutions to provide access to credit for underserved communities. Microfinance has long been recognized as a tool for poverty reduction and social development, and the CBN's regulation ensures stability, transparency, and consumer protection in this critical sector. By regulating microfinance operations, the CBN creates a safer ecosystem for smallholder social entrepreneurs and cooperatives to secure loans for projects in agriculture, education, and health. The CBN also administers various intervention

[53] Central Bank of Nigeria, *Development Finance Activities of the Central Bank of Nigeria* (2020) <https://www.cbn.gov.ng/Out/2020/DFD/CBN%20Development%20Finance%20Activities%202020.pdf> accessed 27 October 2025.

[54] Central Bank of Nigeria, *National Financial Inclusion Strategy (Revised)* (2018) <https://www.cbn.gov.ng/Out/2018/CCD/NFIS.pdf> accessed 27 October 2025.

[55] Central Bank of Nigeria, 'Guidelines for the Regulation and Supervision of Microfinance Banks in Nigeria (Revised)' (2020) <https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20Revised%20MFBs%20Regulatory%20and%20Supervisory%20Guidelines.pdf> accessed 27 October 2025.

funds and credit schemes tailored toward social development outcomes. These include:

i. The CBN Healthcare Sector Research and Development Intervention Scheme (HSRDIS),[56]
ii. The NIRSAL Microfinance Bank's Targeted Credit Facility (TCF),[57]
iii. The Creative Industry Financing Initiative (CIFI)[58], and
iv. The Agribusiness/Small and Medium Enterprise Investment Scheme (AGSMEIS)[59].

Each of these guidelines and schemes is backed by operational frameworks that provide for eligibility, loan structure, monitoring, and performance indicators. These tools ensure the accountability and sustainability of social impact financing from the financial system. The CBN, in this role, functions as both regulator and enabler of innovation in financing models geared towards societal development. Moreover, through its Financial Inclusion Strategy,[60] the CBN fosters the digital and physical infrastructure that facilitates social project financing by expanding access to affordable banking, credit, and savings services across rural and low-income populations.

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[56] Central Bank of Nigeria, *Guidelines for the Implementation of the Healthcare Sector Research and Development Intervention Scheme (HSRDIS)* (CBN, 2020) <https://www.cbn.gov.ng/Out/2020/DFD/Guidelines%20on%20the%20Healthcare%20Sector%20Research%20and%20Development%20Intervention%20Scheme.pdf> accessed 27 October 2025.

[57] NIRSAL Microfinance Bank, *Targeted Credit Facility* https://nmfb.com.ng/tcf-household/ accessed 27 October 2025.

[58] Central Bank of Nigeria, *Creative Industry Financing Initiative (CIFI)* https://www.cbn.gov.ng/Out/2019/CCD/CIFI.pdf accessed 27 October 2025.

[59] Central Bank of Nigeria, *Agribusiness/Small and Medium Enterprise Investment Scheme (AGSMEIS) Guidelines* (CBN, 2021) https://www.cbn.gov.ng/Out/2021/DFD/AGSMEIS%20Guidelines%202021.pdf accessed 27 October 2025.

[60] Central Bank of Nigeria, *National Financial Inclusion Strategy (Revised)* (October 2018) http://cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf accessed 27 October 2025.

9. Institutional Framework for Social Projects in Nigeria

While Nigeria's legal framework provides the regulatory backbone for financing social projects, institutional actors serve as the operational engines driving implementation, coordination, and oversight. Several public and quasi-public institutions play critical roles in facilitating access to funding, ensuring regulatory compliance, designing social investment policies, and promoting inclusive development. Key institutional mechanisms central to Nigeria's social project financing ecosystem are as seen *viz:*

i. Federal Ministry of Finance, Budget and National Planning

The Federal Ministry of Finance, Budget and National Planning (FMFBNP) plays a foundational role in enabling the financing of social projects in Nigeria. As the core institution responsible for the coordination of national economic planning, fiscal policy, and public financial management, the Ministry oversees the formulation and execution of the annual budget and medium-term expenditure frameworks, which serve as the fiscal architecture for funding social programmes and developmental interventions.[61]

The Ministry's function intersects directly with social project financing in several ways. Firstly, through the budgetary allocation process, the Ministry ensures that social sectors such as education, healthcare, water and sanitation, and social investment programmes receive public funding aligned with national development priorities, such as those articulated in Nigeria's National Development Plan (2021–2025)[62] and the Medium-Term National Development Plan (MTNDP). These plans emphasize inclusive economic growth and human capital development, placing social infrastructure and poverty alleviation at the core of Nigeria's fiscal direction.

Secondly, the Ministry is the primary interface between the Nigerian government and multilateral and bilateral donors, including the World Bank, African Development Bank (AfDB), Islamic Development Bank

[61] Federal Ministry of Finance, Budget and National Planning, *Overview of Functions* <https://nationalplanning.gov.ng/functions/ >accessed 27 October 2025.
[62] Federal Government of Nigeria, *National Development Plan 2021–2025* (Volume I, Federal Ministry of Finance, Budget and National Planning 2021) <https://nationalplanning.gov.ng/wp-content/uploads/2021/12/National-Development-Plan-2021-2025-Volume-I.pdf >accessed 27 October 2025.

(IsDB), and other development finance institutions (DFIs). It negotiates, signs, and manages donor-funded social interventions, loans, and grants targeted at poverty reduction, education access, maternal health, and other Sustainable Development Goals (SDG)-aligned outcomes. For instance, the World Bank-supported Nigeria Social Safety Nets Project (NASSP) is coordinated through this Ministry in collaboration with the National Social Investment Office (NSIO), which disburses conditional cash transfers and implements poverty-targeted programmes.[63]

Moreover, the Ministry plays a crucial role in fostering public-private partnerships (PPPs) and creating a stable fiscal environment that attracts private sector investment in socially beneficial infrastructure. This is complemented by its role in managing sovereign guarantees and financing instruments like green bonds, which are increasingly deployed to support climate-resilient and community-based social projects.

In its role as budget and planning authority, the Ministry also engages in monitoring and evaluation (M&E) of social expenditures to ensure transparency, effectiveness, and alignment with the national priorities, in line with international best practices. This ensures that social project funding is not only allocated but properly tracked and reported.[64]

ii. Central Bank of Nigeria (CBN)

The Central Bank of Nigeria (CBN) is a pivotal institution in shaping Nigeria's financial landscape, including the facilitation of funding mechanisms for social projects. As the apex regulatory authority for monetary policy and financial sector stability, the CBN exercises both direct and indirect influence over the design and delivery of financial instruments that can support innovation and financing in the social sector.[65]

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[63] World Bank, *Nigeria Social Safety Nets Project (NASSP)* (World Bank, 2023) <https://projects.worldbank.org/en/projects-operations/project-detail/P151488> accessed 27 October 2025.

[64] Federal Ministry of Finance, Budget and National Planning, *National Monitoring and Evaluation Policy* (2020) <https://nationalplanning.gov.ng/wp-content/uploads/2021/03/National-ME-Policy-Final-1.pdf> accessed 27 October 2025.

[65] Central Bank of Nigeria, *Revised National Financial Inclusion Strategy* (2018) <https://www.cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf >accessed 27 October 2025.

A major contribution of the CBN to social project financing is through its development finance interventions.[66] The CBN has launched several targeted funding initiatives aimed at promoting inclusive economic growth, poverty alleviation, financial inclusion, and job creation, objectives that align directly with the financing of social projects. Programmes such as the Anchor Borrowers' Programme (ABP), the Targeted Credit Facility (TCF), and the Agricultural Credit Guarantee Scheme Fund (ACGSF) are structured to provide concessional funding to vulnerable populations, youth entrepreneurs, and smallholder farmers, thereby directly enhancing livelihood outcomes and improving socio-economic welfare.[67]

In addition, the CBN plays a regulatory role in promoting the financial inclusion ecosystem. Through frameworks such as the National Financial Inclusion Strategy (Revised) 2018, the Bank seeks to close the gap in access to finance for underserved groups. Financial inclusion is a crucial enabler of social development as it provides individuals and communities with access to savings, credit, insurance, and remittance services, which in turn improves resilience and supports micro-level social enterprises.

Another core area is the CBN's support for innovation in financing, particularly through policies that encourage fintech solutions and digital payments. With the introduction of the eNaira, the CBN has signalled its commitment to leveraging technology in expanding access to financial services, a step that can democratize fundraising and social enterprise financing in the long term.[68]

The Bank also issues prudential guidelines and directives for financial institutions, including the guidelines for development finance institutions (DFIs), microfinance banks (MFBs), and non-interest financial institutions (NIFIs), which often serve as vehicles for disbursing funds to social enterprises and community development projects. These regulatory standards are instrumental in ensuring transparency, accountability, and sustainability in social project financing. The CBN supervises the operations of institutions such as the Bank of Industry (BOI) and the Development Bank of Nigeria (DBN) through its development finance

[66] CBN, 'Development Finance Interventions' https://www.cbn.gov.ng/devfin/ accessed 27 October 2025.
[67] *Central Bank of Nigeria v Jacob Oladele Amao & 2 Ors* (2010) LLJR-SC.
[68] CBN, *Regulatory Guidelines on the eNaira* (2021) <https://www.cbn.gov.ng/enaira> accessed 27 October 2025.

department, ensuring that their operations align with national financial stability and inclusive growth targets.

iii. Bank of Industry (BOI)

The Bank of Industry (BOI) plays a significant role in Nigeria's institutional framework supporting the financing of social projects. As Nigeria's oldest and largest development finance institution (DFI), the BOI was established to provide long-term financing to sectors[69] that are critical to national development. Over the years, the BOI has evolved from focusing strictly on industrial development to supporting broader socio-economic objectives, including the financing of social enterprises, youth employment schemes, renewable energy initiatives, and financial inclusion programs targeted at underserved populations.[70]

BOI's financing model is primarily centred around concessional loans and matching funds, often structured through partnerships with domestic stakeholders like the Central Bank of Nigeria, and international partners such as the African Development Bank and the UNDP. These partnerships allow the bank to provide blended finance models for social projects, particularly in sectors like education, health, housing, gender empowerment, and innovation-focused microenterprises. The BOI's Social Intervention Funds, such as the Graduate Entrepreneurship Fund (GEF), MarketMoni, and the National Women Empowerment Fund (NAWEF), have helped bridge the access-to-credit gap for underserved communities.

Importantly, the BOI also operates within the scope of Nigeria's regulatory and development policy mandates. For example, it aligns its programmes with the National Development Plan (2021–2025) and the Economic Recovery and Growth Plan (ERGP), which both identify social inclusion, infrastructure development, and innovation finance as critical pillars.[71] Through its operations, BOI contributes not only to financial intermediation but also to the innovation ecosystem by funding scalable social solutions and incubating socially responsible enterprises.[72]

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[69] Bank of Industry, *Who We Are* <https://www.boi.ng/about-us/ >accessed 27 October 2025.

[70] Bank of Industry, *Impact and Development Reports* https://www.boi.ng/development-impact/ accessed 27 October 2025.

[71] ibid.

[72] ibid.

This paper submits that from a legal standpoint, while the BOI itself is not established under a specific statute (it is incorporated under the Companies and Allied Matters Act), its operations are governed by the regulatory framework of the Central Bank of Nigeria Act, BOFIA 2020, and oversight from the Federal Ministry of Finance, Budget, and National Planning. It also adheres to anti-money laundering and due diligence compliance standards pursuant to the Money Laundering (Prohibition) Act 2022 and CBN prudential guidelines.

iv. Nigeria Sovereign Investment Authority (NSIA)

The Nigeria Sovereign Investment Authority (NSIA) plays an increasingly pivotal role in the institutional framework for financing social and developmental projects in Nigeria. Established under the Nigeria Sovereign Investment Authority (Establishment, etc.) Act[73] 2011, the NSIA was created to manage surplus income from Nigeria's oil earnings and to deploy it towards economic stabilization, infrastructure development, and long-term intergenerational savings. It is structured to operate as a sovereign wealth fund with a commercial orientation while contributing to national development objectives.

The NSIA manages its resources through three main funds:

a. The Stabilization Fund,
b. The Future Generations Fund, and
c. The Nigeria Infrastructure Fund (NIF).

Among these, the Nigeria Infrastructure Fund is particularly relevant to the financing of social projects, as it is directly dedicated to domestic infrastructure investment. Through the NIF, the NSIA channels capital into priority sectors such as healthcare, transportation, power, and agriculture, all of which are integral to Nigeria's social development. Notable examples include the NSIA-LUTH Cancer Centre in Lagos and the NSIA-Kano Diagnostic Centre, which demonstrate how the authority funds high-impact health infrastructure projects through public-private partnerships.

In alignment with global development finance trends, the NSIA is increasingly incorporating Environmental, Social, and Governance (ESG)

[73] Nigeria Sovereign Investment Authority (Establishment, etc.) Act 2011, Cap N166 LFN 2011.

principles into its investment strategy.[74] The Authority has signalled its intention to support climate-resilient infrastructure, renewable energy, and social impact initiatives by aligning with international investment standards and the Santiago Principles, a set of best practice guidelines for sovereign wealth funds.[75]

NSIA's funding model also provides leverage for attracting co-investment from Development Finance Institutions (DFIs) such as the African Development Bank (AfDB), the International Finance Corporation (IFC), and other institutional investors. These partnerships enhance the scale and scope of social infrastructure projects, de-risk investments, and support innovative financing mechanisms such as blended finance.

The NSIA also plays a role in mobilizing diaspora investments and engaging with multilateral platforms to design and finance development-oriented programmes. By operating at the nexus of public capital and private sector efficiency, the NSIA serves as a critical bridge in Nigeria's broader development finance architecture.

10. Role of International and Regional Development Financial Institutions

Development Finance Institutions play a very important role in facilitating the financing of social projects. They engage in strategic resource mobilization and act as intermediaries to help the needs of recipient countries and institutions. In this context, this paper considers the World Bank and African Development Bank.

i. The World Bank Group

The World Bank Group plays a fundamental role in supporting the financing of social and developmental projects across low- and middle-income countries, including Nigeria. Established in 1944 at the Bretton Woods Conference, the World Bank consists of five closely related institutions, two of which are most relevant for development financing: the International Bank for Reconstruction and Development (IBRD) and the

[74] Nigeria Sovereign Investment Authority, 'Environmental, Social and Governance Policy' (NSIA, 2025) <https://nsia.com.ng/sustainabiliy-reports/environmental-social-and-governance-esg-policy/ accessed> 27 October 2025.
[75] ibid.

