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HARNESSING THE BENEFITS OF REGIONAL INTEGRATION SCHEMES IN ECOWAS: THE PLACE OF INDIVIDUALS IN THE 21ST CENTURY

Julius Edobor[1]

ABSTRACT

The ECOWAS integration schemes envisaged that the place of individuals will require an in-depth consideration of the role individuals play, both as beneficiaries of integration (particularly as it relates to trade liberalisation, free movement, residence and establishment) and also, as potential victims of the rough side of integration, which will necessarily require the examination of how individuals may enforce their rights under the integrative instruments. Although several attempts at creating effective regional integrative arrangements in ECOWAS have been made, it is disheartening to state that economic activities involving individuals within the ECOWAS sub-region remain at its lowest ebb. This study reiterates that despite the efforts made to ensure that the ECOWAS integration agenda is realisable, it is in doubt whether citizens of the Community have actually felt free to move in, live and establish in any part of the sub-region of their choice without any attack either on their persons or their investments. This study reveals that attacks on foreigners and their businesses in the ECOWAS region have become legendary and remain a hindrance to the realisation of the ECOWAS objectives envisaged in its legal instruments. In view of the above, this study therefore, recommends that until these identifiable challenges are curtailed, member States may lean towards adopting a protectionist approach to its economic and citizenry affairs and thus, may not be favourably disposed to ensuring full implementation of the ECOWAS Protocols on the right of movement, residence and establishment.

Keywords: ECOWAS, Establishment, Liberalisation, Movement, Residence, Trade

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INTRODUCTION

The Economic Community of West African States (ECOWAS) aims to promote cooperation and integration that would lead to the establishment of an economic union in West Africa. This is done by raising the living standards of its people, maintaining and enhancing economic stability, fostering relations among member States and contributing to the progress and development of the African Continent.[2] ECOWAS is indeed endowed with an abundance of human and natural resources, a coastal location coupled with an impressive and huge potential for economic growth. Yet, it has realised very little of its potential, as a result of the combined effects of political instability, infrastructural deficits and trade insecurity. Given these challenges, the ECOWAS Commission took a new dimension to development by initiating the formulation of Community Development Programmes (CDP), which seek to put greater emphasis on the participatory and inclusive approach to development through the active involvement of both States and non-State actors.[3] With the formulation of the CDP, the ECOWAS Commission aims at turning the current "ECOWAS of States into an ECOWAS of people," which was part of its Vision 2020 that was adopted by the Authority of Heads of State and Governments in June, 2007. Moreso, ECOWAS member States accept to integrate their economics in order to establish a common market and be competitive in the global market.[4] This led to the establishment of the ECOWAS Trade Liberalisation Scheme which aims at promoting cooperation and integration, leading to the establishment of economic union. Unfortunately, the free trade area has not been comprehensively attained within its member States.

Adopting the doctrinal approach, this study interrogates the apparently restricted jurisdiction of the ECOWAS Court where it appears the individuals are completely

[2] The Revised Treaty of ECOWAS, 1993, art. 3.
[3] The CDP is the outcome of a multi-stakeholder process. It started in 2010, following consultations with Member States, IGOs of the region and non-State actors of the civil society, private sector and the research sector. The CDP adopted a formulation methodology structured around four phases, which includes: (i) sensitisation and capacity building, (ii) inventory of projects and programmes of IGOs and Member States, (iii) prioritisation and impact analysis, and (iv) financing round table.
[4] *Ibid*, 6.

shut out of the ECOWAS integration policies as regards the protection of their rights of movement, residence and establishment, with a view to exposing the gaps thus created and the consequences thereof. In the same vein, this study aims at providing an overview of the different concepts of international law, particularly, as it relates to the protection of rights of the individuals in ECOWAS. Also, the study looked at the overview of regional integration and disputes arising from the activities of the individuals, who may enter, reside and/or establish in member States territories of the ECOWAS sub-region. The study further provides a brief analysis on the concept of integration (particularly economic and legal integration), where a few existing ECOWAS integration schemes were also considered. Under this ambit, it is further reiterated that integration cannot successfully be discussed without understanding the role played by sovereignty in the creation of integration schemes and their successes and that, sovereignty invariably forms part of the ambit of this discourse. The study further discusses the place of the individuals in ECOWAS integration schemes which requires an in-depth consideration of the role individuals play, both as beneficiaries of integration (particularly as it relates to trade liberalisation, free movement, residence and establishment) and as potentially victims of the rough side of integration, which will necessarily require the examination of the means by which individuals may enforce their rights under the integrative instruments. This will either lie in the right of individuals to directly seized relevant international court or tribunal, having jurisdiction or rely on their States of nationality to espouse their cases – diplomatic protection. There is also the aspect of the theories around the interplay of municipal law and international law. By way of concluding remarks, the paper equally addresses some of the ill-conceived fears in the ECOWAS integration policies among member States and/or Community citizens and therefore, proffers some policy recommendations.

Concept of Integration

The term "integration" is a modern process of amalgamation, fusion or bringing together two or more sovereign entities within a given global or continental geo-political zone into one unit for the greater or enhanced protection and promotion

of their economic, political, social, cultural or legal priorities or interests.[5] Integration, though usually economic and political, could also be legal, and in some cases, a combination of some or all of the above. It must be added that integration may not be attainable without some form of supranationalism. Thus, although the ECOWAS experience is not perfect, it confirms that unless member States willfully give up some parts of their national sovereignty and empower sub-regional integration institutions to make binding decisions and to implement them, little progress can be made.[6] It is axiomatic to state that people come together to form communities on the basis of parameters such as common language and culture due to the need for security and self-preservation.[7] This need for security and self-preservation make communities to integrate and nations to emerge.[8] The current global trend is for groups of neighboring nations to pull their resources together to form a regional cooperation for the well-being of their citizens. Generally, this is what is referred to as integration.

Accordingly, Charmely opines that integration relates to any process leading to the formation of a political and economic whole or organised unit.[9] In effect, integration involves the process whereby States seek to delegate the decision-making process to a supranational organ on matters concerning trade, custom, tariffs, immigration, etc., as against the idea of making individual decisions on such issues. In the same vein, integration serves to promote the advancement of economies of member States and to promote the total development of its members.

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[5] M.T. Ladan, *Introduction to ECOWAS Community Law and Practice: Integration, Migration, Human Rights, Access to Justice, Peace and Security* (Zaria: Amada Bello University Press, 2009), 10-11.

[6] *Ibid*, 11.

[7] A.W. Butu, "Impact of ECOWAS Protocols on political and Economic Integration of the West African Sub-region," *International Journal of Physical and Human Geography,* 1, No. 2 (2013), 47.

[8] A.K. Thomas, "The Impact of ECOWAS for Political and Economic Integration of West Africa: A Critical Analysis," a Paper Presented at the Armed Forces Command and Staff College, Jaji, Nigeria, (2010).

[9] P. Charmely, "A Note on the Concept of Integration on Paths and on the Advantages of Integration," in M. Samai and K. Garam (eds.), *Economic Integration, Concept, Theories and Problems* (Budapest: Academai Kiado, 1977).

As rightly noted by Ciroma, countries opt for integration because they are unable to create suitable industrial structures separately, hence the destiny of the area is thus tied to international economic manipulations which unfortunately cannot be controlled without a concerted integrative formula.[10] In other words, it is therefore argued that to struggle out of economic strangulation, there is the need to increase industrial production within the sub-region based on a unified formula that will broaden economic ties with other parts of the world.[11] Furthermore, it is necessary to create an integrated 'whole' of the sub-region with subsequent creation of common citizenship as a condition precedent to free movement within the ECOWAS sub-region.[12]

Legal aspects of regional integration

Legal integration is the unification of national (municipal) legal systems on the basis of common legal principles and standards. Inter-State legal integration is regarded as a synonym for the concept of "integration of national legal systems."[13] Undoubtedly, the effectiveness of political, economic and other inter-State integration in the modern civilised world is impossible without the respective legal formalisation and the creation of a unified legal foundation. Thus, without the integration of law, effective co-operation of States in other spheres of social life is impossible because divergence in fundamental legal questions consolidating methods, means, and forms of the realisation of national interests and basic values and priorities exclude the possibility of the normal interaction of States in the political, economic, and other spheres.[14]

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[10] A. Ciroma, "Opening Address, 1976 Conference on ECOWAS", in A.B. Akinyemi, S.B. Falegan and I.A. Aluko (eds.), *Readings and Documents on ECOWAS* (Lagos: Nigerian Institute of International Affairs, 1983), xv.
[11] M.O.U. Gasiokwu, *ECOWAS: Problems of Citizenship and Free Movement*, (Enugu: Chenglo Ltd, 1998), 10. *Ibid*.
[12] *Ibid*, 11.
[13] E.G. Potapenko, "Methods and Means of Inter-State Legal Integration," <https://heinonline .org/HOL/LandingPaget?handle=hein.journals/jrnatila10&div=14&id=&page=> Accessed 10 September, 2020.
[14] *Ibid*.

Potapenko[15] highlightes the significance of law in inter-State integration in the following aspects:

1. Law is an effective mechanism for the realization and regulation of integration processes, within the framework of which the protection and defence of the interests of participants of integration interaction is ensured;
2. Law formalised the results of integration and enables the degree thereof to be determined and the achievement of contemplated purposes;
3. Law creates a platform for elaborating a strategy of development of integration and;
4. Law forms the basis of the development of integration process and imparts stability and transparency to them.

From the above observations, it is pertinent to state that law represented the modern form of inter-State integration in determining integration processes in its general features. Similarly, despite certain circumstances, law acts as an instrument of a civilised inter-State community even though the role of law differs, depending on the model of inter-State integration. In the event of mutual integration, law ensures that interests of all participants are taken into account and creates the possibility for entering into and participating in integration processes on the principle of uniformity.[16] However, despite the differences between models of integration, law is a form of the realisation of integration, and from the above point of view, any inter-State integration becomes legal when it has received its own legal formalisation.[17]

Another ambit of universal method of legal integration is unification. The term "unification" means "bringing into uniformity, a uniform norm and summing-up something under a uniform system".[18] However, in view of the divergence definitions of unification in the legal jurisprudence on the whole, unification is

[15] *Ibid*, 144.
[16] *Ibid*.
[17] *Ibid*.
[18] *Ibid*, 146.

therefore a process of drafting and incorporating into various national legal systems, uniform legal prescriptions and rules to be applied to regulate corresponding relations on the territories of different States. In regional integration, the purpose of unification is to ensure uniformity in legal regulation of similar coincident social relations.[19] According to Balassa, legal integration has been said to "denotes the bringing together of parts of a whole."[20] It is legally significant to the extent that it implies at least four things which include: the existence of separate or autonomous participants (usually States); an objective (goal or utility); their coming together in closer relationship through a process (legal instrument) and; an outcome with some permanence (institutionalisation). The idea of regional integration presumes coexistence and co-operation among States. Thus, in a pioneering study on regional co-operation in Africa, Mutharika[21] argues that:

> there cannot be integration without co-operation…, they are two sides of the same coin…, if one proceeds from the promise that both economic integration and economic co-operation are means to an end and not ends in themselves, this distinction becomes merely academic. In practice, there is no clear line of demarcation between them.

In a similar vein, Cappelleti *et al* posit that legal integration is not a simple exercise in power sharing, but goes deeper and aims at a fundamental restructuring of society and of societal attitudes, and these changes are reflected in and promoted by law.[22] Ojo *et al* perceived integration as the situation whereby two or more individuals or groups come in contact with each other to relate primarily for

[19] *Ibid*.
[20] B. Balassa, *The Theory of Economic Integration* (London: Richard D. Irwin Incorporation, 1961), 1.
[21] B.T.W. Mutharika, *Towards Multinational Economic Cooperation in Africa* (New York: Praeger Publishers, 1972), 14.
[22] M. CAppelleti, M. Seccombe, and J. Weiler, "Integration through law: Europe and the American Federal Experience," cited in G.A. Bermann, *Methods, Tools and Institutions* (New York: Walter de Gruyter and Co., 1986), 223-254.

cooperation, supportive of other positive reasons.[23] Doherty and Pfalzgraff referred to integration as a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre whose instructions demand jurisdiction over the pre-existing national States.[24] Charmely observed that unilateralism and the attendant production of national sovereignty are incompatible with regional integration which requires consensus among member States in the decision making process and the surrendering of part of national sovereignty to the new Community in policy formulation.[25] It is distillable from the above that unilateralism guides national sovereignty, while regionalism requires all member States to make binding commitment for the promotion of free trade and provide adjudication for trade disputes arising from unilateral disregard for trade liberalisation.

Regional economic and political integration

Regional integration is a complex and specialised area of international law involving aspects of international economic and trade laws, as well as human rights, institutional law and, most especially, peace and security. Thus, regional economic integration is probably the most widely studied form of regionalism. According to Balassa,[26] regional economic integration is:

> a process and a state of affairs. Regional as a process encompasses measures designed to abolish discrimination between economic units belonging to different national States, viewed as a state of affairs. It can be represented by the absence of various forms of discrimination between national economies.

[23] O. Ojo, D.K. Orwa and C.M.B. Utete, *African International Relations* (Michigan: Addison-Wesley Longman Limited, 1985).
[24] J. Doherty and R.L. Pfalzgraff, *Contending Theories of International Relation: A Comprehensive Survey*, 4th ed. (London: Addison-Wesley Publisher, 1997).
[25] P. Charmely, "A Note on the Concept of Integration on paths and on the Advantages", cited in Butu, "Impact of ECOWAS protocols on political and Economic Integration of the West Africa sub-region," 49.
[26] Balassa, "The Theory of Economic Integration," 1.

It is argued that economic integration denotes "a state of affairs or a process which involves the amalgamation of separate economies into larger free trading regions".[27] Against the background however, the said amalgamation has consequences for the scope and traditional prerogatives of Statehood. It produces institutions, constrains sovereignty and creates new obligations. Regional integration also helps in the construction of communities and identities.[28] In addition, economic integration involves an arrangement among countries by which those countries seek to reduce, and eventually remove tariff[29] and non-tariff barriers[30] which may impede or hinder a free flow of goods, services, as well as factors of production, where individuals (Community citizens) can become the primary beneficiaries. Essentially, regional economic integration is the process in which two or more States in a broadly defined geographical area reduce or eliminate a range of trade barriers to advance or protect a set of economic goals.[31]

Economic integration in its political form is different from the broader idea of regionalism. Thus, although economic decisions go directly to the intrinsically political question of resource allocation, an economic region can be deployed as a technocratic tool by the participating governments to advance a clearly defined and limited economic agenda, without requiring more than a minimal political alignment or attrition of formal State sovereignty.[32] Moreso, the unifying attribute in the different economic regionalism is thus the desire by the participating States

[27] A. El-Agraa, *Regional Integration: Experience, Theory and Measures* (London: Palgrave Macmillan, 1999), 1.
[28] *Ibid*.
[29] A tariff is a tax imposed upon imports in other to raise revenue and protect local industries. Several tariff types exist, including *ad valorem* tariffs, specific tariffs, and trade licenses. The effect of tariff barriers is to make imports more expensive than locally manufactured products.
[30] Non-tariff barriers are those barriers which hamper trade and which are caused by obstacles other than fiscal. They include quotas, embargos, sanctions, and levies, usually employed by countries to further political and economic goals.
[31] C.C. Ohuruogu, "Economic Integration of the West African States within the ECOWAS Framework: Vision prospects and illusion," being a Paper Presented at the International Conference, Organised by the ECOWAS Court of Justice in Accra, between 21 and 24 of October, 2019, 23
[32] *Ibid*.

to use a wider and transationalised sense of space to advance national economic interest.[33]

On the political factor of regional integration, it is apposite to state that the connection between human rights and regional integration is both intrinsic and instrumental. Intrinsically, both integration and the regional protection of human rights involve varying degrees of diminution of sovereignty. States in regional integration arrangements agree to pool sovereignty. Thus, in political integration, the pooling evolves into a fusion of sovereignty across independent territories.[34] In a similar vein, a regional human rights regime institutes supranational values as limits on State conduct and establishes mechanisms for monitoring compliance within these limits.[35]

Accordingly, the pursuit of economic integration can also present novel international challenges for participating States. For instance, developing States or less developed States engage in defensive regionalism to improve their collective bargaining power against predominant States in the global economy and can be faced with a divide and conquer strategy in interregional and multinational negotiations, which then places additional burdens on the State-actors to maintain solidarity of the region. According to Abbot and Kenton, the advantages of economic integration fall into three categories, namely: trade benefits, employment, and political cooperation.[36] It is argued that economic integration typically leads to a reduction in the cost of trade, improved availability of and wider selection of goods and services, efficiency and gains that lead to greater purchasing power.[37] Also, employment opportunities for Community citizens tend to improve under regional integration due to the fact that trade liberalisation leads

[33] *Ibid*.
[34] C.A. Odinkalu, "Economic Integration of West Africa: Challenges and Prospects," being a paper delivered at the International Conference, Organised by the ECOWAS Court of Justice in Accra, 8.
[35] *Ibid*.
[36] B. Abbot and W. Kenton, "Economic Integration" <https://ww.investopedia.com/terms/e/economic-integration.asp> Accessed 4 November, 2020.
[37] *Ibid*.

to market expansion, technology sharing and cross boarder encouraging opportunities for individuals within the sub-region. Above all, political integration among countries tends to improve on the ground that stronger economic bonds can help to resolve conflicts peacefully, and may lead to greater regional cohesion and stability.

In the words of Asante, "regional integration in the African continent emphasises market integration, an approach that appears to be inappropriate to bring about growth in the region owing to the fact that African countries do not have what is required for successful economic integration to take place".[38] It is further argued that the market approach is ideal for developed countries since there is required infrastructure present. To boost regionalism in Africa, Asante insisted on the need to strengthen national, institutional and managerial capacity and adopt production approach to integration, to strengthen national integration structures, as well as private sector (the individuals) involvement in the integration process.[39] Similarly, Abok observes that the most successful political and economic integration presently is the European Union (EU).[40] According to him, the EU has a Common Monetary Union, a Central Bank, a Single Currency, a Parliament and a Court of Justice. The EU Court of Justice hears some issues that affect member States and citizens of the Union. They have unified foreign policies and other relevant institutions and also, maintain diplomatic relations in its own right with over one hundred and seven countries and international organisations at ambassadorial level all over the world.[41] From the above wordings, it suffices to state that nations benefit from regional integration in terms of development and as such, it is expected that the case of ECOWAS should not be seen differently, and it is

[38] S.K.B. Asante, *The Strategy of Regional Integration in Africa* (Accra: Friedrick Ebert Foundation, 1996), 6.
[39] *Ibid*.
[40] S.A. Abok, "The West African Sub-region, History and Limit of Collective Conflict Resolution," being a Research Project Submitted to the National War College (NWC), Abuja, (1995).
[41] *Ibid*.

expected that, the ECOWAS integration schemes should be harnessed to benefit Community citizens who are the prime movers of businesses in the Sub-region.

In a slight different approach, Argueetey and Odura[42] see the economic sizes of African States as a major impediment to their ability to industrialise with regards to import substitution.[43] According to the authors, the expected benefits of establishing regional arrangements will not materialise unless non-tariff barriers to integration, non-transparent forms of discrimination and the issue of how to distribute gains and costs of regional integration are adequately addressed.[44] It is further argued that, before a regional integration can become an effective development strategy, constraints to integration such as multi objectives, overlapping membership, poor private sector participation, absence of strong supra-national institutions, inadequate sanctioning authority, non-implementation of harmonisation provisions, lack of political commitment, unclear perception about gains, inequalities in the distribution of gains from integration, inadequate compensation mechanisms and stringent trade liberalisation schemes must be addressed.[45] However, with due respect to the authors, though the above constraints to effective development in regional integration strategy are imperative especially within the ECOWAS sub-region, "inequalities in the distribution of gains from integration" as stated by the authors cannot be used as condition precedent in achieving economic integration. The major reason for this assertion is that, a panoramic view at the economic myths and population of countries like Nigeria, Ghana and *Cote d'voire* and their contributions towards attaining regional integration within the West African Sub-region, gains and/or distribution arising from integration, though not shared equally, cannot be said to amount to inequalities as envisaged by the authors.

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[42] E. Aryeetey and A. Odura, "Regional Integration Efforts in Africa: An Overview," in J.J. Teunissen (ed.), *Regionalism and Global Economy: The Case of Africa* (The Hague: FONDAD, 1996), 11.
[43] *Ibid*.
[44] *Ibid*.
[45] *Ibid*.

Against the backdrop, this study demonstrates that free movement of persons, goods and services, as well as individuals' rights of establishment constitute fundamental factors for sub-regional integration designed to turn ECOWAS into a sub-region of emergent economic strength and social progress, based on increased solidarity in the relations between the member States, and in particular, making individuals the driving force of the ECOWAS Court's jurisprudence whenever there is a violation to their rights of movement, residence and establishments.

A SURVEY OF SELECTED ECOWAS INTEGRATION SCHEMES

Following the discussions on the various aspects and components of regional integration, it is axiomatic that for integration to be fully manifested, certain structures or integration schemes have to be put in place through the instrumentality of the law. In other words, the drafters of the ECOWAS Treaty and the protocols annexed to it envisaged the achievement of the aims and objectives of regional integration in ECOWAS. Under this ambit, a few existing integration schemes of the ECOWAS shall be considered.

The Free Trade Area within the ECOWAS

A Free Trade Area (FTA) as it connotes is the grouping of countries within which tariff and non-tariff trade barriers between the member States are generally abolished but with no common trade policy with non-members. Thus, considering the ECOWAS as a Free Trade Area entails a discussion on the legal framework for the establishment of FTA among member States as contained in the Revised Treaty. In article 3(2)(i) of the Revised Treaty, reference is made to achieving trade liberalisation by the abolition, among member States, of Customs duties, levied on the imports and exports, and the abolition among member States, of non-tariff barriers in order to establish a FTA at the Community level, among the aims of the ECOWAS. Article 35 of the Treaty envisaged an elaboration of the trade liberalisation policy to clearly establish FTA among member States of the Community. Discharging its mandate on free trade, ECOWAS objectives of the Trade Liberalisation Scheme is to progressively establish a Customs Union (CU) among member States of the Community over a period of 15 years, starting from 1st January, 1990, the date of entry into force of the Scheme.

In addition, article 36 of the Revised Treaty provided *inter alia* that member States shall reduce and ultimately eliminate customs duties and any other charges with equivalent effect imposed on or in connection with the importation of goods which are eligible for Community tariff.[46] It provided further that Community originating unprocessed goods and traditional handicraft products shall circulate within the region, free of all import duties and quantitative restrictions. It further provides that, there shall be no compensation from loss of revenue from importation of these products within the Community.[47] Also, subject to the regime of Free Trade Area (FTA) are import duties on industries goods. Under this ambit, the Treaty provides that member States shall undertake to eliminate import duties on industrial goods which are eligible in accordance with the decisions of the Authority and Council relating to the liberalisation of intra-Community trade in industrial products.[48]

Theoretically, it is self-evident that in ECOWAS, there is a desire to establish and actualise a Free Trade Area within the sub-region. Also, the elimination of all trade obstacles, whether tariff or non-tariff, existing among member States of the sub-region ought to have been clearly seen to be operational, but in reality the said integration scheme as envisaged by the ECOWAS legal instrument still appears to be a "dream in process."

The ECOWAS as a Customs Union

As stated in the preceding section, the emphasis is on the removal of obstacles of trade carried on by member States. In other words, there is no concern for trade with non-member States. But under the Customs Union (CU) of economic integration, member States are at liberty to negotiate and trade with third-State actors as mutually agreed. Consequently, member States of the FTA are expected to establish a Common External Tariff (CET) with trading partners of member States. The aim is to arrive at a treatment uniformly applied, and this is the stage of the Customs Union.

[46] *Ibid*, article 36(1).
[47] *Ibid*, article 36(2).
[48] *Ibid*, article 36(3).

Thus, article 35 of the Revised Treaty provides that a common external tariff in respect of all goods imported into the member States from third countries shall be established and maintained. This has clearly set the direction for the establishment of a Customs Union within the ECOWAS Sub-region. It is also pertinent to state that the ECOWAS aims and objectives as provided in article 3(2)(d)(ii) of the Treaty emphasise the "adoption of a common external tariff" and a "common trade policy" towards non-member countries. The legal framework establishing a Customs Union is set out in article 37 of the Treaty which established a Common External Tariff (CET) for the Community. It provides that member States agree to the gradual establishment of a common external tariff in respect of all goods imported into the member States from third countries in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, money, and payments commission.[49] The Treaty further provides that member States shall in accordance with a schedule to be recommended by the Trade, Customs, Taxation, Statistics, money and payments commission, abolish existing differences in their external customs tariffs,[50] and that member States undertake to apply the common customs nomenclature and customs statistical nomenclature adopted by Council.[51]

In addition, an ECOWAS supplementary measure was also adopted by the Council of Ministers in which the decision was reached in order to implement the ECOWAS Common External Tariff (CET) in all member States from 1st January, 2015.[52] Subsequently, this was however followed by the adoption of the content of the ECOWAS CET by the Council of Ministers.[53] This ensued by the Declaration of the Authority of Heads of State and Government of the ECOWAS on the implementation of the CET from 1st January, 2015, and directing the President of the ECOWAS Commission to "take all necessary measures to accompany member States to ensure a smooth application of this important

[49] *Ibid*, article 37(1).
[50] *Ibid*, article 37(2).
[51] *Ibid*, article 37(3).
[52] It was held in Abidjan, *Cote D'Ivoire* in September, 2003.
[53] At the 70th Ordinary Session held in Abidjan, Cote D'Ivoire in June 2013.

regional instrument." In pursuit of the Customs Union agenda, the ECOWAS Community further in 2015, adopted a plan for the implementation of a CET with the European Union (EU), forming a new economic partnership with the EU,[54] under a policy which was to be executed in phases.

ECOWAS as a Common Market

Generally, a common market is achieved when, in addition to having a Free Trade Area (FTA), there is relative free movement of capital and services among members of the Union. In a common market, all quotas and tariffs on imported goods from trade within the region are eliminated. A common market is a condition precedent for the creation of a single market.[55] Thus, it is argued that a common market is achieved when the following conditions exist: tariffs quotas and all barriers to trade in goods and services among members are eliminated; common trade restrictions, such as tariffs on other countries (non-members) are adopted by all members of the Community and production factors such as labour and capital are able to move freely without restriction among member States.[56]

Accordingly, among the aims of the ECOWAS is the elimination of obstacles to the free movement of persons, goods, services and capital between member States, as well as the right of residence and establishment.[57] One of the factors of production envisaged above is the increase of intra-regional and external investments, and improving the competitiveness of existing private sector/corporate entities to benefit from the common market economy on investment in ECOWAS Sub-region. The legal basis for the envisioned Common

[54] The Economic Partnership Agreement remains the singular most known attempt to institute a common external tariff with ECOWAS as a sub-region.
[55] The concept involves the elimination of all obstacles to intra-community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market. It is expedient to note that not only commerce but also private persons who happen to be conducting economic transaction across national frontiers should be able to enjoy the benefits of that market. See also, *Gaston Schul Douance Expeditur BV v. Inspecteur der Invoerrechten en Accjnzen,* Judgement of the European Court of Justice of 5 May, 1982.
[56] There has to be free movement of goods, labour, services and capital among Members of the Community for there to exist a common market.
[57] Article 3(d) (iii) of the Revised Treaty.

Investment Market[58] is the provisions of article 3(2) of the Revised Treaty. In specific terms, there are two provisions relating to investment. First, the provisions of article 3(2) (f) of the Treaty envisaged:

> The promotion of Joint Ventures by private sector enterprises and other economic operators, in particular, through the adoption of a regional agreement on cross-border investments." The second ambit as provided under article 3(2)(i) of the Treaty encouraged the "harmonisation of national investment codes leading to the adoption of a single Community Investment Code".[59]

More so, with the adoption of three major Supplementary Acts by the ECOWAS Authority of Heads of State and Government on 19th December, 2008, it is believed that the ECOWAS Commission is making progress with the implementation of the sub-regional Common Investment Market agenda[60] which include: (1) the Supplementary Act A/SA.1/12/08 Adopting Community Competition Rules and the Modalities for their Application within ECOWAS;[61] (2) the Supplementary Act A/SA.2/12/08 on the Establishment, Functions and Operation of the Regional Competition Authority for ECOWAS[62] and; (3) the Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation within ECOWAS.[63]

In furtherance of strengthening the full realisation of the common market, a travel Certificate for ECOWAS member States was established by the Authority of

[58] See ECOWAS Commission: Common Investment Market Vision, Abuja, (2009), 1-95.
[59] Between 2012 and 2014, ECOWAS Technical Experts drafted, reviewed and fanalised on the Draft Investment Policy and Draft Investment Code for ECOWAS. The two drafters are meant to be adopted by the Community by June, 2015.
[60] Having developed and published the Regional Investment Policy Framework in 2007, the Common Investment Market Vision in 2009; and the Operational Guidelines for the Harmonisation of National Investment Laws in ECOWAS Sub-region, 2010.
[61] Done at Abuja on 19th December, 2008.
[62] *Ibid*.
[63] *Ibid*.

Heads of State and Government in 2014,[64] by which the National Biometric Identity Card was established as a travel document within the ECOWAS Sub-region. This was propelled by the need to establish a uniform travel document to facilitate and simplify the movement of Community citizens at border crossings of member States. Similarly, some other Decisions had also been reached, and Protocols executed in efforts to remove obstacles to intra-Community movement of goods, labour, persons and capital, essential in the establishment of a common market. These include: Decision A/Dec.2/7/85 which established a Travel Certificate for ECOWAS States (as amended);[65] Supplementary Protocol A/SP2/7/85 on the Code of Conduct of the Implementation of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment; Supplementary Act A/SA.2/07/14 which amended the code of Conduct for Implementation of the Protocol on the Free Movement of Persons, Right of Residence and Establishment, "to ensure that a citizen who is a national of one member State and resides in a member State other than his State of origin is granted equality of rights with the citizens of the member State where he resides.[66]

It is distillable to state that in spite of the aforementioned provisions, as well as its efforts in actualising the ECOWAS integration agenda, it is in doubt whether citizens of the Community have actually felt free to move in, live and establish in any part of the sub-region of their choice without any attack either on their persons or their investments. In other words, attacks on foreigners and their businesses still remain in part if not all of the sub-region among citizens of member States.

[64] By Decision A/DEC.1/07/14 Adopted at the Forty-Fifth Ordinary Session held in Accra, Ghana, 10-11 July 2014.

[65] This established the National Biometric Identity Card and its implementation modalities.

[66] The Supplementary Protocol provisions were made to establish a valid travel document which includes: a valid passport, official biometric national identity card issued by a Member State or an ECOWAS institution; provision was also made granting the right of entry to private vehicles registered in the territory of a Member State to another Member State upon the presentation of a valid license; certificate of registration; insurance policy recognized by Member States or the emergency travel certificate from customs. The same right was granted to commercial vehicles.

ECOWAS Trade Liberalisation Scheme

According to Ukaoha and Ukpe, regional economic integration is a pan-African development agenda for the attainment of an eventual continental Community.[67] The ECOWAS Revised Treaty of 1993 established the African Economic Community (AEC), which is the most recent legal framework that set-out the strategy for the attainment of the AEC. The main objectives of the ECOWAS is the liberalisation of trade among member States; the elimination of tariff barriers, and ultimately achieving an economic and monetary union after successfully going through the process of a free trade area, customs union and common market.[68] The ECOWAS Treaty also aimed at the elimination of all tariff and non-tariff restrictions on intra-ECOWAS trade, establishment of a Common external Tariff (CET),[69] and commercial policy against non-ECOWAS countries,[70] the abolition of all obstacles to the movement of all factors of production, and harmonisation of domestic policies across its member States.[71]

Essentially, the ECOWAS envisaged a comprehensive Trade Liberalisation Scheme (TLS) quite early in its establishment. Implementation ought to have started in 1979, but it had to be postponed in three consecutive times before it was finally launched in 1990.[72] The implementation of the programme is designed to occur in the following stages:

i. an immediate and full liberalisation of trade in unprocessed goods and traditional handicrafts;

[67] Ken Ukaoha and Aniekon Ukpe, "The ECOWAS Trade Liberalisation Scheme: Genesis, Conditions and Appraisal," *ECOWAS Vanguard,* 2, Issue 3 (2013), 1.
[68] Article 3(2) (d) ECOWAS Revised Treaty.
[69] *Ibid*, article 3(2) (d) (ii).
[70] Ibid.
[71] Ibid, article 3(2) (d) (iii).
[72] There shall be progressively established in the course of a period of ten (10) years effective from 1 January, 1990 as stipulated in Article 54, a custom Union among the Member States. Within this union, customs duties or other charges with equivalent effect on Community originating imports shall be eliminated. See Article 35 of the Revised Treaty.

ii. liberalisation of trade in industrial products, with the phasing reflecting the differences in the levels of development of three categories of ECOWAS member States[73] and;
iii. gradual establishment of a Common External Tariff (CET).

Thus, the trade liberalisation scheme of ECOWAS was conceived as a progressive reduction culminating in the elimination of all tariff and non-tariff barriers against intra-ECOWAS trade.[74] The annual tariff reduction rates varied among the said three categories of countries; for the most advanced countries,[75] the schedule was expected to be in six (6) years, and completion period was set at eight (8) years for the middle group of the countries;[76] while the third group was given up to ten (10) years.[77] Although, by the agreed implementation schedule, total elimination of all trade barriers was expected to occur by the end of 1991, but this in reality, did not happen. Reviewing the situation in the late 1999, the Authority of Heads of State and Government of ECOWAS resolved to adopt a fast-track approach to achieving the sub-region's economic integration objectives. However, this led to the proclamation of the sub-region as a Free Trade Area (FTA) in the year 2000, and a 1st January 2001 date was set for its transformation into a custom union.[78] Despite the declaration of ECOWAS Free Trade Area (FTA) and the schedule for a unified customs union, implementation remains a major challenge on the part of ECOWAS.

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[73] Decision of the ECOWAS Authority of Heads of States and Governments, Decision A/DEC.1/5/83 which classes and Member States into three groups for the implementation of the ETLS: Group 1 – Cape Verde, Guinea Bissau, the Gambia, Upper Volta, Mali, and Nigeria, Group 2 – Benin Republic, Guinea, Liberia, Sierra Leone and Togo, and Group 3- Ivory Coast, Ghana, Nigeria and Senegal. See www.ecowas.int/sec/index.php.

[74] These are barriers to trade that restrict imports but are not in the usual form of a tariff. Examples include: anti-dumping measures and countervailing duties.

[75] Ivory-Coast, Ghana, Nigeria and Senegal.

[76] Benin Republic Guinea, Liberia, Sierra Leone and Togo.

[77] Cape Verde, Guinea-Bissau, Gambia, Upper Volta, Mali and Niger.

[78] A customs Union is a form of economic integration whereby member Countries charge a common set of tariffs to the rest of the world while eliminating tariffs among themselves.