International Development Association (IDA).[76] The IBRD primarily provides loans and financial services to middle-income countries and creditworthy low-income countries, while the IDA offers concessional financing, typically zero or low-interest loans and grants, to the poorest nations, including Nigeria.[77]

The World Bank Group employs a wide range of instruments including development policy financing, investment project financing, and programme-for-results financing. These tools are complemented by robust analytical and advisory services that help countries design, implement, and evaluate public policy and social interventions.[78] Its operations are guided by a Country Partnership Framework (CPF), which is developed in consultation with national governments and aligned with their development priorities.

Nigeria has benefited significantly from World Bank assistance, particularly in areas related to poverty reduction, education, healthcare, infrastructure development, social protection, and governance reform. The World Bank's current Country Partnership Framework for Nigeria (FY21–25) emphasizes building human capital, promoting job creation, and fostering sustainable, inclusive growth.[79] As of 2024, Nigeria ranks among the top recipients of IDA financing globally, with over $11 billion in active commitments across multiple sectors.[80] Notable World Bank-financed projects in Nigeria include the National Social Safety Nets Programme (NASSP), Nigeria Electricity Transmission Access Project (NETAP), and Nigeria Rural Access and Agricultural Marketing Project (RAAMP), all of which have social development implications.

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[76] World Bank, 'What We Do' (World Bank, 2024) <https://www.worldbank.org/en/who-we-are/what-we-do> accessed 27 October 2025.
[77] International Development Association, 'About IDA'< https://ida.worldbank.org/about> accessed 27 October 2025.
[78] World Bank, *Financing Instruments* <https://www.worldbank.org/en/projects-operations/products-and-services> accessed 27 October 2025.
[79] World Bank, *Nigeria Country Partnership Framework FY2021–2025* (2020) <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/531551607768702674/nigeria-country-partnership-framework-fy21-fy25> accessed 28 October 2025.
[80] International Development Association, *IDA21: Ending Poverty on a Livable Planet – Delivering Impact with Urgency and Ambition (IDA21 Replenishment Report, World Bank, March 17, 2025)* <https://documents1.worldbank.org/curated/en/099042525174542121/pdf/BOSIB-7a002896-02fc-42a9-b4f3-78737cf8b931.pdf> accessed 28 October 2025.

ii. The African Development Bank

The African Development Bank (AfDB) is Africa's premier regional development financial institution, established in 1964 pursuant to the Agreement Establishing the African Development Bank.[81] Nigeria is not only a founding member, she is also the largest shareholder in the institution. The AfDB's mission is to promote sustainable economic development and social progress across its regional member countries, thereby contributing to poverty reduction.

The AfDB's operations are guided by five strategic priorities, known as the High 5s: (1) Light Up and Power Africa, (2) Feed Africa, (3) Industrialise Africa, (4) Integrate Africa, and (5) Improve the Quality of Life for the People of Africa.[82] These priorities align with Nigeria's national development goals and offer a broad spectrum of intervention areas including infrastructure development, agriculture and food security, job creation, education, public health, and financial inclusion.

In Nigeria, the AfDB works through both sovereign operations, which involve lending to the government, and non-sovereign operations, which support private sector development. Financing mechanisms include concessional loans (through the African Development Fund), grants, technical assistance, and co-financing with other donors.[83] Recent AfDB-supported projects in Nigeria include the Urban Water Sector Reform Project, Nigeria Electrification Project, and the Special Agro-Industrial Processing Zones (SAPZ) initiative. The AfDBank also provides critical policy advisory services and institutional capacity-building, targeting both federal and sub-national levels of government. Together with the World Bank, the AfDB continues to be instrumental in Nigeria's pursuit of inclusive economic growth and sustainable development by catalyzing financial flows into critical sectors and enhancing the country's institutional and governance framework for delivering social goods.

[81] Agreement Establishing the African Development Bank (1963) 510 UNTS 3.
[82] African Development Bank, 'High 5 Priorities' <https://www.afdb.org/en/the-high-5> accessed 28 October 2025.
[83] African Development Bank, 'Nigeria and the AfDB' <https://www.afdb.org/en/countries-west-africa-nigeria> accessed 28 October 2025.

11. Trends in Financing of Social Projects in Nigeria

There are key concepts in the financing landscape for social projects in Nigeria, which have evolved significantly in recent years. This paper herein sheds light specifically on ESG, Public-Private Partnerships and Technology.

i. Environmental, Social, and Governance (ESG) and the Rise of Sustainable and Responsible Investing in Social Projects

Environmental, Social, and Governance (ESG) considerations are reshaping the global financial ecosystem, creating opportunities for channelling capital toward social projects through sustainable and responsible investment (SRI) strategies.[84] Globally, ESG investing has moved from a niche concept to a mainstream investment paradigm. Institutional investors increasingly demand that environmental, social, and governance factors be integrated into investment decisions as a way of managing risk and achieving long-term returns.

ESG investing holds particular promise for financing social projects, especially through Social Bonds, Green Bonds with social co-benefits, and thematic investment funds targeting SDG-aligned outcomes. In 2017, Nigeria became the first African country to issue a sovereign green bond, which was later followed by a second issuance in 2019.[85] Though primarily focused on climate mitigation and adaptation, such instruments can be adapted to finance social projects in education, healthcare, sanitation, and rural development. Social enterprises and impact-driven SMEs, if ESG-compliant, stand a better chance of attracting capital from impact investors and development finance institutions (DFIs). However, the absence of ESG ratings agencies in Nigeria and the lack of standardized ESG benchmarks across sectors hinder the visibility of such investable opportunities.[86]

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[84] World Bank, *Environmental, Social, and Governance Investing: A Primer for Central Banks' Reserve Managers* (March 2021) <https://openknowledge.worldbank.org/server/api/core/bitstreams/42704643-0f5f-57d5-a913-1c0969890d1f/content> accessed 28 October 2025.

[85] Udo Udoma and Belo-Osagie,'Green Bonds: Helping to Drive Climate Change Mitigation and Sustainable Investments in Nigeria' (September 2023) <https://uubo.org/wp-content/uploads/2023/09/GREEN-BONDS-HELPING-TO-DRIVE-CLIMATE-CHANGE-MITIGATION-AND-SUSTAINABLE-INVESTMENTS-IN-NIGERIA.pdf >accessed 28 October 2025.

[86] T Adeleye and L Obika, 'Impact Investing and ESG Trends in Nigeria: Aligning Finance with Development' (2023) 2(3) *African Journal of Responsible Investment* 122.

ii. Public-Private Partnerships (PPPs) as a Mechanism for Financing Social Projects

Public-Private Partnerships (PPPs) represent a key institutional innovation that enables the pooling of public resources and private capital to deliver infrastructure and social services.[87] In the Nigerian context, PPPs are primarily governed by the Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act 2005, which establishes the legal basis for the Federal Government to enter into concessions with private entities for the development of infrastructure and service delivery.[88]

Under PPPs, the private sector takes on significant financial, technical, and operational risk in designing, building, and operating social infrastructure, such as schools, hospitals, housing, and water systems, which are traditionally the domain of public institutions. This arrangement eases the fiscal burden on the government while accelerating project execution and fostering innovation. For instance, Nigeria's National Integrated Infrastructure Master Plan identifies PPPs as a critical mechanism for mobilising the estimated $3 trillion infrastructure financing gap over 30 years.[89]

In recent years, PPPs have been employed to finance projects with strong social impact, such as healthcare facilities, affordable housing schemes, and educational institutions. The blending of public funding with private investment ensures better accountability and efficiency in service delivery.

12. Role of Technology and Fintech in Access to Finance for Social Projects

Technology and fintech innovations are rapidly transforming access to finance for underserved populations and social entrepreneurs globally

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[87] B Sergi and others, *'Public–Private Partnerships as a Mechanism of Financing Sustainable Development' in Financing Sustainable Development (Springer 2019) 313–339* <https://www.researchgate.net/publication/334721889_Public-Private_Partnerships_as_a_Mechanism_of_Financing_Sustainable_Development> accessed 28 October 2025

[88] ibid.

[89] National Planning Commission (Nigeria), *National Integrated Infrastructure Master Plan* (January 2022) <https://www.policyvault.africa/policy/national-integrated-infrastructure-master-plan-2/> accessed 28 October 2025.

and also in Nigeria.[90] Fintech platforms have broadened the financial inclusion frontier by offering alternative financing models such as mobile money, peer-to-peer (P2P) lending, crowdfunding, and digital micro-investment tools.[91] These innovations directly contribute to financing social projects that address health, education, poverty, and rural development. Platforms like FarmCrowdy, ThriveAgric, and CrowdForce exemplify how fintech can channel retail and institutional capital into socially impactful sectors like agriculture, education, and clean energy. They allow micro-investors to participate in project financing via digital wallets and mobile applications, thus decentralising capital flows and democratizing development finance. Moreover, blockchain-based solutions and open banking protocols, supported by Central Bank of Nigeria's regulatory sandbox initiatives, are improving transparency, reducing transaction costs, and building trust in digital financial services. The CBN's 2021 Framework for Regulatory Sandbox[92] Operations is a legal instrument that further reinforces these innovations by enabling licensed entities to test emerging fintech solutions under controlled environments. While the digital transformation of finance presents vast opportunities, it also poses regulatory and infrastructural challenges. Data privacy concerns, cybersecurity risks, lack of digital literacy, and uneven internet access remain significant barriers to scaling fintech innovations for social impact.

13. Inhibitions towards Financing of Social Projects in Nigeria

Despite increasing interest in innovative financing mechanisms, Nigeria continues to face numerous barriers that hinder effective implementation in the social sector. These barriers are as examined *viz:*

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[90] United Nations, *FinTech for the UN: Integrating Financial Innovation in Development Mechanisms* (March 2023) <https://www.un.org/sites/un2.un.org/files/fintech4_14_march_2023.pdf> accessed 28 October 2025.

[91] P Maskara, E Kuvvet and G Chen, *The Role of P2P Platforms in Enhancing Financial Inclusion in the United States: An Analysis of Peer-to-Peer Lending Across the Rural–Urban Divide* (2021) 50(3) *Financial Management* 747–74. <https://www.researchgate.net/publication/348581912_The_role_of_P2P_platforms_in_enhancing_financial_inclusion_in_US_-_An_analysis_of_peer-to-peer_lending_across_the_rural-urban_divide> accessed 28 October 2025.

[92] Central Bank of Nigeria, *Framework for Regulatory Sandbox Operations* (October 2021) <https://www.cbn.gov.ng/out/2021/ccd/framework%20for%20regulatory%20sandbox%20operations.pdf> accessed 28 October 2025.

i. Institutional Barriers

Institutional weaknesses constitute one of the most significant barriers to innovative financing of social projects in Nigeria. Most institutions responsible for managing development funds and social programmes lack the technical expertise to conceptualize, structure, or manage complex financing instruments like Development Impact Bonds (DIBs), Blended Finance, or Advance Market Commitments (AMCs).

Agencies such as the Bank of Industry (BOI) and the National Social Investment Programme (NSIP) often operate in silos with limited inter-agency collaboration, resulting in inefficiencies and duplication of efforts. Moreover, institutional inertia and a resistance to change hinder the adoption of performance-based financing models, which require transparency, accountability, and rigorous monitoring systems.

There is also a chronic absence of reliable data, which is crucial for designing innovative finance mechanisms that rely on verifiable outcomes and metrics. Without strong institutional frameworks for data collection, impact measurement, and evaluation, it is difficult to track results or assure investors of returns in results-based contracts. Similarly, capacity gaps in public sector procurement and financial management reduce the ability of institutions to absorb private capital efficiently.[93]

ii. Legal Barriers

Legal and regulatory bottlenecks also present considerable challenges. Nigeria lacks a well-defined legal framework for innovative financing mechanisms such as DIBs or AMCs. Public procurement laws, such as the Public Procurement Act 2007, tend to be rigid and do not support flexible, performance-based contracting required in most innovative finance structures. For example, current legal provisions do not allow for outcome-based disbursements, limiting the scope for innovation in public-private collaborations.[94]

Another barrier is the limited legal recognition of hybrid models like social enterprises. Nigerian corporate law does not recognize social enterprises as a distinct legal entity, making it difficult for them to access

[93] O Olayinka, 'Institutional Challenges in Nigeria's Development Agenda' (2022) 4(2) *Nigerian Journal of Development Policy* 46.
[94] J Adegbite, 'Legal Environment for Impact Investing in Nigeria' (2023) 2(1) *African Law and Finance Review* 83.

finance tailored to their dual profit and impact missions. Additionally, contract enforcement remains slow and unpredictable, discouraging private investors from committing to long-term or outcome-contingent financing arrangements. The lack of tax incentives or legislative backing for impact investments further exacerbates the problem.

Although reforms such as the Banks and Other Financial Institutions Act, 2020 (BOFIA 2020) and the Finance Act 2023 have introduced some improvements in the financial landscape, they remain silent on specific instruments for social finance or on how capital markets can be used for social development.

iii. Cultural/Religious Barriers

Cultural perceptions and attitudes also play a critical role in shaping the ecosystem for innovative financing. In many Nigerian communities, particularly in rural areas, there exists deep-rooted distrust towards formal financial institutions and government-led interventions. This skepticism stems from historical experiences of failed development programmes and mismanagement of public funds. Such perceptions reduce public trust and hinder participation in social projects funded through unfamiliar or complex instruments like DIBs or blended finance.

Low levels of financial literacy among both beneficiaries and local institutions further constrain the adoption of innovative finance. Many stakeholders lack a basic understanding of how instruments like social bonds or results-based finance work, resulting in misconceptions and low uptake. This is compounded by the prevalence of informal financial systems that often operate independently of the formal sector.