THE SOVEREIGNTY ELEMENT

Under customary public international law, sovereignty denotes the basic international legal status of a State that is not subject, within its territorial jurisdiction, to the governmental, executive, legislative, or judicial jurisdiction of a foreign State or to foreign law other than public international law.[79] In other words, sovereignty is the ultimate power, authority and/or jurisdiction over a people and a territory.[80] Thus, no other person, group, tribe or State can tell a sovereign entity what to do with its subjects. When used in relation to a territory, it connotes a portion of the globe over which a State has independence of action to the exclusion of every other State.[81] It is argued that the independence of action within a State's territorial sovereignty is protected by international law. In that, it is indeed, the very essence of international law.[82] During the era of traditional international law of coexistence as against the era of interdependence that now prevails under modern international law, the rule of sovereign integrity was absolute. Thus, States were at liberty to exercise their sovereign powers over persons and in respect of anything within their territorial boundaries in the manner of their pleasing, subject, and as such to the law regulating the treatment of the aliens and the rules governing sovereign immunity.[83] Sovereignty is the attribute of the State that allows it to independently establish its form of government, the relationship between the executive branch and the legislative one, the social order

[79] H. Steinberger, "Sovereignty", in Max Planck Institute for Comparative Public Law and International Kaw, *Encyclopedia for Public International Law*, 10 (Amsterdam: North-Holland, 1987), 414.
[80] *Ibid*.
[81] See Separate Anzilotti in *Customs Regime between Germany and Austria* (1931) PCIJ Series A/B No. 41, 57. "The State has over it no other authority than that of international law". See, A. Enabulele and B. Bazuaye, *Basic Topics in Public International Law*, (Lagos: Malthouse Press Limited, 2019), 583.
[82] Enabulele and Bazuaye, *Basic Topics in Public International Law*, 583.
[83] *Ibid*.

and the legal system which are considered to be the most appropriate to support the political survival and the economic development.[84]

The concept of sovereignty entails the fundamental organising principle of inter-State relations, anchored on the acceptance of mutually recognised independence of States, common co-existence, formal equality in such interconnectedness, with non-interference in the internal affairs of States being a necessary correlate. Sovereignty as a major attribute of the modern State system emerged following the Treaty of Westphalia of 1648 ending the devastating Thirty-Year War among the major European powers of the period. The idea of Sovereignty of States has however been variously and variedly interpreted, albeit in the course of its continuous evolution through the ages.

Sovereignty in the Context of International Relations or Organisations

Sovereignty as the supreme power of a State over its internal and external affairs is a distinguishing factor separating the States from other entities. In fact, as Oppenheim posits:

> Sovereignty is the supreme authority, which on the international plane means legal authority, which is not in law dependent on any other earthly authority. Sovereignty in the strict sense and narrowest sense of the term implies, therefore, independence of all round within and without the borders of the country.[85]

Sovereignty serves to provide the defining characteristic of Statehood accepted by the international community, indicating that the State has fulfilled the requirements that would allow it be bestowed with the legal personality and the capacity to possess rights and duties in international law.[86]

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[84] A. Dinicu, "Sovereignty, a Swinging Concept between International Law and Political Reality", *Land Forces Academy Review*, XXIII, No 3(91) (2018), 181.
[85] R. Jennings and R.A. Watts (eds.), in Oppenheim's International Law, 9th ed. (London and New York: Longman, 1997), 122.
[86] Ibid, 330.

According to Lauterpacht,[87] international law recognises the sovereignty of States in two aspects, which include: the internal aspect in which a State can be recognised as a subject of international law "if it is independent of other States and possesses a sovereign government…," and in the external sphere, sovereignty implies independence from other States.[88] In the same vein, the writer subjected the sovereignty of States to the subordination of international law, and maintains that sovereignty under international law confers upon the State the right to determine the future content of international law by which it will be bound, and at the same time, determine the present norms of international law.[89]

Anand, a major proponent of the idea of relative sovereignty, sees sovereignty as an idea that is inconsistent with a system of international law which is itself based on the principle of reciprocal rights and obligations.[90] It is argued that, "… apart from the absence of a supranational executive authority, a State does not recognise a legislator above itself."[91] Brownlie on his part, draws an analogy between sovereignty and equality of States within the context of international law, thus:

> Jurisdiction of State, *prima facie* exclusive over a territory and the permanent population living there; a duty of non-intervention in the area of exclusive jurisdiction of other States and; the dependence of obligations arising from customary law and treaties on the consent of the obligor.[92]

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[87] E. Lauterpacht (ed.), "International Law", Collected Papers of H. Lauterpacht, the Law of Peace, II-VI (Cambridge: Cambridge University Press, 1997), 6.
[88] *Ibid*, 7 (noting that, "Sovereignty in international law is a legal right transcending that of independence in relation to other States.").
[89] *Ibid*, 8 (noting further that, "in relation to international law, they are not sovereign… they (States) admit the existence and binding force of international law, States acknowledge that they are not sovereign).
[90] R. P. Anand, "Sovereign Equality of States in International Law," *R.D.C.*, 197, No. II (1986), 26.
[91] *Ibid*, 29.
[92] I. Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 1990), 287. See in particular, the General Assembly, Declaration principles of International Law

In this light, it could be asserted that the jurisdiction of international tribunals over erring States depends on the consent of the parties vis-à-vis that membership of an international organisation and therefore not obligatory. Accordingly, it is also argued that the organisations have powers to determine their own competence to take decisions by majority vote, and that the enforcement of decisions depends on the consent of the member States.[93]

Bhalla and Chowla on their part explain the correlation between international law and the principle of sovereignty. According to the learned authors, sovereignty is the most important if not the only structural principle of international law that shapes the content of nearly all rules of international law; that the international legal order is merely an expression of the uniform principle of external sovereignty.[94] It was further posited that sovereignty is the criterion for membership in the international society, and that sovereignty in sum is the 'cornerstone of international law' and the 'controlling principle' of world order.[95] A more acceptable as well as the modern approach to the idea of sovereignty is presented by Enabulele.[96] He posits that sovereignty is the attribute that allows an entity to express itself as a State on the international sphere (political independence, which includes the right to enter into international agreements), and gives it exclusive dominance over an area of the globe (territorial integrity, which acknowledges the absolute right of the sovereign to affect persons and events over an area of the globe).[97]

Concerning friendly Relations and co-operation among States in accordance with the charter of the United Nations, GA Res. 2625 (XXV), UN GAOR, Supp. No. (28), UN Doc. A/8028(1978), 123.

[93] Brownlie, *Principles of Public International Law*, 287-288.

[94] Girik Bhalla and Sameeksha Chowla, "Sovereignty in the Modern Context: How far have we come?" Journal *of International Relations and Foreign Policy*, 2(2) (2014), 147-165.

[95] *Ibid*.

[96] A.O. Enabulele, "Supranationality of ECOWAS and the Community Legal Order: Examining Obligations and Consequences of Non-Compliance thereof," Being a paper delivered at the International Conference organized by the ECOWAS Court of Justice in Accra, Ghana, between 21 and 24 of October, 2019.

[97] Ibid. (stating that, "the absolute nature of the said right lies on the fact that only the sovereign over the territory can make laws over the territory in the absence of an international agreement to the contrary").

Consequently, the ideological structure of the United Nations (UN) Charter for instance is predicated on basic democratic tenets[98] and the notion of establishing and maintaining international peace, which was seen as a common international value when the Charter was formed.[99] Thus, one of its basic principles of the UN Charter is based on the principle of the sovereign equality of all its member States (article 2(1)). Similarly, article 2(4) of the UN Charter "protects the territorial integrity and political independence of member States or in any other manner inconsistent with the purposes of the United Nations." The provisions highlight the relationship between member States and the UN, thus a determinant of the character of the UN as an international organisation, as distinct from a supranational organisation. Article 78 of the UN Charter on the other hand, extends the scope of the principle of sovereign equality to the relations among the member States of the UN in general, and constitutes the basis of the entire legal system of the UN.[100] It notes that:

> The trusteeship system shall not apply to territories which have become members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.[101]

Accordingly, the right of a State to conduct its external affairs, which involves the right to enter into treaties obligations, is also a function of sovereignty. Thus, it suffices that the sovereign power of a State can be exercised to reserve to the State, and contain domain of competences.[102] This has however been recognised under the general principles of international law as was statutorily affirmed in article 8(15) of the Covenant of the League of Nations and retained in article 2(7) of the

[98] These include, among others, the principles of the sovereign equality of States, the right of peoples to self-determination, non-intervention in the internal affairs of other States etc.
[99] This is called the "solidarist philosophy." See generally, J. Robinson, "Metamorphosis of the United Nations," in D. Nincic (ed.), Problem of Sovereignty in the Charter and in the Practice of the United Nations (The Hague: Martinus Nijhoff, 1970), 33.
[100] See Nincic, "Problem of Sovereignty in the Charter," 36-37.
[101] Article 78 of the UN Charter.
[102] Enabulele, "Supranationality of ECOWAS," 4.

UN Charter.[103] However, it is pertinent to note that ECOWAS, as a sub-regional organisation is founded on the principle of Supranationality which envisages a situation in international law where an authority created by an association of States voluntarily exercise (at least in theory) powers within its area of jurisdiction, notwithstanding the provisions of the States' national law.[104] It is further argued that Supranationality does not just involve cession of competences but also the power to regulate those competences through directly applicable rules made outside the municipal legal framework of law making, which implies the restraint of powers upon the sovereign[105] and creates an exception to the attributes of sovereignty in operation but not in formation[106] and duration.[107] Undoubtedly, Enabulele[108] quoting Efron[109] posits that:

> A supranational organisation represents a legal entity in which the member States surrender their sovereignty in certain areas, but retain it fully in others. There is thus credited a form of organisation which stands between the rather loose conception of traditional international organisation and the broad surrender of sovereignty implied in a federation.

Apparently, it was further stated that supranational provisions in treaties "provide for the most extensive delegation of sovereign powers and competences to

[103] *Ibid*. See also A. O. Enabulele, "The Reserved Domain: Brierly's Shortcomings of International Law Revisited," *University of Benin Law Journal*, 13(1) (2010-2012), 25.
[104] F.C. Nwoke, "The Role of the ECOWAS Court of Justice in the Integration process," Being a Paper Delivered at the International Conference organized by the ECOWAS Court of Justice in Accra, Ghana, between 21 and 24 of October, 2019.
[105] Enabulele, "Supranationality of ECOWAS," 4. See generally, F. Rosenstiel, "Reflections on the Notion of Supranationality," *Journal of Common Market Studies*, 2 (1963), 127 at 129.
[106] Enabulele, "Supranationality of ECOWAS," 4. – His emphasis is that, "it is a product of the voluntary will of the State to consent to treaties containing supranational provisions."
[107] *Ibid*. He posited further that, "a State may decide to terminate the treaty obligation and withdraw from the supranational arrangement. See for instance, Article 95 of the ECOWAS Revised Treaty.
[108] *Ibid*.
[109] R. Efron and A. S. Nanes, "Emerging concept of supranationality in Recent International Agreements", *Kentucky Law Journal*, 44(2) (1995), 202-203.

international or supranational organs."[110] In addition, it sets a limit and only to itself, and never making decisions other than itself.[111] It is therefore argued that any concept that stands in opposition to sovereignty must be seen as deviating from the force of sovereignty.[112]

Also, the major features of supranationality under public international law include but not limited to the following: the existence of a treaty to which a member State is a party; the legal authority of institution created by the treaty supersedes municipal law within the ambit of its authority, power and jurisdiction; decisions usually come by way of consensus of its member States and; becoming a member of such organisation is either by signature, ratification of accession to the treaty establishing it, which is tantamount to giving up part of the member State's sovereignty.[113] Where State parties to a treaty have voluntarily surrendered their competence to deal with certain subject matter to a supranational in that treaty, it cannot complain that its sovereignty is violated. Reaffirming the above position, the ECOWAS Court in a plethora of decisions have held that ECOWAS is a supranational institution with regard to its areas of competence.[114] In the same vein, the Court has equally maintained under its Revised Treaty[115] and its protocols that it is not constrained by any contrary provisions in the domestic laws of the member States.[116] Thus, in *Saidykhan v. the Republic of Gambia,*[117] the Court stated that:

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[110] Enabulele, "Supranationality of ECOWAS." See also, G. Naonm "Sovereignty and Regionalism," *Law and Policy in International Business*, 27 (1955-1956), 1073, at 1079.
[111] Rosenstiel, "Reflections on the Motion of Supranationality," 129.
[112] Enabulele, "Supranationality of ECOWAS," 4.
[113] Nwoke, "The Role of ECOWAS Court of Justice," 5.
[114] *Aminu v. Government of Jigawa State and Others;* Suit No. ECW/CCJ/APP/02/11.
[115] Article 4(g) of the Revised Treaty.
[116] Article 77 of the Revised Treaty empowers the Authority of Heads of State and Government of ECOWAS to impose certain sanctions on any member State who fails to fulfil its obligations to the Community through suspension of new Community loans and assistance, suspension of disbursement of on-going Community projects or assistance programmes, exclusion from presenting candidates for statutory and professional posts and suspension from participating in the activities of the Community.
[117] Suit No: ECW/CCJ/APP/11/07, ECW/CCJ/JUD/08/10.

> ECOWAS is a supranational authority created by the member States wherein they expressly ceded some of their sovereign powers to ECOWAS to act in their common interest. Therefore, in respect of those areas where the member States have ceded part of their sovereign powers to ECOWAS, the rules made by ECOWAS supersede rules made by individual member States if they are inconsistent.

The Court further reiterated that:

> the Revised Treaty of ECOWAS was ratified by all the member States of ECOWAS… this Court is the offspring of the Revised Treaty; and this Court is empowered by the Supplementary Protocol on the Court of Justice, which is part of the instruments of implementation of the Treaty and has the same legal force as the Treaty, to adjudicate on issues of human rights arising out of the member States of ECOWAS. Therefore, it is untenable for a member State of ECOWAS to claim that a matter is essentially within its domestic jurisdiction when it had expressly or by necessary implication granted ECOWAS powers to act solely or concurrently with national jurisdiction in respect of that matter.[118]

More so, it is apt to state that the acceptance of the doctrine of supranationality as a fundamental objective of ECOWAS is a clear indication that the legal instruments of the Community are no longer treaties that require to be ratified by member States, but by Acts and Decisions that have direct application within member States.[119] Accordingly, it is pertinent to state that the law and practice of ECOWAS seems to support the theory of monism in international law, where international law forms part of municipal law as opposed to dualism which posits that for international law to be part of municipal law, it needs to be incorporated into it by an Act of Parliament. It is also not overemphasised that while

[118] *Ibid*. See also *Valentine Ayika v Republic of Liberia,* Suit. No: ECW/CCJ/APP/11/07.
[119] See Nwoke, "The Role of ECOWAS Court of Justice," 6.

Francophone member States of ECOWAS embrace the system of monism, the Anglophone member States on the other hand still stick to the principle of dualism which makes it difficult for Community laws to have direct application in their States without domestication.[120]

Against this backdrop, for the effective actualisation of the sovereignty element, it must go beyond the mere "pulling together of sovereignties," and must be accompanied by the desire to entrust the organisation with the political will to exercise the ceded competences and direct them towards the actaulisation of the common goals for which the sovereigns have pulled sovereignty together.[121] The States must therefore exercise caution for the interest of the values embodied in a community of States as part of the collective good of its citizens.[122] Therefore, it is contended that the principle of sovereignty, if truly held to be cherished and non-dirigible in ECOWAS must be such that makes it impossible for the existence of any other power or authority above a State and indeed, contradictory to the concept of supranationality.[123]

INDIVIDUALS IN THE INTEGRATION PROCESS OF ECOWAS

In ECOWAS, the Authority of Heads of State and Government (AHSG) on 29 May, 1979 execute a far-reaching Protocol on Free Movement of Persons, Rights of Residence and Establishment.[124] This Protocol lucidly outlined the express rights of Community citizens to enter, reside and establish businesses or economic

[120] See for instance, section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Article 75(2) of the Constitution of the Republic of Ghana, 1992; Article 2(1) and (2) of the Liberian Constitution, 1986, etc.
[121] Enabulele, "Supranationality of ECOWAS," 5.
[122] *Ibid*. See also A. Somek, "On supranationality, *Florida Coastal Law Journal*, 3 (2001-2002), 23-39.
[123] See Enabulele, "Supranationality of ECOWAS," 5.
[124] ECOWAS Protocol A/P.1/5/79 Relating to the Free Movement of Persons, Residence and Establishment of 1979, <http://documentation.ecowas.int/download/en/legal-documents/protocls> Accessed 20 September, 2020.

activities in the territory of other member States.[125] Under this Protocol, it was firmly believed that the free movement of Community citizens, their skills and resources would not only constitute the fundamental basis for enhancing and consolidating the dividends of economic integration in the ECOWAS but also, it was believed to be capable of influencing positively the harmonious development of social, economic and cultural activities within the sub-region. In the Protocol, it was further envisaged that the right to free movement, residence and establishment within the sub-region can increase income, reduce poverty, promote skills acquisition and improve the general wellbeing of the individuals in the ECOWAS.

Thus, article 59 of the Revised Treaty enjoins ECOWAS member States to ensure that Community citizens are granted the rights of entry, residence and establishment and shall undertake to recognise these rights of Community citizens in their territories in accordance with the provisions of the Free Movement Protocols. In effect, member States are enjoined to adopt all appropriate measures to ensure that Community citizens enjoy fully the rights granted them under the ECOWAS legal instruments.[126] However, it is sad to state that there are serious burdens in the implementation of the ECOWAS instruments that granted these rights (movement, residence and establishments) to Community citizens. For instance, article 4(1) of the EECOWAS Protocol on the Implementation of the Third Phase (right of establishment) prohibits member States from any form of discrimination against foreign nationals and companies belonging to other member States. Despite the existence of this prohibiting provision on non-discrimination of Community citizens in the ECOWAS legal frameworks, nationals of ECOWAS member States are most times exposed to some forms of discrimination in member States territories. It is also not in contention that some privileges and rights are reserved for nationals and to which foreign nationals (including ECOWAS citizens) are not entitled to partake in. Above all, whenever any of the aforementioned rights are in violation, most especially by host member States,

[125] J. Akande, "International Legal Treaties and Instruments Relating to Migration in Sub-Saharan Africa," in R. Appleyard (ed.), *Emigration Dynamics in Developing Countries: Sub-Saharan Africa* (Aldershot: Ashgate, 1998).
[126] Article 59(2) of the Revised Treaty.

Community citizens have no means of redress before the ECOWAS Court on lack of jurisdiction and these are major challenges affecting the integration policies envisaged by ECOWAS.[127]

Benefit or Burdens for Individuals?

One of the genuine intendments for the establishment of ECOWAS was to upgrade the living standards of its people; that is, for the benefit of individuals. It was recognised by the Authority of Heads of State and Government (AHSG) that the individuals must not be neglected if genuine integration and grassroots inter-State growth and development would be achieved.[128] To achieve this, the Revised Treaty further provides for the adoption of measures for the integration of private sectors, through the creation of an enabling environment to promote small and medium scale enterprises.[129]

The most important part of this arrangement is, arguably, the establishment of the right of ECOWAS citizens to enter, reside and establish in any member State. There is also the corresponding member States' obligation to recognise these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto.[130] Fundamentally, ECOWAS citizens have rights to enter the territory of any member State without visa requirements, provided that such entering citizens possess their passports or ECOWAS travel documents.[131]

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[127] See *Kemi Pinheiro (SAN) v The Republic of Ghana*, ECW/CCJ/JUD/11/12.
[128] Article 3 of the ECOWAS Revised Treaty of 1993.
[129] *Ibid*, Article 3(2)(g)
[130] Article 3(2)(g). See Protocol A/P 1/5/79 Relating to the Free Movement of Persons, Residence Establishment; Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment and; Supplementary Protocol A/SP 2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.
[131] Protocol A/P 1/5/79 Relating to the Free Movement of Persons, Residence and Establishment. Article 3 provides that any citizen of the Community who wishes to enter the territory of any other Member State shall be required to possess a valid travel document and an international health certificate. A citizen of the Community visiting any Member State for a period not exceeding ninety (90) days shall enter the territory of that Member State through the official entry point free of visa requirements. Such citizen shall, however, be required to obtain permission for an extension of stay

Thus, upon residence and employment, ECOWAS citizens shall enjoy equal treatment as nationals of member States in matters encapsulated under article 23 of the Protocol.[132] Accordingly, in order to involve more closely the citizens of the Community in the regional integration process, member States further agree to create cooperation in the area of information.[133] They, thus, undertook to "ensure respect for the rights of journalists; and to take measures to encourage investment capital, both public and private, in the communication industries in member States."[134]

Although, it is axiomatic to state that the declared reason(s) for the establishment of the ECOWAS as a sub-regional body is for individuals' benefits. However, it cannot be overemphasised that the burdens and challenges with regards to individuals' participations in the integration processes are enormous in the sense that, the rights granted individuals under the ECOWAS legal texts for individuals'

from the appropriate authority if after such entry that citizen has cause to stay for more than ninety (90) days. See also, Decision A/DEC. 2/7/85 of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) relating to the Establishment of ECOWAS Travel Certificate for Member States. It was created to facilitate the intra-regional travel of member states' citizens for periods of a maximum 90 days. The passport can be used within the sub-region and is also recognized for international travel. Article 1(1) provides that, "It is hereby established a travel document other than national passports, known as the "ECOWAS Travel Certificate".

[132] Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment. Article 23 of the Protocol provides that; "No matter the conditions of their authorisation of residence, migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host Member State in the following matters: {a) security of employment; (b) possibility of participating in social and cultural activities: {c) possibilities or re-employment in case of loss of job for economic reasons, in this case, they shall be given priority over other workers newly admitted to the host country; (d) training and advanced professional training; (e) access to institutions of general and professional education as well as to professional training centres for their children; (f) benefit of an access to social cultural and other measures for the implementation of the pro- health facilities". It provides further that; "migrant workers who comply with rules and regulations governing residence, shall enjoy equal treatment with nationals of the host Member State in the holding of enjoyment or the practice of their profession".

[133] Article 66(1) of the Revised Treaty

[134] *Ibid*, Article 66(2) (c) and (d)

benefits, seem too theoretical without having any practical effects on the lives of Community citizens.

Thus, it is argued that a number of burdens and/or challenges, both at the sub-regional and municipal levels have hindered the effective implementation of the said Protocol and legal instruments of the Community. In effect, there is the burden of high barriers and unpredictable enforcement of trade related activities which have created strong incentives for informal trade throughout the sub-region. This situation has aggravated the complex border procedures and frequent harassment of Community citizens in member States' borders. For example, the Nigeria-Benin border is a frequent and relevant case scenario which has been identified as being problematic in this regard.[135] The situation of the Nigerian trade policy that is marred with incessant import bans, as well as harassment and extortion at formal border crossing at the Nigeria-Benin border provides a particularly striking example of the formalisation of informal trade in ECOWAS, most especially, the illicit petroleum products from Nigeria to other member States' territories, and the import of prohibited products into Nigeria, like rice.[136]

In ECOWAS, despite the existence of treaty provisions, as well as municipal legal frameworks which prohibit any form of discrimination,[137] Community citizens who venture into other States territories, outside their own Sates are most times exposed to some forms of discrimination within the sub-region.[138] It is also a notorious fact that most benefits and rights accruable in member States territories

[135] Hoppe V. M. Treichel, O. Cadot and J. Gourdon, "Import Bans in Nigeria Create Poverty." *World Bank Policy Note*, No. 28, (2011).
[136] V. Chambers, M. Foresti and D. Harris, *Final report: Political Economy of Regionalism in West Africa – Scoping Study and Prioritisation*, (London: ODI, 2012).
[137] Article 4(1) of Supplementary Protocol A/SP 2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment (stating that, "in matters of establishment and services, each member State shall undertake to accord non-discriminating treatment no nationals and companies of other member States").
[138] M. Awumbila, Y, Benneh, J. K. Teye and G. Atiim, *Across Artificial Borders: An Assessment of Labour Migration in the ECOWAS Region*, (Brussels: ACP Observatory on Migration, 2014); available at http://publications.iom.int/system/ files/pdf/ecowas_region.pdf. Accessed 7 September, 2021.

are exclusively reserved for their nationals and to which foreign nationals, including ECOWAS citizens are not entitled to partake in such benefits. For instance, in Ghana, foreigners including ECOWAS citizens are not permitted to work in sensitive security services.[139] In addition, in Ghana, foreigners are not permitted to engage in petty trade which is exclusively reserved for its nationals only. Section 18 of the Ghana Investment Promotion Centre Act (Act 478 of 1994) exclusively reserves certain enterprises for only Ghanaian nationals. This provision discriminates against nationals from other member States and as such, it violates the ECOWAS free movement Protocol, which stipulates that ECOWAS nationals who intend to pursue livelihood activities should be subjected to the same laws as nationals of the destination member State; and it has greatly affected the implementation of the ECOWAS right of establishment Protocol. There is no gain saying that these factors have resulted in very low levels of formal intra-regional trade activities in ECOWAS.

In a similar vein, the implementation of the second and third phases of the Protocol on rights of residence as envisaged, and which ought to have accorded Community citizens the right to work and earn a living in member States territories, have also suffered tremendous setbacks.[140] For instance, the recent inhuman treatment and deportation melted on some Nigerians traders living in Ghana is a perfect example of the above setbacks to the ECOWAS Protocol on free movement, right of residence and establishment.[141] Thus, those attacks on Nigerian traders in Ghana were viewed to have negative consequences on integration of the West African

[139] *Ibid*.
[140] Ifeadi, "Free Movement," 16.
[141] Sahara Reporters, (August 15, 2020), "Security Officials in Ghana Attack Nigerian Traders, Confiscate Goods Despite Evidence of Tax Payment", < https://saharareporters.com/2020/08/15/security-officials-ghana-attack-nigerian-traders-confiscate-goods-despite-evidence-tax> accessed 20 December, 2023; The Punch News Paper, "Attack on Nigerians Traders in Ghana, Xenophobic —Reps" < https://punchng.com/attack-on-nigerians-traders-in-ghana-xenophobic-reps/> accessed 20 December, 2023.

sub-region especially, if Nigeria retaliates in kind.[142] It is also not farfetched that the aforementioned setbacks have conspicuously hindered the ability of ECOWAS to actualise its set of objectives as envisaged in the planned implementation of the Protocols on rights of residence and establishment.[143] More so, it suffices to state that the lack of enthusiasm by some member States of ECOWAS on economic integration through rights of movement, residence and establishment could be a function of fear of giving away their supreme sovereignty and independent status as full nation States.[144] It is also a notorious fact that most governments within the sub-region have continued to view one another with utmost suspicion and as a result of that, they have incessantly paid lip services to implementing the Protocol on rights of movement, residence and establishment due to the self-protectionist reasons.[145]

In consequence, not until the above stated setbacks and other identifiable challenges are curtailed, member States may lean towards adopting a protectionist approach to its economic and citizenry affairs and thus, may not be favourably disposed to ensuring a full implementation of the Protocols on right of movement, residence and establishment. In spite of the foregoing discouraging factors, member States should therefore be encouraged to jettison the prevalent attitude and psychological state of reasoning, which leans towards undue tenacities of national sovereignty. It is believed that such tenacious attachments to national sovereignty over and above ECOWAS Treaty objectives have led to the nonchalant attitudes in actualising the integration promises of the Community.

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[142] International Centre for Investigative Reporting (ICiR), "Caught between legality and diplomacy: Pathetic story of Nigerian traders in Ghana" <https://www.icirnigeria.org/caught-between-legality-and-diplomacy-pathetic-story-of-nigerian-traders-in-ghana/> accessed 22 December, 2023; Nana Akufo-Addo, "Ghana President speaks on attacks on Nigerian traders" <https://www.premiumtimesng.com/news/top-news/286994-ghana-president-speaks-on-attacks-on-nigerian-traders.html?tztc=1> Accessed 22 December, 2023.
[143] A. Adepoju, Patterns in Migration in West Africa: International Migration and Development in Contemporary Ghana (Accra, Ghana: Sub-Saharan Publishers, 2005).
[144] *Ibid*.
[145] *Ibid*.

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RECOMMENDATIONS AND CONCLUDING REMARKS

Fundamentally, the ECOWAS Protocols on right of movement, residence and establishment are strategically designed to promote and actualise economic integration and development of member States. It is also established for the development of the standard of living of its community citizens, its principles should be profusely promoted and implemented as it will not only benefit ECOWAS member States, but also, its citizens. Thus, to effectively harness the benefits of regional integration objectives envisaged by ECOWAS in its instruments, this study therefore recommends that the Authority of Heads of State and Government of the ECOWAS should be encouraged to put in more efforts in pacifying the ill-conceived fear that implementing the Protocol on rights of movement, residence and establishment will lead to the unwarranted domination by the bigger countries such as Nigeria and Ghana, over smaller ones, such as the Gambia and the likes. This unspoken fear and inferiority feelings certainly, presents maliciously false ideological mind-set that bigger and more endowed member States with larger population, more sophisticated infrastructural development, higher and more improved Gross Domestic Product (GDP), enviable State status within the global circuit and abundant natural resources and relatively stable economies, would overshadow smaller and less endowed member States, if its citizens are freely allowed to move, reside and establish with its territories.[146]

Moreso, as earlier stated in this study, all evidence predicts a promising future for the free movement of ECOWAS citizens, goods and services, right of residence and establishments within the ECOWAS sub-region, provided that, the mission to build and consolidate integration is not left solely to the member States. However, for this to be actualised, it is further recommended that ECOWAS citizens need to be more effectively enlightened as to the stakes, in order to enable them to seize the opportunity provided under the ECOWAS legal order, which empowers the Authority of Heads of State and Government of ECOWAS to impose certain sanctions on any member State who fails to fulfil its obligations to the

[146] *Ibid*.

Community.[147] Apart from political sanctions for instance, the ECOWAS Supplementary Act, 2012 on Sanction for Failure of Member States to fulfil their Community obligations, authorises sanctions on a delinquent member State.[148] Although, the Act did not expressly state who should approach the Court (which is also a challenge), it suggested that, the beneficiary of such judgment should be able to initiate such an action. This in our view means that, the judgment of the ECOWAS Court of Justice is binding on all parties, namely, member States, institutions of the Community and individuals as the case may be; and failure to comply with them amounts to breach of the Community obligations of the State concerned.[149]

Conclusively, it is a truism that, from the inception of ECOWAS, the free movement policies were adopted quite early, for the benefits of Community citizens. Also, looking at above policies, it is rightly observed that the problem of ECOWAS is not the existence of these burdens per se, but the inexistence of adequate judicial remedies, (stemming from the inability of individuals to litigate the Treaty and relevant Protocols) and lack of administrative remedies (stemming from the lack of administrative mechanisms) which have resulted in so many unilateral closure of member States' borders, particularly, the Nigeria-Benin border, who is supposedly the hegemony of ECOWAS and other related attacks called "xenophobic attacks" as prevalence in Ghana against Community citizens who are petty traders. It is therefore hoped that, for ECOWS to surmount these burdens, the means for holding member States accountable to their integration

[147] Article 77 of the Revised Treaty

[148] Article 3(1) of the Supplementary Act A/SP.13/02/12 providing that, "Member State or their leaders that fail to honour their obligations to the Community shall be liable to judicial and political sanctions"; Article 7(3) (g) of the ECOWAS Revised Treaty vest in the Authority of Heads of States and government the powers to refer where it deems necessary any matter to the Community Court of Justice when it confirms that a Member State or Institution of the Community has failed to honour any of its obligations.

[149] Article 15(4) of the Revised Treaty; Article 2(1) of the Supplementary Protocol on the Community Court of Justice, 2005

promises, should be made available, particularly, to the individuals who are the movers of integration.

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TERMINATION OF CONTRACT OF EMPLOYMENT; REASON(S) REQUIRED OR NOT? A REVIEW OF GHANA'S LABOUR STATUTES AND CASE LAWS

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ABSTRACT

The laws which regulate employment relations have gone through various stages from the master-servant relationship in the medieval period to the current statutory implied provisions embedded in employment contracts. In the current era of insatiable search for the rights and dignity of all persons across the world, the need to ensure decent work conditions has been of great interest. The right of workers to enjoy employment security is entrenched in the International Labour Organization (ILO) Convention on Termination of Employment (Convention 158) and Termination of Employment Recommendations in 1963. State parties to the ILO are required to incorporate such provisions in their national laws. The ILO Conventions and Recommendations on termination of employment contract require that employment contract should be terminated on a stated reason but not at the whim and caprices of the employer. Though Ghana has not yet ratified the ILO Convention 158, the passage of the Labour Act 2003, (Act 651) was guided by the provisions in the ILO Convention on Termination of Employment. Notwithstanding the safeguards provided in Ghana's Labour Act to protect employees from arbitrary termination of employment, the judicial interpretations have maintained the view that an employer can terminate an employment contract without giving reasons. This interpretation placed the Ghanaian worker at the mercy of the employer. What is worse is that many negotiated collective agreements contain provisions for the termination of a contract of employment at will. A recent judicial interpretation has departed from the previous view that an employment contract can be terminated without reason, thereby giving a sigh of relief to the Ghanaian worker. This paper, through theoretical reviews, seeks to reinforce the judicial interpretation that there must necessarily be a reason for the termination of a contract of employment.

Keywords: Employee relations, Termination, Employment, International Labour Organization, Judicial interpretation

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INTRODUCTION

According to Kahn-Freund, there is an imbalance of power between the employer and the employee.[2] Whereas the employer is the bearer of power, the employee is powerless and subservient.[3] At the onset, the employee is submissive and remains subordinate throughout the subsistence of the contract of employment.[4] This is so because of the employer's inherent right to terminate the employment to the detriment of the worker. At common law, employment relationship has before the 19th century, been advantageous to the employer to the detriment of the worker. The employer could dismiss the employee arbitrarily with little regard to procedural requirements.[5] The practice was reinforced by the common law implied terms such as the duty to take care, to co-operate and to obey the employer. The court readily upheld those implied terms, thereby imposing greater responsibility on the employee with minimal commitment from the employer.[6] The plight of marginalized employees was worsened by the unavailability of the remedy of specific performance in employment contracts, whereas onerous restrictive covenants regarding confidentiality followed the employee even after termination.[7] In the United Kingdom, the inadequacy of the common law principles, coupled with labour unrest and international pressures for the protection of workers' rights culminated in the passage of the Labour Relations Act, 1971. The Act guarantees against unfair, arbitrary and irrelevant grounds for dismissal of an employee. In effect, the dismissal of an employee had to be justified by a reasonable cause.[8] The Act also established Industrial Tribunals to give easy access to workers with complaints of arbitrary dismissals.

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[2] Kahn-Freund, Otto. "The Industrial Relations Act 1971-Some retrospective reflections." Indus. LJ 3 (1974): 186.
[3] Ibid.
[4] Tamara (Collier and Fergus ed) *Labour Law in South Africa Context and Principles 1e. Oxford University Press Southern Africa*. (2020) 8 ed Collier & Fergus (eds) at p 11.
[5] Hazel Cart, Dismissed Employees: The search for a more effective range of remedies: The Modern Law Review (1989) 52 No 4 p 449.
[6] Ibid.
[7] Ibid. See Fox, Beyond Contract: Trust, Power and Work Relations (1976) pp. 181-184
[8] Hazel Cart, op cit note 5 at p 451.