Additionally, socio-cultural norms, such as clientelism, nepotism, and ethnic affiliations, frequently determine who gets access to funding, irrespective of merit or project viability. In some regions, religious sensitivities towards interest-based financing further limit the acceptance of certain investment models, especially among Muslim populations in northern Nigeria. This necessitates culturally adaptive models like Sharia-compliant financing tools, which are still underutilized in Nigeria's development finance space.

iv. Political Barriers

The political environment in Nigeria presents additional challenge to the implementation of innovative financing mechanisms. Frequent

changes in government priorities/policies and poor policy continuity make it difficult to plan and implement long-term social investment strategies. Development projects often become politicized, with funds allocated based on political patronage rather than developmental impact.[95] This undermines trust in public institutions and deters private investors who seek stability and accountability.[96]

In *SERAP v The Federal Government of Nigeria,*[97] the Socio-Economic Rights and Accountability Project organization, requested the government to disclose information concerning the recovered stolen public funds since Nigeria's return to democratic rule in 1999. The government, however, rejected the request on the ground that the governing Freedom of Information Act does not retroactively apply to those records that occurred prior to the enactment of that law in 2011. The Federal High Court of Nigeria found that the government's refusal was contrary to fundamental principles of transparency and accountability and in violation of Articles 9, 21, and 22 of the African Charter on Human and Peoples' Rights. In its landmark decision, the Court held that information pertaining to the government expenditure of stolen public funds since 1999 fell squarely within the country's Freedom of Information Act and therefore, the government was required to disclose and widely publish that information.

Regulatory capture, where vested interests influence regulatory agencies to favour certain entities, further hinders fair competition and innovation. Political interference in procurement processes, licensing, and programme implementation also reduces transparency, which is vital for outcome-based financing structures. Moreover, corruption remains a pervasive problem. Nigeria consistently ranks low on global corruption perception indices, with social project funds often being misappropriated. This has led to donor fatigue and reluctance from development finance institutions to commit resources without stringent conditions. Despite having several national development plans and social protection strategies that mention private sector involvement and innovation, the political will

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[95] *Attorney-General of Bendel State v. Attorney-General of the Federation* (1981) 12 NSCC 314.

[96] S Oyedele, 'Politics and the Financing of Public Services in Nigeria' (2022) *Journal of African Public Policy* 7(1) 67.
Transparency International, *Corruption Perceptions Index 2024: Nigeria Country Profile* <https://www.transparency.org/en/cpi/2024/index/nigeria> accessed 28 October 2025.

[97] Suit No: FHC/L/CS/1497/2017.

to implement them rigorously remains weak. These political constraints create uncertainty and high risk, deterring long-term investments in innovative solutions for financing social projects.

14. Conclusion

The financing of social projects in Nigeria remains one of the most critical challenges to sustainable development, equity, and inclusive growth. As the country grapples with mounting social needs in healthcare, education, housing, environmental protection, and poverty alleviation, it has become increasingly clear that traditional funding mechanisms, especially government budgets and donor assistance, are insufficient, unreliable, and poorly adapted to the complex realities of contemporary development. This research has demonstrated that addressing this financing gap requires a radical shift in the legal and institutional frameworks that govern financial innovation. The role of law and regulation is central, not merely as a tool for oversight and enforcement, but as a key enabler of innovation, market confidence, investor protection, and transparent outcomes in social project financing.

15. Recommendations

This paper hereby makes the following recommendations, though not exhaustive, but quite instructive:

i. Strengthening and Harmonizing the Legal and Regulatory Framework:

The absence of a clear, supportive legal structure for innovative financing models such as Development Impact Bonds (DIBs), Blended Finance, and Advance Market Commitments (AMCs) limits investor confidence. Nigeria should enact or revise laws to formally recognise these instruments, provide guidance on their implementation, and clarify the regulatory roles of bodies like the SEC, CBN, and NDIC. This includes standardising outcome-based contracts, introducing legal safeguards for investor risk-sharing, and ensuring enforceability under Nigerian law.

ii. Building of Institutional Capacity and Improving Co-ordination:

Government institutions must develop the technical know-how and administrative capabilities to design, implement, and monitor complex social financing instruments. This includes training personnel in relevant

ministries and regulatory agencies, setting up inter-agency coordinating units for innovative finance, and embedding financial innovation experts within key departments. Dedicated impact financing units within the Ministry of Finance, NSIA, and state investment agencies will help streamline project structuring and implementation.

iii. Promotion of Public-Private Partnerships (PPPs) with Defined Social Objectives:

Nigeria should adopt PPP models that prioritise social outcomes alongside financial sustainability. These include social infrastructure PPPs in education, healthcare, housing, and agriculture where the private sector is rewarded based on measurable improvements in access, quality, or affordability. Clear procurement guidelines, performance-based contracts, and streamlined approval processes are essential to make PPPs more attractive and effective.

iv. Expansion of Public Awareness and Stakeholder Engagement:

A major barrier to innovative financing is lack of awareness among both public sector actors and potential investors. Stakeholder sensitisation campaigns, capacity-building workshops, and community engagement strategies should be adopted to explain the benefits, mechanics, and safeguards of innovative financing. This will foster public trust, encourage political buy-in, and build a pipeline of bankable social projects.

v. Leveraging Technology and Fintech to Expand Access to Social Finance:

Digital platforms can be deployed to mobilise micro-savings, execute smart contracts, ensure transparent disbursement, and track impact in real time. Regulatory reforms should support the development of inclusive fintech tools such as digital KYC, mobile-based investment platforms, and blockchain for impact verification. Fintech can also support alternative credit scoring to unlock funding for informal businesses and community-based projects.

Artificial Intelligence Surveillance in Nigeria: Finding the Sweet Spot between National Security, Data Protection and Digital Rights

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Abstract

This paper examines the deployment of AI-powered surveillance in Nigeria, focusing on the need to balance national security with digital rights and data protection. It explores the existing legal and regulatory frameworks governing surveillance technologies, assesses their implications for individual rights, and identifies challenges and opportunities for achieving a balanced approach. Using a doctrinal method, the paper analyses Nigerian laws, policies, and regulations relating to surveillance, data protection, and digital rights, while drawing on international human rights instruments and best practices in AI-powered surveillance. The study reveals that Nigeria's regulatory framework is inadequate and fragmented, leaving significant gaps in the protection of citizens' digital rights and personal data. It further observes that the increasing use of AI-powered technologies enables extensive surveillance of citizens, posing serious risks to freedoms of expression, association, and assembly. The paper identifies challenges such as lack of transparency and accountability in surveillance operations, weak data protection mechanisms, and low public awareness of digital rights. It recommends the enactment of comprehensive legislation on AI-powered surveillance and data protection, the establishment of an independent oversight body to ensure accountability, and emphasises the need for enhanced citizen education and institutional capacity-building for effective rights protection.

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1. Introduction

The rapid advancement of technology and the widespread use of the internet, social media, and mobile devices have raised significant concerns about the protection of the right to privacy in Nigeria. Despite the guarantees provided by Section 37 of the Constitution of the Federal Republic of Nigeria, 1999, which protects the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications, the right to privacy remains under threat in the digital age.[1] The problem is exacerbated by the lack of comprehensive legislation on data protection in Nigeria. While the Nigeria Data Protection Act, 2023, has been criticized for its limitations. For instance, it does not provide adequate safeguards against the collection and use of personal data by government agencies. Furthermore, the Act does not provide clear guidelines on the right to erasure, the right to data portability, and the right to object to processing. However, section of NDPA, 2023 provides that the Act shall safeguard the fundamental rights and freedoms, and the interests of data subjects, as guaranteed under the Constitution of the Federal Republic of Nigeria, ensure that personal data is processed in a fair, lawful and accountable manner.[2]

Additionally, the NDPA, 2023, provides for data processing practices that safeguard the security of personal data and privacy of data subjects, protect data subjects' rights, and provide means of recourse and remedies, in the event of the breach of the data subject's rights, ensure that data controllers and data processors fulfil their obligations to data subjects.[3] The use of surveillance technologies dates to the colonial era in Nigeria, where the British colonial authorities employed various forms of surveillance to maintain control and suppress dissent.[4] However, with the advent of artificial intelligence and other digital technologies, surveillance has become more sophisticated, and potentially invasive. Today, AI-

[1] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 37.

[2] Nigeria Data Protection Act, 2023, s 1 (a) (d).

[3] Ibid, s 1 (c-g).

[4] A Odusote, 'Data Misuse, Data Theft and Data Protection in Nigeria' [2021] (12) Beijing Law Review 1284-1298.

powered surveillance is increasingly being deployed in Nigeria, ostensibly to enhance national security and combat crime.[5]

The legal framework governing surveillance in Nigeria is fragmented and inadequate. The 1999 Constitution of the Federal Republic of Nigeria guarantees the right to privacy, but this right is not absolute and can be derogated from in certain circumstances. The National Security Agencies Act, 1987 (as amended) and the Terrorism (Prevention) Act, 2011 (as amended) provide some legal basis for surveillance, but these laws are often vague and overly broad, allowing for abuse and arbitrary application. In recent years, Nigeria has witnessed a significant increase in the deployment of AI-powered surveillance technologies, including facial recognition systems, biometric data collection, and social media monitoring. While these technologies have potential benefits for national security and crime prevention, they also pose significant risks to digital rights and data protection.[6] The lack of transparency and accountability in surveillance practices, combined with inadequate data protection laws and regulations, has created a perfect storm of risks for Nigerian citizens.[7] The Nigerian government has argued that AI-powered surveillance is necessary to combat terrorism, kidnapping, and other serious crimes. However, critics argue that these measures are often disproportionate and discriminatory, targeting specific communities and groups. Moreover, the use of AI-powered surveillance has been linked to various human rights abuses, including arbitrary detention, torture, and extrajudicial killings.[8]

The deployment of AI-powered surveillance in Nigeria poses significant risks to digital rights and data protection, while also raising concerns about national security and the rule of law. The lack of transparency and accountability in surveillance practices, combined with inadequate data protection laws and regulations, has created a situation

[5] Ibid.

[6] E Kolawole, 'Protecting Personal Data in Nigeria: An Examination of the Nigeria Data Protection Regulation 2019' [2020] (1) Journal of Intellectual Property and Digital Law 12-25.

[7] Ibid.

[8] E Kolawole, 'Protecting Personal Data in Nigeria: An Examination of the Nigeria Data Protection Regulation 2019' [2020] (1) Journal of Intellectual Property and Digital Law 12-25.

where Nigerian citizens are vulnerable to abuse and exploitation.[9] Therefore, there is a need to balance national security concerns with digital rights and data protection, and to develop a comprehensive legal and regulatory framework that governs AI-powered surveillance in Nigeria. Artificial Intelligence (AI)-powered surveillance has become increasingly prevalent in Nigeria, with the government and private sector deploying various technologies to monitor and track individuals. These technologies include facial recognition systems, biometric data collection, social media monitoring, and predictive policing. The use of AI-powered surveillance in Nigeria is often justified as a necessary measure to combat crime, terrorism, and other national security threats.

The Nigerian government has invested heavily in AI-powered surveillance technologies, with the National Intelligence Agency and the Department of State Services being major beneficiaries.[10] These agencies have deployed AI-powered surveillance systems to monitor public spaces, borders, and critical infrastructure. Additionally, the Nigerian Police Force has established a digital forensic laboratory to analyse digital evidence and track cybercrime. Private companies are also playing a significant role in the development and deployment of AI-powered surveillance technologies in Nigeria. Companies such as ZTE and Huawei have partnered with the Nigerian government to provide AI-powered surveillance solutions.[11] These solutions include smart city initiatives, which integrate AI-powered surveillance with other technologies such as Internet of Things sensors and data analytics.[12]

The rapid advancement of technology in the digital age has raised significant concerns about the protection of individuals' right to privacy. The widespread use of the internet, social media, and mobile devices has made it easier for governments, corporations, and individuals to collect, store, and share personal data, often without consent or transparency. This has led to surge in privacy violations, including data breaches, surveillance, and identity theft, which can have severe consequences for individuals, including reputational damage, financial loss, and emotional distress.

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[9] A Makinwa, 'The Right to Privacy in Nigeria: A Critical Analysis of the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015' [2022] (20) African Journal on Human Rights 301-321.

[10] Ibid.

[11] Ibid.

[12] Ibid.

The Nigerian Constitution, specifically, section 37 guarantees the right to privacy, stating that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected. However, the Constitution does not provide clear guidelines on how this right should be protected in the digital age. Furthermore, existing laws and regulations, such as the Cybercrime (Prohibition, Prevention, etc.) Act, 2015, have been criticized for being inadequate and inconsistent with international human rights standards. This has created a legal vacuum that allows for the exploitation of personal data and the erosion of individuals' right to privacy. Additionally, lack of effective protection for the right to privacy in the digital age has significant implications for Nigerian citizens, including the potential for abuse of power, suppression of free speech, and erosion of trust in institutions.

Despite the potential benefits of AI-powered surveillance, there are concerns about its impact on human rights and civil liberties in Nigeria. The use of AI-powered surveillance has been linked to arbitrary detention, torture, and extrajudicial killings. Additionally, there are concerns about the lack of transparency and accountability in the deployment of AI-powered surveillance technologies, as well as the potential for bias and discrimination. The deployment of AI-powered surveillance in Nigeria is governed by a patchwork of laws and regulations, including the National Security Agencies Act, 1986, the Terrorism (Prevention) Act, 2011 (as amended) and the Cybercrime (Prohibition, Prevention, etc.) Act, 2015. However, these laws are often vague and overly broad, allowing for abuse and arbitrary application. As a result, there is a need for a more comprehensive and nuanced regulatory framework to govern the use of AI-powered surveillance in Nigeria.

2. Conceptual Clarification

i. Digital Age

The digital age refers to the current era of widespread use of digital technologies, including the internet, mobile devices, social media, and other digital platforms.[13] This era has been characterized by the rapid

[13] A A Oyediran, 'Data Privacy in Nigeria: Challenges and Prospects' [2020] (10) (2) Journal of Information Technology and Socio-Economic Technology 1-15.

advancement of technology, which has transformed the way people communicate, interact, and access information. In Nigeria, the digital age has led to an increase in the use of digital technologies, with over 100 million Nigerians having access to the internet and millions more using mobile devices and social media.[14] The digital age has also led to the emergence of new forms of data collection, storage, and dissemination. Personal data is now collected and processed on a massive scale, often without the knowledge or consent of the individuals concerned. This has raised significant concerns about the protection of the right to privacy, as individuals are increasingly vulnerable to data breaches, cybercrime, and online harassment.

ii. Privacy

Privacy refers to the state of being free from unauthorized intrusion, observation, or surveillance. It involves the right to control one's personal information, including sensitive data such as financial information, health records, and personal communications.[15] In the context of the digital age, privacy encompasses not only physical spaces, but also online activities, digital communications, and personal data stored on digital devices. In Nigeria, the concept of privacy is deeply rooted in the country's cultural and social norms. The idea of "private life" is highly valued, and individuals expect to have a reasonable level of control over their personal information and private spaces. However, the digital age has introduced new challenges to the concept of privacy, as personal data can be easily collected, stored, and disseminated online. This has raised concerns about the erosion of privacy and the potential for abuse of personal information.[16]The Nigerian Constitution recognizes the importance of privacy, guaranteeing the right to privacy in Section 37.[17] This provision protects the privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications. However, the interpretation and application of this

[14] Ibid.

[15] O A Dada, 'Data Protection and Privacy in Nigeria: An Examination of the Nigeria Data Protection Regulation 2019' [2020] (12) (1) African Journal of Information and Communication 1-18.

[16] O A Dada, 'Data Protection and Privacy in Nigeria: An Examination of the Nigeria Data Protection Regulation 2019' [2020] (12) (1) African Journal of Information and Communication 1-18.

[17] CFRN, 1999 (as amended).

provision in the digital age remain unclear, and the study aims to provide a constitutional analysis of the right to privacy in Nigeria's digital age.

3. National Security Concerns and Justification for AI-powered Surveillance in Nigeria

Nigeria faces numerous national security challenges, including terrorism, kidnapping, armed robbery, and cybercrime. The Boko Haram insurgency in the Northeast, for instance, has resulted in thousands of deaths and displacements, while kidnapping and armed robbery have become rampant in many parts of the country.[18] These security challenges have created a sense of urgency and necessitated the deployment of innovative technologies, including AI-powered surveillance, to enhance national security.[19] The Nigerian government has justified the deployment of AI-powered surveillance on the grounds that it is necessary to prevent and combat crime, as well as to protect national security.[20] The government has argued that AI-powered surveillance can help to identify and track criminals, anticipate and prevent crime, and improve the overall effectiveness of law enforcement agencies.[21] Additionally, the government has claimed that AI-powered surveillance can help to protect critical infrastructure, such as airports, seaports, and public buildings, from terrorist attacks and other security threats.[22]Therefore, one of the key national security concerns that AI-powered surveillance is intended to address is the threat of terrorism. Nigeria has been plagued by terrorist attacks in recent years, particularly in the Northeast, where Boko Haram has been active. AI-powered surveillance can help to identify and track terrorists, anticipate and prevent terrorist attacks, and improve the overall effectiveness of counter-terrorism operations.[23] Additionally, AI-powered

[18] A Adekunle, 'Data Protection and the Right to Privacy in Nigeria' [2019] (38) Nigerian Journal of Technology 123-135.

[19] O Olasoji, 'The Nigeria Data Protection Regulation 2019: A Critical Analysis' [2020] (1) Journal of Law and Technology 34-49.

[20] Ibid.

[21] O A Dada, 'Data Protection and Privacy in Nigeria: An Examination of the Nigeria Data Protection Regulation 2019' [2020] (12) (1) African Journal of Information and Communication 1-18.

[22] Ibid.

[23] Ibid.

surveillance can help to identify and disrupt terrorist financing networks, which are critical to the survival and operations of terrorist groups.[24]

Another national security concern that AI-powered surveillance is intended to address is the threat of cybercrime.[25] Nigeria has been identified as one of the countries most affected by cybercrime, with millions of Nigerians falling victim to cybercrime every year.[26] AI-powered surveillance can help to identify and track cybercriminals, anticipate and prevent cybercrime, and improve the overall effectiveness of cybersecurity operations.[27] Additionally, AI-powered surveillance can help to identify and disrupt cybercrime networks, which are critical to the survival and operations of cybercriminal groups.[28] The deployment of AI-powered surveillance in Nigeria is justified on the grounds of national security concerns, including the threat of terrorism, kidnapping, armed robbery, and cybercrime.[29] AI-powered surveillance can help to identify and track criminals, anticipate and prevent crime, and improve the overall effectiveness of law enforcement agencies.[30] However, it is also important to ensure that AI-powered surveillance is deployed in a manner that respects human rights and civil liberties, and that is transparent, accountable, and subject to oversight and regulation.[31]

4. Impact of AI Surveillance on Digital Rights and Data Protection in Nigeria

The deployment of AI-powered surveillance in Nigeria has significant implications for digital rights in the country. One of the major concerns is the potential for mass surveillance, where the government and other actors can monitor the online activities of citizens without their

[24] (n 13).

[25] I Ekoja, 'Digital Rights and Data Protection in Nigeria: Challenges and Prospects' [2020] (1) Journal of Digital Rights 12-28.

[26] E O Adebayo, 'Data Protection and Cybersecurity in Nigeria: Issues and Challenges'[2020] (2) Journal of Cybersecurity 56-70.

[27] Ibid.

[28] O Ajai, 'Data Protection and the Right to Privacy in Nigeria: A Comparative Analysis with the United States' [2020] (15) Journal of Comparative Law 12-28.

[29] Ibid.

[30] Ibid.

[31] O Olasoji, 'The Role of the Judiciary in Protecting Personal Data in Nigeria' [2020] (1) Journal of Judicial Studies 12-28.

knowledge or consent. This can lead to a chilling effect on free speech, as individuals may be reluctant to express themselves online for fear of being monitored or targeted. Also, another impact of AI surveillance on digital rights in Nigeria is the potential for discrimination and bias. AI-powered surveillance systems can be programmed to target specific groups or individuals based on their race, ethnicity, religion, or other characteristics. This can lead to discriminatory treatment and unequal protection under the law. For instance, AI-powered facial recognition systems have been shown to be less accurate for individuals with darker skin tones, which can lead to false positives and wrongful arrests.[32]

The use of AI-powered surveillance in Nigeria also raises concerns about data protection and privacy.[33] The government and other actors may collect and store vast amounts of personal data, including biometric data, without adequate safeguards or oversight.[34] This can lead to data breaches, identity theft, and other forms of exploitation. Furthermore, the use of AI-powered surveillance can also lead to the creation of "data profiles" that can be used to predict and influence individual behaviour.[35] The impact of AI surveillance on digital rights in Nigeria is also felt in the realm of freedom of assembly and association.[36] The use of AI-powered surveillance can make it more difficult for individuals to assemble and associate freely, as they may be subject to monitoring and tracking.[37] This can have a chilling effect on political activism and social movements, as individuals may be reluctant to participate in protests or other forms of collective action for fear of being targeted or surveyed. The deployment of AI-powered surveillance in Nigeria has significant implications for digital rights in the country. The potential for mass surveillance, discrimination, and bias, as well as the risks to data protection and privacy, all raise concerns about the impact of AI surveillance on digital rights in Nigeria. It is therefore essential that the government and other actors take steps to ensure that AI-powered surveillance is deployed in a manner that respects

[32] A Adeyeye, 'The Challenges of Implementing the Nigeria Data Protection Regulation 2019' [2020] (1) Journal of Information, Technology and Management 34-49.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] C Okoro, 'The Impact of the Nigeria Data Protection Regulation 2019 on Businesses in Nigeria' [2020] (2) Journal of Business and Economic Studies 12-25.

and protects digital rights, and that is transparent, accountable, and subject to oversight and regulation.

5. Legal and Regulatory Framework Governing AI Surveillance in Nigeria

The legal and regulatory framework governing AI surveillance in Nigeria is fragmented and inadequate. Therefore, there is no single, comprehensive law that regulates AI surveillance in Nigeria. Rather, there are various laws and regulations that touch on different aspects of AI surveillance, including data protection, privacy, and national security. Thus, section 37 of the 1999 Constitution of the Federal Republic of Nigeria guarantees the right to privacy, which includes the right to be free from unauthorized surveillance.[38] However, this right is not absolute and can be derogated from in certain circumstances, such as national security and public safety. The National Security Agencies Act, 1986 and the Terrorism (Prevention) Act, 2011 (as amended), provide some legal basis for surveillance in Nigeria. However, these laws are often vague and overly broad, allowing for abuse and arbitrary application. For instance, Section 2 of the National Security Agencies Act empowers the National Security Adviser to intercept communications and conduct surveillance on individuals suspected of posing a threat to national security.[39]

The Cybercrime (Prohibition, Prevention, etc.) Act, 2015 is another law that touches on AI surveillance in Nigeria. Section 38 of the Act empowers law enforcement agencies to intercept electronic communications and conduct surveillance on individuals suspected of committing cybercrimes. However, the Act does not provide adequate safeguards for protecting individual rights and freedoms. The Nigerian Data Protection Regulation, 2019 is one of the recent developments that aims to regulate the processing of personal data in Nigeria.[40] The Regulation requires data controllers to obtain the consent of data subjects before processing their personal data. However, the Regulation does not specifically address AI surveillance, and it is unclear how it will be applied in practice. In terms of instances of application, AI surveillance has been used in various contexts in Nigeria, including law enforcement, national

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

[39] NSA, 1986.

[40] U Jerome, 'Data Privacy and Protection in Nigeria: A Review of the Legal Framework' [2020] (2) Journal of Information and Technology 21-40.

security, and private sector applications. For example, the Nigerian Police Force has used AI-powered facial recognition technology to identify and track suspects. Similarly, private companies have used AI-powered surveillance systems to monitor their premises and protect their assets.[41]

Despite these developments, there are still significant gaps in the legal and regulatory framework governing AI surveillance in Nigeria. There is a need for a comprehensive law that specifically addresses AI surveillance and provides adequate safeguards for protecting individual rights and freedoms. Additionally, there is a need for greater transparency and accountability in the deployment of AI surveillance systems in Nigeria. The legal and regulatory framework governing AI surveillance in Nigeria is fragmented and inadequate. While there are various laws and regulations that touch on different aspects of AI surveillance, there is still a need for a comprehensive law that specifically addresses AI surveillance and provides adequate safeguards for protecting individual rights and freedoms.

6. Application of AI-powered Surveillance in Nigeria

The deployment of AI-powered surveillance in Nigeria raises significant ethical concerns. One of the primary concerns is the potential for bias and discrimination in AI-powered surveillance systems.[42] These systems can be programmed to target specific groups or individuals based on their race, ethnicity, religion, or other characteristics. This can lead to discriminatory treatment and unequal protection under the law.[43] For example, AI-powered facial recognition systems have been shown to be less accurate for individuals with darker skin tones, which can lead to false positives and wrongful arrests. Another ethical concern is the potential for AI-powered surveillance to erode individual privacy and autonomy. The use of AI-powered surveillance systems can lead to a loss of anonymity and freedom of movement, as individuals may be tracked and monitored without their knowledge or consent. This can have a chilling effect on free speech and association, as individuals may be reluctant to express

[41] O Ajai, 'Data Protection and the Right to Privacy in Nigeria: A Comparative Analysis with the United States' [2020] (15) Journal of Comparative Law 12-28.

[42] C Okoro, 'The Impact of the Nigeria Data Protection Regulation 2019 on Businesses in Nigeria' [2020] (2) Journal of Business and Economic Studies 12-25.

[43] Ibid.

themselves or participate in public activities for fear of being monitored or targeted.[44]

The lack of transparency and accountability in AI-powered surveillance systems is another significant ethical concern. The use of AI-powered surveillance systems can lead to a lack of transparency and accountability, as decision-making processes are often opaque and difficult to understand. This can lead to abuse and arbitrary application of power, as individuals may be targeted or surveilled without due process or oversight. The potential for AI-powered surveillance to exacerbate existing social inequalities is another ethical concern. The use of AI-powered surveillance systems can perpetuate existing biases and inequalities, particularly in the context of law enforcement and national security. For example, AI-powered surveillance systems may be more likely to target marginalized communities or individuals, leading to further marginalization and exclusion. The deployment of AI-powered surveillance in Nigeria raises significant ethical concerns. The potential for bias and discrimination, erosion of individual privacy and autonomy, lack of transparency and accountability, and exacerbation of existing social inequalities are all pressing concerns that must be addressed. It is essential that policymakers, stakeholders, and the public engage in a nuanced and informed discussion about the ethics of AI-powered surveillance in Nigeria, and work towards developing policies and regulations that prioritize transparency, accountability, and human rights.

7. Data Protection Challenges of AI surveillance in Nigeria

The deployment of AI-powered surveillance in Nigeria poses significant data protection challenges. One of the primary concerns is the collection and processing of personal data without consent.[45] AI-powered surveillance systems can collect vast amounts of personal data, including biometric data, without the knowledge or consent of individuals.[46] For instance, the Nigerian government's use of AI-powered facial recognition technology to monitor public spaces raises concerns about the collection and processing of biometric data without consent. Another data protection challenge is the lack of transparency and accountability in AI-powered

[44] Ibid.

[45] C Okoro, 'The Impact of the Nigeria Data Protection Regulation 2019 on Businesses in Nigeria' [2020] (2) Journal of Business and Economic Studies 12-25.

[46] Ibid.

surveillance systems.[47] The use of AI-powered surveillance systems can lead to a lack of transparency and accountability, as decision-making processes are often opaque and difficult to understand. For example, the Nigerian Police Force's use of AI-powered surveillance systems to track and monitor individuals raises concerns about the lack of transparency and accountability in the decision-making process. The potential for data breaches and cyber attacks is another significant data protection challenge in AI-powered surveillance in Nigeria.[48] AI-powered surveillance systems can be vulnerable to cyber-attacks, which can result in the unauthorized access and disclosure of personal data. For instance, the hacking of the Nigerian government's database of biometric data raises concerns about the potential for data breaches and cyber-attacks. The lack of data protection regulations and enforcement mechanisms is another significant challenge in AI-powered surveillance in Nigeria. Nigeria's data protection regulations are inadequate and poorly enforced, which can lead to the abuse and exploitation of personal data. For example, the Nigerian Data Protection Regulation, 2019 is a recent development, but it is unclear how it will be enforced in practice.