In South Africa, the Labour Relations Act (LRA)[9] enjoins employers to comply with substantive and procedural requirements for the dismissal of an employee.[10] The employer bears the onus of proving that a dismissal is both substantively and procedurally fair whereas the worker only proves the existence of dismissal.[11] Dismissal is defined in section 186 (1) of the LRA to mean any one of the following circumstances:

i. 'an employer has terminated employment of the worker with or without notice to the worker;

ii. an employee employed for a fixed-term contract of employment reasonably expected the employer:

   a) to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

   b) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed-term contract, but the employer offered to retain the employee on less favourable terms or did not offer to retain the employee; an employer refused to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment;

iii. an employer who dismissed some employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another;

iv. an employee terminated employment with or without notice because the employer made continued employment intolerable for the employee; or

[9] No. 66 of 1995.
[10] Schedule 8 of the LRA.
[11] LRA section 188(1).

v. an employee terminated employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer.'[12]

The Employment Rights Act 1996 ('the ERA') of the United Kingdom provides for statutory grounds on which an employer can fairly terminate the employment of an employee.[13] The employer must convince the Employment Tribunal that his reason for the dismissal falls within the potentially fair reasons for dismissal. Short of that, the dismissal is unfair and the employee shall succeed in his claim. The Act describes the circumstances in which an employee is deemed to be dismissed to include the following; that the contract under which he is employed is terminated by the employer (whether with or without notice); that the employee is employed under a limited-term contract and the contract terminates by virtue of the limiting event without being renewed under the same contract, or that the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.[14] The dismissal also occurs when the employer gives notice to the employee to terminate his contract of employment, and at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire. In the latter case, the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.[15] From the definition of the concept of dismissal in the ERA, it connotes or is coterminous with termination of employment. Under the ERA, the employee is entitled to be provided by the employer with a written statement giving particulars of the reasons for the employee's dismissal.[16]

[12] Ibid section 186 (1).
[13] Employment Rights Act 1996 s 98.
[14] Ibid. s 95 (1).
[15] Ibid s 95(2),
[16] Ibid s 92(1)

The question of whether a particular dismissal is fair or otherwise depends on the circumstances of each case and whether the employer acted reasonably or unreasonably in treating the reason for dismissal as sufficient to warrant the dismissal of an employee.[17] In determining the reasonableness of a dismissal, equity and the substantial merits of the case shall prevail.[18] The two cases of *British Home Stores (BHS) v Burchell*[19] and *Iceland Frozen Foods v Jones*[20] lay down the determinants of fairness of the dismissal of an employee. First, the employer holds a genuine belief that the reason given for the dismissal was the reason; whether such reason was reasonably founded, based on a reasonable investigation; and whether a reasonable employer would have dismissed the employee for that misconduct. These protections enshrined in the UK statutes are fairly in compliance with the ILO convention on the termination of employment. However, the Ghanaian position seems to deviate from the international best practice. Ghana's Labour Act[21] provides for substantive and procedural grounds for termination of employment. The substantive grounds of termination include the following:- first, mutual agreement between the employer and the worker; second, by the worker on grounds of ill-treatment or sexual harassment; third, by the employer on the death of the worker before the expiration of the period of employment; forth, by the employer if the worker is found on medical examination to be unfit for employment; fifth, by the employer because of the inability of the worker to carry out his or her work due to sickness or accident; or incompetence of the worker or proven misconduct of the worker.[22] The procedural ground of termination requires the employer to comply with the necessary notice period depending on the nature and type of employment.[23] However, the courts and employers have misconstrued the compliance of the notice period as satisfaction or fulfilment of substantive and procedural grounds of appeal.

[17] *David Bradley, '*Assessing the fairness of a dismissal' (2019) 64619 (peoplemanagement.co.uk)
[18] Ibid.
[19] [1978] IRLR 379
[20] [1982] IRLR 439; ICR 17
[21] 2003, Act 651
[22] Ibid s 15.
[23] Ibid s. 17.

This paper draws the attention of the legal fraternity to the error committed in the application of the concept of termination of employment in the Labour Act. The concept has emboldened many employers to terminate the employment of employees at will and without any reasonable ground. This error of application ought to be corrected in order to avoid the perpetration of injustice against employees. The paper shall review Ghanaian case laws which have held the position that employment could be terminated without giving reason or grounds for termination. Further, the recent decision by the Supreme Court which seeks to depart from the long-held view and to correct the errors committed in the past. The research will be situated within the statutory doctrines and principles governing the termination of employment contracts. This is because, by the principle of hierarchy of norms, statute takes precedence over common law and case laws.

The goal of this paper is to review the various theories of termination of employment laws propounded by jurists and the international standard set under the auspices of a global body, the International Labour Organization (ILO) and situate them within the judicial approach in Ghana. The question this paper attempts to resolve is whether the Ghanaian court's construction and application of the Labour Act, 2003, (Act 651) to the effect that an employer can terminate employment contract without giving reason to the employee is a good law. The paper examines this issue in the light of ILO Convention 158 which stipulates the grounds for termination of contract of employment. Though Ghana has yet to ratify Convention 158, Ghana is under a moral obligation not to do anything to denigrate the intent and purpose of the ILO Convention. The paper seeks to ensure that the employee rights inherent in a democracy and secure the freedom and dignity of man in other jurisdictions are incorporated in the inexhaustive lists of human rights guaranteed in the 1992 constitution.[24]

The author argues that the position affirmed by the courts in Ghana that, an employer can terminate the employment of an employee without giving a reason is not a good law even on the face of the Labour Act. It equally conflicts with the ILO Convention 158 and other international best practices and protections afforded to employees. Further, the paper will argue that the recent Supreme Court decision

[24] Constitution of Ghana 1992, article 33(5)

in the case of *George Akpass vs. Ghana Commercial Bank Ltd*[25] should settle the law.

The study adopted the qualitative research approach to analyse the phenomenon. It relied on the doctrinal legal research design. This approach is also sometimes referred to as the "black letter" method; it places more emphasis on the letter of the law than the actual application of the law. Using this technique, a researcher creates a detailed and descriptive examination of legal provisions discovered in original sources (cases, statutes, or regulations). The data were collected from over 30 sources, including "the rule itself," cases brought under the rule, relevant legislative and case law history, commentaries and literature on the rule, journals, reports, documents from government agencies and institutions, website and online publications, policy and other relevant documents. Examples of such sources were: *The Modern Law Review* (1989), *Aryee v State Construction Corporation* [1984-86] 1 GLR 425 CA, *Bannerman-Menson vs. Ghana Employers' Association* [1996-97] SCGLR 417, *George Akpass vs. Ghana Commercial Bank Ltd,* Constitution of Ghana, 1992, Labour Act 2003 (Act 65) and The Termination of Employment Convention, 1982 (No. 158) among others. The data selected were germane to the main themes and aligned with the objectives of the study. They helped to describe the law, compare the sources and explain the overarching theme or system.

The choice of qualitative research in general is appropriate because it helps to describe a topic rather than measure, assess opinions, views and qualities rather than pictorial presentations.[26] By gathering and examining non-numerical data, the qualitative approach aided better comprehension of ideas, experiences and views from the materials collected.[27]

The analysis of the data relied on the thematic analytical approach. The data from the cases, statutes, regulations and other relevant documents were carefully coded

[25] [2021] DLSC10768 at p 18.
[26] Chinere, N. Ugwu, Val H.U. Eze 'Qualitative research. International Digital Organization for Scientific Research, IDOSR' 2023, *Journal of Computer and Applied Sciences* Vol. 8 No. 1 at p 33.
[27] Ibid. at p 33

and examined according to themes: termination of employment, ILO termination of employment, Ghanaian concepts of termination of employment and dismissal, a shift towards reasoned termination of employment, among others. The study analysed the interpretation and application of the law on the termination of contracts (in Ghana). It focused primarily on the law's shortcomings and flaws and provided remedies. The analysis was also sifted through the various theories of termination of employment.

This paper is written in six sections. The first section introduces the paper by way of background information, research aim, and the method employed. The second section discusses the theories of termination of employment. The third section looks at the ILO termination of employment while the fourth section looks at termination of employment without reason. The fifth section discusses the shifts towards reasoned termination of employment while the final section provides a conclusion to the paper.

THEORIES OF TERMINATION OF EMPLOYMENT

Cases of termination of contract of employment have over the years been decided on various legal principles propounded by courts and jurists. These principles have become the guidelines on which future cases shall be determined. This section attempts to discuss some of the theories upon which the termination of the contract of employment rests. These theories include the elective theory, automatic theory, mutuality of obligations doctrine and termination of employment contract theory, common law doctrine of employment-at-will and lastly, statutory intervention created to cure the defect of the employment-at-will relationships.

The study, however, relies principally on the common law doctrine of employment-at-will as the theory underpinning the analysis. This is chosen for various reasons including the fact that Ghanaian case laws aligned favourably with the common law doctrine of employment-at-will. Further reasons are given in the subsequent discussion.

The elective theory stipulates that where an employer repudiates the contract of employment unilaterally in breach of the implied mutual terms and conditions but short of dismissal, the employee must accept the repudiatory breach before the

employment can be treated as effectively terminated. In this circumstance, the 'elective' theory gives the employee the option to either accept the breach and claim damages for constructive wrongful dismissal at common law upon resignation or affirm the contract so that it continues in existence.[28] This theory aligns with contract law.

The automatic theory of the termination of employment holds that an employer's unilateral repudiatory breach of the material terms of the employment operates automatically to terminate the contract of employment.[29] The automatic theory operates on the principle that a contract of employment cannot survive wrongful dismissal. This is because, in English law, there is a presumption against an order of specific performance or injunctive relief in the context of the actual or threatened dismissal of an employee.[30] It is, however, argued that it is difficult to regard a continuous employment relationship where the employer's dismissal is a repudiatory breach.[31] Before the Supreme Court of the United Kingdom made a definitive pronouncement to settle the parameters of these theories in *Societe Generale (London Branch) v Geys*[32], there were different views expressed by the court on these theories.[33] However, the Supreme Court has endorsed the elective theory of termination of an employment contract.

The Mutuality of Obligations Doctrine and Termination of Employment Contract theory, which was propounded by Lord Drummond Young in the case of *McNeill v Aberdeen City Council (No 2).*[34] This concept is unique to the Scots common law in contradistinction to the English common law. This principle thrives on the

[28] David Cabrelli, Rebecca Zahn **'**The Elective and Automatic Theories of Termination at Common Law: Resolving the Conundrum?' 2012 *(ILJ)* Vol 41, 3 at p 349; John McMullen 'A Synthesis of the Mode of Termination of Contracts of Employment' 1982 *Cambridge Law Journal* Vol. 41, No. 1 at p 111.
[29] David Cabrelli, Rebecca Zahn **'**The Elective and Automatic Theories of Termination at Common Law: Resolving the Conundrum?' 2012 *(ILJ)* Vol 41, 3 at p 346.
[30] Ibid at p 347.
[31] Ibid.
[32] *Societe Generale (London Branch) v Geys* [20121 UKSC 63, [20131 1 AC 523 at 349. Also see *Gunton v Richmond Upon Thames*, [1981] 1 Ch 448. *Boyo v LB of Lambeth* [1994] ICR 727.
[33] David Cabrelli, Rebecca Zahn **'**The Elective and Automatic Theories of Termination at Common Law: Resolving the Conundrum?' 2012 *(ILJ)* Vol 41, 3 at p 346.
[34] *McNeill v Aberdeen City Council (No 2)* [20131 CSIH 102, [20141 IRLR 113.

merger of a statutory constructive dismissal under section 95(1)(c) of the Employment Right Act[35] and traditional common law principles under the law of contract. At common law, a breach of an express term of a contract, or a common law implied term of the contract of employment by the employer is automatically repudiatory and it would be considered sufficiently serious enough to entitle the employee to claim constructive dismissal. The effect is that it also amounts to statutory constructive dismissal.[36] The facts of the *McNeill* case were that the employee was in anterior repudiatory breach of the contract of employment, having breached an implied terms of mutual trust and confidence (ITMT&C) but the employer failed to accept the employee's breach and terminated the employment contract. While the employee's breach was still at play, he sued the employer on a claim of constructive dismissal under section 95(1)(c) of ERA on the ground that his employer had committed a repudiatory breach of an implied term of mutual trust and confidence. In the Employment Appeal Tribunal ("EAT"),[37] the claim of statutory constructive dismissal under section 95(1)(c) was dismissed. The court invoked the doctrine of mutuality of contractual obligations to prevent the employee from demanding performance from the employer and to accept the employer's subsequent repudiatory breach as bringing the contract to an end.

However, on appeal to the Inner House, Lord Drummond Young said: '[whilst the ITMT&C] affects the way that the parties act in performing their substantive duties ... it is conceptually distinct [and therefore] ... if there is a sufficiently material breach of contract by the employee, the employer will be justified in suspending employment and not paying salary or wages, but will not be justified in going further and performing acts that are calculated to destroy or seriously damage the

[35] Employment Rights Protection Act of United Kingdom.
[36] David Cabrelli (University of Edinburgh) 'The Mutuality of Obligations Doctrine and Termination of the Employment Contract: McNeill v Aberdeen City Council (No 2)' 2014 (EdinLR) Vol 18 p 260. Also see HUGH COLLINS (London School of Economics) 'Constructive Dismissal and the West Lothian Question: Aberdeen City Council v McNeill' 2011 *ILJ*, Vol. 40, No. 4 at p 439.
[37] Aberdeen City Council v McNeill [2010] IRLR 374.

relationship of mutual trust and confidence.'[38] In justifying the holding that the ITMT&C was not a substantive obligation, the court reasoned that to "find otherwise would enable the employer to take any prior repudiatory breach by the employee and use it as a means of treating the employee in a "wholly outrageous manner, without any redress" which would "promote unfairness".[39]

Another theory of termination of an employment contract is the statutory intervention created to remedy the employment-at-will relationships. This theory seeks to protect the employment rights of workers since employment is fundamental to human existence and lack of it endangers humans' dignity. The doctrine requires termination of employment only on grounds of valid reasons, subject, however, to statutory requirements such as pension age. The International Covenant on Economic, Social and Cultural Rights[40] prohibits the deprivation of people's means of subsistence.[41] The theory is found in international treaties, instruments, conventions, national laws, collective agreements, etc. This theory was confirmed by Joan Bertin Lowy when she stated that: 'Once public employment has been secured, the constitution of member states does limit the method and reasons that may be utilized to dismiss an incumbent employee.'[42]

The theory of termination of employment underpinning the study is the common law doctrine of employment-at-will. At common law, the doctrine of employment-at-will entitles the employer to discharge an employee for a good cause, a bad cause, or no cause at all, without any contractual limitations.[43] Similarly, the

[38] David Cabrelli (University of Edinburgh) 'The Mutuality of Obligations Doctrine and Termination of the Employment Contract: McNeill v Aberdeen City Council (No 2)' 2014 (EdinLR) Vol 18 p 262.
[39] Ibid.
[40] International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976, in accordance with article 27.
[41] Ibid at article 1(2).
[42] Joan Bertin Lowy, *Constitutional Limitations on the Dismissal of Public Employees,* 43 BROOK. L. REV. 1 (1976) at p 2 Bluebook 21st ed.
[43] Mordsley & Steven R. Wall: *The Dismissal of Employees under the Unfair Dismissal Law in the United Kingdom and Labor Arbitration Proceedings in the United States: The Parameters of Reasonableness and Just Cause,* 16 CORNELL INT'l L.J. 1 (1983). Bluebook 21st ed. Also see

employee is at liberty to cut employment ties with his employer at any time without giving any reason. This theory is grounded or aligned with the common law principle of master-servant in employment relationships. In *Ridge v Baldwin*,[44] Lord Reid emphasizes that 'the law regarding master and servant relationship is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none.'[45] This theory puts the employees at peril. Marvin reported that majority of American workers were still employed at will, and they were subject to discharge for good reasons, bad reasons, false reasons or for no reason.[46] However, through statute, collective bargaining agreements and judicial activism, the doctrine of employment at will has been watered down in America. For instance, the courts have entertained cases brought by employees dismissed at will and found the employers liable on grounds of implied covenants of good faith and fair dealing, public policy, and whistleblowing to limit the operation of the employment-at-will doctrine.[47] Indeed, while the employer is at liberty to hire and fire at will and for virtually any reason, there are statutory exceptions to this doctrine. For instance, an employer is prohibited from discriminatory reasons including the employee's gender, race, ethnic origin, social and economic status, colour, religion and creed[48] as the basis of the termination of the contract of employment. Employers are also prohibited from cutting employment relationships on account of the employee having blown a whistle.[49]

Ghanaian case laws aligned favourably with the common law doctrine of employment-at-will, which allows the employer to terminate the contract of employment without giving any reason. The choice of this theory is important given that Ghanaian case laws rely on the key tenets of the theory in deciding on the termination of the contract in whichever way. Both employers and the Court

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Marvin F. Hill Jr., *Arbitration as a Means of Protecting Employees from Unjust Dismissal: A Statutory Proposal*, 3 N. ILL. U. L. REV. 111 (1982) at p 112 Bluebook 21st ed.
[44] [1963] APP.L.R 03/14, HL
[45] Ibid.
[46] Ibid, Marvin F. Hill Jr.,
[47] Ibid; Mordsley & Steven R. Wall at p 6. Also see Marvin F. Hill Jr., at p 112.
[48] 1992 Constitution of Ghana, article 17(2).
[49] Whistleblower Act, 2006 (Act 720) s 12(2).

refer to its provisions in making decisions about interpretation and termination of contracts. The theory also helps to explain and point out the weaknesses of the entire judicial system with respect to the complex relationship between employers and employees, clientele and service providers. The study argues that the theory's "double-edged sword" makes it vague and gives room for too much flexibility and multiple interpretations. It is not surprising that Ghanaian courts continue to give divergent interpretations and adopt different applications to the law. Thus, the need for measures to ameliorate the complexity and the multiplicity in the application and interpretation of the laws governing the termination of contract (in Ghana) has become imperative.

It is however argued that following the passage of Ghana's Labour Act in 2003, the employment relationship is no longer regulated by the traditional master-servant relationship but a contractual relation between the employer and the employee. Consequently, labour legislations give greater protection to the employee who is a weaker party in the contractual relationship. Therefore, the power of the employer to terminate the contract employment at will has been whittled down. It is further postulated that the traditional view that an employer can terminate a contract of employment at will and without reason is no longer a good law.

THE ILO TERMINATION OF EMPLOYMENT CONVENTION, 1982, (NO. 158)

The Termination of Employment Convention was adopted following significant developments that occurred in the law and practices of the ILO member states on the back of the Termination of Employment Recommendations in 1963. Convention 158, therefore, sets new international standards for termination of employment due to the emerging instances of termination of employment in many countries arising from economic difficulties and technological changes.[50]

The adoption of the Termination of Employment Convention by the ILO was informed by the economic difficulties and technological changes employers in

[50] See the preamble to the Termination of Employment Convention, 1982 (No. 158).

many countries experienced in the years preceding 1982.[51] Workers bore the brunt of the employers' response to the economic difficulties and technological changes. The obvious response of many employers was the termination or retrenchment of their employees. Workers in some countries became victims of arbitrary dismissals by their employers. Morsch[52], for instance, reports that in Brazil, the absence of a regulatory framework to enforce the constitutional guarantee against arbitrary dismissal gave employers the leeway to terminate employment on whimsical grounds. For instance, employers terminated employment and rehired employees for the same job for a lower pay rate. A report from the Ministry of Labour and Employment Statistics (CAGED) reveals that one-third of dismissals occur during the worker's first year of employment in the enterprise concerned.[53]

Convention 158 has four parts and 22 articles. The first part deals with the methods of implementation, the scope and definitions while the second part is about the standard of implementation. The third part is on supplementary provision relating to the termination of employment for economic, technological, structural and similar reasons. The fourth part has the final provision. Convention 158 is supplemented by a non-binding instrument, R166 - Termination of Employment Recommendation, 1982 (No. 166). The instrument makes several recommendations for state parties to include in their national legislation, collective agreement, judicial decisions, work rules, and arbitration awards to give effect to Convention 158.[54]

The scope of the Convention, therefore, excludes fixed-term contract employees, probationary employees, casual employees,[55] categories of employees with equivalent protection the Convention offers[56] and categories of employees in undertakings (institutions or organisations) with special problems including the

[51] Termination of Employment Convention, 1982 (No. 158) at the preamble.
[52] Magda Barros Biavaschi Camila Morsch, a retired judge from Brazil's Regional Labour Court for Region 4, is a Master of Law and Public Institutions at the UFSC.
[53] Magda Barros Biavaschi Camila Morsch '*ILO Convention 158, the right to employment and implementation problems in Brazil: contradictions and social tensions'* at pa 12. https://www.ilera2015.com/dynamic/full/IL213.
[54] Termination of Employment Recommendation, 1982, Recommendation 1.
[55] Termination of Employment Convention, 1982 (C. 158) at article 2(2).
[56] Ibid at article 2(4).

size and nature of the work.[57] However, the Convention prohibits contracts of employment nuanced in a manner to circumvent the legal obligation of the employer to deprive the employee of protections upon termination of employment.[58] In response to the possibility of circumvention of a contract of employment, the Termination of Employment Recommendation, 1982 (No. 166) recommends that state parties make provisions in their labour legislations to deem contracts of employment for a specified period as indeterminate if it is renewable for more than one occasion.[59] The Convention construes the terms 'termination' and 'termination of employment' in a limited sense to mean termination of employment at the instance of the employer but not the employee.[60]

There must always be a valid reason related to a worker regarding her capacity or conduct or based on the operational requirements of the undertaking, establishment, or service for the termination of the contract of employment. Termination of employment shall not be valid if the reason for the termination is age, (other than the national retirement age), absence from work because of national, civic or military duties, and temporary absence due to ill health or injury. What constitutes a temporary period of absence is subject to the laws of the member country. In the view of the committee of experts,[61] the need to base termination of employment on a valid reason is the cornerstone of the provision in the Convention.[62] The provisions in Article 4, therefore, bar the employer from any unilateral termination of the employment relationship. The employer is required not to only give reasons for the dismissal, but also ensure that the reason is grounded on the 'fundamental principle of justification', connected with the

[57] Ibid at article 2(5).
[58] Ibid at article 2(3).
[59] Termination of Employment Recommendation, 1982 (No. 166), Recommendation 3.
[60] Termination of Employment Convention, 1982 (C. 158) at article 3.
[61] Committee of Experts on the Application of Conventions and Recommendations of the ILO.
[62] *'Note on Convention No. 158 and Recommendation No. 166 concerning termination of employment'* at p 1. The note was prepared by the International Labour Standards Department (Sector I), the Employment Analysis and Research Unit (Sector II) and the Social Dialogue, Labour Law and Labour Administration Branch (Sector IV), with the collaboration of specialists from the ILO Training Centre in Turin.

capacity, or conduct of the worker or based on the operational requirements of the undertaking.[63]

To justify the termination of employment on grounds of lack of capacity of the worker, the employer must show that the worker either lacks the requisite skills or qualities to perform her assigned tasks, leading to unsatisfactory performance or her work performance is poor, not due to intentional misconduct, but because of incapacity to perform work due to illness or injury. Similarly, termination of employment connected with the conduct of the worker takes two forms. The first is the inadequate performance of the worker's assigned duties which she was contracted to carry out because of neglect of duty, violation of work rules, disobedience of legitimate orders, etc. The second form is a general improper behaviour of the worker including disorderly conduct, violence, physical assault, using insulting language, disrupting the peace and order of the workplace, etc.

Finally, though the Convention does not define the concept of "operational requirements, it is generally accepted to include reasons of economic, technological, structural or similar nature. Dismissals resulting from operational requirements may affect an individual or a group. It is a no-fault dismissal that is intended to reduce the workforce.[64] Convention 158 supports productive and sustainable enterprises. It also recognizes that in times of economic downturns, the employer is reasonably expected to reorganize in order to sustain the enterprise. Financial difficulties constitute a valid reason for termination of employment.[65] However, the employer is expected to engage in a social dialogue with workers or their representatives to search for alternative means to avoid or minimize the social and economic impact of termination of employment for workers. This is a core procedural response to collective dismissals on grounds of operational requirements.[66] However, the employer cannot justifiably and validly terminate employment on one or more of the following non-exhaustive lists of reasons:

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[63] Ibid.
[64] Ibid at p 2. Also see Termination of Employment Convention, 1982 (C. 158), article 4.
[65] '*Note on Convention No. 158 and Recommendation No. 166 concerning termination of employment'* at p 44.
[66] Ibid.

i) union membership or participation in union activities outside of working hours or, with the consent of the employer within working hours;
ii) seeking office as, or acting or having acted in the capacity of, a workers' representative;
iii) filing of a complaint or participation in the proceedings against an employer involving an alleged violation of laws or regulations or recourse to competent administrative authorities;
iv) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
v) absence from work during maternity leave.[67]

Ghanaian concepts of termination of employment and dismissal

This section will proceed to examine the Ghanaian concept of termination of employment within the theories of employment-at-will characterized by the principle of master-servant relation and statutory intervention. Both termination and dismissal are means of severing the employment relationship between an employer and a worker. The two concepts developed out of the common law.[68] The constitution of Ghana guarantees public service workers against arbitrary dismissal from their employment except for a just cause.[69] The constitutional protection against unjust dismissal is specific to public service workers. The constitution does not use the phrase "termination of employment" with regard to public servants. The Labour Act has given statutory recognition to the concept of termination of employment.[70]

Whereas the constitution of Ghana uses the word "dismissal" to describe severance of employment relationship, the Labour Act uses "termination of employment" to describe employment severance. The concept and grounds for termination of employment are sufficiently explained in Act 651, but dismissal is not defined. The two concepts are disjunctively used in the Labour Act, which suggests that the

[67] Termination of Employment Convention, 1982 (C. 158) at article 5. Also see p 8 of '*Note on Convention No. 158 and Recommendation No. 166 concerning termination of employment'* at p 1.
[68] *George Akpass vs. Ghana Commercial Bank ltd.* [2021] DLSC10768 at p 18.
[69] op cit note 24 article 191(b).
[70] See sections 15-18 and 62-64 of the Labour Act 2003 (Act 651).

legislator did not intend similar or the same meaning for both words.[71] For instance, section 119 (2) of the Labour Act provides that 'an employer shall not *dismiss or terminate* the employment of a worker or withhold any remuneration of a worker who has removed himself or herself from a work situation, which the worker has reason to believe, that presents an imminent and serious danger to his or her life, safety, or health.'

Though the term dismissal is used in the Labour Act, the grounds for dismissal are not provided, unlike termination. The Act states, 'the provision in the section that a terminated worker would be entitled to his annual leave earned in the calendar year and shall not be deprived of any other grants or awards including payment in lieu of notice of termination which the worker is entitled to will not apply to cases where the employer has the right to *dismiss* a worker without notice.'[72] This implies that in the case of dismissal, the dismissed employee is not entitled to annual leave earned and other benefits due to an employee whose contract of employment is terminated. The Act also provides that 'a person who seeks by intimidation, *dismissal***,** threat of *dismissal*, or by any kind of threat or by imposition of a penalty, or by giving or offering to give a wage increase or any other favourable alteration of terms of employment, or by any other means, seeks to induce a worker to refrain from becoming or continuing to be a member or officer of a trade union is guilty of unfair labour practice.'[73]

TERMINATION OF EMPLOYMENT WITHOUT REASON - EMPLOYMENT-AT-WILL

Act 651 came into force in 2003. The pre-2003 position of the law was that a contract of employment is not a contract of servitude. Both the employer and the employee were at liberty to terminate the contract at any time without assigning any reason. This position is referred to as the traditional rule as was clearly stated by the court in the case of *Kobi v Ghana Manganese Co Ltd*[74] that,

[71] *George Akpass* supra note 189 at p 20.
[72] Labour Act 2003, (Act 651) at section 30 (3) of the.
[73] Ibid at section 127 (2).
[74] [2007-2008] SCGLR 771**.**

> 'The traditional rule in employer-employee relationship, relied upon by the Court of Appeal (in the instant case) is that in dispensing with the services of an employee, an employer is at perfect liberty to either give or refuse to give reasons. However, in exercising that right, fairness must be the watchword.'[75]

Again, the traditional rule was further elucidated in the case of *Aryee v State Construction Corporation*[76] where *the* court stated as follows:

> 'It should be noted that a contract of service is not a contract of servitude. To say, as we are wont to do, that it gives rise to a master-servant relationship is to distort reality. The employee is not the servant; in the popular sense, of the employer. He is merely his employee. The contract is framed in such a way that either party may bring it to an end and free himself from the relationship painlessly. In this case, the defendant could at any time give the relevant three months' notice (or forfeit an equivalent in salary) and leave the corporation, without justifying his action to the corporation. He need not give any reason for his action nor is the corporation entitled, if he should give one, to satisfy itself that the reason is true or false, sufficient or insufficient, justified or unjustified. In the same way it would seem to us that the corporation need not assign any reason for choosing to terminate their contract with the defendant. The contract merely requires that the corporation gives three months' notice (or its equivalent in salary), and their conduct will be perfectly in order.'[77]

Thus, even after the promulgation of the Labour Act in 2003, the Ghanaian courts have interpreted and enforced the employment-at-will theory. In doing so, the courts hold a similar or same view to the doctrine of employment-at-will, which entitles the employer to discharge an employee for a good cause, a bad cause, or

[75] Ibid at holding 3.
[76][1984-86] 1 GLR 425 CA,
[77] Ibid per Adade, JSC at page 432.

no cause at all, without any contractual limitations. The courts have confirmed that an employer can terminate the employment of a worker without reason, but a dismissal must always be accompanied by a reason. In the case of *Kobea v Tema Oil Refinery,*[78] the judgment was delivered on 29th April 2004 when Act 651 came into force. The Supreme Court said,

> '… an employer is legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons, provided only that he gives due notice to the employee or pay him his wages in lieu of notice. He does not have to reveal his reason, much less justify the termination…' On dismissal, the court stated that '…At common law, an employer may dismiss an employee for many reasons such as misconduct, substantial negligence, dishonesty, etc.… these acts may be said to constitute such a breach of duty by the employee as to preclude the further satisfactory continuance of the contract of employment as repudiated by the employee…'[79]

The Court of Appeal confirmed this and further elucidated the differences between termination of employment and dismissal. The court held that 'dismissal is where an employee's appointment has been truncated based on his behaviour…. Dismissal is an embarrassment as the employee loses most of his benefits.'[80] Termination is not an embarrassment. Upon termination, the employee is entitled to her benefits. An employer may terminate the employment of her employee without any reason provided the required notice is given or the salary is paid in lieu of the notice per the collective agreement.[81] As previously stated, this theory always puts the employees in danger. Workers are still hired at will, and they can be fired for good reasons, terrible reasons, deceptive reasons, or no reason at all. However, the notion of employment at will has been toned down in America due

[78] [2003-2004] 2 SCGLR 1033.
[79] *Kobea v Tema Oil Refinery* [2003-2004] 2 SCGLR 1033 at p 1040.
[80] *Faustina Asantewaa & 7 ors v Registered Trustees of the Catholic Church of Koforidua.* [2016] 92 GMJ 176 (CA).
[81] Ibid.

to legislation, collective bargaining agreements, and judicial activism.[82] To limit the operation of the employment-at-will doctrine, courts have heard cases brought by employees who were fired at will and found the employers accountable on grounds of implied agreements of good faith and fair dealing, public policy, and whistleblowing.

A SHIFT TOWARDS REASONED TERMINATION OF EMPLOYMENT

Even before the shift from the traditional rule, the Labour Act has provided the grounds for the termination of an employment contract. These include a mutual agreement between the employer and the worker; by the worker on grounds of ill-treatment or sexual harassment; on the death of the worker, on medical grounds, inability of the worker to carry out work due to sickness or accident; or incompetence or proven misconduct of the worker.[83] That aside, Act 651 provides for a novel concept of fair and unfair termination of employment. Thus, section 62 of the Act provides that, 'A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds; (a) that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed; (b) proven misconduct of the worker and (c) redundancy under section 65.' Further, section 63(4) also states that 'A termination may be unfair if the employer fails to prove that, (a) the reason for the termination is fair, or (b) the termination was made in accordance with a fair procedure or this Act'. The foregoing statutory provisions impose a duty on the employer to provide justification or reasons for the termination of employment. To fairly terminate an employment contract, the reason must be incompetence of the worker or lack of relevant skills to do the work, misconduct, and insolvency.

Notwithstanding the statutory provision stating the reasons for fair termination of employment and the grounds on which an employer can terminate the employment of a worker, the courts have relied rather on the procedure for terminating employment to hold that an employer can terminate the employment of a worker without giving any reasons. The procedure is that the employer must give

[82] op cit note 43.
[83] Labour Act 2003 (Act 65) at section 15.

appropriate notice or pay wages in lieu of notice.[84] However, the reason for termination must be based on the grounds stated in the Labour Act.

The first step in discarding the traditional notion that employment can be terminated without reason was mooted in the case of *Kobi v Ghana Manganese Co. Ltd,*[85] where Ansah JSC explained that**:**

> 'It was time the 'traditional rule' epitomized by *Aryee v State Construction Corporation* (supra), was re-considered because it had the potential of resulting in oppression by the employer and creating docility in the employee. With the fear of losing his job at anytime depending on the whims and caprice of his employer who may dismiss him at will, staring at him perpetually, the worker enjoyed no security of tenure. He would become a malleable tool in the hands of his master and do his bidding. However, his consolation was that a collective agreement may require that the employer could only terminate an employment; upon certain contingencies, namely, the employee being found guilty of an offence in a schedule of offences in the collective agreement; or the laws of the land or statute regulating employment in the land for the time being; or declared redundant under special conditions'.[86]

At the time of delivering this judgment, the Labour Act was in force. However, it does appear that the traditional rule was deeply ingrained in the mind of the court so much that the court failed to identify the changes introduced in Act 651. This really shows a defect in our judicial system as the judge failed to apply the law and also counsels equally failed to bring the court's attention to the current position of the law. Thus, a departure from the traditional approach ought to have occurred in the labour jurisprudence in Ghana more than a decade earlier.

Even so, it is contended that the position taken by the Supreme Court in the *Kobea v Tema Oil Refinery* (supra) cannot be the correct position of the labour law of

[84] Ibid at section 17.
[85] [2007-2008] SCGLR 771**.**
[86] Ibid at pages 794-795.

Ghana at the time the decision was made. Indeed, the Labour Act had made serious incursions in the common law principle of employment at-will and such changes clearly eluded the learned justices and they held on rigidly to the outdated law. With the coming into force of the Labour Act in 2003, the employer is no longer legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons. It is argued that the employer rather required to satisfy the grounds of termination before meeting the procedure of termination which is by way of giving notice for a defined period before the termination takes effect or payment of salary in lieu of notice.

Indeed, the labour law recognizes mutual agreement between the employer and employee to terminate the employment at their own convenience. In that case, there was no need for either party to state the reason for terminating the employment for their own convenience provided they complied with the appropriate notice period. In *Bannerman-Menson vs. Ghana Employers' Association*[87], the terms of employment of the parties stated that either party may terminate the relationship by giving six months' notice. The employer gave six months' notice of its intention to retire the appellant. The appellant was dissatisfied and sued subsequently. Aikins JSC explained the legal position in such contracts of mutual agreement as follows:

> '… the appellant's conditions of service states that the contract was terminable by six months' notice on either side... the appellant could terminate the appointment by giving his employers six months' notice if he decided to, without giving any reasons. So were the respondents entitled to dispense with the appellant's services by giving him six months' notice. This conforms with equitable principles. The respondents exercised their right in giving the appellant six months' notice to retire from the services of the association…. The respondent owed no other obligation to the appellant. …

[87] [1996-97] SCGLR 417.

> To me, it is of no consequence if the respondents gave as a reason for the termination of the appellant's employment the fact that he had reached the age of 60 years. What is important is the mutual agreement of the parties that the contract of employment could be determined by giving six months' notice of intention to do so. I think the appellant was labouring under a serious illusion in assuming that this appointment was terminated for reaching the retirement age at 60 years. The respondents were under no obligation to give him reasons for his termination.'[88]

A precursor to the departure from the traditional rule was initiated by the Ansah JSC in *Kobi v Ghana Manganese Co. Ltd* (supra). The learned jurist stated that,

> 'The passing of the new Labour Act, 2003 (Act 651), has brought relief to the employee, for now there are statutory duties and rights of the employer and the employee. The right to terminate employment does not depend on the whims of the employer. Sections 62-66 of the Act are sub-titled; "Fair and Unfair Termination of employment". And section 63 of the Act headed; "Unfair termination of employment" explains in its subsections (2)-(4) what constitutes unfair termination of employment. Thus, under section 63(4), a termination may be unfair if the employer fails to prove that the reason for termination is fair, or it was made in accordance with a fair procedure under the Act.'[89]

About a decade and a half later, a complete departure from the traditional rule of termination of employment to absolute compliance with the reasons and grounds of termination of employment stated in the labour law and the collective bargaining agreements was boldly mooted in the recent case of *George Akpass vs. Ghana Commercial Bank ltd.*[90] The court explained that,

[88] Ibid at pages 422-423.
[89] *Kobi v Ghana Manganese Co Ltd* [2007-2008] SCGLR 771 at page 794
[90] [2021] DLSC10768 at p 18.

> 'Where the termination is not by mutual agreement and the employer is compelled to terminate on other grounds provided for in the contract of employment such as ill-treatment or sexual harassment, medically unfit for the employment or inability of the worker to perform his role due to sickness, disability, incompetence or lack of qualification for the position employed or other reasons which do not merit summary dismissal, then the protocol envisaged under Act 651 is that the reasons for the termination must be clearly stated and must be seen to be fair. This is because though the employer has the power by contract and law to terminate on those grounds, that power has been curtailed by statute and can no longer be exercised arbitrarily or capriciously. It must justifiably be substantively and procedurally seen to be fair.'[91]

In the opinion of Pwamang JSC, the learned jurist completely gave a lethal blow to the traditional rule of termination of employment when he stated that,

> 'On account of the provisions of Act 651 referred to by Ansah, JSC and the analysis I made above, my clear thinking is that, the Ghanaian cases that held that the employer has a right to terminate the employment of a worker for no reason and that there can be no specific performance of a contract of employment are no longer good law. The cases include Kobea v Tema Oil Refinery (supra), Lt. Col. Ashun v Accra Brewery Ltd. [2009] SCGLR 81 and Aryee v State Construction Corporation (supra).'

It is now settled that an employer must assign a justifiable reason for the termination of the employment of her worker. The traditional rule which empowered employers to terminate the contract of employment without reason is finally laid to rest. It is now unlawful to terminate employment without reason(s). This decision undoubtedly sighs relief to workers who were malleable and docile in the hands of their employers for fear of losing their jobs. The injustices suffered by employees under the traditional rule have given way to alms-length

[91] Ibid at p 17.

employment relations, which by all indications shall render just and fair labour relations. Workers can assert their right to demand reasons for termination of their employment and may resort to the court for appropriate remedy.

CONCLUSION

This paper examined the history of employment relations and the employer's right to terminate the employment vis-à-vis the interest of the employee. Several theories have evolved to determine the severance of employment relations. These include the elective theory, the automatic theory, the Mutuality of Obligations Doctrine and Termination of Employment Contract theory, the employment-at-will theory and the statutory theory of termination of employment. The paper examined these theories and their application in Ghana, particularly the common theory of employment-at-will. It was observed that Ghanaian case law has been largely influenced by the employment-at-will theory with its underlying principle of master-servant relation in contracts of employment. The case law before and even after the passage of the Labour Act was extensively guided by the traditional rule, which encapsulates the employment-at-will and the master-servant relations. This rule empowered employers to terminate the employment of their employees without giving reason(s).

The overarching quest for human rights and dignity has compelled many civilized nations to regulate employment relations to reduce the overbearing power an employer wields in employment relations relative to the employee. Over the years, employment relations have shifted from relation of servitude to contractual relations with statutory implied terms. The ILO Termination of Employment Convention, enacted in 1982, set the international standard which member countries were required to incorporate in their national employment laws. The Labour Act 2003, (Act 651) was largely influenced by the provision in the ILO Convention on Termination of Employment despite the fact that Ghana has not yet ratified Convention 158. The Labour Act provided for the grounds of termination of employment tailored along the ILO Convention 158. Besides, the Act introduced a novel concept of fair and unfair termination of employment. A termination of employment is fair if the reason for termination is incompetence of

the worker, misconduct or insolvency. Notwithstanding these statutory incursions aimed at undoing the traditional rule of termination of employment, case law held on to the theory of employment-at-will and justified termination of employment without reason. The courts rather ensured that the procedural fairness of termination of employment characterized by an appropriate notice period or payment of salary in lieu of notice was strictly adhered to. What is even more stunning is the fact that the collective agreement negotiated between employers and labour unions contained provisions that entitle an employer to terminate the employment contract without reason except for complying with the notice period or payment of salary in lieu of notice. The Supreme Court has recently righted the judicial wrongs in the past in relation to termination of employment and laid to rest the traditional rule that employment can be terminated without reason. With this decision, Ghana has fallen in line with its counterparts in civilized countries that uphold the rights and dignity of workers in employment relations.

It is recommended that labour unions revisit the collective agreement entered into with their employers to amend the provision which empowers the employer to terminate an employment contract without giving any reason. The expositions in this paper should empower employees to assert their right against termination of contract without giving reason(s) in law. The proactiveness of the judges to tow along the new decision of the Supreme Court with regard to the requirement to give reasonable grounds for the termination of employment will definitely uphold the rights and dignity of Ghanaian workers.

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TOWARDS ACHIEVING THE PURPOSES OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) FOR THE IMPROVEMENT OF HUMAN RIGHTS PROTECTION IN NIGERIA: ESSENTIALITY AND NECESSITY OF EFFECTIVE DOMESTIC ENFORCEMENT INSTITUTIONS

Irene Airen Aigbe[1] & Anthony Cosmas Essiet[2]

ABSTRACT

Corruption violates human rights and manifests in many forms including embezzlement, bribery, and money laundering. It is a crime which includes economic and financial crimes. It exists in every country of the world including Nigeria. The United Nations Convention against Corruption (UNCAC) 2003 was the direct legal response to prevent and combat the menace. The bulk of enforcement of the UNCAC is the duty of the State Parties *via* the domestic system but Nigeria has yet to domesticate same. This paper makes a case for the essentiality and necessity of effective domestic enforcement institutions in Nigeria towards achieving the purpose of the UNCAC.

Keywords: Corruption, Embezzlement, Bribery, Money Laundering, Public Procurement, Fiscal Responsibility, Human Rights

INTRODUCTION

Corruption is an issue in the full enforcement and enjoyment of human rights; and this prompted the United Nations General Assembly (UNGA) in the preamble to Resolution 58/4 of 31 December 2003 to be "Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies,

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undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law."[3] Prasad and Eeckeloo traced the link between corruption and human rights by stating that:

> Corruption is also a major obstacle to the observance and implementation of human rights, both as objective standards and as subjective rights. Corruption undermines the basic values of human dignity, equality, and freedom for all, but in particular those whose rights are already wrongfully curtailed such as people living in poverty and those who are disadvantaged or otherwise marginalized. It also destabilizes democracy, good governance, and the administration of justice.[4]

Prasad and Eeckeloo[5] affirm that corruption is a threat to the full enjoyment of civil and political rights on the one hand and socio-economic rights on the other.

Corruption is one malady that has infected and adversely affected all aspects of the domestic system that it is now a threat to international peace, security, businesses, welfare, and cohesion.[6] Corruption has its tap roots in the domestic system but is sustained by the foul waters of the international system. The United Nations Convention against Corruption (UNCAC) 2003[7] is the signal of the universal acknowledgement that corruption is a global issue and that it is a threat to the peace and stability of the international system. Unfortunately, the Convention does not

[3] UNGA Resolution 58/4 of 31 December, 2023, preamble.
[4] Divya Prasad and Lazarie Eeckeloo, *Corruption and Human Rights.* (Geneva Academy and Center for Civil and Political Rights, 2019), 9.
[5] Ibid, 12-24
[6] Kofi A. Annan, Foreword to the United Nations Convention Against Corruption (UNCAC) 2003, iii-iv. Available at www.unodc.org/documents/... Accessed on 2 January 2023; Ngozi Okonjo-Iweala, *Fighting Corruption is Dangerous: The Story Behind the Headlines*. (The MIT Press, 2018), 83-105; Maxwell M. Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?' of 8 December 2023, 7-22, being a paper presented at a one-day Symposium organized by the Bwari Branch of the Nigerian Bar Association (NBA) to mark the 2023 Anti-Corruption Day.
[7] United Nations Office on Drugs and Crime (UNODC), *United Nations Convention against Corruption (UNCAC) 2003*. Available at www.unodc.org/documents/... Accessed on 2 January 2023.

define corruption. Maybe it is taken for granted that the concept of corruption has attained a universal meaning that cannot be faulted. The UNCAC 2003, however, touches on such issues as bribery in the public and private sectors; bribery of foreign public officials and officials of public international organizations; embezzlement, misappropriation or other diversion of property by a public official; trading in influence; abuse of functions; illicit enrichment; embezzlement of property in the private sector; laundering of proceeds of crime; concealment; obstruction of justice; participation and attempt; etc.[8] From the foregoing, though the Convention does not explicitly define corruption, the substance of corruption is not in doubt. As a result, the State Parties to the Convention acknowledged and were concerned about:

> [t]he seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law;
>
> [t]he links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering.[9]

The effects of corruption are so corrosive that international attention was drawn to them *via* the Convention and ways of tackling them, to reduce their effects in society. The Convention is the first global multilateral legal instrument aimed at preventing and combating corruption. Though corruption has global effects, the menace seems to have strong roots in Africa and other developing economies. According to Annan:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

[8] UNCAC 2003, arts. 16-20; 22-25 and 27.
[9] Ibid, paras. 3 and 4 to the preamble.

> This evil phenomenon is found in all countries — big and small, rich and poor — but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.[10]

Nigeria has had a large share in the menace of corruption as can be affirmed from events during the military era prior to 1999 and more in our democratic experience since 1999. Gidado lists and explains twenty-two high profile cases of corruption, in a document of twenty-three pages, in Nigeria.[11]

Earlier on 29 September 2003, the United Nations Convention against Transnational Organized Crime (UNCATOC) had already entered into force. Unfortunately, the UNCATOC only focused on financing transnational organized crimes, which is only an aspect of the menace of corruption. Before the UNCAC, there were regional efforts to tackle the menace of corruption *via* legal and institutional frameworks. The regional multilateral instruments for the prevention and combat of corruption include the following:

> [t]he Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996; the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organization for Economic Cooperation and Development on 21 November 1997; the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on

[10] Annan, Foreword to the UNCAC 2003.
[11] Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?,' 2023, 7-14.

> 27 January 1999; the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999; and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.[12]

The regional efforts at preventing and combating corruption have not been successful, especially in Africa, where the virus seems uncontrollable. According to Ribadu:

> Between 1960 and 1999, Nigerian officials had stolen or wasted more than $440 billion. That is six times the Marshall Plan, the total sum needed to rebuild a devastated Europe in the aftermath of the Second World War. When you look across a nation and a continent riddled with poverty and weak institutions, and you think of what this money could have done – only then can you truly understand the crime of corruption, and the almost inhuman indifference that is required by those who wield it for personal gain.[13]

Ribadu made the above statement fifteen years ago but the menace of corruption is yet to be adequately tamed in Nigeria. The evil and extent of corruption are well known everywhere but the political will to tackle it comprehensively, especially in Africa, seems to be lacking. This is evident in the brazen manner in which perpetrators of this crime still have a field day in Nigeria.

The protection of human rights has been the concern of the international community and at the front burner of international discourse since 1945 with the entry into force of the following international instruments on human rights: Universal Declaration of Human Rights (UDHR) 1948;[14] Charter of the United Nations 1945;[15] the International Covenant on Economic, Social and Cultural

[12] UNCAC 2003, para. 15 to the Preamble.
[13] Nuhu Ribadu, 'Capital Loss and Corruption: The Example of Nigeria,' Testimony before the House Financial Services Committee, Centre for Global Development, 19 May 2009, 9. Available at www.cgdev.org/publications/... Accessed on 2 January 2023.
[14] UN General Assembly Res. 217A (III), UN Doc - A/810 at 71 of 10 December 1948.
[15] Treaty Series (TS) 993 of 26 June 1945, art. 1 (3).

Rights (ICESCR) 1966;[16] and the International Covenant on Civil and Political Rights (ICCPR) 1966.[17] In Nigeria, starting from the independence constitution in 1960 to the current Constitution of the Federal Republic of Nigeria (CFRN) 1999, human rights have been recognized as fundamental and enshrined since then in the constitution for the benefit of her citizens and all within her territory.[18] The examination of the subject of the protection of human rights within the context of corruption has, however, evaded the radar of academic discourse until the manifestation of recent realities of the effect of corruption on the protection of human rights.[19] This paper seeks to examine the purposes of the Convention and make a case for the imperativeness of effective domestic enforcement institutions in achieving the purposes of the Convention in Nigeria, bearing in mind that effective legal and institutional frameworks are the foundations for effective enforcement.

This paper adopts the doctrinal research method in the examination of the purposes of the United Nations CAC 2003 by emphasizing the essentiality and necessity of strong, independent, creative, and result-oriented democratic and enforcement institutions for the prevention and combat of corruption aimed at the protection of human rights in Nigeria. This method examines primary sources[20] like treaties, domestic legislations, statutes and case law on the subject of corruption *vis-à-vis* the protection of human rights in Nigeria. It also examines secondary sources like legal texts and articles on the subject. This paper is limited to a narrative within the ambit of the law. We agree with Almog that the interpretation of the law is immersed in the narrative and that narrative, as a legal genre, is a unique genre.[21] Almog has, however, warned that narrative in law is constrained by the rules of

[16] 993 UNTS 3 of 16 December 1966. It entered into force on 3 January 1976.
[17] 993 UNTS 171 of 16 December 1966. It entered into force on 23 March 1976.
[18] Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), ss. 33-46.
[19] Chinua Achebe, *There was a Country: A Personal History of Biafra*. (Allen Lane, 2012); Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?,' 2023.
[20] Catherine Dawson, *Introduction to Research Methods: A Practical Guide for Anyone Undertaking a Research Project* (4th edn. How to Content, 2009), 1-158; Khadijah Mohamed, 'Combining Methods in Legal Research,' [2016] 11 (21) *The Social Sciences Journal*, 5191-5194.
[21] Shulamit Almog, 'As I Read, I Weep: In Praise of Judicial Narrative,' [2001] 26 (2) *Oklahoma City University Law Review*, 471-501.

law and procedure.[22] We have limited ourselves, in our narrative in this paper, to decided cases in court and the law establishing the anti-corruption institutions in Nigeria. We also adopt Murray's explanatory synthesis and the TREAT paradigm [23] in our assessment of statutes and case law in relation to the effectiveness of the anti-corruption institutions in Nigeria. Nigeria is a constitutional democracy where the constitution is the supreme law of the country. [24] The domestic enforcement institutions against corruption are all creations of the constitution and derive their powers therefrom.

This paper is divided into eight sections. Section one is the introduction which lays the groundwork and introduces the subject of discussion. Section two introduces the concept of human rights though in a very limited way, especially for beginners. Section three takes on the UNCAC 2003 as it relates to the prevention and combat of corruption. Section four discusses the effects of corruption on human rights in Nigeria. Section five deals with the domestic legal framework creating enforcement institutions in Nigeria. Section six discusses the challenges of the enforcement institutions in preventing and combating corruption in Nigeria. Sections seven and eight take care of the recommendations and conclusion respectively.

THE CONCEPT OF HUMAN RIGHTS

Human rights are rights that inure in favour of the human being only because he or she is a human being and they are fundamental to civilized living by human beings. Human rights are not the creation of the law by way of treaties or domestic legislation. In *Saude v. Abdullahi*,[25] the Supreme Court of Nigeria (SCN) held that: "Fundamental human rights are important and they are not just mere rights. They are fundamental. They belong to the citizen. These rights have always existed even before orderliness prescribed rules for the manner they are to be sought." The

[22] Ibid, 472-473.
[23] Michael D. Murray, 'Classical Rhetoric, Explanatory Synthesis, and the TREAT Paradigm,' [2007] *University of Illonois College of Law* (Law and Economics Working Paper No. 75), 1-69.
[24] CFRN 1999 (as amended), s. 1; *Marwa & Ors. v. Nyako & Ors.* (2012) LPELR 7837.
[25] (1989) 4 NWLR (Pt. 116) 387 at 419.

nature of human rights was explained by the SCN in *Ransome-Kuti v. Attorney-General of the Federation* [26] thus:

> But what is the nature of a fundamental human right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is primary condition to a civilized existence and what has been done by our Constitutions since independence, starting with the independence Constitution, that is, the Nigeria (Constitution) Order in Council 1960, up to the present Constitution, that is, the Constitution of the Federal Republic of Nigeria, 1979 … is to have these rights enshrined in the Constitution so that the rights should be 'immutable' to the extent of the 'non-immutability' of the Constitution itself.[27]

In conventional terms, human rights have been segregated into three generations, reflecting the grouping of human rights into clusters: civil and political rights; socio-cultural rights; and group rights which include the right to environment.[28]

The protection of human rights, as a primary condition for civilized existence, cannot be fully realized in Nigeria with the prevalence of corruption. That becomes more challenging especially where the institutions established to prevent and combat corruption are not effective.[29]

UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) 2003

As stated earlier, the UNCAC 2003 is the first global multilateral legal instrument aimed at preventing and combating corruption at the level of the United Nations.

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[26] (1985) 2 NWLR (Pt. 6) 211.
[27] Ibid, at 229-230.
[28] Malcolm N. Shaw, *international Law* (6th edn., Cambridge University Press, 2008); Prasad and Eeckeloo, *Corruption and Human Rights*, 2019; UNODC, *Knowledge Tools for Academics and Professionals*.
[29] Fola Arthur-Worrey, *The Prosecutor in Public Prosecutions*. (Lagos State Ministry of Justice Law Review Series, 2000), 5; Lawrence Asekome Atsegbua, Violet Omon Okosun Aigbokhaevbo and Sunday Omokhudu Daudu, *Criminal Law in Nigeria: A Modern Approach* (Justice Jeco Printing & Publishing Global, 2012), 8.

The Convention was adopted by the General Assembly of the United Nations on 31 October 2003 at United Nations Headquarters in New York. It was open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005, in accordance with article 67 (1) of the Convention. The Convention was also open for signature by regional economic integration organizations provided that at least one member State of such organization had signed the Convention[30] in accordance with its provisions. The Convention entered into force on 14 December 2005.[31]

Nigeria signed the Convention on the 9 December 2003 and ratified same on the 14 December 2004.[32] Nigeria has, however, not yet domesticated the Convention in accordance with the provisions of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).[33]

The Convention has seventy-one articles and grouped into eight chapters. Chapter I contains the general provisions; Chapter II contains the preventive measures; chapter III takes care of criminalization and law enforcement. Chapter IV is concerned with international cooperation while chapter V deals with asset recovery. Chapter VI is the technical assistance and information exchange; chapter VII is concerned with mechanisms for implementation; and the last chapter takes care of the final provisions.

The purposes of the Convention are the following: a. To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; b. To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and c. To promote integrity, accountability and proper management of public affairs and public property.[34]

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[30] UNCAC 2003, art. 67 (2).
[31] Ibid, art. 68 (1); United Nations Office on Drugs and Crime (UNODC), 'Ratification Status of the UNCAC 2003,' 2003. Available at www.unodc.org/unodc/en/corruption/ratification-status. Accessed on 2 January 2023.
[32] UNODC, 'Ratification Status.'
[33] CFRN 1999 (as amended), s. 12 (1).
[34] UNCAC 2003, art. 1.

The Convention (2003, art. 3), however, has an expanded scope of application thus:

> This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.
>
> For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.[35]

The enforcement of the Convention is the duty of the States Parties. Therefore, each State Party is to enforce the Convention at the domestic level with the mutual assistance and cooperation of other States Parties. That is even one of the rationales for addressing each article of the Convention to either the State Party individually as "Each State Party shall, in accordance with the fundamental principles of its legal system, …" or States Parties collectively as "States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, …."[36] It is the function of the criminal law to prevent crime by means of appropriate punishment of the guilty, or the prevention of the commission of a crime;[37] and the domestic criminal justice system is the best in such endeavours.

In accordance with the purposes and scope of application of the Convention, Nigeria has put in place measures to curb the menace of corruption in the country.

EFFECTS OF CORRUPTION ON THE PROTECTION OF HUMAN RIGHTS IN NIGERIA

Many authors have undertaken studies, within the context of the law, on the above issue[38] while others have carried out their studies outside the context of the law but

[35] Ibid, art. 3 (1)-(2).
[36] Ibid, art. 5 (1-3 and 5) respectively.
[37] Timothy Akinola Aguda and Isabella Okagbue, *Principles of Criminal Liability in Nigerian Law* (2nd edn. Heinmann Educational Books Nigeria PLC, 1990), 5.
[38] F. Dimowo and S. O. Daudu, 'Corruption and its Challenges to the Nigerian Economy: A Discuss,' [2010-2012] 13 (1) *University of Benin Law Journal*, 250-265; Femi Odeahan, 'An Appraisal of the Decision in *Alhaji Tajudeen Adewale Adelekan & 23 Ors. v. Central Bank of*

with relevance to the general socio-economic implications of the effects of corruption.[39] The CFRN 1999 provides that the security and welfare of the people shall be the primary purpose of government.[40] It further provides for the human rights and the procedures for the enforcement of those rights when there is a violation.[41] The first effect of corruption on human rights is manifested in the right to life which is the most fundamental of all human rights. All other human rights depend on the right to life because it is the living that can claim those other human rights. Where a country, like Nigeria, cannot provide the three basic needs of food, shelter and clothing for her citizens, it calls to question the operational viability of enforcing the primary purpose of government mentioned above. This is even more devastating where there is evidence of international cooperation in committing acts of corruption in Nigeria.[42]

Corruption has effects on every aspect of life in Nigeria including life expectancy, quality health, critical infrastructure, elections, public administration, etc. Corruption affects both procedural and substantive human rights in Nigeria. The enforcement institutions have a bigger role to play in preventing and combating corruption so as to effectively protect human rights in Nigeria.

Nigeria (2017 11 NWLR (Pt. 1575) page 1 and its Legal Implications on Unilateral and/or Organized Acts of Economic Sabotage in Nigeria's Public Sector,' [2023] (3) *Capital Bar Law Journal*, 27-44; Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?,' 2023.

[39] Achebe, *There was a Country*, 149-253; Gabriel O. Arishe, *Developing Effective Legislature: The Country Specific Approach to Assessing Legislative Power* (Paclerd Press Ltd., 2017), 417-419; Okonjo-Iweala, *Fighting Corruption is Dangerous*, 27-139.

[40] CFRN 1999, s. 14 (2) (b).

[41] Ibid, ss. 33-46.

[42] (*Alh. Tajudeen Adewale Adelekan & 23 Ors. v. Central Bank of Nigeria* [2017] 11 NWLR (Pt. 1575) 1; *Federal Republic of Nigeria v. Process & Industrial Development Ltd* [2020] EWHC 2379 at 226.

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DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORKS TO PREVENT AND COMBAT CORRUPTION IN NIGERIA

Apart from the traditional Criminal Code Act[43]and the Penal Code Act,[44] there is a plethora of domestic and institutional legislations in Nigeria that seek to prevent and combat corruption. The Criminal Code Act, which is generally applied in the southern part of the country, criminalizes corruption by public officers employed in the public service.[45] Any such public officer who engages in those prohibited corrupt acts or omissions commits a felony and is liable to imprisonment for between three to seven years. In addition, the Act criminalizes obtaining by false pretence, which is also a felony, and carries a penalty of three years imprisonment on conviction.[46] This offence is generally known as '419' and which, incidentally, tallies with the section of the Act. The Penal Code Act, which is generally applied in the northern part of the country, also criminalizes fraudulent or dishonest inducement, which is also known as cheating.[47]

Some preventive and combat legislation are:

Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) (Cap. C23 LFN 2004)

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) has many provisions that aim at preventing corruption.[48] For example, the political, economic, social and educational objectives in the Constitution are all aimed at preventing corruption in Nigeria.[49] The Constitution specifically mandates the States to abolish all corrupt practices and abuse of power.[50] Again, on the government and the people, the Constitution declares that:

[43] Cap. C38, Laws of the Federation of Nigeria (LFN) 2004.
[44] Cap. P1, LFN 2004.
[45] Criminal Code Act (CCA), s. 98. The whole of chapter 12 of the CCA is titled 'Corruption and Abuse of Office. That chapter runs from sections 98 through 111.
[46] Criminal Code Act (CCA), s. 419.
[47] PCA, s. 321.
[48] CFRN 1999 (as amended), ss. 15-18.
[49] Ibid.
[50] Ibid, s. 15 (5).

> The composition of the Government of the Federation or of any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government or in any of its agencies.[51]

There is equivalent provision above for the States and their agencies; and for the local government councils and their agencies.[52]

The Constitution also established certain Federal Executive Bodies[53] to enhance transparency and accountability in governance. Some of the Federal Executive Bodies are relevant in the prevention and combat of corruption in Nigeria, which include: Code of Conduct Bureau; Council of State; Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission; National Judicial Council; Nigeria Police Council; Police Service Commission; and Revenue Mobilization, Allocation and Fiscal Commission. The Constitution equally established Certain State Executive Bodies[54] in the each of the States of the Federation and specifically provides that:

> In appointing Chairmen and members of boards and governing bodies of statutory corporations and companies in which the Government of the State has controlling shares or interests and councils of Universities, Colleges and other institutions of higher learning, the Governor shall conform with the provisions of section 14 (4) of thee Constitution.[55]

[51] Ibid, s. 14 (3).
[52] Ibid, s. 14 (4).
[53] Ibid, s. 153.
[54] Ibid, s. 197 (1).
[55] Ibid, s. 197 (3).

The sections of the constitution referred to above grants active and inclusive participation for all citizens of the State in the political and administrative affairs of their respective States so as to foster a sense of belonging and loyalty among all the peoples of the Federation. The appointment of chairmen and members of the above Federal Executive Bodies is done by the President and the appointments, in some of the bodies, are subject to confirmation by the Senate,[56] which is the Upper Legislative Chamber of the National Assembly in Nigeria. Furthermore, the removal of members of the Code of Conduct Bureau, the Federal Civil Service Commission, the Independent National Electoral Commission, the National Judicial Council, the Federal Civil Service Commission, the Federal Character Commission, the Nigeria Police Council, the National Population Commission, Revenue Mobilization, Allocation and Fiscal Commission, and the Police Service Commission is subject to an address by the President, supported by two-thirds majority of the Senate, praying that such a member be so removed for inability to discharge the functions of the office or for misconduct. [57] In addition, the independence of these bodies, in the exercise of their power to make appointments or to exercise disciplinary control over persons, is guaranteed under the Constitution.[58]

Some of the above statutory bodies have the capacity to prevent corruption and combat same in an administrative manner. For example, the Code of Conduct Bureau is crucial in the prevention and combat of corruption in the public service of the country because every person in the public service of the federation and of each of the States is under obligation to observe and conform to the Code of Conduct.[59] The Code of Conduct, by way of Declaration of Assets before assuming office, also applies to elected and appointed public office holders and politicians to any office in the federation and the States. [60] Though a creation of the Constitution, the functions and powers of the Bureau are further explained *via* the

[56] Ibid, s. 154 (1).
[57] Ibid, s. 157 (1) - (2).
[58] Ibid, s. 158 (1)).
[59] Ibid, ss. 172 and 209 respectively.
[60] Ibid, ss. 52, 94, 149 and 185.

Code of Conduct Bureau and Tribunal (CCBT) Act 1991.[61] The aims and objectives of the Bureau are to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.[62] The CCBT Act prohibits certain acts by public officers which include: conflict of interest with duty; prohibition of foreign accounts; gifts or benefits of any kind; restriction on loans, gifts or benefits to certain public officers; bribery of public officers; abuse of powers; membership of societies that is incompatible with functions or dignity of office;[63] etc.

On the declaration of assets, the Act provides that every public officer shall submit to the Bureau a written declaration in a prescribed form of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.[64]

Any false statement in the declaration is a breach of the Act and any property or asset which is not fairly attributable to income, gifts or loan approved by the Act, is deemed to have been acquired in breach of the Act unless the contrary is proved.[65]

The functions of the Bureau are: to receive assets declarations by public officers; examine the assets declarations and ensure that they comply with the requirements of the Act and of any other law; take and retain custody of such declarations; and receive complaints about non-compliance with or breach of the Act and where the Bureau considers it necessary to do so, refer such complaints to the Code of Conduct Tribunal.[66] Accordingly, Act provides that:

> Where the Tribunal finds a public officer guilty of contravening any of the provisions of the Act, it shall impose upon that officer any of the punishments specified under subsection (2) of this section.

[61] Cap. C15, LFN, 2004.
[62] Ibid, s. 2.
[63] Ibid, ss. 5, 7, 10-14 respectively.
[64] Ibid, s. 15 (1).
[65] Ibid, s. 15 (2) - (3).
[66] Ibid, s. 3.

> The punishment which the Tribunal may impose shall include any of the following:
> (a) vacation of office or any elective or nominated office, as the case may be;
> (b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and
> (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.[67]

The Bureau has done well but can do better if it effectively implements the provisions of the law that created it. There is so much hype in Nigeria over the issue of declaration of assets and liabilities by public officers but this is only one of the functions of the Bureau. The Bureau seems to have abandoned its other functions as enumerated above. From the above, the Code of Conduct Bureau has the capacity to prevent and combat corruption, especially in the public service in the country. This can only be achieved where the Bureau and the Tribunal apply the provisions of the Act in full and in a consistent and transparent manner.

Another institution that can prevent and combat corruption in Nigeria is the Federal Character Commission.[68] The purpose of the Commission is to give effect to the equal rights of all citizens and all sections to actively participate in the governance structure of the Federation and the States.[69] The provision is aimed at checking nepotism, ethnicity, tribalism and the like in the governance structure of the Federation and the States or in any corporation where the government has controlling interests and shares. The Commission is made up of a chairman and one person representing each of the States of the Federation and the Federal Capital Territory, Abuja, as members.[70] That, in essence, means that every part of the Federation is represented in the Commission. The focus of the Commission is stated thus:

[67] Ibid, s. 23 (1) - (2).
[68] CFRN 1999 (as amended), s. 153 (1) (c).
[69] Ibid, s. 14 (3) - (4).
[70] Ibid, Third Schedule, para. 7 (1).

> In giving effect to the provisions of 14 (3) and (4) of this Constitution, the Commission shall have the power to:
> (a) work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the States;
> (b) promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;
> (c) take such legal measures, including the prosecution of the head or staff of any Ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission; and
> (d) carry out such other functions as may be conferred upon it by an Act of the National Assembly.[71]

The public officers in (a) and (b) above include the permanent secretaries, Directors-General in Extra-Ministerial Departments and parastatals, Directors in Ministries and Extra-Ministerial Departments, senior military officers, senior diplomatic posts and managerial cadres in the Federal and State parastatals, bodies, agencies and institutions.[72] The Commission is mandated to make sure that federal character is reflected in the appointments of directors and senior management staff of every public company or corporation.[73] It is also the duty of the Board of Directors of every State owned enterprise to recognize and promote the principle of federal character in the ownership and management structure of the company.[74] More elaborate provisions are made in the Federal Character Commission (Establishment, etc.) Act.[75] The Federal Character Commission has the potential

[71] Ibid, Third Schedule, para. 8 (1) (a) – (d).
[72] Ibid, Third Schedule, para. 8 (2).
[73] Ibid, Third Schedule para. 8 (3).
[74] Ibid, Third Schedule para. 9.
[75] Cap. F7, LFN, 2004.

to prevent and combat corruption in the allocation of posts and public offices in the management of the affairs of the Federation and the States.

Furthermore, the Federal Civil Service Commission and the Federal Judicial Service Commission play crucial roles in the appointment and discipline of persons to those offices that these Commissions have power to oversee. If their powers are exercised in a transparent and consistent manner, they prevent and combat corruption in the federal civil service and the federal judiciary in Nigeria.

From all the above analyses, the Constitution of the Federal Republic of Nigeria 1999 has, therefore, made copious provisions aimed at preventing and combating corruption in the country.

Public Procurement Act 2007 (Cap. P44, LFN, 2004)

In addition to the Constitutional safeguards against corruption, public procurement is another area where corruption reigns supreme.[76] In response, the National Assembly responded with a number of legislations not only for public procurement but for the whole system of transparent management of the national resources. These legislations are collectively referred to as the 'Due Process Legislations.' These legislations include: Public Procurement Act;[77] Fiscal Responsibility Act;[78] Allocation of Revenue (Federation Account, etc) Act;[79] and Finance (Control and Management) Act.[80]

The Public Procurement Act (PPA) 2007 is an Act of the National Assembly that established the National Council on Public Procurement (the Council) and the Bureau of Public Procurement (the Bureau) as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement

[76] Okonjo-Iweala, *Fighting Corruption is Dangerous*, 83-89; Gidado, 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?,' 1-23.
[77] Cap. P44, LFN, 2004.
[78] Cap. F40, LFN, 2004.
[79] Cap. A15, LFN, 2004.
[80] Cap. F26, LFN, 2004.

in Nigeria, and for related matters.[81] The Act has thirteen parts divided into sixty-one sections).

The Council is made up of the following persons and office holders as members:

(a) the Minister of Finance as Chairman;
(b) the Attorney-General and Minister of Justice of the Federation;
(c) the Secretary to the Government of the Federation;
(d) the Head of Service of the Federation;
(e) Economic Adviser to the President;
(f) Six part-time members to represent:
    (i) Nigerian Institute of Purchasing and Supply Management;
    (ii) Nigerian Bar Association;
    (iii) Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture;
    (iv) Nigerian Society of Engineers;
    (v) Civil Society;
    (vi) the Media; and
(g) the Director-General of the Bureau who shall be the Secretary of the Council.[82]

It can be concluded that the Council is made of the cream of public sector administrators, carefully chosen, based on their strategic relevance and capability to drive the aim of probity, accountability and transparency in public procurement so as to prevent and combat corruption in public procurement in Nigeria. The functions of the Council are in line with greater transparency and accountability in public procurement and are as follows:

(a) consider, approve and amend the monetary and prior review thresholds for the application of the provisions of this Act by procuring entities;
(b) consider and approve policies on public procurement;
(c) approve the appointment of the Directors of the Bureau;

[81] This is the Long Title of the Public Procurement Act, 2007.
[82] Public Procurement Act (PPA) 2007, s. 1 (2).