The deployment of AI-powered surveillance in Nigeria poses significant data protection challenges. The collection and processing of personal data without consent, lack of transparency and accountability, potential for data breaches and cyber attacks, and lack of data protection regulations and enforcement mechanisms are all pressing concerns that must be addressed. It is essential that policymakers, stakeholders, and the public engage in a nuanced and informed discussion about data protection in AI-powered surveillance in Nigeria, and work towards developing policies and regulations that prioritize data protection and human rights.

8. International Human Rights Standards and Best Practices Related to AI-Powered Surveillance in Nigeria

The use of AI-powered surveillance in Nigeria must comply with international human rights standards, including the right to privacy, freedom of expression, and non-discrimination.[49] The United Nations

[47] C Okoro, 'The Impact of the Nigeria Data Protection Regulation 2019 on Businesses in Nigeria' [2020] (2) Journal of Business and Economic Studies 12-25.

[48]Ibid.

[49] A Adekunle, 'Data Protection and the Right to Privacy in Nigeria' [2019] (38) Nigerian Journal of Technology 123-135.

Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 provide a framework for protecting human rights in the context of surveillance. The UN Special Rapporteur on the Right to Privacy has also emphasized the need for surveillance to be necessary, proportionate, and subject to oversight and accountability. The European Union's General Data Protection Regulation (GDPR) provides a best practice framework for data protection in the context of AI-powered surveillance.[50] The GDPR emphasizes the need for transparency, accountability, and data minimization in the processing of personal data. The GDPR also provides individuals with rights to access, rectify, and erase their personal data, as well as the right to object to processing. Nigeria can draw on the GDPR as a model for developing its own data protection regulations.[51]

The Principles on the Application of Human Rights to Communications Surveillance, 2013 provide a set of guidelines for ensuring that surveillance is conducted in a manner that respects human rights.[52] The principles emphasize the need for surveillance to be necessary, proportionate, and subject to oversight and accountability. The principles also provide guidelines for the protection of metadata, the use of encryption, and the provision of remedies for individuals whose rights have been violated. The African Union's Convention on Cyber Security and Personal Data Protection, 2014 provides a regional framework for data protection and cyber security in Africa. The Convention emphasizes the need for data protection, cyber security, and human rights to be respected in the context of AI-powered surveillance. Nigeria is a signatory to the Convention and can draw on its provisions in developing its own data protection regulations.

International human rights standards and best practices provide a framework for ensuring that AI-powered surveillance in Nigeria is conducted in a manner that respects human rights. The right to privacy, freedom of expression, and non-discrimination must be respected, and surveillance must be necessary, proportionate, and subject to oversight and accountability. Nigeria can draw on international frameworks, such as the GDPR and the African Union's Convention on Cyber Security and

[50] Ibid.

[51] Ibid.

[52] Ibid.

Personal Data Protection, in developing its own data protection regulations and ensuring that AI-powered surveillance is conducted in a manner that respects human rights. Balancing national security and digital rights in Nigeria is a complex and delicate task. On one hand, the government has a responsibility to protect its citizens from security threats, such as terrorism and cybercrime. On the other hand, the government must also ensure that it does not infringe on the digital rights of its citizens, including their right to freedom of expression, association, and privacy.

One of the major challenges in balancing national security and digital rights in Nigeria is the lack of a clear and comprehensive regulatory framework. The government has enacted several laws and regulations aimed at enhancing national security, such as the Cybercrime (Prohibition, Prevention, etc.) Act, 2015. However, these laws and regulations are often vague and overly broad, and can be used to justify human rights violations, including the suppression of free speech and the interception of communications. Another challenge is the lack of transparency and accountability in the government's surveillance activities. The government has been criticized for its failure to provide clear information about its surveillance activities, including the types of data that are being collected, the purposes for which they are being used, and the safeguards that are in place to prevent abuse. This lack of transparency and accountability makes it difficult for citizens to hold the government accountable for any human rights violations that may occur. The government's response to security threats has also been criticized for being heavy-handed and disproportionate.[53] For example, the government has been known to shut down the internet or block social media platforms in response to security threats, which can have a disproportionate impact on citizens' ability to access information and express themselves. This approach can also drive criminal activity underground, making it more difficult to track and prosecute.

9. Conclusion/Recommendations

The deployment of AI-powered surveillance in Nigeria raises significant concerns about the balance between national security and

[53] U Jerome, 'Data Privacy and Protection in Nigeria: A Review of the Legal Framework' [2020] (2) Journal of Information and Technology 21-40.

digital rights and data protection. While AI-powered surveillance may offer benefits in terms of enhancing national security, it also poses risks to individual rights and freedoms, particularly in the context of data protection and privacy. Therefore, it is essential that policymakers, stakeholders, and the public engage in a nuanced and informed discussion about the implications of AI-powered surveillance in Nigeria.

To strike a balance between national security and digital rights and data protection, it is respectfully suggested that the Nigerian government should develop a comprehensive legal and regulatory framework that governs the deployment of AI-powered surveillance. This framework should include provisions for transparency, accountability, and oversight, as well as safeguards for protecting individual rights and freedoms. Additionally, the government should establish an independent oversight body to monitor the use of AI-powered surveillance and ensure that it is conducted in a manner that respects human rights.

Furthermore, it is recommended that the Nigerian government prioritize the development of data protection regulations that are consistent with international best practices. This should include provisions for data minimization, transparency, and accountability, as well as safeguards for protecting individual rights and freedoms. Additionally, the government should invest in public education and awareness campaigns to inform citizens about the risks and benefits of AI-powered surveillance and the importance of data protection.

The Impact of Artificial Intelligence on Child Abduction and Trafficking in Nigeria

Ekomobong U. Essien *

Abstract

One of the fastest growing and highly lucrative areas of criminal activity is the illegal transportation of persons whether male or female against their will, from one place to another, through the use of force, deceit, threats, debt bondage and servitude. This criminal activity which is termed abduction and trafficking could be perpetrated for the purpose of sale, slavery or forced labour, early marriage and other purposes frowned at by existing international treaties, conventions and municipal legislation. Moreso, as a highly organised crime and with the advent of technology, there is an increase in cases involving women and children despite the plethora of fine worded legislation and agencies put in place to curb this menace. This work addressed the topic 'The Impact of Artificial Intelligence on Child Abduction and Trafficking in Nigeria.' The specific objective of this work, was to examine the effectiveness of the legal framework proscribing this phenomenon, in line with innovations of Artificial Intelligence and Machine Learning tools. It was found that there are gaps in legislation due to the technicalities created by AI. To nip these technicalities in the bud, this work has recommended a robust legislative review, while viewing this menace from a holistic approach and taking into consideration the future prospects of AI.

1. Introduction

Human trafficking for sexual exploitation is believed to be one of the fastest growing areas of criminal activity. The phenomenon of human trafficking, particularly in West Africa, has in recent years assumed

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alarming proportions and hence receives unprecedented global attention. Although there is a lack of accurate data, it is reported that in West and Central Africa about 200,000 children are trafficked annually, while in West Africa alone, an estimated 35,000 women and children are trafficked every year for commercial sexual exploitation.[1] Nigeria, the largest and most populous country (140 million) in Sub-Saharan African occupies a central position as a country of origin, transit and destination for the crime of human trafficking.[2]

Child victims are particularly vulnerable but there is little systematic knowledge based on empirical research about their characteristics, experiences, and prospects for long-term integration into the mainstream society.[3] Women and children especially, from poor rural communities and with little or no education often constitute the larger percentage of trafficked persons in Nigeria. Traffickers exploit the vulnerability of the people in places where there is general poverty, lack of income generating opportunities and pervading ignorance, to source the victims of trafficking. The vulnerability of rural dwellers becomes more visible in cases where the children and young people are not only from poor rural communities but are orphans or come from dysfunctional homes. In some cases human trafficking is facilitated or carried out with the active connivance of members of the victims' families.[4]

Nigeria, like some of its neighbouring countries in West Africa such as Benin, Togo and Ghana, has been affected by human trafficking for several years but has only recently recognized the phenomenon as an issue of concern to be given national attention.[5] In 2003, Nigeria became the first country in the region to adopt national legislation to deal specifically with

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[1] A Mantua, 'Trafficking in Women and Children" (2003) African Women's Journal, New People Media Centre.

[2] The Trafficking in Persons Report, US State Department, July 2001.

[3] E Goździak, 'Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States' (2008) NIJ Grant NO. 2005-IJ-CX-0051 Final Report p.1.

[4]Olagbegi, B O 'Review of legislation and policies in Nigeria on Human Trafficking and Forced Labour' (2010) Action Programme against Trafficking and Forced Labour in West Africa.

[5] B O Olagbegi and A Ikpeme, 'Review of legislation and policies in Nigeria on Human Trafficking and Forced Labour' Action Programme against Trafficking and Forced Labour in West Africa p.1.

the issue of human trafficking. The Act is known as the "Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003". In addition Nigeria has signed, ratified and domesticated the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the United Nations Convention against Trans-national Organised crime.[6]

In recent times and with the emergence of technology, the welfare and state of children globally have been plagued by a sizeable number of conundrums and ill practices as a result of the activities of child traffickers. These ill-practices as exhibited in abduction, abuse, child stealing and trafficking have been impacted largely by evolving concerns of generative human technology, data privacy and protection which has impacted positively and negatively on the statistics for the perpetration of these crimes. These issues are critically addressed in this work with a view to proffer suggestions and measures to be taken to reduce or eliminate these crimes and strengthen the existing legal framework.

2. Analysis and Gaps in Legislation

One of the major gaps that exist in the concept of artificial intelligence as it relates to the menace of human trafficking is largely the period of its evolution into Nigeria.[7] This increasing interest in AI having found its way into the Nigerian Jurisprudence has pinpointed the need for previously enacted legislation to evaluate its applicability in line with the evolution.[8] With the increase in child abduction and human trafficking globally, and with the attendant hydra-headed problems, there was heightened international concern about the adverse effects of trafficking on the efforts of the United Nations and regional intergovernmental organisations to promote human rights and human security in the world. Consequently, the need to ensure that the issue was addressed from a

[6] The Nigerian domesticated laws are "The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children (ratification and enforcement) Act, 2003" and " The UN Convention against Trans-national Organized Crime (Ratification and Enforcement) Act, 2003.

[7]Michael Haenlein, Andreas Kaplan, ' A Brief History of Artificial Intelligence: On the Past, Present and Future of Artificial Intelligence' (2019) https://www.researchgate.net accessed 24 October 2025

[8] Ibid.

human rights perspective informed the adoption of various conventions and guidelines for the protection of trafficked victims. Nigeria has signed and ratified many of these instruments and, in order to make them nationally applicable, the following instruments have been domesticated:

i. The Palermo Protocol

A major step that was taken by the comity of nations under the auspices of the United Nations to address the issue of human trafficking is the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the Convention against Trans-national Organized Crime signed in Palermo, Italy in 2000. Nigeria signed and ratified the Palermo Protocol and the Convention on 13th December 2000 and 28th June 2001 respectively. The Nigerian Government further domesticated it by an Act of the National Assembly signed into law in 2003 and known as the "Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (ratification and enforcement) Act 2003 and the United Nations Convention against Trans-national Organized Crime (Ratification and Enforcement Act), 2003. Incidentally, Nigeria is one of the first countries in Sub-Saharan Africa to ratify and domesticate the Palermo Protocol, which shows the political will of the Government to combat human trafficking in Nigeria. The wordings of this protocol may have made it easy to prevent, suppress and punish trafficking crimes, however, with the sophistication of technology application in different jurisdictions, there are inherent dangers in the verbatim adoption of international instruments as domestic laws.

ii. The Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)

This protocol aims at furthering the achievement of the purposes of the Convention on the Rights of a Child by providing states with detailed requirements to end the sexual exploitation and abuse and also protect children from being sold for non-sexual purposes- such as other forms of forced labour, illegal adoption and organ donation. For purposes of the Protocol, Article 2 of the Protocol provides definitions for the offences of 'sale of children', 'child prostitution' and 'child pornography'. It further creates obligations on governments to criminalize and punish

activities related to these offences.[9] The protocol also protects the rights, and interests of child victims.[10] Governments must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system.[11]

iii. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)[12]

The OPAC refers to the inclusion as a war crime in the Rome Statute of the International Criminal Court, the conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts. The Preamble takes note of the definition of a Child in Article 1 of the CRC and expresses the conviction that raising the age of possible recruitment will contribute effectively to implementing the principle of the best interests of the child as a primary consideration in all actions concerning children. The Protocol by Articles 1 and 2 extends the minimum age requirement for direct participation in armed conflict and conscription to eighteen respectively and forbids rebel or other non-governmental armed forces "under any circumstances," to recruit or to use in hostilities persons under that age.[13] It does not prescribe age eighteen as the minimum for voluntary recruitment, but requires States Parties to raise the minimum age for it from fifteen[14] (i.e., to 16 years of age) and to deposit a binding declaration setting forth the minimum age permitted for voluntary recruitment and describing safeguards adopted to ensure

[9]Article 3 of the OPSC.

[10]Article 8 of the OPSC.

[11]Article 8(3) of the OPSC. As a complement to the CRC, the interpretation of the Optional Protocol's text must always be guided by the general principles of non-discrimination, best interests of the child and child participation.

[12] This Protocol is also called the Child Soldiers Protocol. It comprises of a Preamble and 13 articles, entered into force on February 12, 2002. G.A. Res. A/RES/54/263 of 25 May 2000. For an online text, see the OHCHR Web site, http://www.ohchr.org/english/law/crc-conflict.htm accessed on 25th of May 2017. The status of ratifications and reservations to the Protocol is available via hyperlinks in the left column of that same Web site.

[13]Article 4.

[14]Article 38 (3) of the CRC.

voluntariness[15]. The Protocol also requires States Parties to take "all feasible measures to ensure" the demobilisation or release from service of children recruited into armed conflict or used in hostilities and, "when necessary," to accord "all appropriate assistance" for the children's rehabilitation and social reintegration.[16]

iv. Domestication of the CRC and ACRWC in Nigeria

Nigeria signed and ratified both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child in 1991 and 2000 respectively. Generally, States that have ratified the CRC are known in international law as State Parties and subsequently take on both positive and negative duties to respect, protect and fulfill the rights contained in the treaty.[17] With precision, Article 4 of the CRC and Article 1 of the ACRWC puts Nigeria under a positive international law obligation to undertake legislative means amongst other means to implement the rights recognised in both Conventions being that the country is a State Party to them. It therefore against this backdrop that a draft Child's Rights Bill aimed at principally enacting into Law in Nigeria the principles enshrined in the Convention on the Rights of the Child and the AU Charter on the Rights and Welfare of the Child was prepared in the early nineties. However, it was only in 2003 that the Bill was eventually passed into law by the National Assembly and signed into law by the President; giving birth to the Child's Rights Act of 2003.

v. The Child's Rights Act 2003

The structure of the CRA is informed by the mandate to provide a legislation which incorporates all the rights and responsibilities of children, and which consolidates all laws relating to children into one single

[15] Article 3(1-3). Importantly also, According to Article 3(5), "the requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child."

[16]Article 6(1) and (3).

[17]For Example Committee on Civil and Political Rights, General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/GC/2004/21/Rev.1/Add.13, 2004; Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of States Parties' obligations, Geneva: UN, E/1991/23, 1990.

legislation, as well as specifying the duties and obligations of government, parents, relevant authorities and organisation. As stated previously, the power to legislate on issues concerning children in Nigeria rests on the States and as such, it is in the residuary legislative list. Consequently, individual States ought to adopt and adapt the Child's Rights Act. On this note, the CRA has presently been passed into law in at least 26 States of the Federation. The Child's Rights Act in its rights and responsibilities approach is culturally sensitive, compatible, relevant and above all in the best interest of the Nigerian child.[18]

vi. NAPTIP Act[19]

Examining the NAPTIP Act as a whole, one finds that the legislation is oriented more towards the prosecution of traffickers than to the prevention of trafficking and protection of trafficked persons. Another major flaw is that the offences created by the NAPTIP law focus on trafficking for sexual purposes to the neglect of offences relating to trafficking for other forms of labour. The NAPTIP Act has, for the first time instituted severe penalties for the offence of human trafficking ranging from two years to life imprisonment. In addition, it provides for a series of other penalties including the option of fines and confiscation of the properties of convicted traffickers and accomplices. It is noteworthy that penalties for trafficking offences related to sexual purposes and involving minors under the age of 18 are much stiffer than other penalties.

The deficiencies in the NAPTIP Act regarding the protection of victims and witnesses has resulted in difficulty to effectively prosecute offenders due to the lack of cooperation from victims and witnesses who fear reprisals. In its first two years of existence only two cases were successfully prosecuted to conviction under the law despite the thousands of trafficking transactions taking place in Nigeria. To the extent that the NAPTIP Act lacks victims or witness protection, it has not complied with the internationally recommended human rights standard approach. The Nigerian government has taken a laudable step towards strengthening the legislative framework to address human trafficking in Nigeria by the passage of the NAPTIP Act. There is, however, a need for law reform to make the Act truly comprehensive and to address the various issues and

[18]I W Nwakpu, 'Overview of the Legal Framework for the Protection of the Rights of the Child in Nigeria' (2013) 5(1) Ebonyi State University Law. p 33-41.

[19] Ibid.

manifestations of human trafficking in Nigeria, considering the proliferation of data privacy breaches and insecurities.

vii. The Cybercrimes (Prohibition, Prevention, Etc.) Act[20]

The Cybercrimes Act is Nigeria's principal legislation for combatting crimes perpetrated on the cyberspace. It promotes cybersecurity and protection of computer systems and networks and privacy rights. However, with the fastpaced integration of Artificial Intelligence technologies into the online space and the enactment of the Act long before this innovation, it lacks specific provisions addressing Artificial Intelligence related threats.[21] This regulatory gap creates difficulties in prosecuting cases where Artificial Intelligence systems are used for unlawful purposes, such as automated recruitment or data-driven exploitation.[22]

3. Artificial Intelligence and Child Abduction

The concept of Artificial Intelligence cannot be discussed without considering the risks and innovations associated with it. AI has impacted positively and negatively on cases of child abduction and trafficking in Nigeria. As an emerging technology in our digital space, AI based technologies are becoming prevalent and increasingly integrated into modern life, ensuring new opportunities for the safeguard of child rights and projecting frontiers for crime perpetrators.[23] As a highly organized crime and with the evolution of the digital space, artificial intelligence is beneficial for innovation, data management and security.[24] Traffickers increasingly use Artificial Intelligence tools which are capable of displaying human like abilities such as reasoning, learning, planning and creativity to

[20] 2015

[21] United Nations Office on Drugs and Crime (UNODC), Technology and Human Trafficking: Emerging Threats and Opportunities (Vienna: UNODC, 2022).

[22] Huskie Commons, The Emerging danger of AI generated Child Sexual Abuse, https://huskiecommons.lib.niu.edu accessed 24 October 2025.

[23] Ifeyinwa Nsude, (2024) Enhancing Child Rights Protection in Nigeria Through Artificial Intelligence (AI) https:doi.org/10.4000/123j3 https://www.researchgate.net accessed 24 October 2025

[24] Ibid.

exploit children through deceptive recruitment tactics, identity theft, and algorithm-driven operations.[25]

Advanced machine-learning systems allow criminals to create false identities, monitor potential victims on social media, and distribute exploitative content with anonymity and efficiency.[26] Artificial Intelligence is embedded in children's toys, video games and adaptive learning systems and can determine a growing number of decisions impacting directly on the welfare and safety of the child.[27] To date, not so much has been published on how human traffickers are using generative AI to exploit the vulnerabilities of children. As a consequence, debates about the risks associated with AI and trafficking crimes have not focused much on AI-enabled human trafficking despite the existence of readily available cases. The methods transnational criminal organizations use to develop scams and create deepfake images are very similar to known trafficking business models and raises concerns of data privacy, stemming from data collection and reporting of issues of potential misuse.[28]

Conversely, Artificial Intelligence also offers transformative tools for combatting trafficking. Predictive analytics and data-driven investigations can assist law enforcement agencies in identifying trafficking networks and monitoring abduction prone areas. Facial recognition software, for instance, has been used globally to locate missing persons and dismantle trafficking rings. In Nigeria, Artificial Intelligence-powered systems could be used to trace digital footprints of traffickers, identify victims, and predict patterns of abduction.[29]

Nevertheless, these technologies raise privacy and ethical concerns with excessive monitoring infringing the on constitutional rights under section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This provision guarantees privacy of citizens and is recognised as a fundamental human right. Therefore, the deployment of Artificial

[25]ibid

[26] ibid

[27] Organisation for Security and Cooperation in Europe … NEW FRONTIERS: THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE TO FACILITATE TRAFFICKING IN PERSONS https://www.osce.org/files/f/documents/7/d/579715.pdf accessed 23rd October, 2025

[28] ibid

[29] ibid

Intelligence must be accompanied by robust legal safeguards to prevent infringements.

Some scholars emphasise that the Nigerian government must adopt a rights-based approach to Artificial Intelligence regulation by aligning domestic laws with international standards such as the United Nations Guidelines on Artificial Intelligence and Child Protection (2021).[30] This would ensure accountability, transparency, and fairness in the use of technology for both prevention and prosecution.

4. Conclusion/Recommendations

Trafficking in children is, without doubt, a despicable practice. It is a dehumanising practice for millions of children trapped in it because their fundamental rights are violated, and their future is jeopardised. In the light of the impact brought on by artificial intelligence, the combat waged against human trafficking in general and child trafficking, in particular, purport that the legal frameworks are heavily disadvantaged and must be reviewed to keep pace with current realities. The key historic event in legislation about human trafficking is recorded with the advent of the United Nations Convention against Transnational Organized Crime which encompassed the Trafficking in Person Protocol and recently United Nations Guidelines on Artificial Intelligence and Child Protection (2021). It should be recognised that the most enlightened lawmakers drafted them and the laws appear fit for purpose. Nigeria needs to put in place workable Legislation, policies and strategies and ensure that social protection legislation, policies and strategies are devised to tackle all forms of child abuses no matter the emerging challenges occasioned by artificial intelligence influences on the Nigerian society.

Apart from a robust legislative paradigm shift, it is high time Nigeria opted for the intensive capacity building. Indeed, there is a need to build the capacity of existing structures, which are both under-resourced and under-funded, to be well equipped with AI tools and the knowledge base to combat child trafficking. Capacity-building should also occur for personnel in the immigration service, the police, the customs and National Agency for the Prohibition of Trafficking In Persons (NAPTIP). The Nigerian biometric passport should not be falsifiable as it currently is the case. The passport service and the immigration staff should be trained to prevent or foil

[30] Uche, O. and Odo, J., Artificial Intelligence and Child Protection in the Digital Age: Emerging Legal Gaps in Nigeria (2022) Nigerian Journal of Cyberlaw 7(2), 45–67.

attempts to forge travel documents and identity theft. The biometric system for travel document should be centralised and placed under the strict control of trustworthy employees. Also, Nigeria has to cooperate in cases of extradition of criminals involved-in-human-trafficking.

In light of the suggestion for immediate domestication, the problem of implementation and enforcement will remain. Hence, legal paradigms, political paradigms, and socio-economic paradigm issues such as children's data and privacy protection, participation to work, public awareness, the institutionalisation of child fostering, and effective cooperation between states are fundamental in providing a definite response to the problem of child-trafficking enhanced by artificial intelligence.

Impact of The Convention for The Unification of Certain Rules for International Carriage by Air 1999 To The Nigerian Aviation Industry: A Legal Examination

Esther Inko Abili[*] *and Christian Chizindu Wigwe*[**]

Abstract

Flying has become the easiest, quickest, and safest means of long-distance travel for business and leisure purposes. This paper examines the legal impact of the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (CUCRICA 1999) on Nigeria's aviation industry, focusing on how it shapes the rights and obligations of the air carrier and the consumer/passenger within the contract of carriage. Using a doctrinal research methodology, the paper analyses primary and secondary sources such as the Civil Aviation Act 2022 (CAA 2022), Nigeria Civil Aviation Regulations 2023, relevant international instruments, and scholarly materials. The study finds that CUCRICA 1999 is a pivotal legal framework in Nigeria's aviation jurisprudence, establishing uniform standards for compensation and liability in cases of delay, injury, or death occurring during embarkation/disembarkation

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or boarding. It observes that while the Convention has been domesticated under the CAA 2022, Nigeria's liability limits remain outdated compared to current International Civil Aviation Organisation (ICAO) standards. The paper recommends that the National Assembly amend Articles 22 and 24 of the Second Schedule to the CAA 2022 to reflect the 2024 ICAO Revised Limits of Liability and advocates the use of AI-based mechanisms to ensure prompt legal remedy and instant compensation for air passengers without unnecessary litigation.

Keywords: Aviation, Air Carrier, Consumer/Passenger, Contract of Carriage, Embarkation/Disembarkation, Boarding, Legal Remedy

1. Introduction

International carriage by air of passengers, baggage, and cargo is pivotal to modern human existence. The movement of people, goods and services are intrinsically tied to the development, progression, even survival of nations. Flying has become the easiest, quickest, and safest means to long-distance journeys for business and leisure travellers. It was discovered prior to 1910 that due to the fact that airplane is a faster medium of transportation over longer distances within a sovereign state—even between sovereign nations, it cannot *stricto sensu* be regulated within clearcut national boundaries.[1] Besides, it is undisputable that for international air travel to be most functional and seamless, there must be some definite parameter upon which the business of carriage by air is transacted. The liability of air carriers to passengers is generally regulated by international law, albeit, subject to ratification and a modification of certain relevant parts into a State Party's domestic laws. Consequently, it is safe to query the following concerns: Have State Parties within the international aviation community gotten the right governance regime from the inception of carriage by air? What is the justification for the extant Convention for the Unification of Certain Rules Relating to International Carriage by Air 1999 (CUCRICA 1999)? To what degree is the legal

[1] ICAO, 'History: The Beginning' History: The beginning accessed 6 January 2025.

framework for implementing the CUCRICA 1999 in Nigeria effective? Finally, how significant is the CUCRICA 1999 to Nigeria's aviation industry?

2. Definitive Clarification of Key Concepts

To reinforce our grasp of the laws relevant to protecting the interests of consumers in international—even domestic—carriage by air in the aviation industry, it is necessary to expound on these concepts, *to wit*: aviation, air carrier, consumer/passenger, contract of carriage, embarkation/disembarkation, boarding, legal remedy.

i. Aviation

Aviation involves the human activity carried out by aircrafts. Culled from the Latin *avis* meaning 'bird,' it affords an appropriate translation that aviation deals with travel by air, specifically in a plane.[2] The aviation sector includes airports, airlines, general aviation, air navigation service providers and those activities directly serving passengers or providing airfreight services.[3] In *section* 117 of the Civil Aviation Act 2022 (CAA 2022), aircraft is defined as 'any machine that can derive support in the atmosphere from reactions of the air other than reactions of the air against the earth's surface.' Examples of such aircraft include airplanes, helicopters, airships (including), gliders, paramotors and hot air balloons.[4]

ii. Air Carrier

Regulations 19.1.2.1 of the Nigeria Civil Aviation Regulations 2023 (NCARs 2023) defines air carrier to mean 'an enterprise that engages in provision of transportation services by aircraft for remuneration or hire.' An air carrier is a commercial carrier operating aircraft as its primary instrument of transport.[5] Aircraft is 'any machine that can derive support

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[2] Vocabulary, 'Aviation' Aviation - Definition, Meaning & Synonyms | Vocabulary.com accessed 6 January 2025.

[3] ATAG, 'Aviation Benefits Beyond Borders' Aviation: Benefits Beyond Borders (2020) - regional analyses | ATAG accessed 6 January 2025.

[4] Kingsley E Izimah, 'When an Airline's Liability to its Passengers or Customers Will Arise in Aircraft Accident or Loss of Baggage and the Laws Regulating Same' When An Airline's Liability To Its Passengers Or Customers Will Arise In Aircraft Accident Or Loss Of Baggage And The Laws Regulating Same - Tekedia accessed 6 January 2025.