(d) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;
(e) approve changes in the procurement process to adapt to improvements in modern technology; and
(f) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.[83]

The Bureau, on the other hand, is the day-to-day implementing regulatory authority of the Act. The Council depends largely on the expertise and creativity of the Bureau for success. The overall objectives of the Bureau, in this regard, are:

(a) the harmonization of the existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;
(b) the establishment of pricing standards and benchmarks;
(c) ensuring the application of fair, competitive, transparent and value-for-money standards and practices for the procurement and disposal of public assets and services; and
(d) the attainment of transparency, competitiveness and professionalism in the public sector procurement system.[84]

The functions and powers of the Bureau, as spelt out in the Act, are very comprehensive and exhaustive.[85] For example, the Bureau has the power, where a reason exists, to inspect or review any procurement transaction to ensure compliance with the Act; debar any supplier, contractor or service provider that contravenes any provisions of the Act; maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish same in the procurement journal; and nullify the whole or any part of any procurement proceeding or award which is in contravention of the Act.[86] The

[83] Ibid, s. 2.
[84] Ibid, s. 4.
[85] Ibid, ss. 5 and 6.
[86] Ibid, s. 6.

Bureau also has the power to recommend to the Council, where there are persistent breaches of the Act or regulations made under it, for:

(h) the suspension of officers concerned with the procurement or disposal proceeding in issue;
(i) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the chairperson of the Tenders Board as the case may be;
(j) the discipline of the Accounting Officer of any procuring entity;
(k) the temporary transfer of the procuring or disposal function of a procuring and disposing entity to a third party procurement agency or consultant; and
(l) any other sanction that the Bureau may consider appropriate.[87]

As stated earlier, the Bureau has a lot of powers that are exercisable for the overall aim of preventing and combating corruption in public procurement in Nigeria.

The scope of application of the Act covers all procurement of goods, works and services carried out by the Federal Government of Nigeria and all its procurement entities. It also applies to all entities which derive at least 35% of the fund appropriated for any type of procurement described in the Act from the Federation share of the Consolidated Revenue Fund.[88] The Act does not, however, apply to the procurement of special goods, works and services involving national defence or national security unless the express approval of the President has been first sought and obtained.

The Act further makes provisions for fundamental principles for procurements to the effect that all public procurements are to be concluded subject to the prior review thresholds as may be set by the Bureau from time to time.[89] Other fundamental principles for public procurement are to be concluded:

> (b) based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized

[87] Ibid.
[88] Ibid, s. 15 (1).
[89] Ibid, s. 16 (1) (a).

> until hr procuring entity has ensured that funds are available to meet the obligations and subject to the threshold in the regulations made by the Bureau, has obtained a 'Certificate of 'No Objection' to Contract Award,' from the Bureau;
> (c) by open competitive bidding;
> (d) in a manner which is transparent, timely, equitable for ensuring accountability and conformity with this Act and regulations deriving therefrom;
> (e) with the aim of achieving value for money and fitness for purpose;
> (f) in a manner which promotes competition, economy and efficiency; and
> (g) in accordance with the procedures and timeline laid down in this Act and as may be specified by the Bureau from time to time.[90]

The fundamental principles for public procurement are many and cover twenty-eight subsections of the section 16 of the Act. The above few fundamental principles are cited to drive home the fact that the Act is very comprehensive, exhaustive and innovative in its provisions towards preventing and combating corruption in public procurement in Nigeria. In addition to the above, the Act also provides for the manner in which public procurement should be organized;[91] methods of public procurement for goods and services;[92] special and restricted methods of public procurement;[93] and procurement of consultant services.[94] The Act also provides for public procurement surveillance and review by the Bureau. By this provision:

> The Bureau may review and recommend for investigation by any relevant authority any matter related to the conduct of procurement proceedings by a procurement entity, or the conclusion or operation of a procurement contract if it considers that a criminal

[90] Ibid, s. 16 (1) (b) – (g).
[91] Ibid, Part V.
[92] Ibid, Part VI.
[93] Ibid, Part VII.
[94] Ibid, Part VIII.

> investigation is necessary or desirable to prevent or detect a contravention of this Act.[95]

Where the Bureau is satisfied that there is a contravention of any provisions of the Act, it has the authority to take action to rectify such contravention, which action includes:

(a) nullification of the procurement proceedings;
(b) cancellation of the procurement contract;
(c) ratification of anything done in relation to the proceedings; or
(d) a declaration consistent with any relevant provisions of this Act.[96]

The proposed actions above by the Bureau are not a bar to other criminal proceedings which are to be taken against the offending procuring entity.[97] A bidder, on the other hand, also has the right to seek administrative review for any omission or breach by a procuring or disposing entity under the provisions of the Act.[98]

The Act also applies to disposal of public property though subject to the Public Enterprises (Privatization and Commercialization) Act 1999.[99] The Act finally provides for the Code of Conduct for Public Procurement.[100] It further provides for offences and penalties relating to public procurement.[101] In each of the State of the Federation, there is an equivalent procurement regulator, generally referred to as State Procurement Bureau.

Fiscal Responsibility Act (FRA) 2007[102]

The Fiscal Responsibility Act (FRA) 2007 is an enactment of the National Assembly for the prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, secure greater accountability

[95] Ibid, s. 53 (1).
[96] Ibid, s. 53 (4).
[97] Ibid, s. 53 (5).
[98] Ibid, s. 54 (1).
[99] Ibid, s. 55
[100] Ibid, s. 57.
[101] Ibid, s. 58.
[102] Fiscal Responsibility Act (FRA) 2007, Cap. F40, LFN, 2004.

and transparency in fiscal operations within a medium-term fiscal policy framework, and establish the Fiscal Responsibility Commission (the Commission) to ensure the promotion and enforcement of the nation's economic objectives; and for related matters.[103]

The Act established the Commission, which is responsible for the enforcement of the provisions of the Act, with the power to:

(a) compel any person or government institution to disclose information relating to public revenues and expenditure; and
(b) cause an investigation into whether any person has violated the provisions of this Act.[104]

The Commission is mandated to forward a report of the investigation of any violation of the provisions of the Act to the Attorney-General for possible prosecution.[105] The whole Act is about transparency and accountability in the management of the nation's resources *via* the Medium-Term Expenditure Framework[106] which is the basis for the annual budget.[107] For the purpose of attaining transparency and accountability in fiscal and financial affairs, the Federal Government is mandated to ensure full, timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.[108] The National Assembly also has a role to play to ensure transparency in the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill.[109] The enforcement of the Act is stated thus: 'Any person shall have legal capacity to enforce the provisions of this Act by obtaining prerogative orders or other remedies

[103] That is the Long Title to the Act.
[104] FRA 2007, s. 2 (1).
[105] Ibid, s. 2 (2).
[106] Ibid, s. 11.
[107] Ibid, s. 18.
[108] Ibid, s. 48 (1).
[109] Ibid, s. 48 (2).

at the Federal High Court, without having to show any special or particular interest.'[110]

If the Fiscal Responsibility Act were effectively implemented by the Commission, the recurrent issues of budget padding and joggling of figures would be things of the past.[111] On the whole, the Act has the potential to prevent and combat corruption in the management of the nation's resources through transparency and accountability.

Apart from the legal frameworks discussed above, the other three modern prominent and traditional legal and institutional frameworks for the prevention and combat of corruption in Nigeria are: Corrupt Practices and other Related Offences (ICPC) Act 2003;[112] Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004;[113] and Police Act 2020.[114]

The above three National Assembly legislations tend more towards combating than preventing corruption in Nigeria. For example, the ICPC Act is an Act to prohibit and prescribe punishment for corrupt practices and other related offences.[115] The Act criminalizes corrupt acts such as gratification;[116] corrupt offers to public officers;[117] corrupt demand by persons;[118] fraudulent acquisition and receipt of property;[119] gratification by and through agents;[120] bribery of public officer;[121] etc. The Act established the Anti-Corruption Commission as its enforcement institution in collaboration with the Office of the Attorney-General.[122] Part of the

[110] Ibid, s. 51.
[111] Okonjo-Iweala, *Fighting Corruption is Dangerous*, 55-82; Arishe**,** *Developing Effective Legislature***,** 417-419.
[112] Cap. C31, LFN, 2004.
[113] Cap. E1, LFN, 2004.
[114] Cap. P19, LFN, 2004.
[115] Corrupt Practices and other Related Offences (ICPC) Act 2003, the Long Title to the Act.
[116] Ibid, s. 12.
[117] Ibid, s. 13.
[118] Ibid, s. 14.
[119] Ibid, ss. 15 and 16.
[120] Ibid, s. 20.
[121] Ibid, s. 21.
[122] Ibid, s. 10 (a).

general duties of the Commission, however, includes the prevention of corrupt practices in Nigeria.[123]

On the other hand, the Economic and Financial Crimes Commission (EFCC) functions as the institution for the enforcement and the due administration of all economic and financial crimes in Nigeria[124] and is also the designated the Financial Intelligence Unit (FIU) in Nigeria.[125] The special powers of the Commission includes acting as the coordinating agency for the enforcement of the provisions of the Money Laundering Act, the Advance Fee Fraud and other Related Offences Act, the Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, the Miscellaneous Offences Act, and any other law or regulation relating to economic and financial crimes, including the Criminal Code and the Penal Code.[126] The Act is a corruption combat legislation and the Commission is a corruption combat institution.

Finally, the police have the foremost duty to prevent and combat corruption as a crime in Nigeria.[127] This is because, as the primary law enforcement agency in Nigeria, the police have the powers to arrest and prosecute any person who is reasonably suspected of having committed an offence,[128] including corruption offences, in Nigeria.

In summary, and in line with the multiple domestic legislative frameworks to combat corruption, the institutions for combating the menace of corruption are also many in Nigeria. They include: the Attorney-General of the Federation and those of the States; the Corrupt Practices and other Related Offences Commission (ICPC); the Economic and Financial Corruption Commission (EFCC); the Nigeria Police Force; Code of Conduct Bureau; Code of Conduct Tribunal; the Bureau of Public Procurement; the Fiscal Responsibility Commission; Federal Civil Service

[123] Ibid, s. 10 (b) – (f).
[124] EFCC Act 2004, s. 6.
[125] Ibid, s. 1 (2) (c).
[126] Ibid, s. 7.
[127] Police Act 2020.
[128] Ibid, s. 4.

Commission; Independent National Electoral Commission (INEC); [129] the National Assembly[130]; the Judiciary;[131] etc.

CHALLENGES OF DOMESTIC ENFORCEMENT INSTITUTIONS IN NIGERIA

The UNCAC has two main purposes: prevention and combat of corruption. The domestic institutional frameworks in Nigeria, however, do not seem to take prevention as the priority. The combat of corruption, which is the main focus of the Nigerian legal and institutional frameworks, does not seem easy to achieve as they are inundated with many challenges such as:

Preventive enforcement institutions have greater roles to play in curbing corruption in Nigeria: Agencies like the Federal Civil Service Commission, the Bureau of Public Procurement, the Fiscal Responsibility Commission and the Code of Conduct Bureau. These agencies are, however, inundated with lots of challenges like lack of political will, lack of the requisite personnel, lack of modern technological infrastructure for tracking, etc. the failure of preventive measures makes the combat of corruption very herculean. If the preventive agencies had been up to their duties, cases like inflation of contract sums, contract splitting and general corruption in the award of contracts for supply of goods and services would not arise. The case of *FRN v. George & Ors.*,[132] readily comes to mind where inflation of contract sums, contract splitting and violation of the Public Procurement Act were the gravamen for the prosecution.

Prosecution is always in a hurry thereby violating some of the crucial provisions of the law such as due process: Denning reports an incident in 1984 which involved a rich Nigerian in London over issues of corruption back home in Nigeria. According to Denning:

> On Thursday 5 July 1984, about midday, a rich Nigerian Mr Umaru Dikko was receiving guests at his expensive London house. He was

[129] CFRN 1999 (as amended), s. 153.
[130] Ibid, s. 4.
[131] Ibid, s. 6.
[132] Suit No: ID/7/C/2008 which judgement was delivered on the 26 October, 2009 per Oyewole, J.

> surrounded and overpowered. Drugs were pumped into him. He was made unconscious and bundled off in a van. He was taken to a place where two large wooden crates were awaiting his arrival. … Our police opened the crates and found the contents. They took the unconscious Mr Dikko to hospital. They arrested the others.
> The truth then came out. The Nigerian authorities regard Mr Dikko as a conspirator who had robbed Nigeria of vast sums of money and hoarded them in this country and elsewhere. They felt that extradition proceedings would mean long delay and much uncertainty. So they took this extraordinary means of getting him back to Nigeria.[133]

Due process is crucial for success in preventing and combating corruption. Violation of due process may have great adverse effects on the fight against corruption. The rule of law is an integral part of due process and the Court of Appeal has also harped on the supremacy of the rule of law in *Bello v. Governor of Gombe State*.[134] For example, Denning discussed Mr Umari Dikko's case under 'international terrorism' in his book because the rule of law was violated in the process of extraditing the suspect from the UK to Nigeria for trial.

The shoddy investigation by enforcement agencies: Where there is a shoddy investigation, there is no way the evidence will be credible and admissible to secure conviction. Careful and painstaking investigations are necessary for the cause of justice in preventing and combating corruption in Nigeria. In *Osuagwu v. State*,[135] the SCN allowed the appeal because the police had carried out an improper investigation of the case. Justice Akaahs stated thus in that case:

> I wish to observe that the police must be meticulous with their investigation and not engage in sloppiness which will lead to

[133] Alfred Thompson Denning, *Landmarks in the Law* (Butterworths, 1984), 255.
[134][2016] 8 NWLR (Pt. 1514) 219.
[135] [2016] 16 NWLR (Pt. 1537) 31.

> criminals getting off the hook because of tardiness in carrying out their primary function of investigation and prevention of crime.[136]

In *Nwude v. FRN* [137] the Court of Appeal harped on the duty of the court not to allow criminals enjoy the proceeds of crime. The courts can only convict where there is proper prior investigation by the anti-corruption agencies.

Inability to prove the case beyond reasonable doubt: This challenge, sometimes, is the direct result of shoddy investigation of crimes involving corruption. It is not about establishing a plethora of anti-corruption agencies but the effectiveness of the agencies thus established. That is the argument and our concern in this paper. Proving a criminal case beyond reasonable doubt is the only sure way justice can be achieved in corruption cases. Therefore, the prosecution must discharge the burden of proof and attain the acceptable standard of such proof in corruption cases in accordance with the provisions of the law.[138]

Actions in violation of the legislative powers of the agencies: Some of the enforcement agencies violate the powers granted them by the Act that created them. This is a big challenge in curbing corruption in Nigeria because this, in itself, is corruption. The case of *EFCC v. Diamond Bank PLC & Ors.*[139] is a case in point where the Supreme Court of Nigeria had the opportunity to make pronouncements on this issue thus:

> It is important for me to pause and say here that the powers conferred on the appellant, ie the EFCC to receive complaints and prevent/or fight the commission of financial crimes in Nigeria pursuant to section 6 (b) of the EFCC Act (supra) does not extend to investigation and/or resolution of disputes arising or resulting from simple contracts or civil contracts as in this case. The EFCC has an inherent duty to scrutinize all complaints that it receives carefully, no matter how carefully crafted by the complaining party,

[136] Ibid, at 71.
[137] [2016] 5 NWLR (Pt. 1506) 471 at 515.
[138] Evidence Act 2011, Cap. E14, LFN, 2004 (as amended), ss. 135 and 139.
[139] [2018] 274 LRCN 46.

> and be bold enough to counsel such complainants to seek appropriate/lawful means to resolve their disputes.
> Alas! The EFCC is not a debt recovery agency and should refrain from being used as such.[140]

In *Ihenacho v. N.P.F.*,[141] the Court of Appeal equally held that it is not the duty of the police to enforce contracts or collect common debt.

Incompetent personnel especially in the draft of charges: An incurably defective charge has no probative value in criminal cases and has the potential to impede the prevention and combat of corruption in Nigeria.

Inadequate investment in anti-corruption campaigns: The lack of modern technology, like forensic infrastructure, is a daunting challenge in preventing and combating corruption in the country.

Ineffective legislature: the two chambers of the National Assembly have not been effective in their oversight functions over the institutions of governance especially as it relates to due process, accountability and transparency in handling the business of government in Nigeria. This is in spite of the fact that the National Assembly has the power to enact laws for the good governance of Nigeria and perform oversight functions over the institutions of government.[142]

The challenges discussed above are by no means exhaustive. They are only aimed at driving home the point that real challenges exist in the prevention and combat of corruption and that the enforcement institutions must be assisted to improve on their dual roles of preventing and combating corruption in Nigeria. It is not enough to dole out the challenges. We must also be ready to proffer solutions to the challenges.

RECOMMENDATIONS

The desire to eradicate or curb corruption starts from the knowledge that corruption is an evil that has adverse ripple effects in all aspects of the life of the citizenry

[140] Ibid, at 66.
[141] [2017] 12 NWLR (Pt. 1580) 424.
[142] Arishe, *Developing Effective Legislature*, 1-29.

including the protection of human rights in Nigeria. Therefore, our recommendations are based on the challenges identified in the last section.

Prevention of corruption should be the focus, with all the enforcement agencies involved. Prevention of corruption should be the first option for enforcement institutions. Prevention can solve many of the problems associated with the investigation and prosecution of offenders and it would enhance the success of the mandates of the enforcement institutions in Nigeria. The prevention of corruption can be achieved through capacity building *via* regular training and re-training of personnel for effective service delivery.

Investigation and prosecution of offenders should be meticulously carried out, within the ambit of due process and the rule of law, by the enforcement institutions in Nigeria.

Measurable Key Performance Index (MKPI) should be set for each of the enforcement institutions for assessing their performance over time. Hardworking personnel should be rewarded while lazy personnel should be sanctioned.

Enforcement institutions should not exceed their mandates so as not to violate due process and the rule of law.

The Civil Service is the engine of administration and forms the bedrock upon which government policies are implemented. Therefore, the Federal Civil Service Commission (FCSC) has a bigger role to play in preventing and combating corruption in Nigeria by way of training, effective service delivery, and discipline of erring employees. The Code of Conduct Bureau must be ready to actively engage its staff in the verification of declarations of assets by public servants while the Code of Conduct Tribunal must abide, at all times, with its jurisdictional mandate.

The Bureau of Public Procurement and the Fiscal Responsibility Commission have their functions cut out by the Acts that created them. Their duty in the prevention of corrupt practices can never be overemphasized. They must aim at attaining their mandates through training and re-training, collaboration with other relevant agencies, and be transparently accountable to Nigerians.

Every person in elective or appointive position of authority must ensure the need for proper leadership, good governance in all respects, sincerity and dedication to service as outlined by the Supreme Court of Nigeria (SCN) in *Sheriff v. P.D.P.*[143] Also in *P.D.P. v. Sheriff*, the SCN admonished that the interests of citizens should be the first and foremost in the minds of politicians.[144] Members of the National Assembly should carry out their oversight functions with dedication and sincerity as well.

The judiciary must see to it that justice is done in all cases of corruption before it. In corruption cases, which are criminal trials, Oputa, JSC, (as he then was) articulated the essence of justice in *Josiah v. State* thus:

> And justice is not a one-way traffic. It is not justice for the Appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic. Justice for the Appellant accused of a heinous crime of murder; justice for the victim, the murdered man, the deceased, 'whose blood is crying to heaven for vengeance,' and finally justice for the society at large, the society whose social norms and values had been desecrated and broken by the criminal act complained of.[145]

Corruption can be regarded as murder if not more than that, because its effect on society is worse than murder itself. Corruption leads to the inability of the government to provide basic healthcare facilities to treat common ailments like malaria which can lead to death. Therefore, justice should be the overall driving force for preventing and combating corruption in the country.

Public education of the Nigerian society, on the dangers of corruption and its effects on the protection of human rights, should be intensified. This can be done in collaboration with the National Orientation Agency (NOA), the Ministry of Education, faith-based organizations, and the Traditional Rulers Council. The Bwari Branch of the Nigerian Bar Association (NBA) had a one-day symposium

[143] [2017] 14 NWLR (Pt. 1585) 212.
[144] [2017] 15 NWLR (Pt. 1588) 219.
[145] [1985] 1 NWLR (Pt. 1) 125 at 141.

on corruption on 8 December 2023 with the theme: 'Anti-Corruption Fight in Nigeria: A Lost Battle or a Work in Progress?' The symposium provided an opportunity for experts, drawn from many government agencies and the private sector, to assess the journey so far and the areas for improvement.

Asset seizures and forfeitures should not be selective. They should be objectively carried out by the enforcement institutions to serve as a deterrent to would-be offenders. Asset seizures and forfeitures are parts of the mandates of the anti-corruption institutions in Nigeria but much is yet to be seen in those areas.

The challenge of the incompetence of the enforcement institutions can be solved by adopting the UNCAC 2003 guidelines on recruitment into the public and civil services in the country. A greater part of recruitment into the public and civil services should be based on merit without undermining the constitutional provisions on the federal character principle.

CONCLUSION

To attain the purposes of the UNCAC 2003 for the improvement of the protection of human rights in Nigeria, there is an urgent need for the necessity and essentiality of effective domestic enforcement institutions in Nigeria. There is corruption in every part of the world including the Federal Republic of Nigeria (FRN). Corruption is manifested in many ways and by various means. Corruption adversely affects the protection and promotion of human rights everywhere including Nigeria. Corruption has affected every aspect of life in Nigeria including life expectancy, quality health, critical infrastructure, elections, public administration, etc. Corruption affects both procedural and substantive human rights in Nigeria. On 31 October 2003, the UN General Assembly declared 9 December of every year as International Anti-Corruption Day, a day set aside to highlight the link between anti-corruption and peace, security and development. The global agreement against corruption manifested itself in the UNCAC 2003 which entered into force on 14 December 2005.

The purposes of the UNCAC 2003 are: the promotion and strengthening of efficient and effective measures to prevent and combat corruption; the promotion, facilitation, and support for international cooperation and technical assistance in

the prevention of and fight against corruption, including asset recovery; and the promotion of integrity, accountability and proper management of public affairs and public property.[146] For the UNCAC 2003 to be attained in Nigeria, there is an imperative need for effective domestic enforcement institutions.

The scope of application of the convention is very specific and applies, by its terms, to the prevention, investigation, and prosecution of corruption and the freezing, seizure, confiscation, and return of the proceeds of offences established by the Convention.[147]

State parties are expected to domesticate the convention by establishing 'specialized authorities'[148] for domestic enforcement and implementation of the convention[149] which is in line with the law of treaties on the implementation of treaties.[150] The Federal Government of Nigeria (FGN) is yet to domesticate the convention in accordance with the provisions of her constitution[151] but has created domestic institutions for the prevention and combat of corruption in the country. Despite the creation of the various domestic enforcement institutions in Nigeria, corruption still looms large in the country. The prevention and combat of corruption are not about the multiplicity of domestic enforcement institutions but more about the efficiency and effectiveness of those institutions. Unless the domestic enforcement institutions are efficient and effective, the purposes of the UNCAC 2003 would not be attained and the promotion and protection of human rights would not be achieved in Nigeria.

We have offered recommendations, in this paper, for the efficient and effective domestic anti-corruption enforcement institutions in Nigeria. Transparency and accountability are the foundational watchwords for success in preventing and combating corruption in the country. Every hand must be on deck in order to collectively sing the *nunc dimittis* to corruption in Nigeria.

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[146] UNCAC 2003, art. 1.
[147] Ibid, art. 3.
[148] Ibid, art. 36.
[149] Ibid, art. 65.
[150] Vienna Convention on the Law of Treaties (VCLT) 1969, arts. 26 and 27.
[151] CFRN 1999 (as amended), s. 12 (1).

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Nwude v. FRN (2016) 5 NWLR (Pt. 1506) 471 at 515

Osuagwu v. State (2016) 16 NWLR (Pt. 1537) 31

P.D.P. v. Sheriff (2017) 15 NWLR [Pt. 1588] 219

Ransome-Kuti v. Attorney-General of the Federation (1985) 2 NWLR (Pt. 6) 211.

Saude v. Abdullahi (1989) 4 NWLR (Pt. 116) 387 at 419.

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INSECURITY AND TERRORISTS' THREATS OF ATTACKS ON SELECTED NIGERIAN CITIES: IMPLICATIONS ON LAGOS RESIDENTS' CONCERNS FOR SAFETY AND THE CITY SECURITY PLANNING

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ABSTRACT

Terrorism is common but limited to certain towns in Nigeria. However, the nomenclature seems to be changing as security intelligence has it that terrorist groups are planning attacks targeting Lagos, and other notable cities. This study therefore examines concerns for safety among residents and implications on individual and city-level security planning in Lagos. The official wards as demarcated by the Independent National Electoral Commission represent clusters from which at least a respondent was randomly selected. The study's respondents were selected from 49 (one of every five wards {20%}) wards out of 245 wards in Lagos. In the selected wards, at least two respondents were randomly selected. A total of 288 residents participated in the survey, but, only 134 respondents accurately completed the questionnaire used in this analysis, representing a 58.7% response rate. Results show that 78% of the respondents were concerned about their safety while some 90% took precaution by avoiding certain places and activities. Findings show significant relations between awareness of the planned attacks, concerns for safety, and precautionary behaviour among respondents. Besides, results show that respondents' socio-economic characteristics, neighbourhood environmental design, and past crime victimisation mediate concerns for safety and security behaviour. The study concludes that the emergence of this security intelligence in the public domain has further contributed to the increasing fear and residents' mobility change. The study recommends among others policing strategies, a new urbanism, where urban planning and design strategies are applied to make attacks more difficult to carry out in soft spaces and places.

Keywords: Security intelligence, Terrorists' attack, Fear of violence, Safety behaviour, Lagos

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INTRODUCTION

Nigeria has witnessed a lot of violence crime, conflict threats and unprecedented insecurity in almost all the states, geo-political areas and different zones and locations of the country.[3] The country has experienced extraordinary threats, attacks and different forms of insecurity problems ranging from terrorism and insurgency, kidnapping and abduction, shelling, bloodshed, armed robberies, violent crime and criminality, and cybercrime as well as different forms and magnitude of internal and external challenges bedevilling the country both in the past and present time.[4] All these have hindered businesses and the development of the country in the last decade.[5,6,7] In the recent past, more and more cities in Nigeria have been facing terrorist attacks. Festivals, events and outdoor shows were cancelled in many Nigerian cities such as Kaduna, Abuja and Lagos because of the increasing threat of terrorism. On 28th of March, 2022, bandits attacked a Kaduna-bound train in central Nigeria carrying 970 passengers; at least eight people were killed.[8] Consequently, some train stations and bus terminals were evacuated after being warned of further attacks.

The most dangerous so far are the terrorist activities and militia groups of Boko Haram. Since its rise in 2009, the Boko Haram terrorism and insurgency has adversely affected millions of people, and businesses and caused thousands of deaths, and millions of injuries.[9] Boko Haram and its offshoots are responsible for the displacement of 2.5 million Nigerians, with approximately 200,000 seeking refuge in neighbouring countries.[10] Due to the brutal tactics deployed by Boko Haram, a group called "Ansaru" broke awayin 2012 and 2020, the Ansaru group

[3] J.M Etebom, The Characteristics and Complexity of the Nigerian Security Challenges, (2022)
[4] I Daniel, National Tragedy and Insecurity Threats in Nigeria: Implications to Security Woes and Challenges in the 21st Century (2021).
[5] R A Aborisade, SS Adedayo, Security and the 2063 Agenda for Sustainable Development in Africa: Whither Nigeria? (2018)
[6] S Epron, Emerging Security Threats: Factors and Implications for Nigeria's Socio-Economic Development 2015-2019, (2019)
[7] D Ishaya, National Tragedy and Insecurity Threats in Nigeria: Implications to Security Woes and Challenges in the 21st Century, (2021).
[8] O Ojewale, A Badiora, F Onuoha, Kaduna's train attacks add to Nigeria's deep security problems, (2022).
[9] J.M Etebom, The Characteristics and Complexity of the Nigerian Security Challenges, (2022)
[10] International Crisis Group, Boko Haram on the Back Foot?

conducted its first attacks in Kaduna state.[11] The most recent security intelligence has it that the group is planning another attack on Kaduna state, having consolidated their grip on communities in Kaduna with a "parallel" government and "permanent operational base" in the North-western state near Nigeria's capital, Abuja.[12] The Ansaru group is broadly aligned with Al-Qaeda.[13] The group has kidnapped many hostages and is believed to have killed several hostages as well. The indiscriminate killing of civilians and, in particular, Muslim faithfuls caused further divisions within the Boko Haram group. In 2016, Boko Haram further split into two factions: Jama'atu Ahlis Sunna Lidda'adati wal-Jihad (JAS) and the Islamic State-West Africa Province (ISWAP).[14]

The JAS is characterised by the use of more violent methods and continues to perpetrate systematic attacks against both Muslims and Christians. Any person who does not support the group is perceived as an ally of the government and may be targeted.[15] JAS is more active in south-central Borno and along the border of Cameroon. It also has bases in the north-western part of Nigeria. On 19 May, 2021, JAS's leader and his groups were captured by ISWAP.[16] ISWAP focuses its attacks on Christians and persons not abiding by Sharia law, military structures, government and security personnel, traditional leaders and contractors, and has tried to gain the support of local communities by providing services. ISWAP's stronghold lies in Lake Chad. Its influence also extends to Borno, and southwards into Yobe state, up to Adamawa. ISWAP is also building the capacity of radical groups in the north-western part of Nigeria.[17] The group has become politically

[11] A Mahmoud, N Ani, Factional Dynamics within Boko Haram, Institute for Security Studies, Pretoria, South Africa. (2018).
[12]A Taiwo-Hassan, EXCLUSIVE: El-Rufai writes Buhari, says terrorists creating 'parallel' Government in Kaduna. Avail at: https://www.premiumtimesng.com/news/headlines/548109-exclusive-el-rufai-writes-buhari-says-terrorists-creating-parallel-govt-inkaduna.html/Accessed:20 August, 2022
[13] A Mahmoud, N Ani, Factional Dynamics within Boko Haram, Institute for Security Studies, Pretoria, South Africa. (2018).
[14] Ibid
[15] Ibid.
[16]Premium Times, Boko Haram leader, Shekau, dead as ISWAP fighters capture Sambisa forest — Report. Avail at: https://www.premiumtimesng.com/news/headlines/462774-boko-haram-leader-shekau-dead-as-iswap-fighters-capture-sambisa-forest-report.html/accessed: 20 August, 2022.
[17] Ibid

entrenched and seems to pose an even greater challenge to the Nigerian military.[18,19] ISWAP is affiliated with the ISIS core in Iraq and Syria.

These groups have conducted several attacks in different states and places in Nigeria. Public places where crowds gather have been targeted, including churches, marketplaces, Internally Displaced Persons (IDPs) camps, transport terminals (e.g. train networks, bus terminals), government buildings, educational institutions (e.g. colleges and universities), and international organisations (e.g. UN Office).[20] Thus, from an urban design and planning perspective, this means that terror groups are increasingly aiming at soft targets and crowded places that cannot be altered without radically changing how we experience, plan, and design our cities. Their modus operandi includes coordinated armed assaults, sporadic shooting, assassinations, kidnapping, use of improvised explosive devices (IEDs), bombings (including by child and female bombers), and car bombings with which bombers drive into crowds as a tool of terror, among others. They also use military uniforms and vehicles as a tactic to get close to the intended target. In some cases, terrorist groups construct illegal vehicle checkpoints on major roads in Northern Nigeria and attack travelling vehicles.[21]

In furtherance of these attacks, fresh intelligence has it that terrorist groups of ISWAP and Ansaru are plotting coordinated attacks on Lagos, Abuja and some other important cities with armed fighters and high calibre weapons particularly Rocket-propelled Grenade launchers, Anti-Aircraft guns and General Purpose Machine Guns.[22] Some recent happenings suggest that this may not be a mere threat. The increasing bandit and terrorists attacks all over the country (*including the "peaceful" southwest region*); on the country's security formations; and the fatal (emotional word) assaults on the Presidential Guards in Abuja[23] are cases in point. A few months later, precisely on the 23rd of October, 2022, the US Embassy

[18] A Kassim, "Boko Haram Internal Civil War: Stealth Takfir and Jihad as Recipes for Schism" (2018).
[19] A Mahmoud, N Ani, Factional Dynamics within Boko Haram, Institute for Security Studies, Pretoria, South Africa. (2018)
[20] Oversee Security Advisory Committee [OSAC]. Nigeria 2019 Crime & Safety Report, 2019.
[21] O Cyril et al., Violent crimes and insecurity on Nigerian highways, 2023
[22] Vanguard News, Bandits, terrorists planning atta
cks on Lagos, FCT, Katsina, three others – NSCDC. Available at: https://www.vanguardngr.com/2022/07/bandits-terrorists-planning-attacks-on-lagos-fct-katsina-three-others-nscdc/ Accessed: 17 August, 2022.
[23] Ibid

issued a security advisory that there could be a possible terrorist attack in Nigeria's Federal Capital Territory, Abuja and the nation's commercial capital, Lagos. Furthermore, on the 22nd of June, 2023, the Department of State Services (DSS) raised the alarm over planned attacks on worship and recreational centres before and during Eid Kabir celebrations.[24] The recovery of Improvised Explosive Devices (IED) from terrorists in joint operations by the DSS, personnel of the Nigerian Army and the Nigeria Police force lent credence to the planned terrorist attack.