[5] Dictionary, 'Air Carrier' https:/www.dictionary.com/browse/air-carrier accessed 6 January 2025.

in the atmosphere from reactions of the air other than reactions of the air against the earth surface.'[6] Whilst airline means 'any air transport enterprise offering or operating a scheduled international air service.'[7] Airline could also refer to a system of commercial scheduled flights transporting people and goods, or a company that operates such a system. It also means a person or corporation engaged principally in the carriage of passengers by aircraft in interstate commerce.[8]

iii. Consumer/Passenger

Lowe and Woodroffe,[9] define consumer in relation to any services or facilities, to mean any individual who may desire to be provided with a services or facilities otherwise than for the purposes of any business of his. A consumer purchases, utilises, manages, or dispenses with products or services.[10] Broadly speaking, a consumer may be a person to whom goods or services are supplied or sought to be supplied by another individual in the subsistence of a business transaction embarked upon by the latter and any other individual who utilises it or becomes affected by the goods or services.[11] Three elements are distillable. A consumer is a person who does not act in a business capacity, the supplier of goods or services must have acted in a business capacity, and the goods or services so supplied must be for private consumption rather than business. Garner,[12] explains consumer to be a person who purchases goods or services for private, family, or household usage, with zero intention of resale. Indeed, a natural person who utilises products for personal, rather than commercial, reasons, is a

[6] (NCARs 2023) regs 19.1.2.1.

[7] ibid.

[8] Microsoft Encarta, *Airline* (Microsoft Corporation 2009); Law Insider, 'Passenger Airline' https:/www.lawinsider.com/search?q=Passenger+airline accessed 6 January 2025.

[9] Robert Lowe and Geoffrey Woodroffe, *Consumer Law and Practice* (Sweet & Maxwell 1999) 261.

[10] F O Akwueze, 'Legal Challenges of Obtaining Consumer Redress in Nigeria' (2012) (1) *Journal of Contemporary Law*, 116

[11] S A Apinega, 'Consumer Protection and Remedies in Nigeria: An Appraisal' in Adedeji Adekunle and Shankyula T Samuel (eds), *Law and Principles of Consumer Protection* (NIALS Press: Abuja 2013) 479-503.

[12] Bryan A Garner (ed), *Black's Law Dictionary* (8th edn, West Group 1999) 335.

consumer. In this context, reference is made to a consumer of 'civil aviation services.'[13]

On the other hand, Passenger means 'a person in whose name a ticket and a reservation is made and or confirmed and who is eligible to travel upon the stated flight pursuant to that ticket whether the ticket is purchased by the person or not and whether the ticket is zero fare ticket for which no fees or fare is paid.[14] Air Passenger is any person, except for members of the crew, carried or to be carried in an aircraft with the consent of the carrier, pursuant to a valid contract of carriage.[15]

iv. Contract of Carriage

A contract is an agreement, whether oral or written, between two or more persons with intention to create legal obligations. To be binding and enforceable however, a contract must be in writing. The following elements makes a contract valid: offer, acceptance, consideration, intention to enter into legal relations, and performance.[16] A contract could be express, implied, conditional, joint and several, unconscionable, and fixed price.[17]

A contract of carriage is created once a passenger purchases an air ticket for travel from an air Carrier. The terms of the contract are set forth in the said Ticket, any applicable Tariffs, and the Conditions of Carriage or General Rules of Tariff by a Carrier.[18] A contract of carriage defines the duties and rights of passengers and carriers. It also provides and limits liability for delay, damage, and loss of baggage; rules of reservation; changes in flight schedule and rerouting; even liability for injury and death.[19]

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[13] (n 6) regs 19.1.2.1(6).

[14] ibid, regs 19.1.2.1(23).

[15] Law Insider, 'Passenger' https:/www.lawinsider.com/search?q=Passenger accessed 6 January 2025.

[16] A G Guest (ed), *Chitty on Contract* (24th edn, Sweet & Maxwell Limited 1983) 21-30.

[17] LegalMatch, 'What is a Contract' https://www.legalmatch.com/law-library/article/what-is-a-contract.html accessed 6 January 2025.

[18] Dana Air, 'Conditions of Carriage' https://flydanaair.com/pdf/Dana-Conditions-of-Carriage.pdf accessed 6 January 2025.

[19] *International Messengers (Nig.) Limited v Pegofor Ind. Limited* (2005) 15 NWLR (Pt.947) 1, per Edozie, JSC.

International Carriage is any carriage where the departure and destination, irrespective of any break in the carriage or a transshipment, are situated either within the territories of two State Parties, or within the territory of a single State Party so long as there is a stopping place within the territory of another State, whether or not a State Party.[20]

v. Embarkation/Disembarkation

Embarkation means 'the boarding of an aircraft for the purpose of commencing a flight, except by such crew or passengers as have embarked on a previous stage of the same through-flight.'[21] It is the process of boarding an aircraft for the purpose of starting out on a flight.[22] The process of embarkation on an aircraft begins from a passenger's entry into an airport building, to proceeding to the stand for temperature/ticket check (for passengers only). Upon confirmation of ticket booking, passenger baggage will be checked-in after registration and tagging. The passenger subsequently proceeds to the check-in counter where the ticket is submitted to the officials for acknowledgement and baggage is placed on the belt or weighing machine to confirm the weight meets with the standard maximum of the airline (as any excess attracts additional charges). After checking-in the passenger online, the official returns the ticket with the boarding pass, baggage tag, and Embarkation & Customs Forms (for international flights only).[23]

At this point, international passengers will proceed to immigration for passport/visa check and stamping, collection of the Embarkation & Customs Forms, and customs clearance. Thereafter, domestic, and international passengers are subjected to boarding pass check, which may be completed manually or electronically. Also, passengers on connecting flight will have their baggage checked and identified. Passengers and their

[20] (Convention for the Unification of Certain Rules for International Carriage by Air) Convention for the Unification of Certain Rules for International Carriage by Air, art 1(2).
[21] (n 6).
[22] Law Insider, 'Embarkation' Embarkation Definition | Law Insider accessed 6 January 2025.
[23] JIMS, 'A Study on Embarkation Disembarkation Procedures in Air Travel' jims, 'a study on embarkation disembarkation procedures in air travel' - Search Images accessed 6 January 2025.

hand baggage are checked before admittance into the waiting area or boarding lounge. At the time of boarding, there is usually a second check to confirm boarding pass/ticket and passenger identification. At this juncture, only valid means of identification are recognised, such as National Identity Card, International Passport, or Drivers' Licence. The boarding pass/ticket handed to the ground official at the boarding entrance is split into two and one is handed back to the passenger for boarding. Upon embarking onto the aircraft, the boarding pass/ticket is presented to the cabin crew for direction on passengers' seats (except for free seating).[24]

Disembarkation means 'the leaving of an aircraft after landing, except by crew or passenger continuing on the next stage of the same through-flight.'[25] Furthermore, it is the act of getting off an airplane after landing and upon arrival at a passenger's destination.[26] Similarly, disembarkation is procedural. Firstly, upon landing for international flights, passengers clear with immigration and have their passports stamped with the arrival date and the permissible length of stay. Customs clearance is also a routine for international passengers. Afterwards, passengers proceed to the arrival hall for collection of their checked baggage and exit the airport terminal.[27]

vi. Boarding

Save for charter flights, boarding of passengers mainly occur in scheduled flight operations. A scheduled flight is one where a commercial airline opens every seat in its aircraft for sale, with a declaration in advance of the schedule, or time, for departures and arrivals from different endpoints. An air passenger's pass or qualification for boarding, that is, the act of entering an aircraft, begins first with the purchase of a ticket. Ticket simply means 'a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued, or authorised by the air carrier or its authorised agent.[28] Collins defines a boarding pass as a card that a passenger must have when boarding a plane

[24] ibid.

[25] (n 6).

[26] Law Insider, 'Disembarkation' Disembarkation Definition | Law Insider 6 January 2025.

[27] (n 23).

[28] (n 6).

or a boat. A passenger must show a pass when boarding a plane, ferry, etc.[29] A pass authorises a passenger to board an aircraft and is issued after purchase and collection of ticket. That said, a paper boarding pass is usually collected at the check-in counter upon presenting a soft or hard copy evidence of electronic or e-booking. This boarding pass along with a valid photographic identification card admits an air passenger to board the plane upon presentation at the point of boarding. Whilst a boarding pass is synonymous with a ticket, a ticket is generated upon confirmation of booking, otherwise termed electronic or e-ticket. Practically, a boarding pass is generated upon online check-in, or physically at the counter.[30]

In some instances, where a passenger purchases a ticket and checks-in online or in person, the flight may be cancelled. The NCARs 2023 defines cancellation to mean 'the non-operation of a flight which was previously planned and on which at least one seat was reserved.' However, *force majeure* or act of God, in the form of bad weather, can disrupt a scheduled flight from airlifting passengers to their destinations. This occurs during strong winds, thunderstorms, storms, cyclones, fog or low visibility, snowfall, de-icing problem at runways during take-off or landing, lightning, or other natural disasters,[31] and may cause delayed boarding. Conversely, technical problems do not exculpate airline corporations from liability to passengers in the event of delays.[32] Any flight take-off delays occasioned by maintenance of an aircraft due to normal wear and tear such as landing gear problems, kerosene leakage, wheel change, braking problem, engine failure, electrical problems, tail strike problem, hard landing, or flap problem, do not constitute valid reasons for delay to the detriment of passengers.[33]

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[29] Collins, 'Boarding Pass' Collins Online Dictionary | Definitions, Thesaurus and Translations accessed 6 January 2025.

[30] Going, 'Boarding Pass' What is a Boarding Pass? | Boarding Pass Definition accessed 6 January 2025.

[31] Flight-Delayed.CO.UK, 'Flight Delayed or Cancelled due to Bad Weather, Am I Entitled to Flight Compensation?' Flight cancelled or delayed due to bad weather | What to do? accessed 6 January 2025.

[32] Flight-Delayed.CO.UK, 'Technical Issues with Your Flight: How to Claim Compensation' Compensation & Refund for Technical Issues | Flight-Delayed.co.uk accessed 6 January 2025.

[33] ibid.

Rerouting occurs where an aircraft changes the direction of its flight to a different endpoint as against the contracted destination of passengers onboard. Furthermore, an airline's change of prearranged destination for a flight is rerouting. Extraordinary circumstances like poor weather, technical problems with aircraft, unsafe political climate, may give rise to rerouting. In any event, delays and detours are bound to occur in flight rerouting due to extraordinary circumstances. However, where rerouting is caused by airlines' profiteering *simpliciter*, there are legal obligations on those airlines to ensure passengers' comfort and safety during the time of redirection until they arrive at their intended final destination.[34]

vii. Legal Remedy

Legal Remedy is the legal means of enforcing a right or redressing a wrong. It is usually a method of problem-solving wherein a person is instructed to make a payment for harm or damage they have caused to another, using a decision made in a court of law.[35] In this case, an air passenger may have cause to approach the courts for a remedy over any real or perceived error in the services rendered by an air operator.

3. A Chronicle of the Emergence of the International Liability Governance Regime for Carriage by Air

In the wake of the World War I, it became expedient to rechannell the use of aircraft for other profitable ventures beside the military. Consequently, the first notable international air law code for regulating carriage by air is traceable to the Paris Conference of 1910 (PC 1910).[36] However, it was the Paris Peace Conference of 1919 (PPC 1919) that drew up a blueprint consisting of 43 articles on the operational, technical, and management structures of civil aviation, albeit in a small international scale.[37] The PPC 1919 was signed by 26 members of the Allied and Associated powers ably represented thereat, and eventually ratified by 38 States.[38] Furthermore, the PPC 1919 anticipated the creation of an

[34] Connecting Flights Guide, 'What Does Rerouting Mean in Air Travel?' What Does Rerouting Mean in Air Travel? - Connecting Flights Guide accessed 6 January 2025.

[35] (n 12) 1054; Cambridge, 'Legal Remedy' LEGAL REMEDY | English meaning - Cambridge Dictionary accessed 6 January 2025.

[36] (n 1).

[37] ibid.

[38] ibid.

International Commission for Air Navigation (ICAN)—a forerunner of the International Civil Aviation Organisation (ICAO)—for the monitoring of developmental strides in civil aviation as well as make proposals to State Parties to keep up-to-date with such developments.[39]

However, a broader international liability governance regime on carriage by air dates to 1929 with the Convention for the Unification of Certain Rules for International Carriage by Air (Warsaw Convention 1929),[40] signed by 152 Parties at Warsaw, Poland,[41] on 12 October, 1929. It entered into force being on 15 February 1933. The Warsaw Convention 1929—comprised of 41 articles—dominated the international airspace alongside its various permutations as the first international instrument to discuss the liability of air carriers in international flights. It applied to all international carriage of persons, luggage and goods air-lifted by an aircraft for a reward.[42] However, pursuant to article 55 of the CUCRICA 1999, the Warsaw Convention 1929 and all its supplementary instruments, have been repealed.

4. Justification for the Convention for the Unification of Certain Rules for International Carriage by Air 1999

The Warsaw Convention 1929 needed a replacement when the provisions therein on stipulated limits of liability for the erstwhile fledgling air carriers—currently armed with sufficient capacity—became antiquated and otiose. The constant revisions through protocols and supplementary protocols were a testament to the fact that public interest was getting the upper hand over the impracticable provisions of the international instruments. This was especially the so with those grossly inadequate compensation sums by airline in discharging liability to aggrieved passengers.

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[39] ibid.

[40] Warsaw Convention 1929 Convention for the Unification of Certain Rules relating to International Carriage by Air (Warsaw Convention); ICAO, 'Current Lists of Parties to Multilateral Air Law Treaties' Current lists of parties to multilateral air law treaties - Default 6 January 2025.

[41] ICAO, 'Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 and the Protocol Modifying the Said Convention signed at the Hague on 28 September 1955' WC-HP_EN.pdf 6 January 2025.

[42] (n 40) art 1(1).

Conversely, the CUCRICA 1999, also known as Montreal Convention (MC99), being the extant international instruments which regulates international carriage by air, was signed in 1999 at Montreal, Canada, by 140 out of the 191 State Parties to the International Civil Aviation Organisation (ICAO), but entered into force in 2003.[43] Consequently, the CUCRICA 1999 is yet to attain the status of a single universal liability governance regime as only 73.2% of State Parties are signatories.[44] Nonetheless, the emergence of the CUCRICA 1999 is a bold recognition of the importance of ensuring the protection of consumers' interests in international carriage by air and the need for a uniform treatment of passengers globally with equitable compensation based on restitution principles. It is based on the conviction that all State parties will be committed to collectively harmonise and codify these rules to assure equitable balance of interests.[45] Significantly, the CUCRICA 1999 unifies all the different international treaty regimes which covers airline liability that had existed since 1929.[46]

Moreover, it is apposite to state that unlike its predecessor, the CUCRICA 1999 provides a specific period for revising the limits of compensation from air carriers to passengers. Pursuant to article 24 of the CUCRICA 1999, the Depositary is empowered to review the limits of liability by air carrier at five-year intervals. There has been three (3) revisions of liabilities since 2004—2009, 2019,[47] and the current limits of liabilities dated 28 December 2024,[48] which provides for the following:

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[43] ICAO, 'Administrative Package for Ratification of or Accession to the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999' ADMINISTRATIVE PACKAGE; Tim Colehan, 'Montreal Convention 1999: A Global Standard' PowerPoint Presentation accessed 6 January 2025; ICAO, 'Current Lists of Parties to Multilateral Air Law Treaties' CONVENTION FOR THE UNIFICATION OF CERTAIN RULES accessed 6 January 2025.

[44] (ICAO) ibid.

[45] (n 20) the Preamble.

[46] IATA, 'The Montreal Convention 1999' IATA - Montreal Convention 1999 accessed 6 January 2025.

[47] ICAO, 'Revised Limits of Liability Under the Montreal Convention of 1999 2019 Revised Limits of Liability Under the Montreal Convention of 1999 accessed 6 January 2025.

[48] ICAO, '2024 Revised Limits of Liability Under the Montreal Convention 1999' 2024_Revised_Limits_of_Liability_Under_the_Montreal_Convention_of_1999_en.pdf 6 January 2025.

injuries and death of air passengers is $151,880 (One Hundred and Fifty-one Thousand, Eight Hundred and Eighty USD); damage caused by delay is $6,303 (Six Thousand, Three Hundred and Three USD), loss of baggage is $1,519 (One Thousand, Five Hundred and Nineteen USD), and cargo: $26 per kg (Twenty-six USD per Kilogram).

Locally, a mandate is placed on the Minister of Aviation and Aerospace Development to review such limits of liability by air carriers at every seven-year interval, upon the advice of the NCAA.[49] This will ensure the CUCRICA 1999 continues to maintain its relevance in the evolving economic times.

5. Legal Framework for the Implementation of the Convention for the Unification of Certain Rules for International Carriage by Air 1999 in Nigeria

In executing their constitutional mandate to enact laws on aviation matters, the Civil Aviation Act 2022 (CAA 2022) was passed by the National Assembly to regulate operations in civil aviation throughout Nigeria. The objectives of the CAA 2022 include the provision for an effective legal and institutional framework for the regulation of civil aviation in Nigeria in conformity with the ICAO Standards and Recommended Practices (SARPs). The CUCRICA 1999 is applicable in Nigeria by virtue of *section* 55(1) of the CAA 2022, which provides thus:

> *The provisions contained in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28th May, 1999 set forth in the Second Schedule to this Act and shall, from the commencement of this Act have force of law and apply to international carriage by air to and from Nigeria, in relation to any carriage by air to which the rules apply, irrespective of the nationality of the aircraft performing the carriage, and shall, subject to the provisions of this Act, govern the rights and liabilities of carriers, passengers, consignor, consignees and other persons.*

Accordingly, the various provisions set forth in the CUCRICA 1999 on liability of air carriers to passengers embarking on international flights are applicable *ipsissima verba* within the Nigerian territorial airspace. Also,

[49] Second Schedule to the CAA 2022, art 24.

pursuant to *section* 55(2) of CAA 2022, Modifications to the CUCRICA 1999,[50] in the Second Schedule to the CAA 2022 essentially regulates all domestic air transportation in Nigeria and shall govern the rights and liabilities of carriers and passengers, amongst others. The benchmark for limits to liability for delayed boarding, loss of and/or damage to baggage, injury whilst onboard an aircraft, and/or death of air passengers, are expressly stipulated as enshrined in Modifications to the CUCRICAA 1999.[51]

In furtherance to Nigeria's discharge of her commitment to comply with the sacrosanct provisions of the CUCRICA 1999, the principal agency responsible for giving effect to the CAA 2022—the Nigerian Civil Aviation Authority (NCAA), likewise enacted the NCARs 2023. Effective 10 July 2023, Part XIX of NCARs 2023 is the operative rule on consumer protection.[52] Basically, it deals with passengers' rights and duties and the corresponding liability of airlines to passengers. Though expansive in scope, the relevance of NCARs 2023 covers passengers departing from one airport to another within Nigeria. It also addresses consumer protection issues, including compensations for denied boarding, delays, and cancellations of flights.[53]

6. The Impact of the Convention for the Unification of Certain Rules for International Carriage by Air 1999 to the Nigerian Aviation Industry

The CUCRICA 1999 governs airline liability to passengers, baggage, and cargo on international flights in the event of injury or death and compensation thereto,[54] or delays and limits of liability thereto,[55] and the novel provisions of electronic air waybills.[56] The CUCRICA 1999 also honours freedom to contract so long as the said freedom does not conflict

[50] (n 49).

[51] ibid, arts 17(1), 21(1), 22.

[52] NCAA, 'Publication and Implementation of Nig.Cars 2023' Publication and Implementation of Nig.Cars 2023 – Fourth Amendment to Nigeria Civil Aviation Regulations. NCAA accessed 7 January 2025.

[53] (n 6) regs 19.4; Introduction.

[54] (n 20) arts 17 & 21.

[55] ibid, arts 19 & 22.

[56] ibid, art 5.

with its provisions.[57] In consequence, air passengers are bound to benefit from fairer compensation and greater protection. Shippers and those in the air cargo supply chain benefit from being able to make claims in an expeditious manner without the delays and expenses of litigation.[58] Moreover, electronic air waybills assures faster and more efficient trade than the erstwhile paper versions.[59] Likewise, the airlines benefit from the provisions of the CUCRICA 1999 as they are now more informed with greater level of certainty and clarity on the rules governing their liability across the international route network.[60]

It is a fact, so judicially noticed, that the act of an air carrier would amount to a fundamental breach if the performance can be shown to be of such nature that is radically dissimilar from that which the contract contemplated or is one which would entitle a passenger to damages.[61] In *Cameroon Airlines v Otutuizu*,[62] the respondent's $20,000 and other valuables were stolen from his briefcase when the appellant re-routed him to South Africa rather than his destination, which was Swaziland (now Eswatini). Subsequently, the respondent was apprehended by the immigration officials for not possessing a transit visa, detained in prison for 9 days, deported to Nigeria thereafter, and his briefcase was never returned. In dismissing the appeal, the Supreme Court upheld the discretionary general damages of N500,000 awarded by the trial Court and the fixed special damages of $20,000 (N520,000) awarded by the Court of Appeal. To ameliorate the hardship on the respondent passenger, the learned justices of the apex court disregarded the limit of 125,000 franc placed by article 22(1) of the repealed Warsaw Convention 1929 on the basis of the willful misconduct of appellant and its agents who leverage on the paltry liability sum to defraud passengers of their valuables in full knowledge that those valuables far exceeded the amount payable as liability.

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[57] ibid, art 27.

[58] Tim Colehan (n 37).

[59] ibid.

[60] ibid.

[61] Per Edozie, JSC in *International Messengers (Nig) Ltd v Pegofor Ind. Ltd* (2005) 15 NWLR (Pt 947) 1.

[62] (2011) LPELR-827 SC.

Moreover, in *Mekwunye v Emirates,*[63] the respondent was by a contract of carriage obligated to carry the appellant aboard its flight on 17th December 2007 *en route* from Dallas, Texas in U.S.A. to Lagos, Nigeria, and back, upon purchase of the flight ticket by the appellant. However, on the said flight date and despite reassuring validations from the respondent, the appellant was denied boarding pass involuntarily. Left stranded, the appellant faced great embarrassment, beside the stress of providing food and hotel accommodation for two days on self-sponsorship. Thereafter, she was put through extra financial strain of having to purchase a fresh over-the-counter ticket from another airline, which was more expensive and for a longer route, taking extra 48 hours. In reversing the Court of Appeal's judgement, the Supreme Court considered the respondent's acts of willful misconduct and breach of contract and upheld the decision of the trial Federal High Court in favour of the appellant.

Therefore, it would appear safe to acknowledge the CUCRICA 1999 as a pivotal international instrument most relevant to the ongoing development of aviation jurisprudence in Nigeria. Granted, there remains a lot to be done in full compliance with the express provisions of the said CUCRICA 1999, its blueprint—as an illuminating roadmap—have been immensely beneficial to Nigeria.

7. Summary of Findings

The summary of findings of this paper are that:

i. From its inception, State Parties within the international aviation community have constantly evolved in their quest to create a uniform governance regime for international carriage by air. First was the international air law code traceable to the PC 1910; next came the PPC 1919 which provided in a small scale the operational, technical, and management structures of international civil aviation; next came the Warsaw Convention 1929, a broader international instrument on carriage by air alongside its various permutations, was renowned as the first international instrument to discuss the liability of air carriers in international flights. Then came the CUCRICA 1999, also known as Montreal Convention (MC99), being the extant international instruments regulating international carriage by air. However, the CUCRICA 1999 is yet to

[63] (2019) 9 NWLR (PT 1677) 191.

attain the status of a single universal liability instrument since only 140 out of 191 ICAO-contracting State Parties have assented to it.

ii. Public interest was essentially a driver for the CUCRICA 1999. The stipulated limits by the Warsaw Convention 1929 for liability of air carriers became grossly inadequate, antiquated and otiose, hence the justification for the extant international instrument. Moreover, the CUCRICA 1999 provides a five-year interval period for revising the limits of compensation from air carriers to passengers. In compliance, the Second Schedule to the CAA 2022 on domestic carriage stipulates a seven-year interval period for its revision.

iii. The CAA 2022 is the principal aviation legislation enacted to give effect to the provisions of the CUCRICA 1999. Moreover, the NCAA—the primary agency charged with compliance to aviation laws—created the NCARs 2023 to smoothen out any rough edges and/or *lacunaes* in the CAA 2022. However, the extent of the legal framework's effectiveness leaves much to be desired.

iv. The CUCRICA 1999 is a key international instrument most relevant to the ongoing development of aviation jurisprudence in Nigeria. The CUCRICA 1999 recognises the importance of ensuring protection of the interests of consumers in international carriage by air and the need for a uniform treatment of passengers globally with equitable compensation based on restitution principles. Thus, airlines are now more informed with greater level of certainty and clarity on the rules governing their liability across the international route network. The benchmark for limits to liability for domestic delay of boarding, loss of and/or damage to baggage, injury whilst onboard an aircraft, and/or death of air passengers, are expressly stipulated as enshrined in Modifications to the CUCRICAA 1999 contained in the Second Schedule to the CAA 2022. Also, electronic air waybills assures faster and more efficient trade than the erstwhile paper versions, while shippers and those in the air cargo supply chain benefit from being able to make claims in an expeditious manner without the delays and expenses of litigation.

8. Conclusion and Recommendations

The emergence of the CUCRICA 1999 to the international civil aviation governance regime has had a tremendous impact on the development of aviation globally. The CUCRICA 1999 provides for airlines' liability to passengers, baggage, and cargo on international flights in the event of injury or death and compensation thereto, delays and limits of liability thereto, and the novel provision of electronic air waybills. Nigeria's domestic legislation, the CAA 2022, was fashioned to reflect the sacrosanct obligations she entered into upon assenting to the CUCRICA 1999. The NCARS 2023 is a testament to Nigeria's commitment towards complying with the international governing instrument on aviation. The consequences of aligning domestic legislation align with the periodically revised limits of liabilities set by the ICAO assures fairer compensation and greater protection for air passengers, while airlines embrace insurance policies to cushion the effects of higher liabilities on their finances. However, the legal landscape may appear vague when these revised limits of airlines' liability are not timeously reflected into our domestic aviation legislation.

Accordingly, the following recommendations are submitted for consideration by the relevant international and state actors:

i. The governance regime on international carriage by air should not be left stagnated but made progressive. Consequently, the CUCRICA 1999 should be made to reflect the current economic realities in this fast-paced evolving world.

ii. For the sake of public policy, article 17 of the CUCRICA 1999 should be revised. The fact that bodily injury is interpreted by courts as physical injury only, is restrictive and without recourse to the effect of a traumatic experience which is capable of causing emotional and mental injury. An amendment thereto will make allowance for passengers who were traumatised emotionally and mentally to receive due compensation.

iii. Under the supervisory lead of the Minister of Aviation and Aerospace Development, the Nigerian National Assembly should amend article 24 of the Second Schedule to CAA 2022, to comply with the extant ICAO Revised Limits of Liability effective 28 December 2024, for injuries and death of air passengers. The

current amount is $151,880 (One Hundred and Fifty-one Thousand, Eight Hundred and Eighty USD). However, the CAA 2022 only replicated the 2004 original limit, now outdated, of $100,000 (One Hundred Thousand USD) enshrined in the repealed CAA 2006.
Likewise, the National Assembly should amend article 22(1) (2) (3) of the Second Schedule to CAA 2022. The extant ICAO Revised Limits of Liability for damage caused by delay is $6,303 (as against $4150 in the CAA 2022), loss of baggage: $1,519 (as against $1000 in the CAA 2022), and cargo: $26 per kg (as against $17 per kg in the CAA 2022).

iv. The National Assembly should insert strict penalty clauses in the proposed amended CAA 2022, which should be meted on defaulting air carriers in the event of any breach in honouring contractual obligations to air passengers.
Furthermore, the NCAA should utilise Artificial Intelligence (AI) technology to formulate new policies for instant compensation by air carriers for any breach of their contractual duty to air passengers without the delays, expenses, and rigours of litigation.