Being one of the cities that has consistently been on the terrorists' directory, this study examines fear and concern for safety among Lagos residents. In this study, the emphasis is on how Lagos residents' reception of the security intelligence news is associated with their concern for safety, and precautionary behaviours. The study further examines whether this relationship remains when geographical location, age, gender, education, occupation, nationality and ethnic groups, experiential victimization, length of stay in Lagos, and income/economic pressure are adjusted for. The relationship between violence news and concerns for safety on a more general level has received notable attention. But, many of these studies have focused on violent media reportage and not security intelligence. Generally, findings suggest significant links between violent crime and conflict news and fear[25,26,27,28,29] as well as precautionary behaviour.[30,31,32] When exploring violent news effects, it is right to know the extent to which this reverberates in people's

[24] News Times Nigeria, DSS raises alarm over planned terrorist attacks on religious, recreational centres - NewsTimes.org.ng Accessed, August, 1 2023
[25] R. Aborisade, Mass Media and the Cultivation of the Fear of Crime in Nigeria. (2017).
[26] Hollis, *et al.,* The relationship between media portrayals and crime: Perceptions of fear of crime among citizens. (2017).
[27] J. Wardman, Nothing to fear but fear itself? Liquid provocations for new media and fear of crime. (2017).
[28] Intravia, *et al.,* Investigating the relationship between social media consumption and fear of crime: A partial analysis of mostly young adults. (2017).
[29] Näsi, *et al.,* Crime News Consumption and Fear of Violence: The Role of Traditional Media, Social Media, and Alternative. (2020).
[30] Wilcox, *et al*., A multidimensional examination of campus safety: Victimization, perceptions of danger, worry about crime, and precautionary behavior among college women in the post-Clery era. (2007).
[31] May, *et al*., A gendered assessment of the "threat of victimization: Examining gender differences in fear of crime, perceived risk, avoidance, and defensive behaviors. (2010).
[32] Näsi, *et al.,* Crime News Consumption and Fear of Violence: The Role of Traditional Media, Social Media, and Alternative. (2020).

behaviour. That is, what counteractive measures are taken because people are worried? One of such is precautionary behaviour: the decision to circumvent certain areas at certain times.[33,34,35,36]

The significance of security intelligence could be weightier on residents' fear and behaviour compared to mere traditional and usual crime incidence news. Thus, this study considers fear, along socio-economic, spatial and temporal lines due to security intelligence information leaked to the general public. The study takes a street politics approach, reflecting residents' concerns for safety and avoidance behaviour in the stir of security intelligence and some follow-up/matching attacks. The study moves away from discourses of anxiety as control, to an understanding of anxiety according to the daily experience of people on the streets of Lagos. This study contributes towards an exploration of measures that could reduce the prevalence of terrorism, and attempt to address the concerns for safety among residents. Furthermore, we aim to add to prior research by using a Lagos representative sample of residents, and by capturing the fresh security intelligence environment

AN OVERVIEW OF TERRORIST ATTACKS ON NIGERIAN CITIES

The history of terrorism in Nigeria can be dated back as far as the days before the country's civil war. The very first experience was the establishment of the Niger Delta Volunteer Force (NDVF), led by Major Boro. The group then declared the Niger Delta Republic as a revolt against the then military government of General Yakubu Gowon, and to agitate for a more equitable stake of the wealth from the nation's oil resource. While the group was a brief threat to national peace and the then government, it was later crushed and their leader was arrested. Over the years, other "terrorist groups" like the Movement for the Actualization of the Sovereign State of Biafra (MASSOP), Movement for the Emancipation of the Niger Delta (MEND), The Boko Haram, Ansaru, JAS and ISWAP among others have been

[33] R. Aborisade, & C. Oyafunke-Omoniyi, Spatial Distribution of Crime and Deviance in Urban Nigeria: A Theoretical Exposition. (2019).
[34] Badiora, *et al*., Gender Differences in Risk Perception and Precautionary Behaviour among the Residents of Yoruba Traditional City. (2014).
[35] Wilcox, *et al.,* A multidimensional examination of campus safety: Victimization, perceptions of danger, worry about crime, and precautionary behavior among college women in the post-Clery era. (2007).
[36] Näsi, *et al*., Crime News Consumption and Fear of Violence: The Role of Traditional Media, Social Media, and Alternative. (2020).

established. The motives and ideologies that fired up the activities of these groups that have threatened the nation's peace, safety and security were poverty and socio-economic deprivation, land-use and property rights, inequality, discrimination, political alienation, and ethno-religion.[37]

The issue of terrorism had increased in 2009, and the security agencies seemed to be helpless in the face of the many successful terror attacks across the nation. Several attacks have been perpetrated by terrorist groups, mostly in Borno, Yobe, and Adamawa States in the country's North East.[38] There have also been significant attacks in other states like Gombe, Kano, Kaduna, Plateau, Bauchi, and Taraba States, among others. The terrorist groups have claimed responsibility for many successful attacks including but not limited to the August 2011 attack, killing twenty-three people in a suicide car bombing outside the United Nations headquarters in Abuja; the attack on July 5, 2022, where the Kuje Prison in the country's capital was bombed. In addition; the killing of policemen in Suleja, Niger State on May 12 and July 4, 2022; an IED attack on a bar in Kabba, Kogi State on May 29, 2022; IED attack on May 2022 against a military facility in Jalingo; a number of long-range rockets fired into near Maiduguri city Airport on December 23, 2021; the November 28, 2020 killing of at least 70 civilians with several other wounded and abducted in Jere, Borno State. Other attacks include the execution of five aid workers on July 22, 2020; the July 2, 2020 shooting of the United Nations Humanitarian Air Service (UNHAS) flight in Damasak, Borno State; the killing of at least thirty-eight civilians, and targeting the humanitarian hub located in Monguno, Borno State on June 13, 2020, and the June 9, 2020 killing of around eighty-one civilians in Felo village, Gubio, Borno State.[39] Between May and August, 2022, ISWAP had conducted a number of attacks in Kogi, Niger, and in FCT. The shameful assaults on the Presidential Guards in Abuja and the Zuma Security formation[40] are cases in point.

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[37] J.M Etebom, The Characteristics and Complexity of the Nigerian Security Challenges, (2022).
[38] D Ishaya, National Tragedy and Insecurity Threats in Nigeria: Implications to Security Woes and Challenges in the 21st Century, (2021).

[39] Oversee Security Advisory Committee [OSAC]. Nigeria 2020 Crime & Safety Report, 2020.
[40] Vanguard News, Bandits, terrorists planning attacks on Lagos, FCT, Katsina, three others – NSCDC. Avail at: https://www.vanguardngr.com/2022/07/bandits-terrorists-planning-attacks-on-lagos-fct-katsina-three-others-nscdc/ Accessed: 17 August, 2022.

In another instance, within the space of a month, Owo, a town in the country's southwest, was attacked twice. The latest occurred on July 27, 2022, at the Folahami Junction of the town, where a construction company called Craneburg Construction Company was located. The criminals opened fire on everybody in sight. Some IEDs were also used, this occurred in the evening and left some people killed and scores injured.[41] This came weeks after the attack of June 5, 2022, on people attending worship. The armed men entered Saint Francis Catholic Church and fired gunshots and IEDs at the congregation, killing about 40 parishioners while many others were seriously injured.[42] The Church was attacked in broad daylight at about 11.30a.m. These attacks have been traced to ISWAP. Unlike northern Nigeria which has been battling terrorism and banditry since 2009, the southwest has long been considered the most peaceful area in the country. Although certain crimes (e.g. kidnappings, armed robbery) have become increasingly common in the southwest, terrorist attacks wererare until the recent Owo massacres. Boko Haram and ISWAP were responsible for the death of 272 civilians in the first quarter of 2023.

These attacks are pointers to the need to redefine urban management and policies in order to meet new security requirements and procedures. Owo is about 250km from Lagos. It takes less than 4 hours to arrive at Lagos from Owo by road. Hence, terrorism and insurgency are just a few hours away from Lagos. The insurgence of a potent jihadist force around Lagos means continuous battle for the city and other southwest states, as well as danger for residents caught in the scuffle. The Owo attacks are much more serious and signal a fresh movement of terrorism, targeting cities in southwestern Nigeria. With the security intelligence, Owo's attacks and assaults on the Presidential Guards, there are no other signals that can prepare Nigeria, particularly, Lagos and Abuja for the tragic crime that these cities could face in the near future. Focusing on Lagos therefore, this study examines concerns for safety and precautionary behaviour, because of the security information disclosed to the general public.

[41] Vanguard News, Many injured as unknown gunmen attack Owo, 2nd time in 7 weeks. Availaible at: https://www.vanguardngr.com/2022/07/breaking-many-injured-as-unknown-gunmen-attack-owo-twice-in-7weeks/ Accessed: 17 August, 2022.
[42] BBC News, Nigeria Owo church attack: Gunmen kill Catholic worshippers in Ondo. Available at: https://www.bbc.com/news/world-africa-61697409/ Accessed: 17 August, 2022

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DOI: 10.47963/ucclj.v3i2.1361

What could have made Lagos to be on the Terrorists' Target List?

To begin with, Lagos is a city in Nigeria: the most populous country in Africa and a regional economic giant.[43] Lagos is located in the Southwestern part of Nigeria, in West Africa and on the narrow coastal floodplains of the Bight of Benin (*See Figure 1*). Physically, it lies approximately between longitude 2º42'E and 3º22'E and between latitude 6º22'N and 6º42' N. Lagos is bounded in the West by the Republic of Benin, and in the South by the Atlantic Ocean (*See Figure 1*). Territorially, Lagos encompasses an area of 358,862 hectares and over 40% of its total land area is covered by water bodies and wetlands[44].

Lagos is divided into three broad homogenous geographical divisions: the Mainland, the Island, and the Hinterland. The mainland is the area where a large (approximately 60%) population of Lagos residents live (see Figure 1). It is the centre of Lagos and where most industrial and manufacturing businesses are located. The Island is the geographical term used to define the area of Lagos that is separated from the mainland by the main channel draining the lagoon into the Atlantic Ocean. This part of Lagos is the area where most business and administrative activities take place. It also houses high-class politicians, professionals, executives in the private sector, civil societies, NGOs and government officials, and most of the upscale residential areas. The hinterlands are developed areas which lie beyond the Lagos mainland and island. These are the Lagos periphery zones, outside the main urban area where farming, other agricultural activities, and urban land uses (residential and businesses) are intermixed.

Lagos covers multiple administrative areas. Lagos encompasses the municipality covering the extent of what is present-day Lagos Island Local Government (See Figure 2). This area served as the headquarters of the Lagos Colony and remains the core of the modern metropolis and its central business district. Second is the Lagos Metropolis (See Figure 3), covering 16 LGAs.[45] Third is the Lagos state (see Figure 2), which covers 20 LGAs (16 metropolitan and 4 peri-urban LGAs).

[43] T. Agbola, Sustainable Urbanization: Reflections of African Planning Professionals on the Growth and Development of African Cities. (2006).
[44] K Aderogba, Global warming and challenges of floods in Lagos metropolis, Nigeria. (2012).
[45] L. Oduwaye, Rezoning of residential areas as a strategy for increasing Housing supply in metropolitan Lagos Department of Urban and Regional Planning, University of Lagos, Lagos, Nigeria. (2013).

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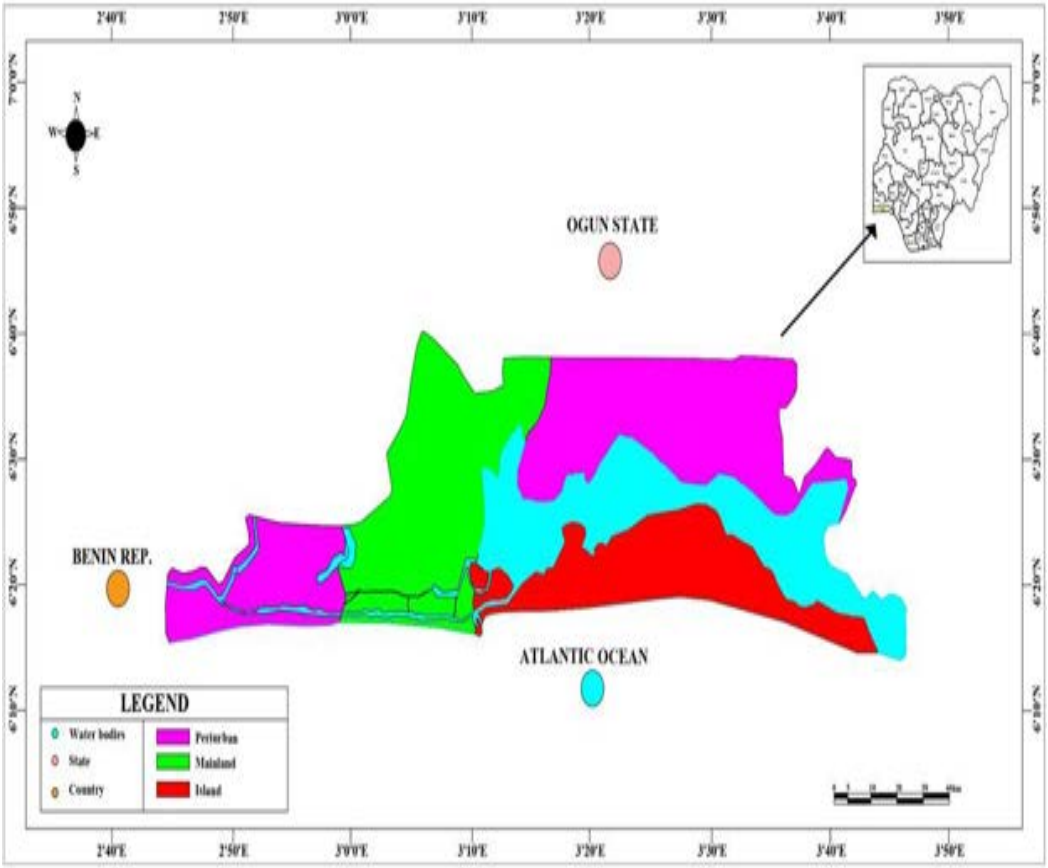
Figure 1: Map indicating Lagos major geographical divisions/areas



Source: Badiora (2023)

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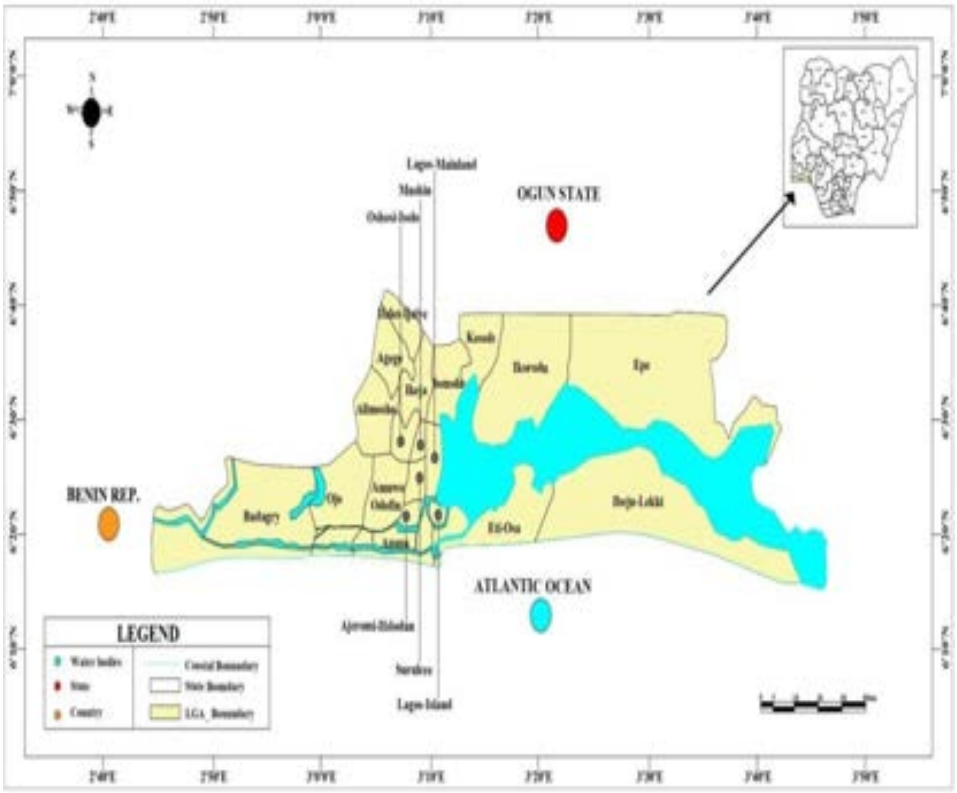
DOI: 10.47963/ucclj.v3i2.1361

Figure 2: Lagos, indicating 20 LGAs (the 16 metropolitan and 4 Peri-urban LGAs)



Source: Badiora (2023)

The choice of Lagos for planned terrorist attacks is likely based on the following: (1) the Rational Choice Principle (RCP) and (2) the number of successful attacks recorded in the country in the last 8 years. Regarding RCP, crime is thoughtfully calculated and deliberate[46,47]. All criminals (*including terrorists*) are rational actors who practice decision-making making that concurrently work towards gaining the maximum paybacks for their situation and motivations[48,49]. Hence,

[46] J. Brantingham, & L. Brantingham, Anticipating the displacement of crime using the principles of environmental criminology. (2003).
[47] W. Einstadter, & S. Henry, Criminological theory: An analysis of its underlying assumptions (2006).
[48] Ibid
[49] Jacobs, et al., Carjacking, street life and offender motivation (2013).

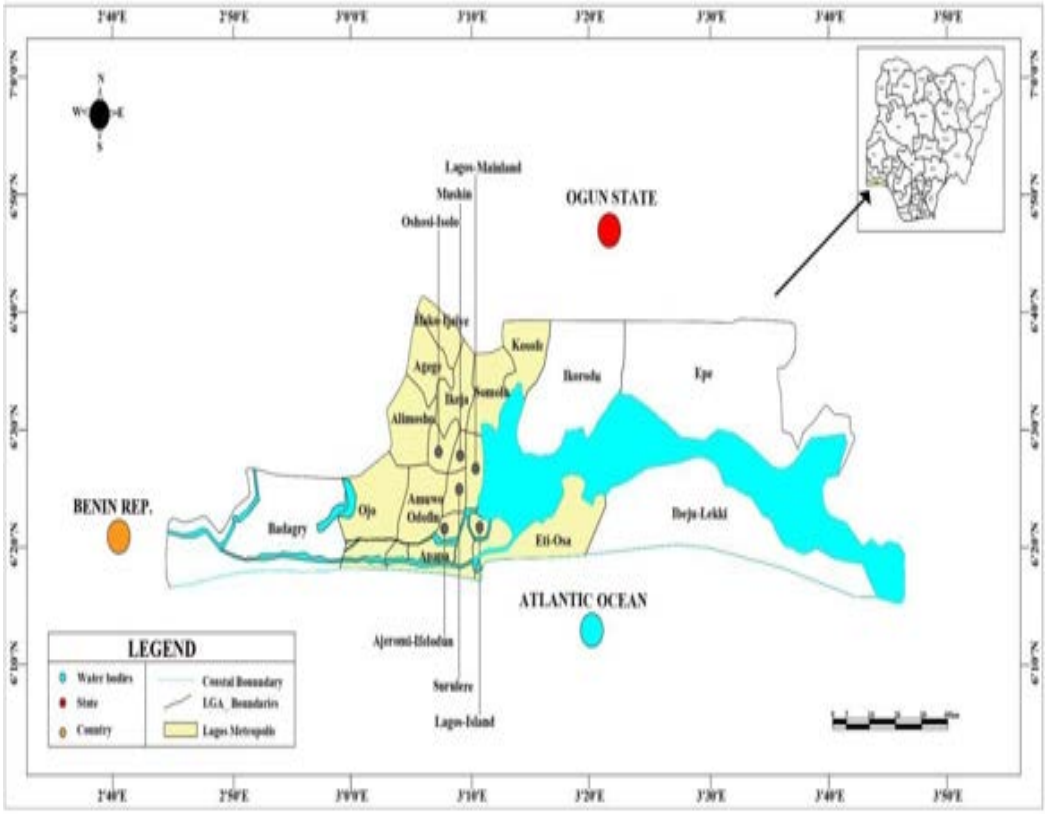
Lagos is a location that fits into terrorism motivation and situation for several reasons as follows.

The first explanation is population. Typically, the drive of terrorist groups is to cause mass fatality of innocent people to gain tangible political attention and/or military objectives. According to Phillips, who wrote for *Forbes* on 17 August 2017, '*terrorist attacks typically occur in cities due to the density of population*' and Lagos is one of the fastest growing cities in the world today. At present, Lagos is 40 times larger than it was in the 1950s. It has been estimated by the government of Lagos state that eighty-six youth migrants arrive in Lagos every hour with no plans to leave[50], representing the highest figure in any city in the world. This high level of migration brings opportunities as well as challenges to the city. While it is hard to come up with the exact number (since most residents live in suburban slums and informal settlements), the projected population of Lagos is about twenty (20) million people[51]. Thus, any attack on whichever part of the Lagos city system (*churches, markets, transport terminals, government and private buildings, educational institutions etc.*) is likely to cause mass mortalities of innocent people, military, and security forces as well as injuries and fear among residents.

[50] A. Ambode, Rapid Urbanization: 86 Migrants Enter Lagos Every Hour https://insidebusiness.ng/18245/rapid-urbanization-86-migrants-enter-lagos-every-hour-ambode/
[51] United Nations, World Urbanization Prospects, 2019. Department of Economic and Social Affairs. (2020).

DOI: 10.47963/ucclj.v3i2.1361

Figure 3: Map indicating Lagos metropolitan Area and LGAs



Source: Badiora (2023)

Another reason is Lagos state's political and economic status. Lagos has strategic political and economic importance in Nigeria and Africa.[52] More than half (about 65%) of the country's manufacturing, commercial, and financial businesses are located in Lagos.[53] Lagos is the foremost commercial hub of Nigeria, offering a huge and accessible market within the African economic zone. Lagos has the fourth-highest GDP in Africa.[54] The influence of Lagos on the country's GDP cannot be discounted. At present, Lagos contributes about 30% to Nigeria's GDP.

[52] New York Times, *"What Makes Lagos a Model City". 7 January 2014. Retrieved 16 August 2022.*
[53] Ibid
[54] Ibid

Hence, the planned attacks are likely to undermine these and hit hard on the nation's economy, politics, democracy, and governance. Besides, attacks on Lagos could have extended effects on West Africa, and the African continent in general. Besides, such attacks on Lagos could also have global socio-economic impacts as well. Furthermore, Lagos is one of the "heavily protected" metropolises in Nigeria because of its socio-economic and socio-political significance. Likewise, a heavily defended location, like Lagos might become a prime target for a terrorist attack, given the propaganda value that would be achieved if terrorist groups of ISWAP and Ansaru manage to penetrate the supposedly unassailable security arrangement of the city.

Some underlying socio-economic issues, structural drivers, and existing violent crime problems could also have motivated the terrorist groups of ISWAP and Ansaru. For instance, the phenomenon of spatial development with its two distinctions; the political/economic elitist areas and the informal settlements of the poor. This spatial pattern of development became inevitable after years of low-density development created by the Lagos elites and the deprived. This development creates social isolation and segregation of the urban fabric in Lagos. It also creates inequality in access to urban opportunities and services. This, in turn, pushes the disadvantaged segment of the population towards fanaticism in exchange for jobs and money. Furthermore, this spongy Lagos urban fabric has allowed some freedom fighters to have even pushed for ethnic separation between neighborhoods in Lagos. This creates additional tension in the Lagos urban environment, particularly in the public and political realm recently. This porous Lagos urban development fabric provides a fertile atmosphere for terrorist groups of ISWAP and Ansaru to mix with residents of these low-density areas and informal settlements in the core and peripheral areas. At present, Lagos has over 157 slum communities deserving of attention.[55]

Furthermore, there is low resilience and unregulated growth due to weak control and communications systems as well as a lack of consistent rules for interaction among sections of the city[56]. This has resulted in widespread youth unemployment, poverty, hunger, inequality, overcrowding, and land deterioration which overstretches the available urban facilities, thereby creating a downward spiral of

[55] T Lawanson, Lagos has over 157 slum communities, must address urbanization. Lagos has over 157 slum communities, must address urbanisation -UNILAG don (premiumtimesng.com)
[56] US Chief of Staff of the Army, Megacities and the United States Army Preparing For a Complex and Uncertain Future. (2014)

instability.[57] Lagos is a loosely integrated area; the city lacks many of the formal relationships that keep highly integrated cities stable[58]. Although "heavy" security governance and structures exist at different levels, their ability to enforce safety and security is problematic. That is why many Lagos residents have been victims of one or more crimes, including armed robbery, burglary, carjacking, rape, and kidnapping among others.[59] Spatially, the Mainland portion of Lagos has experienced periodic outbreaks of violence, resulting from clashes among localized street gangs known as "area boys" while the hinterland portion is known for cultist violence, which often erupts in supremacy battles between various groups.[60] In Lagos, smash-and-grab robberies are common, with criminals robbing occupants of stopped vehicles of valuables. House invasions remain a serious threat in Lagos, including guarded buildings and gated communities on the Island.[61] Furthermore, armed robbers have invaded waterfront areas by boats and canoes, using waterways as a means to foment troubles and escape. In 2019, Lagos had the highest rate of everyday crime in Nigeria.[62] To this end, Lagos seems incapable of dealing with its rapid population growth, structural transformation problems and everyday safety and security issues at the moment and thus, the expectation of the city's ability to prevent planned terrorist attacks is equally slim.

METHODOLOGY

The study adopted a quantitative research design[63] to examine how Lagos residents' reception of the security intelligence news is associated with their concern for safety, and precautionary behaviours. A quantitative design allows for descriptive and inferential analysis[64]. Logistic regression models[65] were used to examine the influence of independent variables (e.g. reception of the security intelligence, experiential fear and residents' socio-economic grouping) on dependent variables (e.g. perceived fear/concern for safety, precautionary behaviour). Data for this study is based on a survey undertaken between August

[57] A Badiora, Safety and Security in Urban Africa: The Case of Lagos (2023).
[58] Ibid
[59] Oversee Security Advisory Committee ([OSAC], Nigeria 2019 Crime & Safety Report.
[60] A Badiora, Safety and Security in Urban Africa: The Case of Lagos (2023).
[61] Ibid
[62] NBS, Crime rates by states in Nigeria, Abuja, Nigeria. National Bureau of Statistics. (2019).
[63] J Creswell, Research design: Qualitative, quantitative, and mixed methods approaches, (2018).
[64] S Flynn, Research design for the behavioral sciences, (2021).
[65] D Olive, Linear Regression, (2017).

2022 and December, 2022 after the security intelligence broke out through a leaked memo dated July 25, 2022 and signed by the Deputy Commandant General (DCG), the Nigeria Security and Civil Defence Corps (NSCDC). Data were collected through semi-structured questionnaire/interview guides. This is because a similar instrument has been used in previous fear and violence victimization studies[66,67,68].

The population of this study is residents of Lagos. For the purpose of questionnaire administration, cluster sampling was used. Cluster sampling is a technique where the researchers divide the entire population into sections or clusters that represent a population.[69] There are 245 wards or micro-communities as demarcated by the Independent National Electoral Commission (INEC) in Lagos. A ward is a local community or neighbourhood area, typically and officially demarcated for administrative and electoral purposes in Lagos, Nigeria. Thus, each of the wards constitutes a cluster. Furthermore, systematic sampling was used to select one of every five wards from which at least two respondents were randomly selected as participants. Unlike simple random sampling in which each of *n* elements is then randomly chosen, in systematic sampling, an element is chosen from the first *k* elements (*k* is often defined as N/*n*), and then every *k*th element is chosen until *n* elements are selected.[70] In this study, therefore, systematic sampling is conducted by sampling every Kth ward in the study area after the first ward is selected at random from the list. Thus, every fifth ward (*representing 20% of the population clusters*) was systematically selected after the first ward had been selected randomly. Value of K (*at least 3%)* is considered allowable as sample value at 3% and above had been proposed to adequately represent a homogenous population sample such as this[71,72]. The value of k in this study is however 20%. Hence, the final number of micro-local communities where at least a respondent was randomly selected was 49 wards.

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[66] Badiora et al., Spatial Analysis of Residents' Fear and Feeling of Insecurity in Ile-Ife, Nigeria (2013).
[67]B Pleggenkuhle, J Schafer, Fear of crime among residents of rural counties: An analysis by gender. (2018).
[68] Kujala, et al., Income inequality, poverty, and fear of crime in Europe. (2019).
[69] S Flynn, Research design for the behavioral sciences, (2021).
[70] Ibid
[71] L Oduwaye, Rezoning of residential areas as a strategy for increasing Housing supply in metropolitan Lagos Department of Urban and Regional Planning, University of Lagos, Lagos, Nigeria (2013).
[72] G Sharma, Pros and cons of different sampling techniques (2017).

In these selected wards, a total of 288 residents started to participate in the survey. Because this study upholds informed consent during data collection, respondents were acquainted with the aim of the study, and given an equal chance to partake and withdraw whenever they wanted. Hence, it is important to state that only 134 respondents eventually completed the questionnaire used in this analysis, representing a 58.7% response rate. Consistent with this[73] average response rates for studies at the organization/community level are 37.2% and 52.7% at individual level research. This study upholds avoidance of harm, and confidentiality of respondents' identity, and personal information supplied. The respondents were adults of age 18 years and above and who had spent at least five years in Lagos. This benchmark is to provide valued information for understanding the extent, trends and patterns of fear among residents in Lagos, and to ensure that such a respondent possesses adequate knowledge and experiences about concern for safety in the study area. The number of years a person has lived in an area will influence his or her opinions and ability to converse about the focus of this study. Furthermore, the selected wards and participants were distributed proportionally based on the geographical coverage of the Mainland, Island and Peri-urban to designate the spatial dimensions of fear and concern for safety to the study.

Before its application, a pilot study was conducted on 15 residents to test the instruments. The rule of thumb is to test the survey on at least 12 to 50 people before full-scale administration[74]. Feedback was obtained and the instrument was revised and further administered to 15 residents. For analysis of the internal reliability, Cronbach's *alpha* values were tested with a cut-off value of 0.75[75]. Reliability analysis indicated that the instrument is acceptable (alpha coefficient: 0.82), exceeding the suggested satisfactory level of 0.70[76]. To reduce respondents' predisposition, closed-ended questions were preferred[77]. Nonetheless, respondents were given opportunities to discuss responses. This study upholds voluntary participation and withdrawal of respondents at any point, avoidance of harm, confidentiality and informed consent during data collection.

[73] Y Baruch, B. Holtom, Survey response rate levels and trends in organizational research (2008).
[74] M Tavakol, and R Dennick, Making sense of Cronbach's *alpha* (2011)
[75] M Tavakol, and R Dennick, Making sense of Cronbach's *alpha* (2011).
[76] Ibid
[77] C Teddlie, and A Tashakkori, Handbook *of mixed methods in social and behavioural research*. (2003).

Variables and measurements

Two groups of variables were considered in this study: dependent variables and independent variables.

Dependent variables

The variables in this category include perceived fear/concern for safety, precautionary behaviour due to the threat of terrorist attacks, and respondents' view of the planned attack as a threat to oneself. Regarding fear/concern for safety, it was asked that: "In the past weeks, have you been afraid of becoming a victim of the planned terrorist attack if it happened?" with a response scale from 1 to 2, where 1 = No and, 2 = Yes. The response scale was re-coded into two classes, to make a clear distinction between those who had been afraid and those who had not. In terms of precautionary behaviour, it was asked that: "Is there an area in your community/Lagos, which you avoid because of the threat?" with a response scale from 1 to 2, where 1 = No and, 2 = Yes. This was done in order to scrutinise respondents who avoided certain area(s) from those who did not. A detailed description of the dependent variables is included in Table 1.

Table 1: *Summary of dependent variables*

Item	Variable	N (134)	%
Fear/concern for safety	Yes	104	77.6
	No	30	22.4
Precautionary behaviour	Yes	121	90.3
	No	13	09.7

Source: Authors' Survey (2022)

Independent variables

The independent variables were constructed into three groups: reception of the security intelligence, experiential fear, and residents' socio-economic grouping. Regarding the reception of security intelligence we asked: "Have you heard about the security intelligence on the planned attack on Lagos?" with a response scale from 1 to 2, where 1 = No and threat, 2 = Yes with "No" as the reference variable. The response scale was re-coded into two classes, so as to make a clear distinction between those who had received the news and those who had not. In this study, we are not interested in the sources, comprising traditional media, new and social media, official information channels, and publications among others.

Experiential fear was theorised as past victimisation experience based on three forms: violence against a person, violence against property, and experience of shooting, bombing and/or kidnapping. Information on past violent crimes against persons was gathered through the question: "Have you, your family or any member of your community experienced violent crime (like grievous harm and wounding, sexual violence, or used any other kind of physical violence) in the last five years?" Similarly, past property crime was based on the question: "Has theft of personal property occurred to you or any member of your community in the last five years?" Then, past experience of shootings, bombing, and or kidnapping was based on the question: "Have you, your family or any member of your community experienced shootings, bombing, and or kidnapping in the last five years?" In all three cases, the options had the following response options: 1 = No one, 2 = Yes with "No" as the reference variables in all the three experiential fear cases. This was done to separate victims from non-victims.

Table 2a: *Summary of independent variables (Security intelligence & Experiential fear)*

Item	**Variable**	**N (134)**	**%**
Reception of the security intelligence	Yes	124	92.5
	No	10	08.5
Violence against persons	Yes	105	78.4
	No	29	21.6
Violence against property	Yes	118	88.1
	No	16	11.9
Experience in shooting, bombing and/or kidnapping	Yes	49	36.6
	No	85	63.4

Source: Authors' Survey (2022)

The respondents' socioeconomic status is indicated by gender, nationality, ethnicity, age, occupation, and level of income /financial situation, highest level of education attained, geographical area and number of years already spent in Lagos. Gender was coded into male and female with female as the reference variable. Nationality was coded into Nigerian and non-Nigerian with the former as the reference category. For Nigerians, four different groups were determined: Yoruba, Igbo, Hausa/Fulani and others with both Hausa/Fulani and others as the reference category. The categories for age were 18–40 years, 41–60 years and those above 60 years, with 18–40 years as the reference category. For the highest level of education attained, options included those with no formal education, basic education, post-basic education, and tertiary education. The combination of no formal education and basic education was used as the reference category. For geographical area, Lagos is coded into three principal geographical areas: the Mainland, Island, and Peri-urban, with the Mainland as the reference category.

For respondents' occupations, there are four groups: business/professional service owners, civil/public servants, those employed in business/professional services and others with the combination of those employed in business/professional services and others as the reference category. The respondents' average monthly income/financial situation is coded into three: Less than 1000 USD, between 1000 USD and 1000 USD as well as above 10000 USD with less than 1000 USD as the reference category. The categories for years already spent in Lagos were coded as 5 - 9 years, 10–14 years, 15–19 years, and more than 19 years with the combination of those who have spent 5–9 years, and 10–14 years as the reference category.

Table 2b: *Summary of independent variables (socio-economic characteristics)*

Item	**Variable**	**N (134)**	**%**
Gender	Male	79	58.9
	Female	55	41.1
Nationality	Nigerians	130	97.0
	Non-Nigerians	4	3.0
Nigerians (*n = 130*)	Yoruba	53	40.8

	Igbo	34	26.1
	Hausa/Fulani	21	16.2
	Others	22	16.9
Occupation	Private business/professional service owners	22	16.4
	Civil/Public servant	48	35.8
	Employed in private business/professional services	36	26.9
	Others	28	20.9
Age distribution	18 – 40	29	21.6
	41 - 60	70	52.2
	Above 60 years	35	26.2
Educational level	No formal education	00	00.0
	Basic education	2	1.5
	Post-basic education	4	3.0
	Tertiary Education	128	95.5
Monthly income	Less than 1000 USD	24	17.9
	1000 USD – 10000 USD	57	42.5
	Above 10000 USD	53	39.6
Length of stay	5-9 yrs.	22	16.4
	10 – 14 yrs.	31	23.2
	15 – 19 yrs.	27	20.1

	> 19 yrs.	54	40.3
Geographical area	Mainland	67	50.0
	Island	27	20.2
	Hinterland (Peri-Urban)	40	29.8

Source: Authors' Survey (2022)

DATA ANALYSIS

The data analysis was done using the statistical package of SPSS 16.0 [IBM 22][78]. Descriptive analysis (*frequency counts and percentages*) was used to summarize the variables. In a few instances where respondents were given opportunities to elaborate their responses, conversations were transcribed, particularly, when respondents gave their opinions or provided important clarification. A narrative technique of reporting was used to analyze the opinions of the respondents regarding both dependent and independent variables.

In terms of exploring the variables, logistic regression was used[79,80]. The independent variables were used in logistic regression models to predict the following dependent variables: safety concerns; precautionary behaviour of residents, and respondents' view of the attack as a threat to themselves. Logistic regression was used because it is preferred over others as a suitable method for analyzing dichotomized variables[81]. The results of the logistic regression models were reported using Average Marginal Effects (AME) and Standard Error estimates (SE). As matched with more conventional odds ratios, AMEs are more appropriate for comparing models[82], and so using AME coefficients allows us to compare the effects of independent variables across models. The AME also

[78] H Denis, and D Cramer, *Introduction to research methods in psychology*. (2008).

[79] Wooldridge, *Econometric analysis of cross section and panel data*. (2022).
[80] Esbensen, et al., Similarities and Differences in Risk Factors for Violent Offending and Gang Membership. (2009).
[81] Ibid
[82] Ibid

provide statistics that are more straightforward to interpret and make genuine inferences[83].

Results and discussion

Survey findings are discussed under various subheadings as follows. Unless otherwise stated, the tables used to summarise the findings are the products of the survey carried out between August, 2022 and January, 2023.

Descriptive analyses of the variables

In the final sample (see Table 1), approximately 78% of sample respondents were concerned about their safety and security since the security intelligence got into the public domain. In further discussion with the respondents, one could see a palpable degree of fear among residents of Lagos. One of the sampled respondents spoke as follows:

> …since the information about the planned attack broke out, I can confidently say that everybody in this area is frightened. Throughout the first week when the information got to the public domain, my wife and two daughters could not even have a good sleep. Whereas on this street, we are used to hearing noise even to late in the midnight but now, any little racket on the street looks like a sound of war now…" (Male/45yrs/Civil servant/Peri-urban).

In response to this fear, 90% of respondents adopt precautionary behaviour by avoiding going out at certain times (at night and certain places) in their communities and Lagos at large. These results show that even some residents who were not actually concerned about safety, now observe precautions, nonetheless. In this regard, a respondent spoke thus:

> …there is a Yoruba' adage that says 'koju ma ribi, gbogbo ara logun e'. Everyone knows that these bandits always attack public places, so I've tried as much as possible to avoid these spaces, particularly, Church. I now attend worship services online. Besides, I do most of my work from home now and have also encouraged many of my staff to do so except on matters of essentials. Of a truth,

[83] Ibid

> my wife and daughters are scared now more than ever before. I may move them out of Nigeria to a safer country in a while. I'm also considering the option of selling off this business to start afresh somewhere else… (Male/57yrs./Entrepreneur/Lagos Island).

In further discussion with the respondents, it was observed that precautionary behaviour also extended to the community/neighbourhood/street level as some communities now intensify security precautions through community joint efforts and government interventions. One of the sampled respondents spoke as follows:

> …in the interim, pedestrian and vehicular movements are now restricted to between 5:00 and 23:00 hours. We have instructed and encouraged public places, including churches and bars in this area to close operations by 22:00 hour for the time being. All movements after 23:00 hours are nowadays thoroughly scrutinized by the community security operatives. We now engage the services of "Olodes" (local-watch) to patrol our streets throughout the night. The government prohibition on Okada operations in this community is supportive. Of a truth, a number of past violentcrimes in this area are linked to Okada operations. We thank the government for the Neighbourhood Watch and Joint security operations that are now very much noticeable in this area… (Male/62yrs./Retiree/Lagos Mainland).

As shown in Table 2a, despite the hullabaloo of the terror threats intelligence in the last five weeks, it is surprising to see that some 9% of Lagos residents are yet to receive or be aware of the information and the majority of these people are women with a low level of formal education. This unearths some of the problematic issues that growing African megacities like Lagos may be having in terms of communication and prompt information dissemination. One of the sampled respondents spoke as follows:

> … for where! This our Lagos? I never hear am. As you can see, I'm always busy with my small business from morning till late in the evening. But that one no fit happen. Na those people from Maiduguri get their wahala. They should not bring that rubbish come here o. I beg, forget am, 'awa o ni ri ogun ni bi yi, odi o kere

> [that is, we will not see war in this land, but for somewhere else] (Female/58yrs./Petty trader/Lagos Mainland).

Findings show that prior to the survey, a good number of sampled respondents, their families or members of their community/neighborhood (78%) have experienced victimization including grievous harm and wounding, assaults, sexual violence or any other kind of physical violence. One of the sampled respondents spoke as follows:

> …I will say assaults occur here daily and we (women) are mostly affected. We have "area boys and agbero" in pockets of places in this area. There are verbal abuses, body-shaming and unwelcome advances usually directed to girls and ladies walking on their streets, even in broad daylight. They (area boys) can obstruct your movement or grab you, and push you. They even go to the extent of pulling your hair or hitting your buttock with their hand. Just two weeks ago, one of the area touts tried to force a teenage girl into sexual intercourse if not for the quick intervention of a vigilante. It occurred in the night. Of a truth, nighttime is not safe for girls walking alone in this area. Besides, it was on this street that one of the "area boys and agbero" was beaten ruthlessly and almost set ablaze because of conflict which arise among different factions of NURTW … (Female/38yrs./Employee/Lagos Mainland).

The situation was even worse regarding property crime victimization as some 88% of respondents, their families or members of their communities or neighbourhoods have experienced theft of personal property, such as money, wallet, purse, credit card, mobile phone, laptop, and vehicle among others. One of the sampled respondents spoke as follows:

> … On this fateful day, it was around 23:00 hours when some criminals entered our premises. That day, they hijacked one of us (residents) at gunpoint and followed him and later subdued our security guards to gain entry into our building. They operated for like 60 minutes and carted away cash, phones, laptops and other valuables from six households that were residing in these premises then. Even after that event, my eyes have seen 'sege' (challenges)

> in this Lagos! I have personally been robbed. For instance, till today, I never received a product for which I ordered online and had already paid. It was after that I realized it was a fake online outlet. On two occasions, my ATM card (Debit card) was used to steal from my bank account even though the Debit card was with me. I guessed it was a point of sales (POS) machine compromise. So, since then, I've stopped using POS services… (Male/51yrs./Civil servant/Lagos Island).

Results show that a significant proportion (37%) of the respondents, their families or community members have experienced shooting, bombing and/or kidnapping. For most respondents, sporadic shootings usually occur when there are clashes among different confraternities and cult groups in Lagos over territorial conquest. For instance, "Aiye" and "Eiye" operate on the Island, "one million boys" have established domain in the Ikorodu axis of the hinterland/peri-urban while "Fadeyi' boys, "Akala' boys, Nokia boys, "Awawa" boys and "Koko" groups share territories on the Mainland. On several occasions, transport union (NURTW) riots have led to sporadic shootings among factions leading to the death of innocent residents and anxiety among people. Moreover, kidnapping was particularly emphasised by respondents. One of the respondents spoke on how his colleague, a pastor and a co-resident was abducted and killed as follows:

> … Although the event did not occur in Lagos, he was kidnapped sometime in April, 2021 in Ondo state when he was travelling to his hometown to attend to some issues. He was first declared missing when he did not reach his destination as expected. Thereafter, the abductors called and demanded that ten million naira ransom be paid. The family negotiated for two million naira; some of us contributed parts of the money which was delivered to the abductors. But unexpectedly, it was the dead body of "Fredrick" that was recovered where the kidnappers said we would see him. He was just 50 years old then with an aged parent, wife, and four children. It was such an unfortunate event… (Male/52yrs./Civil servant/Lagos Mainland).

There were several other cases mentioned by respondents. For instance, respondents reported that on February 29, 2016, gunmen attacked Babington

Macaulay Junior Seminary in Ikorodu; a peri-urban area of Lagos State, and abducted three schoolgirls. The girls were freed some days later after collecting a ransom. In another conversation, a respondent shared how on January 13, 2017, eight persons, including five students and three staff members from the Turkish International School in Isheri, were kidnapped by gunmen. One of those kidnapped was a Turkish national. The kidnappers gained entrance into the compound through the school's fence portion that is close to a swamp. The students and staff members were rescued by the police after ten days in the kidnappers' den, although there were claims that the school and the victims' families paid millions of naira as ransom. Furthermore, a resident of Aja community in Lagos Island recounted how a retired Nigerian Air Force Marshal was abducted on September 28, 2021, in the area. He narrated that the kidnappers were hooded, and shot sporadically before abducting him and dragged him into the speedboat. These were just a few cases of many kidnapping experiences among residents of Lagos.

Regarding the socio-economic composition of the final sample (See Table 2b), approximately 60% of the respondents were male. The majority (97%) were Nigerian nationals, with Yoruba, Igbo and Huasa/Fulani ethnic groups accounting for 40.8%, 26.1% and 16.2% respectively. Residents who were civil and public servants (36%) were more represented compared with owners of business and professional services as well as those employed in private businesses and professional services. While the majority of respondents (52.2%) were between 41 and 60 years of age, all respondents had formal education, and a significant proportion (96%) had completed tertiary education. The average monthly income of respondents was 950 USD with some 42% earning between 1,000 USD and 10,000 USD monthly. Moreover, 40% of the respondents had been living in Lagos for more than 19 years. Geographically, 50% of the sampled respondents live on the Mainland (where a large population of Lagos residents reside), 20% on the Island, and 30% on the Hinterland or Lagos Peri-urban.

Multivariate analyses of the variables

The results of the logistic regression model (see Table 3) show that respondents who are aware of the intelligence regarding planned terrorist attacks were more likely to report fear and concerns for safety, compared with those who have not heard the information. That is, respondents who are aware of the security intelligence were 39% more likely to report fear compared to those who are not aware of the violent crime update. Prior studies have shown a connection between

the reception of violent crime news and fear[84,85]. In terms of experiential fear, respondents who had experienced and/or witnessed past violence crime victimization were 14% more likely to report fear, compared to those who had not been victims. Similarly, respondents who had experienced and/or witnessed past property crime victimization were 19% more likely to report fear compared to those who had not been victims, while respondents who had experienced and/or witnessed past shooting, bombing, or kidnapping were 31% more likely to report anxiety compared with respondents who had not been victims. All these findings are consistent with prior research[86,87,88] which has shown a connection between previous victimization and fear.

It is a common finding that women have been more likely to report fear[89,90], and this applies to the current study too as results show females were 23% more likely to report fear than males. In terms of nationality, non-Nigerians were 11% more likely to report fear than Nigerians. Among Nigerians, findings show that both Igbo and Yoruba ethnic groups were more likely to report fear than Hausa-Fulani ethnic groups. The situation more than doubled for the Igbos. That is, the Yoruba and Igbo ethnic groups were 14% and 33% respectively more likely to report fear compared to Hausa-Fulani and others. In terms of occupation, civil and public servants were 5% less likely to report fear, while private business and professional owners were13% more likely to report fear. In terms of age, the age group (41–60 years old) was 16% more likely to report fear, while the oldest age group (above 60 years old) was 9% less likely to report fear compared to other age groups. These

[84] Hollis, *et al*., The relationship between media portrayals and crime: Perceptions of fear of crime among citizens (2017).
[85] Romer, *et al*., Television news and the cultivation of fear of crime. (2003).
[86] Badiora, et al., Spatial Analysis of Residents' Fear and Feeling of Insecurity in Ile-Ife, Nigeria. (2013).
[87] Janssen, et al., Victimization and Its Consequences for Well-Being: A Between- and Within-Person Analysis. (2021).
[88] P Kujala, Gendered feelings of unsafety and avoidance of local central areas in Finland 2001–2016. (2022).
[89] Ibid
[90] Badiora, et al., Spatial Analysis of Residents' Fear and Feeling of Insecurity in Ile-Ife, Nigeria. (2013).

findings deviate from past research[91,92,93] which indicates that aged people tend to be more likely to report fear compared with younger people. However, the results support[94] findings that young people tend to be more likely to report fear.

[91] Ibid.
[92] R LaGrange, and K Ferraro, The elderly's fear of crime: A critical examination of the research.
[93] P Kujala, Gendered feelings of unsafety and avoidance of local central areas in Finland 2001–2016. (2022).
[94] Z Podaná, and E Krulichová,. Victimization experience does matter: Testing the effect of different types of victimization on fear of crime among adolescents. (2021).

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Table 3: *Logistic regression models of Fear of terror violence and precautionary behaviour*

Item	**Variable**	**Fear and concern for safety**		**Precautionary behaviour**	
		ame	**s.e**	**ame**	**s.e**
Reception of security intelligence	No				
	Yes	.391**	.012	.332**	.016
Violence against person	No				
	Yes	.142**	.734	.112**	.655
Violence against property	No				
	Yes	.019**	.367	.135	.723
Shooting, bombing or kidnapping	No				
	Yes	.319**	.847	.143**	.444
Gender	Male				
	Female	.234**	.599	.437**	.696
Nationality	Nigerians				
	Non-Nigerians	.113**	.358	.234**	.344
Nigerians	Hausa/Fulani and others				
	Igbo	.334***	.261	.236**	.019
	Yoruba	.149**	.091	-.097***	
Occupation	Employed in private businesses and others				
	Civil/Public servant	-.057*	.389	-.052*	.099
	Private business/professional service owners	.137*	.289	.168*	.123
Age distribution	18 – 40		.		.909
	41 - 60	.169**	.594	.234**	.145
	Above 60 years	-.098**	.356	.257*	.023
Religion	Muslim and others				
	Christians	.214**	.063	.393**	.341
Educational level	No formal education/Basic Education				
	Post-basic education	.167*	.389	.034*	.084
	Tertiary Education	.174**	.289	.239*	.111
Monthly income	Less than 1000 USD				
	1000USD – 1000USD	.297**	.178	.159**	.098
	Above 10000 USD	.348**	.558	.313**	.256

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Length of stay	5-9 yrs./10 – 14 yrs.				
	15 – 19 yrs.	- .093**	.147	-.084**	.076
	> 19 yrs.	- .156**	.098	-.097*	.176
Geographical area	Mainland				
	Island	.196**	.419	.158**	.423
	Hinterland (Peri-Urban)	.338**	.718	.169**	.098

***p ≤ .05; **p ≤ .01; ***p ≤ .001*; ***s.e** = standard error**; ame** = average marginal effect*

Source: Authors' Survey (2022)

In terms of religious affiliation, Christians were 21% more likely to report fear than Muslims and others. This may not be far from the fact that many of the previous attacks of these terrorist groups were targeted at Churches and Christian worshipers. In terms of education, respondents with post-basic education were 16% more likely and respondents with tertiary education were 17% more likely to report fear compared with respondents with no formal education and just basic education. In terms of income, findings show that the level of fear increases as income increases. That is, respondents earning between 1000 USD and 1000 USD as well as those earning more than 10000 USD were 29% and 34% more likely to report fear respectively compared with respondents who earn less. These findings reinforce past research[95,96,97] which indicates that high-income earners tend to more likely report fear compared with low-income earners.

Findings show that fear decreases as respondents spend more years in Lagos. That is, respondents who had spent 15-19 years as well as those who had spent more than 19 years were 9% and 15% less likely to report fear respectively, compared with respondents who had spent fewer years in Lagos. It is a common finding that newer residents have been more likely to report concern for safety[98]. In terms of geographical area, concerns for safety vary spatially in the city of Lagos, just as is obtainable in previous studies[99,100,101,102]. Respondents in the peri-urban and those on the Mainland were 33% and 19% more likely to have anxiety respectively, than those on the Island. The pattern of crime incidences and vulnerability of these areas (*Peri-urban and Mainland*) could be the reasons for this. Residents on the Island are mostly influential with various degrees of power to provide additional security for themselves in the face of threats.

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[95] Badiora, *et al.,* Spatial Analysis of Residents' Fear and Feeling of Insecurity in Ile-Ife, Nigeria. (2013).
[96] R LaGrange, and K Ferraro, The elderly's fear of crime: A critical examination of the research
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[99] Ibid
[100] V Ceccato, Fear of crime and overall anxieties in rural areas: The case of Sweden. In M. Lee & G. Mythen. (Eds.), The Routledge international handbook on fear of crime (2018).
[101] B Pleggenkuhle, and J Schafer, Fear of crime among residents of rural counties: An analysis by gender. (2018).
[102] A Yates, and V Ceccato, Individual and spatial dimensions of women's fear of crime: A Scandinavian study case. (2020).

In terms of precautionary behaviour, respondents who were privy to the security intelligence were 33% more likely to engage in precautionary behaviour compared with respondents who were not aware of the security intelligence. Consistent with the literature on experiential victimization,[103,104,105,106] respondents who had experienced and/or witnessed past violent crime victimization, past property crime victimization, and past shooting, bombing or kidnapping were 11%, 13% and 14% respectively more likely to engage in precautionary behaviour compared with those who had not been victims.

Regarding socio-economic characteristics, females were 43% more likely to engage in precautionary behaviour than males. This is persistent with previous findings[107] that women are more likely to engage in avoidance behaviours. In terms of nationality, non-Nigerians were 23% more likely to engage in precautionary behaviour than Nigerians. This is not surprising as prior findings show that non-Nigerians had more concerns for safety than Nigerians. While the Igbos are 23% more likely to engage in precautionary behaviour, Yorubas are 9% less likely to do precautionary behaviour compared to Hausa/Fulani groups. Private business/professional service owners were 16% more likely to engage in precautionary behaviour while civil servants were 5% less likely to engage in precautionary behaviour compared to private sector employees and other occupation groups. In terms of age, the oldest age groups (>60 years old) 25% and 41– 60 year-olds (23%) were most likely to report precautionary behavior.

Findings show that Christians were 39% more likely to engage in precautionary behaviour than Muslims. This is expected as prior findings show that Christians had more concerns for safety than Muslim faithful. In terms of education, respondents with tertiary education were most likely to engage in precautionary behaviour, and those with post-basic education were 3% more likely to report avoidance behaviour. This shows that people with higher levels of education are

[103] Badiora, et al., Gender Differences in Risk Perception and Precautionary Behaviour among the Residents of Yoruba Traditional City. (2014).
[104]behavioural N Rader, and S Haynes, Avoidance, protective, and weapons behaviors: An examination of constrained behaviors and their impact on concerns about crime. (2014).
[105] Hibdon, *et al.,* Avoidance behaviors in a campus residential environment. (2016).
[106] Janssen, *et al.,* Victimization and Its Consequences for Well-Being: A Between- and Within-Person Analysis. (2021).
[107] H De Jubainville, and C Vanier, Women's avoidance behaviours in public transport in the Ile-de-France region. (2017).

more sensitive to crime-related threats. Prior research suggests that those with higher levels of education deploy a wider concept of violence, and manifest above-average sensitivity to conflicts and violence[108]. Thus, this may be the case in Lagos as well. In terms of income, high-income respondents (Above 10000 USD monthly) were 31% more likely to report avoidance behaviour compared with low-income respondents. Findings show that respondents who have spent above 19 years and those who have spent between 15–19 years are respectively 9% and 8% less likely to engage in precautionary behaviour. In terms of geographical area, precautionary behaviour is consistent with the pattern of fear as respondents in the Peri-urban and those on the Mainland were 16% and 15% more likely to engage in precautionary behavior respectively than those on the Lagos Island

CONCLUSION AND RECOMMENDATIONS

This study explores the link between the reception of security intelligence about planned terrorists' attacks on fear and precautionary behaviour in the context of the current security situation in Nigeria. Using Lagos (*one of the Nigerian cities under the terrorists' watch*) as a case study, findings show that only a very small proportion of the residents are not aware of the security information. This indicates that the actual societal reach of the news about security intelligence is extensive in the context of this study. Findings go well with past studies that have established a link between the reception of violent crime news and fear, concerns for safety and precautionary behaviour. Nevertheless, this study adds to the previous research by establishing that the emergence of security intelligence in the public domain has very likely further contributed toward the increasing fear, and concern for safety and resident's mobility, at least in Lagos, Nigeria. In addition, results show that past crime victimization experience was associated with concerns for safety and precautionary behaviour. This could mean that besides awareness of security intelligence and/or consumption of crime news, decisions to avoid certain places because of threats may be determined by real-life perceptions and experiences of the local security situation.

Findings highlight the importance of some socio-economic characteristics as well. For instance, women and older residents were more likely to report concerns for safety and engage in precautionary behaviour. Besides, relatively high income and

[108] J Kivivuori, Understanding trends in personal violence: Does cultural sensitivity matter? In M. Tonry (Ed.), Crime and Justice. (2014).

high education were also linked to concerns for safety and precautionary behaviour as respondents earning better income and those with post-basic or tertiary education were more likely to have fear and avoid certain areas, than those with just low income and basic education. While it appears that concerns for safety and precautionary behaviour are greatly influenced by the consumption of news about panned threats and past crime victimization experience, the study concludes that concerns for safety and precautionary behaviour cannot be totally explained by a single cause but rather, a summation of diverse contributing factors as shown in this study. As evidenced in this study, there is a palpable level of fear and concern for safety in Lagos: residents' routine activities and mobility are being altered; business enterprises and social activities are somewhat negatively affected. Hence, investors and residents of Lagos need to be reassured of their safety and security. Nigeria and Lagos city authorities should therefore find integrated and new proactive ways to prevent terrorist attacks.

The Government, particularly, the Lagos State government, should not gaffe by being cool, lethargic or play down the terrorists' threats. This 28th of March, 2022 attack on a Kaduna-bound train carrying 970 passengers where at least 8 people were killed was attributed to the failure of authorities to act on intelligence reports. It is high time state security forces increased their surveillance and armed themselves with new technology in order to prevent future attacks, hunt down terrorist groups and bring them to face the applicable law of the land. If need be, Nigeria and Lagos city administrators can request foreign support in terms of security aid and forces to prevent these threats and bring perpetrators to justice. The government needs to beef up security and check-points on all roads and waterways leading to Lagos, to fortify the nation's commercial capital against terrorists. Furthermore, the forest parks in the country's southwest zone have become the hideout and the operational base for the bandits because the long-standing practice of constantly patrolling and monitoring by forest security guards appeared to have been jettisoned. This practice needs to be reconsidered. There is a need to beef up security around vulnerable public places. The security response should be joint and inter-agency. This could be carried out by a multi-agency task force comprising state and non-state security outfits.

Modern security hardware technology such as drones, cameras and trackers are needed in public places like recreation centres, and religious grounds for prompt detection and prevention. Poverty, hunger and joblessness make people vulnerable to terrorism and violent crime. Lagos State government should therefore work on

a plan to pursue a development agenda for the state. This should include targeted empowerment programmes designed for unemployed youths, to minimise their vulnerability to recruitment by ISWAP, Ansaru, and other emerging criminal groups in the state. While Lagos state could rely on state policing, it should be noted that Nigeria's security departments are at present overstretched with many security issues ravaging the country's northern region. Hence, much more needs to be done for the southwest security network known as Amotekun, the Lagos state security outfit, known as Neighbourhood Safety Agency, and other vigilante structures. With this new security dimension, these regional approaches must be reinvigorated with sophisticated equipment and training as effective security forces for the State in this period of uncertainty.

Furthermore, it is evident that heavy spending on security equipment, systems, procedures and investigations has not made cities safer. Boko Haram, ISWAP, and Ansaru attacks continue to occur in many Nigerian cities, despite the heavy budget allocation in the last five years. It is unreasonable to believe that policing measures alone will be able to stop terrorist attacks from occurring in Nigerian cities. There are solutions, however, that complement policing measures. In times like this, cooperation from Lagos residents concerning intelligence gathering is vital. Criminals and crime events should not be covered, intentionally or otherwise, irrespective of where and who is involved. Residents should therefore be more vigilant and report security issues to the police as soon as possible. Reporting crime and suspicious events is considered among citizens' "civic duties," just as voting with your PVC. Not reporting crime and wary happenings could create an enabling environment for terrorism to flourish in the city.

This study advocates that further planning of the city of Lagos should balance economic, social, and environmental goals, such that excessive sprawl development does not occur. This would cause less segregation and isolation among the Lagos population. Besides, one regular modus operandi of terrorist attacks in Nigeria is the use of vehicles and motorcycles to attack soft places and targets. Thus, city design could be one of the best ways to ward off the growing threat of terror attacks with the use of cars and motorcycles as weaponries. The urban design approach which splits cars/motorcycles from pedestrians by using physical barriers that are capable of stopping a moving vehicle/motorcycle can also function as environment-enhancing installations that allow the city to protect people/buildings while maintaining and even enhancing the city's everyday function as a place to live, recreate, and work.

Lagos city planners/designers can primarily accomplish this by putting in place measures that seek to maximize the "standoff" distance between streets/roads and possible target buildings or locations such as churches, schools, and recreational centres. The city planners can also use subtler design alterations that can reduce the speed of vehicles moving to a target location. Small bends, bumps, or turns in roads approaching soft targets and crowded locations (such as sports stadiums, bars and nightclubs, shopping centres and places of worship) could be used as a way to limit the speed at which a vehicle attack can be launched. These design strategies should work parallel with policing and smart monitoring systems, such as smart CCTV and advanced street lighting. Residents of Lagos are likely to like these tactics because they improve the city space without making it feel like a police city. Of course, if design elements are going to be effective, they should be accompanied by preparation for the event of their use. To maximize the effectiveness of Lagos's built-in security features and policing, officials should continue to emphasize preparedness in the face of these shocking planned attacks.

This study offers opportunities for further research. The current study focuses on only one of the Nigerian cities on planned terrorist attacks. Besides, it focuses on the Sub-Saharan context of a rapidly developing Megacity. The findings might be different in other Nigerian cities and countries with similar threats. Hence, a good area to expand this research is the development of more case studies. This single case study does not allow a comparative analysis of issues among residents. The comparison of these cases in other geographical settings will provide a better understanding of this subject matter. As this study only explored the residents' perspectives, the question of what the government, state, and non-state actors are doing regarding these threats could be explored in future analyses. Moreover, the sample is small compared to the population of the city of Lagos. This may mean that the statistical power may be low (e.g. the capability to detect accurate significant statistics). Future analysis may therefore consider a larger sample and new data collection methods to obtain time-series data on perceived safety, and their influencing factors. The current analysis is basically descriptive. Thus, future studies should consider more robust and serious techniques of analysis. For instance, using z-scores, minimum and/or maximum normalisation (multiplied by 100), validation of the indices and variables using factor analysis, and principal components, among others.

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THE RESURGENCE OF MILITARY COUP *D'ETATS* IN AFRICA: A STEP FORWARD OR BACKWARD IN DEMOCRATIC GOVERNANCE?

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ABSTRACT

This article discusses the resurgence of military coup *d'états*, in Africa, whether it is backward or forward movement in democratic governance on the continent. Recently there has been an upsurge in UCG in Mali, Burkina Faso, Sudan, Guinea and the latest now is Gabon. This trend is against Article 4(m) (p) of the Constitutive Act of African Union that condemns UCG; and the African Charter on Democracy, Election and Good Governance (ACDEGG), 2007. It is not also a surprise that some citizens of these countries where the unconstitutional change of government has taken place were found jubilating due to maladministration of the constitutionally elected leaders. This article aims at bringing the attention of global leaders to the regressive trend in the democratic progress of certain African nations. Doctrinal methodology is used and the data method is content analyses. The findings of the study show that some citizens of these countries are not enjoying dividends of democracy and that the military itself has not imbibed the dictates of civilian administration or rule on the continent. This paper concludes that the mere suspension of a particular country whose civilian administration has been overthrown is not enough deterrent to other countries in Africa, and stricter penalties is needed to be implemented against such country. It is one of the recommendations of this article that paper condemnation of illegal take over government and the suspension of such a country from AU is not enough deterrent to putsch in the continent.

Keywords: Coup *de'tats*, Resurgence, Governance in Africa, Right to Rebel, The Malabo Protocol, UN SC Reaction to Coups

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INTRODUCTION

After the end of colonial rule in many colonies, military coups became a common method of altering the political order in Africa.[3] As at July 2023, it is amazing that seven African countries are under military rule. These countries are the Republic of Chad, Sudan, Mali, Guinean, Burkina Faso, Republic of Niger and the latest being Gabon. According to a research conducted by Thyne, Powell, Hayden, and VanMeter, between 1960 and 2000 there were an average of four coups and coup attempts every year.[4] However, as calls for democratic changes and constitutionalism developed in the new century, the number of military coups reduced to two per year until 2019.[5] However, they appear to be making resurgence, causing United Nations Secretary-General Antonio Gutierrez to condemn what he called 'an epidemic of coup d'états' earlier in 2022.[6]

A coup, according to Powell and Thyne, is an 'illegal and overt attempt by the military or other elites within the state apparatus to unseat a sitting executive'.[7] According to the same authors, 'a coup attempt is successful if the perpetrators seize power for at least seven days'.[8]According to analysts, Thyne & Hitch and Dersso, the recent increase in the militarization of politics is influenced by a combination of external, influence such as the growing and diverse number of international actors active in the continent prioritizing their interests, and internal

[3] M Durmaz, '2021, the Year Military Coups Returned to the Stage in Africa, (2021),*Aljazeera News*
<https://www.aljazeera.com/news/2021/12/28/2021-year-military-coups-return-to-the-stage-in-africa> Accessed 20 December 2022.
[4] C L Thyne, *et al* 'Even Generals Need Friends: How Domestic and International Reactions to Coups Influence Regime Survival' *Journal of Conflict Resolution* (2018) 62 (7) </doi/10.1177/0022002716685611> Accessed 22 December 2022.
[5] R Schiel, C Faulkner and J Powell 'Silent Guns: Examining the Two year Absence of Coups in Africa' *Political Violence at a Glance,* (2017)<https://www.accord.org.za/conflict-trends/a-new-coup-era-for-africa/> accessed 26 January, 2023.
[6] Durmaz (n 1).
[7]J Powell and C Thyne, 'Global Instances of Coups' from 1950-2010' (2011), *Journal of Peace Research,* 48(2), 249 – 259. <https://www.uky.edu/~clthyn2/powell-thyne-JPR-2011.pdf> accessed 12 December, 2022.
[8] Ibid.

factors, such as widespread public frustration with corruption, insecurity, and poor governance, among others.[9] The coup in Guinea was precipitated by widespread discontent and protests against President Alpha Conde's unpopular decision to abolish the two-term limit on the presidency. Therefore, the head of the military junta, Colonel Mamady Doumbouya, justified the coup by alleging that poverty and pervasive corruption obliged his special forces to act.[10] Doumbouya said:

> The personalization of political life is over. We will no longer entrust politics to one man. We will entrust it to the people at a time. The electoral process increases public support for the armed forces to do something.[11]

Concurring, Cummings and Devermont said the militaries assume 'the position of saviour and use civic discontent as a means of legitimizing their unconstitutional power grabs'.[12] Similarly the two military coups in Mali occurred against the backdrop of widespread protests, against President Ibrahim Boubacar Keita, whose administration was accused of; corruption, nepotism, and failing to address the country's deteriorating security issues.[13] Military commanders in Mali and Sudan employed similar strategies to seize power. Following the first coup in August 2020, the Malian putsches led by Colonel Assimi Goita initially agreed to create a

[9] C L Thyne and K Hitch, 'Democratic versus Authoritarian Coups: The Influence of External Actors on States Post-coup Trajectories' *Journal of Conflict Resolution*<https://ideas.repec.org/a/sae/jocore/v64y2020i10p1857-1884.html> accessed 26 January, 2023; S A Dersso, 'Unconstitutional Change of Government and Unconstitutional Practices in Africa' *African Politics and African Peace, Summary Paper From The Program On African Peace Missions,* June 2016,<https://sites.tufts.edu/wpf/files/2017/07/2.-UCG-Dersso-f.pdf> accessed 21 July, 2023.

[10]Durmaz (n 1).

[11] Ibid.

[12] R Cummings and J Devermont, 'Under Radar' *Centre for Strategic and International Studies (CICS)* Summer 2021 Edition <https://www.csis.org/analysis/under-radar-summer-edition> accessed 26 January, 2023.

[13] R Adekoya, 'Why are coups making a comeback in Africa', *CNN* September 13, 2021<https://edition.cnn.com/2021/09/12/africa/africa-coups-resurgence-intl-cmd/index.html> *Accessed* 20 December 2022.

military civilian mixed transitional council, vowing to give over power to civilian government at the end of the transition.[14]

Following a cabinet change that saw two military members replaced with civilian lawmakers, Goita imprisoned and then ousted the civilian president and prime minister of the transitional council in May 2022. Meanwhile, the military's commitment to organise elections by February 2023 appears more unlikely to be fulfilled.[15] Recently, on October 25, Sudan's General Abdel Fattah al-Burhan seized control and jailed Prime Minister Abdalla Hamdok, with whom he had agreed to oversee the government. [16]

The African Union (AU) and regional community such as the Economic Community of West African States (ECOWAS) suspended nations where coups had occurred—except Chad—in an attempt to persuade military authorities to reach an agreement with civilian leaders. However, such initiatives have had a limited impact. Cummings and Davermont continued by remarking that their answers to previous power grabs had been "relatively toothless," and they added that:

> It is our understanding that the preference has been to engage in dialogue process between the leadership and aggrieved domestic stakeholders, rather than to pursue punitive measures against the said leadership for their transgressions; this ensures that democratic consolidation does not take place organically within these states which, in turn, allows the military to exploit these democratic deficits.[17]

Africa, the continent with the world's youngest democracy, now boasts of four of the world's longest-serving elected presidents. In Gabon and Togo, the Bongo and

[14] Durmaz (n 1).
[15]Ibid.
[16] Ibid.
[17] Cummings and Devermont (n 10).

Eyadema dynasties have reigned for 55 years apiece. [18] Teodoro Obiang of Equatorial Guinea is approaching his 44th year as president, while Cameroon's Paul Biya has been in government for more than 40 years. Elections are in disgrace throughout Africa, and the endless president is back in style.[19]

Doctrinal methodology is adopted and the paper considers the works and data provided by other Authors on this subject matter. The primary legislation used are; the Constitutive Act of AU, the Protocols for example, ACDEGG and Resolutions of the UNSC. This paper is divided into four parts; part one discusses the unconstitutional change of government, its element and factors responsible for this. Part two discusses the history and the resurgence of it in 2021. Part three discusses the reaction of the UN Security Council to unconstitutional change of government and the right to rebel then conclusions and recommendations made.

It is the contention of this paper that if the international bodies delay or refuse to implement stricter policies against *coup de tat* in Africa, at the end of the day many more African nations may be under military rule which is an antithetical to democratic rule in the world but now gaining ground in Africa. This article therefore, intends to proffer solutions to military rule.

Unconstitutional Change of Government (UCG) in Africa

As articulated in the African Union (AU) instruments, Unconstitutional Change of Government (UCG) takes different modes. They are Military coups, intervention by mercenaries, and removal of democratic government by armed rebels and refusal of an incumbent to hand over power to newly elected leaders. All these are evident and prevalent in Africa in comparison to other parts of the world.[20]

On military coups, three types are discernible; these are, military coups proper, where members of the army depose the incumbent political leader and put in place a military led government, for example in Mauritania (2005 and 2008), Guinea

[18] C A Odinkalu, 'Return of Interminable President in Africa' (*The Punch* Nigeria) 10 April 2023.
[19] Ibid.
[20] Derrso (n 7).

Bissau (2009 and 2012, Niger (2010), and Mali (2012). The other is instance of forced change of government involving mass protest, where mass protest facilitated military backed change of government. Examples of these include Madagascar and Egypt, and also the army's involvement in violation of constitutional processes which was the case in Togo and recently in Chad. On intervention by mercenaries, since the norm against (UCG) was instituted, there has been no successful overthrow of a government by mercenary forces, though they did attempt to do so in Equatorial Guinea.[21]

On the refusal of an incumbent to relinquish power, Zimbabwe and Kenya are cited as difficult example but relevant to this form of UCG, the only case that Africa Union (UN) actually considered as UCG on the ground of refusal of an incumbent to relinquish power was Cote d'lvoire. The amendment of a legal instrument or the constitution to prevent constitutional change in government as was unsuccessfully sought in Nigeria and Burkina Faso.[22]

UCG eroded and undermined constitutional rule, entrenched bad governance and created conditions inimical to citizen's rights and freedom (including by encouraging future coups). This change with the revival of multi-party politics in Africa in the 1990s which led to the emergence of a belief in elections as the only legitimate basis for assuming a retaining governmental power. Building on his belief, the AU has become not only the defender of democracy and constitutional rule on the continent, but has also taken up the role of promoting democracy and helped enshrine the norm against the UCG in various legal instruments. Through norms like the UCG, the AU has even exceeded the United Nations (UN) in expansively articulating the conditions that could be considered as threat to peace and security.[23]

President Macky Sall of Senegal is the most recent addition to this group, what happens in 2024 in his bid to amend the constitution in order to contest for a third

[21] Ibid.
[22] Ibid.
[23] Ibid.

term will be critical to the continents. UCG is definitely one of the most serious and contentious offences that will fall within the purview of the newly constituted African Criminal Chamber.

Elements of Unconstitutional Change of Government

The Malabo Protocol, which will serve as the legal foundation for this future African Criminal Court[24] defines this offence as the commission or ordering to be committed of a number of specified acts with the aim of illegally accessing or maintaining power. These acts include:

(a) A putsch or coup *d'etat* against a democratically elected government. This is the type that took place in Niger Republic in 2023 where a democratically elected government was toppled.
(b) An intervention by external forces to a democratically elected government;
(c) Any replacement of a democratically elected government by use of armed dissidents or rebels or though political assassination;
(d) Any refusal by an incumbent government or relinquish power to the winning party or candidate after free, fair and regular elections. This occurred in Gambia in 2017 when Yahya Jammeh refused to relinquish power to democratically elected president
(e) Any amendment on the principles of democratic change of government or is inconsistent with Constitution; and
(f) Any substantial modification to the electoral laws; in the last six months before the elections without the consent of the majority of the political actors. In accordance with the above Article of the Malabo Protocol, several different actions can constitute the crime of UCG. They all have one thing in common: they all pose a danger to

[24]Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, STC/Legal/ Min7(1) Rev. I, African Union; First Meeting of the Specialized Technical Committee on Justice and Legal Affairs, 15–16 May 2014, Addis Ababa, Ethiopia (Malabo Protocol).

> democratically elected governments and processes. This occurred in Togo when Gnassingbe Eyadema amended the constitution to eliminate the two – term limit; so also in Uganda, Chad and Cameroon.

In other words, the whole provision aims to safeguard institutions and (democratic) political decision-making processes. In this regard, the crime is analogous to current international crimes. It is the tragic destiny of international criminal justice that is principally concerned with the tragic fate of particular human beings; who have suffered - and continue to suffer - as a result of gross human rights breaches amounting to the most severe international crimes.[25] This does not exclude, however, that communities, (political) institutions or even procedure can be the victims of international crimes. The most conspicuous example is obviously the crime of aggression. Article 8b of the Rome Statute defines the crime of aggression as an 'act of aggressions' – invasion or attack by armed forces, bombardment, blockade of the ports or coasts etc. - of one state against another state. In other words, the provisions aim at the preservation of the integrity of the state.[26] In a same spirit, terrorism as an international crime is distinguished not only by the specific goal to terrorize the populace, but also by the desire to compel a government to do or refrain from doing anything, or to seek the extinction of an economic, social, or political institution.[27]

[25]Compare the second item of the Preamble to the Rome Statute that reads 'Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of mankind'.

[26]R S Clark 'The Crime of Aggression', in G. Sluiter and C. Stahn (eds.), *The Emerging Practice of the International Criminal Court*, (Leiden/Boston,2009) 709<https://lawcat.berkeley.edu/record/73254?ln=en>accessed 12 December, 2022.

[27]The Special Tribunal for Lebanon defined the *mens rea* required for terrorism as the intent to spread fear among the population or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it (Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging (STL- 1–01/I/AC/R176bis), Appeals Chamber, 16 February 2011, §§ 83, 85.

Some Aggravating Factors of Unconstitutional Change of Government

The first issue to note, in looking at drivers of UCG, is the way earlier political transitions in some of the affected countries have been characterized by incompleteness. Since 2012, Mali has vacillated between transient civilian rule and military coups. In Guinea and Sudan, there is evidence of similar contestation between attempt to consolidate reform and civilian administration on the one hand, and incursion by the military into politics on the other. The fact that the AU has initiated suspensions 13 times against just six its member states due to UCG provides a clear indicated of this pattern of incomplete transition in some countries. The countries in question are Burkina Faso, Central African Republic Egypt, Guinea, Mali and Sudan.[28]

Second, there is some evidence to suggest a correlation between a country's experience of a military coup and its socio-economic, governance and overall fragility contexts. Burkina Faso Chad, Guinea, Sudan and Mali are ranked at the bottom of the United Nations Development Programme (UNDP). The Human Development Index (HDI) measure life expectancy; expected years of schooling, average years of schooling, and Gross National Income per capita. A low score indicates significant shortfall in progress towards Agenda 2030 and Agenda 2063. These countries also rank low in the Mo Ibrahim Governance index and are among the top countries in the Fragile States Index[29]

The desire for good change among the populace, which is linked to a rise in democratic aspirations across the continent, is a related third set of drivers. This desire can spur popular protest movements but can also be easily exploited by

[28] JM Okeke and J Banfield, 'Hot-Air or a Resurgence? Making Sense of Unconstitutional changes in Government in Africa ' *Accord* May 26, 2022<https://www.accord.org.za/analysis/hot-air-or-a-resurgence-making-sense-of-unconstitutional-changes-in-government-in-africa/> accessed 24 July, 2023.

[29] UNDP Annual Report 2022 UN Development Programme <https://www.google.com/aclk?sa=l&ai=DChcSEwj5g_65xKeAAxVF4u0KHaYxDpkYABAAGgJkZw&sig=AOD64_0AlsxZcUiRZ3jx-qQioquM1BM6tA&q&adurl&ved=2ahUKEwizh_G5xKeAAxUhQ0EAHT-lBJ0Q0Qx6BAgBEAE> accessed 24 July, 2023.

putsches. This is no to suggest that citizens' perceptions justify military coups. Rather, it is evident from early findings of a new research project examining these issues, that prolonged frustrations and unmet expectations of citizens can serve to trigger popular support for any change of government, irrespective of whether it is through constitutional or unconstitutional means, at least in the short-team.[30]

Incompleteness of previous transitions, underlying development and governance shortfall and related citizen's frustration emerge as salient factors shaping the trajectory of the countries that experience coup. They are experienced more widely across the continent however and cannot therefore be taken alone to explain coup occurrence.[31]

A fourth set factor to be considered is the sub-regional specificity of recent event. A concentration of the coups has played out in the greater Sahel. It is perhaps no coincidence that this is region which has become increasing militarized over the past decade. Since 2012 the United Nation (UN), European Union (EU), French, United State (US) as well as regional forces have deployed at scale, responding to multiple intersecting crises such as terrorism and irregular migration[32]

Analyst like International Crisis Group has long argued that investing in the region's governance should be prioritized over and above the dominance of security approaches. The latter has sometimes raised the issue of the use of indiscriminate force, which could erode state-citizen trust. Failure to reduce violence despite deployment has furthermore shaped the region's political culture, with a leader's ability to provide security seen as a priority.[33]

Powell and Thyne are of the opinion that the lack of concrete and unified international condemnation and the growing number of international actors, who

[30] Okeke and Banfield (n 26).
[31] Ibid.
[32] Ibid.
[33] International Crisis Group, 'A course correction for the Sahel stabilization Strategy, February 1, 2021 <https://www.crisigroup.org/africa/sahel/299-course-correction-sahel-stabilisation-strategy>accessed 24 July, 2023.

have shown willingness to work with the military governments, encourage more unconstitutional power grabs by military officials who know they will not face several consequences or regional and global condemnation.[34] China, the continent's largest trading partner, has a no-interference policy on the domestic affairs of African countries, as long as they are committed to long-term economic ties.[35] This is seen favorably by many across the continent, with more African Leaders wooed by China's economic success on the global stage becoming increasingly convinced their countries should leave Western prescriptions for good governance and economic growth.[36]

Russia, on the other hand, had been expanding its influence politically and militarily across the continent. Moscow has been stretching its muscles by backing putsches leaders like Mali's Goita and Sudan's al-Burhan and running online disinformation campaigns to spread a positive image of the Kremlin and capitalize on rising anti-French sentiments in Francophone Africa.[37] Meanwhile, the Kremlin-linked Wagner Group has reportedly deployed mercenaries in conflict-ridden countries including the Central African Republic, Mali, Libya, and the Niger Republic, while the Russian government denies any links to the shadowy private security company.[38]

RESURGENCE OF COUPS IN AFRICA

The Egyptian army's 1952 overthrow of King Farouk signaled the start of military intervention in Africa with the goal of gaining political control. Since then, there have been other ones, making military intervention in politics a regular tactic to seize political control. Thus, the concept of coups is not new, despite mounting concerns about their increasing prevalence in recent times.

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[34] Powell and Thyne, (n 5).
[35]M Shannon, 'The International Community's Reaction to Coups' *Foreign Policy Analysis* (2015) 11 (4).<https://www.jstor.org/stable/44784751> accessed 26 January 2023.
[36] ibid.
[37] ibid.
[38] ibid.

In Africa, coups have been characterized by three main dynamics. The first is that their frequency is distributed unevenly, with sporadic spikes associated with the governing structure of different states. Second, each coup has a unique set of causes, actors, triggers, and ultimate outcomes that differ greatly from one another. As a result, several internal transitional dynamics and management strategies have been developed to address the effects of coups in countries.[39]

The recent resurgence of coups and coup attempts in Africa highlights the challenges of the African Union's framework on UCG. It was not long ago that the decline of coups was being celebrated, not just in Africa, but globally. New African Magazine asked in 2015 why coups are going out of style.[40] In 2017, Schiel, Faulkner and Powell pointed to a two-year period since the last attempts coup in Africa, with the continent approaching three full years since the last successful attempt.[41]A month later, former Malian Foreign Minister Kamisssa Camara even in the context of her serving shortly after a coup-suggested that 'the time for coups is over'.[42]

Through perhaps not a long period at first glance, this was the longest coup-less stretch in Africa since decolonization.[43] Various efforts have been made to explain this shift, including the institutionalization of more open political systems and the role of external factors such as the African Union (AU).[44] Though the November

[39] ISS/PSC Monthly Report: 'Evolution of Coups in Africa.' https://issafrica.org/pscreport/psc-insights/the-evolution-of-coups-in-africa accessed 21 December, 2023.
[40]R Ntomba, 'Why are Military Coups Going out of Fashion in Africa?' *New African(2015)<https://newafricanmagazine.com/11522/>*accessed 12 December, 2022.
[41] Schiel, Faulkner and Powell (n 3).
[42] K Camara, *'En Afrique de l'Ouest, Les Revisions Constitutionnells Ont-elles Contribue a la Consolidation de la Paix et de la Democratie, oul'inverse?'* Africa Research Institute (2017)<https://nyelenimagazine.org/afrique-de-louest-revisions-constitutionnelles-ont-contribue-a-consolidation-de-paix-de-democratie-linverse/> accessed 12 December, 2022.
[43] Ibid.
[44]I Souare, 'The African Union as a Norm Entrepreneur on Military Coups d'etat in Africa (1952-2012): An Empirical Assessment', *Journal of Modern African Studies*, 52(1), 69-94 DOI: https://doi.org/10.1017/S0022278X13000785; J Powell,; T Lasley and R Schiel, (2016) 'Combating Coups d'etat in Africa, 1950-2014', *Studies in Comparative International Development, 51, 482-502 (2014) DOI: 10.1007/s12116-015-9210-6*accessed 12 December, 2022.

2017 coup against Robert Mugabe in Zimbabwe was a new coup, coups remained something of an afterthought in subsequent years.[45]

More recently, commentary at the Council on Foreign Relations concluded that 'old style' coups in which soldiers attempted to seize power had been supplanted by incumbents scheming to maintain it.[46] This has changed since August 2020, with successful coups taking place in Chad, Guinea and twice in Mali as well as a failed effort to seize power in Niger, and both a failed and successful coup in Sudan.[47] This apparent resurgence in the phenomenon has prompted much discussion on the cause of these events, whether they are related, and what-if anything-the region can do to block the trend.[48] Independent African states have experienced over 200 coup attempts since 1950, of which over one hundred have succeeded.[49]This work reviews the recent 'coup epidemic' within a larger historical context, reflecting on commonalities, disparities, and how these events fit into international frameworks designed to deter coups.[50] The region's recent coups point to two important challenges to the AU framework on UCG. First, though the AU had been heralded for becoming less tolerant of military coups, the less responsive to the constitutional maintenance of power has not proved this assertion.[51]

The Coup D'état of 2021

The world attention to coups shifted to Southeast Asia following Myanmar's 1 February, 2021 coup against its young democracy. This attention returned to Africa following a short-lived coup effort from elements of the Nigerien Air Force

[45] Ibid.
[46]J Campbell, 'The Changing Style of African Coups', *Council on Foreign Relations* (2020)<https://www.accord.org.za/conflict-trends/a-new-coup-era-for-africa/> accessed 12 December, 2022.
[47] ibid.
[48] ibid.
[49]Powell and Thyne (n 5).
[50] Ibid.
[51] Ibid.

on 31 March, 2021.[52] Three weeks later, Chad's military installed General Mahamat Idrisss Deby following the death of his father, President Idriss Deby. A power vacuum was created after the latter became the first head of state to be killed in Africa in battle since Emperor Yohannes IV of Ethiopia fell to Mahdist forces in March 1889.[53] Mali soon saw interim President Bah N'Daw removed on 21 March, 2021, just eight months after the country's previous coup. Guinea's Alpha Conde was the next victim, with his 5 September 2021 ousting. Though the next coup attempt failed in Sudan on 21 September 2021, the armed forces successfully removed Prime Minister Abdallah Hamdok on October 2021.[54]

As difficult as it would be to overstate the seriousness of Africa's coup resurgence, some observers have managed the task. Following Sudan's October coup, The Wall Street Journal declared military coups to be at their highest level since the end of colonialism.[55]Though hyperbolic, 2021's departure from recent history has been dramatic enough to earn comparison with the independence era. The Economist more accurately noted that 2021 has seen more coups than the previous five years combined.[56]

Our exploration of the data indicates that the year has seen the most successful coups in Africa since 1999 and the most total coup attempts since 1991.[57] Perhaps more importantly, the coups have not fallen into any particular pattern with regard to victims. They have occurred within vacuums, young regimes and long-entrenched ones, countries moving both toward and away from democracy, those

[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] B Faucon, S Parkinson and J Summer 'Military Coups in Africa at Highest Level since End of Colonialism', *Wall Street Journal* (2021). <https://www.wsj.com/podcasts/google-news-update/africa-coups-at-highest-level-since-colonialism/eb151e7b-7b23-4d1b-9861-adae7e42c1c1> accessed 12 December, 2022.
[56]The Economist (2021) 'As Sudan's Government Wobbles, Coups are Making a Comeback', (2021) <https://www.economist.com/graphic-detail/2021/10/25/as-sudans-government-wobbles-coups-are-making-a-comeback> accessed 12 December, 2022.
[57] Ibid.

with ongoing insurgencies, and those in relative peace. It is perhaps more intriguing that this high number of coups in 2021 occurred within the context of the AU UCG framework, that since 1997 has sought to discourage coups and other illegal seizures of power.[58]

Increase of the Anti-Coup Norm

With the loss of foreign patrons and sweeping challenges in Africa, such as structural adjustments and unprecedented pressure for democracy, the immediate post-Cold War period saw a spike in coup attempts. Soon, however, the region began moving toward a more formal anti-coup framework. In 1997, Robert Mugabe declared, 'we are getting tougher and tougher on coups. Coup-plotters will find it more difficult to get recognition from us; we now have a definite attitude against coups'.[59] Mugabe's words came in the midst of the OAU Summit in Harare, during which Nigerian forces under the auspices of the Economic Community of West African States Monitoring Group (ECOMOG) commenced a bombardment meant to dislodge Paul Koroma's recently established in Sierra Leone.[60]

Mugabe's remarks were followed by the 1999 Algiers Summit decision on UCG.[61] This decision urged the restoration of constitutional rule in those countries that had experienced illegal power seizures since the Harare Summit and called on the OAU Secretary-General to facilitate constitutional governance in Member States. The 2000 Lome Declaration on the Framework an OAU response to UCG went even further by defining what actions constituted UCG and stipulating the OAU's responses to such illegal power seizures.[62] In the Lome Declaration, UCGs

[58] Ibid.
[59]M Andrew 'Coups No Longer Acceptable: OAU', *Africa Renewal* (1997)<https://www.un.org/africarenewal/magazine/july-1997/coups-no-longer-acceptable-oau> accessed 12 December, 2022.
[60] Ibid.
[61] OAU 'Declarations and Decisions Adopted by the Thirty-fifth Assembly of Heads of State and Government', Ordinary Session of the OAU, Algiers, Algeria, 12-14 July (1999).
[62] OAU 'Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government', Lome, Togo 10-12 July (2000).

included coups against democratically elected governments, power seizures by mercenaries, armed rebels, and dissident groups, and incumbents' refusal to relinquish power following electoral defeat as stated earlier in this work. Additionally, the Lome Declaration outlined two responses from the OAU Central Organ in the event of a UCG.[63]

a. Condemnation of the fact, suspension of participation in OAU decision-making, and a six-month deadline to restore constitutional rule.
b. The AU Secretary-General's use of diplomatic pressure and coordination with Member States, regional organisation, and other international actors to facilitate the restoration of constitutional rule. Further pressure, in the form of targeted sanctions, visa restrictions, limited diplomatic contacts, and trade embargoes, was to be deployed in those instances where the illegal regime was not making progress towards a return to constitutional rule.[64]

The Lome Declaration continues to inform the AU policy on UCG. For instance, The Constitutive Act of the AU of 2000 which became operational in 2002,[65] and The Protocol establishing the AU Peace and Security Council (PSC) 2002,[66] confirmed the Lome Declaration as its formal document on dealing with illegal power seizures, reiterating that governments acquiring power through illegal means would be suspended from participating in the AU and could face further sanctions. The provisions of the Lome Declaration were further strengthened through the 2007 African Charter on Democracy, Elections and Governance

[63] ibid.
[64] ibid.
[65] The Constitutive Act of AU, 2000 <https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf> accessed 28 January 2023.
[66]The Protocol Relating to the Peace and Security Council, 2002 <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> accessed 28 January 2023.

(Addis Ababa Charter).[67] This Charter, which entered into force in 2012, makes three notable amendments to the Lome Declaration. First, the Charter includes attempt to amend or revise constitutions to extend one's rule as UCG. Second, the charter authorizes the AU PSC to respond to UCG events. And third, the charter stipulates that those who obtain power through unconstitutional means should not participate in or contest the elections aimed at restoring constitutional rule.[68]

Academic commentaries on international conflicts indicate that deterrence occurs when actors 'define the behavior that is unacceptable and publicize the commitment to punish and restrain transgressors'.[69] While the OAU may add Lome toward the former, it was not until the abandonment of the non-intervention norm and the launch of the AU that the pattern could be established.[70] Even then, efforts to 'define' and 'publicize' an anti-coup policy might have been meaningless in the absence of demonstrating a commitment to the framework. Just months after the Lome meeting, for example, General Robert Guei was allowed to represent Cote d'lvoire following his coup against President Henri Konan Bedie. While the early years saw some inconsistencies in response, the establishment of the AU PSC represented an important shift toward invariably condemning coups.[71] At the time of Souare's seminal study on AU as a 'norm entrepreneur' on military coups *d'etat* in Africa, every coup between 2004 and 2012 saw the regimes suspended from the AU, with half witnessing the ensuring junta being forced from power.[72] It was within this context that coup attempts dropped by nearly 60% from pre-AU period,

[67] AU African Charter on Democracy, Elections and Governance', Eighth Ordinary Session of the Assembly of the AU, Addis Ababa, Ethiopia (2007) <https://en.wikipedia.org/wiki/African_Charter_on_Democracy,_Elections_and_Governance#:~:text=The%20African%20Charter%20on%20Democracy,members%20of%20the%20African%20Union> accessed 12 December, 2022.
[68] ibid.
[69] RN, Lebow and Janice Gross-Stein, (1990) 'Deterrence: The Elusive Dependent Variable', *World Politics (1990)* DOI: <https://doi.org/10.2307/2010415> accessed 12 December, 2022.
[70] Articles 4(h) & (j) of The Constitutive Act of the AU.
[71] Souare (n 42).
[72] ibid.

and nearly 50% from the post-Cold War period immediately preceding the AU.[73] Military leaders in Mali, which as stated earlier saw coups in 2020 and 2021, have postponed election till 2024. Guinean's first democratic leader was removed from office through a coup in 2021. Niger has been facing coup attempts, while Beninois President, Patrice Talon has hung to power and filled the parliament which must approve presidential elections with his supporters. And finally, in Cameroon president Paul Biya has been in office since 1982.[74]

Are Coups on Decline?

A closer inspection reveals a mixed record in the AU's implementation of its UCG policy particularly towards coups. Following the 2008 coup in Mauritania led by General Mohamed Ould Abdel Aziz, the AU suspended Mauritania on the coup-born regime.[75] Subsequent to an agreement being reached to facilitate a transition to constitutional rule 2009, the AU lifted Mauritania's suspension and sanctions and accepted Abdel Aziz as the new democratically elected leader, despite his participation in the 2008 coup.[76] Similarly, despite labeling Abdel Fatah el Sisi's takeover in Egypt in 2013 as a coup and suspending Egypt from the organisation, the AU nonetheless accepted Sisi's election as president in 2014 and lifted Egypt's suspension, contrary to the Addis Ababa Charter.[77]

The AU quickly described the Burkinabe armed force's seizure of power in the vacuum created by President Blaise Compaore's resignation in 2014 as 'constituting a coup'.[78] However, the organisation baulked at following through on its threats of suspension and sanctions, even after Lieutenant Colonel Isaac Zida

[73] Scheil, Faulkner and Powell, (n 3).
[74] *The Washington Post*, 'Nigeria Points the Way toward Democracy in a Region where it is Scarce' Wednesday, 20 March, 2023.
[75] AU 'Communique of the 14th Meeting of the Peace and Security Council' (2008), AU 'Communique of the 168th Meeting of the Peace and Security Council' (2009).
[76] AU 'Communique of the 196th Meeting of the Peace and Security Council' (2009), New York Times 'Coup Leader Wins Election Amid Outcry in Mauritania' (2009).
[77] AU 'Communique of the 384th Meeting of the Peace and Security Council' (2013), AU 'Communique of the 442nd Meeting of the Peace and Security Council' (2014).
[78] AU 'Communique of the 465th Meeting of the Peace and Security Council.

who had illegally assumed power was formally announced as Prime Minister of the transitional government.[79]The Burkina Faso case required the PSC to balance the unconstitutional seizure of power with the fact that Compaore's resignation was the product of a 'people's right to overthrow oppressive regimes'.[80]

Though also targeting an oppressive regime, the coup against Zimbabwe's Robert Mugabe in 2017 was hardly an effort by or on behalf of 'the people's, and instead represented a clear effort to preserve the privileges of the armed forces and their allies. Instead of suspending the new government or even acknowledge that a coup had taken place, actors, including the AU and the Southern African Development Community (SADC), accepted Mugabe's exit as a resignation and 'tacitly' endorsed the coup.[81]

Togo's 2005 coup is a case in point. After 36 years in power, Togolese President Gnassingbe Eyadema died in office after suffering a heart attack in February 2005. Constitutionally, the head of the National Assembly should have succeeded Eyadema, but the military appointed Eyadema's son, Faure Gnassingbe, as the new president. The Economic Community of West African States (ECOWAS) and other relevant actors strongly condemned the coup, imposing a travel ban on coup leaders, freezing their assets, establishing an arms embargo, and enacting a diplomatic suspension, all of which would be lifted only if constitutional order was restored. Following a post ad hoc effort to amend the constitution to accept the maneuver, ECOWAS further demanded a reversal of efforts to legitimate the coup.[82]

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[79] S Dersso 'Protests have Ended Blaise Compaore's Reign' Institute for Security Studies (2014); Bonkoungou, Mathieu and Coulibaly, Nadoun 'Burkina Faso Names Army Colonel Zida as Prime Minister' *Reuters* (2014).

[80] Institute for Security Studies 'Popular Ousting of Compaore Not Considered Contrary to AU Norms' PSC Report (2014).

[81] P Roessler 'How the African Union Got it Wrong on Zimbabwe' (2017) <https://www.aljazeera.com/opinions/2017/12/5/how-the-african-union-got-it-wrong-on-zimbabwe> accessed 12 December, 2022.

[82] A Banjo, 'The Politics of Succession Crises in West Africa: The Case of Togo', *International Journal of World Peace*, 25(2), 33-35 (2008)

The AU suspended Togo's membership, endorsed the sanctions imposed by ECOWAS, and threatened further sanctions, if deemed necessary, on 'de facto authorities' in the country.[83] Following the lead of these regional actors, the United States terminated military assistance and supported the sanctions imposed by ECOWAS until Togo conformed to ECOWAS's communiqué sent on February 2021.[84]In stark contrast, the installment of President Idriss Deby's son in Chad in April 2021 saw a complete reluctance to describe the event as a coup or as falling under the UCG framework. This reaction was viewed as illustrating an 'erosion of the AU consensus on UCG'.[85]

It is astonishing that on 26 July, 2023, the soldiers struck again in Niger Republic toppling the democratically elected President Mohammed Bazoum. The United States, France and UN strongly condemned the UCG. This time around it was the presidential guards that put the president under house arrest before soldiers announced the takeover.[86]A mercenary group Wagner, based in Russia has hailed the coup as a welcome development in one of the poorest countries of the world. General Abdourahmane Tchiane who was declared as the country by the coup leaders has also warned against any form of intervention by ECOWAS or the AU, saying that the coup was in the best interest his country.[87]

<https://www.jstor.org/stable/20752832> accessed 12 December, 2022.

[83] AU 'Communique of the Twenty-Fifth Meeting of the Peace and Security Council' (2005).

[84] US Bureau for Public Affairs, Press Relations office 'Togo: Imposition of Sanctions by the Economic Community of West African States', US Department of State (2005) <https://2001-2009.state.gov/r/pa/prs/ps/2005/42493.htm> accessed 26 January, 2023.

[85]P S Handy and F Dijilo 'AU Balancing Act on Chad's Coup Sets a Disturbing Precedent', *Institute for Security Studies* (2021) <https://issafrica.org/iss-today/au-balancing-act-on-chads-coup-sets-a-disturbing-precedent> accessed 12 December, 2022.

[86] S Mednick, 'World Leaders condemns "Unconstitutional" Military Takeover in Niger' *Aljazeera News*, 26 July, 2023 <https://www.aljazeera.com/news/2023/7/27/world-leaders-condemn-unconstitutional-military-takeover-in-niger> accessed 27 July 2023.

[87] News monitored on Aljazeera News Net work on 31 July, 2023, at 1900 GMT <https://www.aljazeera.com/news/2023/7/26/soldiers-in-niger-claim-to-overthrow-mohamed-barzoums-government> accessed 1 August, 2023.

The Central African Republic (CAR) also voted on 30 July, 2023, in a referendum on a new constitution that will allow President Faustina-Archange Toudera to seek a third term in the country. The proposed new constitution would extend the presidential mandate from five to seven years and also abolish the two term limit. The president said Russia and Rwanda, two states whose influence has been very much on the rise will be 'supporting' the security forces during the polls. A mercenary group, Wagner-linked source said that that several hundreds of Russian fighters would be in place for the polls.[88]

UNITED NATIONS SECURITY COUNCIL'S REACTION TO UNCONSTITUTIONAL CHANGES OF GOVERNMENT IN AFRICA

Several patterns have developed over time in the Council's efforts to address unconstitutional changes of power. One is that it appears easier for the Security Council to discuss coup d'état when the country concerned is already on its agenda, such as Mali, which hosts a UN peacekeeping operation, or Guinea-Bissau, which had a UN special political mission when the military carried out a coup in April, 2021. Some members tend to be wary of discussing issues not already on the agenda, justifying this by citing the principle of non-interference in internal affairs. For example, the Council did not discuss the coup d'état in Guinea – which was not on its agenda – even though the AU Peace and Security Council (AUPSC) expressly calledon the Security Council to support the ECOWAS decision for the restoration of constitutional order in that country. In the case of Guinea, it appears that a Security Council member from the region was sensitive about such a discussion, even though the position of the African members (A3) is generally in line with AU decisions.[89]

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[88] France 24, 'Central African Republic votes on new Constitution as the President eyes Third Term' (News monitored on France 24 Network, Sunday, 30 July, 2023 at 600 GMT) <https://www.france24.com/en/africa/20230730-polls-open-in-central-african-republic-for-referendum-on-new-constitution> accessed 1 August,2023.

[89] Security Council Report, In Hindsight: The Security and Unconstitutional Changes of Government in Africa, July, 2022

There is no general practice discernable in the type of outcome the Council adopts following coups d'état. Products have ranged from press statements, a relatively weak instrument in the Council's toolkit, to stronger outcomes such as presidential statements and, in one case, a resolution imposing sanctions. The resolution adopted after the April, 2012 coup in Guinea-Bissau remains among the Council's most robust such responses in Africa, and established a travel ban that would be applied against leading officers involved in the coup. According to Under-Secretary-General for Political Affairs – Rosemary DiCarlo, who spoke at the 7 February Security Council debate on general issues related to sanctions, these punitive measures are believed to have contributed to facilitating the eventual restoration of constitutional order (elections were organized in the spring of 2014) and to have had a deterrent effect on military intervention during subsequent political crises in the country. Renewed concerns about the military's role in Guinea-Bissau surfaced in the aftermath of the disputed outcome of the 2019 presidential election, in addition to 2022 attack on the presidential palace.

The Council is often supportive of regional and sub-regional organizations' responses to military takeovers. This has been notable in West Africa. ECOWAS has often led international responses to unconstitutional seizures of power in the region in ways that the Security Council has largely supported, also coordinating its message with the sub regional body and the AU. Following the August, 2020 coup d'état in Mali, after issuing an initial press statement expressing strong support for ECOWAS an AU initiatives and mediation, the Council adopted a presidential statement in October, 2020 backing ECOWAS-brokered arrangements for an 18-month national Malian transitional. Renewing the mandate of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) in June, 2021 and the Mali sanctions regime in August, 2021, the

<https://www.securitycouncilreport.org/monthly-forecast/2022-07/in-hindsight-the-security-council-and-unconstitutional-changes-of-government-in-africa.php> accessed 25 July 2023.

Council reiterated its support for ECOWAS' role and an 18-month transition period.[90]

The Council's reaction to 2021's military takeover in Sudan was also less assertive that that of the AU, reflecting differing interpretations of the crisis among Council members. Following the events of 25 October, 2021 – when the military suspended the transitional institutions, declared a state of emergency and detained Prime Minister Abdalla Hamdok and other civilian members of the transitional government – the AUPSC suspended Sudan until the civilian-led transitional authority would be restored. When the Security Council met to discuss the situation on 26 October, 2021, a legal debate ensued during which some permanent members questioned whether the developments in Sudan could be characterized as a coup d'état. Council members issued a press statement on 28 October, 2021, which expressed serious concern about the military takeover but did not condemn it, even as they also called upon Sudan's military authorities to restore the civilian-led transitional government.[91]

As a result of the COVID-19 pandemic, the Council went for two years without visiting mission, taking away one tool that it can use to understand the political dynamics in countries going through delicate political transitions. In October, 2021, the Security Council visited Mali. Members conveyed messages on the need for the country to return to constitutional order, though this was also when early signs of fissure in Council support for the ECOWAS position began to surface. As the Council struggles with consistent messaging around coups and coup attempts, first-hand information about developments on the ground will remain important – if not necessarily decisive.[92]

[90] Ibid.
[91] Ibid.
[92] Ibid.

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The Right to Rebel

There is a potential tension between criminalization of assaults on incumbent governments and the right of rebellion. In the opening sentences of his searching article, Honoré captures succinctly the predicament:

> There is a dilemma concerning the relationship between human rights and criminal responsibility. Unless in certain conditions we have the right to rebel, much talk of human rights can be dismissed as empty rhetoric. But if there is such a right, we are at times entitled to use violence against our fellow citizens as if we were at war with them. We may properly commit what are by ordinary standards the gravest of crimes.[93]

For the purpose of this work, it is important to figure out whether the introduction of the crime of UCG can be reconciled with the right to rebel. Such an inquiry into the normative compatibility of these notions requires a further investigation of the content of, and limitations on, the right to rebel as well as by whom it is recognized. One is therefore less interested in the question whether there is a remedy to enforce the right to rebel, because the focus is on the crime of UCG and whether the introduction of that crime can be trumped by the right to rebel, as a normative counterweight.[94] It is less important whether the right to rebel can actually be enforced.

Some light on both the essence of the right to rebel and its limitations is shed by a famous sentence in the Preamble of the Universal Declaration of Human Rights:

> . . . whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and

[93] T Honoré, 'The Right to Rebel', *Oxford Journal of Legal Studies* (1988) (8) 34. <https://www.jstor.org/stable/764412>accessed 26 January, 2023.
[94]ibid.

> oppression, that human rights should be protected by the rule of law.[95]

The formulation is rather enigmatic and shrouded in ambiguity. Indeed, it could be interpreted as an exhortation to states to avoid rebellion.[96]Moreover, one should be cautious not to deduce too easily a right to rebellion from these lines, in view of the explicit resistance against recognition of such a right by country delegates during the drafting process of the Universal Declaration of rights.[97] Nonetheless, the Preamble suggests that the international society of states allows people to rise against their oppressing rulers, as an ultimate measure. The situation must have become unbearable and there should be no other method available to escape the ordeal, as is clearly expressed in the words 'as a last resort'.[98]

The notion of rebellion as 'ultimate remedy' resonates in the grand tradition of political philosophers. Calvin's acknowledgement of the right to resist the monarch had – unlike what one might have expected – clearly political, rather than religious, connotations. If the king renounced his primary duty, to wit, the protection of the liberties of the people, selected persons entrusted with power and authority within the realm would be allowed to disobey and, if necessary, depose him in order to preserve order. Calvin opined:

> Certain remedies against tyranny are allowable, for example, when magistrates and estates have been constituted and given the care of

[95] Preamble of the Universal Declaration of Human Rights, 1946.
[96] Honoré (n 91).
[97] B Dunér, 'Rebellion: The Ultimate Human Right?', *International Journal of Human Rights* (2005) 9 (2), at 253 points out that 'Several countries made it clear that they did not want to see rebellion as a right.'
<https://www.tandfonline.com/doi/abs/10.1080/13642980500095393> accessed 26 January 2023.
[98] Harmen Van Der Wilt 'Unconstitutional Change of Government: A New Crime within the African Criminal Court, (Cambridge University Press)
<https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/unconstitutional-change-of-government-a-new-crime-within-the-jurisdiction-of-the-african-criminal-court/C83093071021B63ACE46656168411BED> accessed 26 January 2023.

> the commonwealth; they shall have the power to keep the prince to his duty and even to coerce him if he attempts anything unlawful.[99]

Calvin predicated this right – or even duty – to disobey the unfaithful king on the premise that the relation between the ruler and citizen 'was not a direct one, but occurred through the mediating agency of the law.'[100]

For another philosopher, John Locke, the right to revolt was a logical sequel of his postulating the predominance of society over politics, in which we already discern the traces of Rousseau's political discourse. The monarch only rules by the grace of the will of the community and its role was that of 'image, phantom, or representative of the commonwealth, acted by the will of society, declared in its laws.'[101]If the king strayed from the right course, blatantly abused his powers and oppressed the people, the society had the right to depose him by forceful means, in order to restore the ideal state of nature. Locke suggested that the fierceness of the reaction that was visited upon him was proportionate and reciprocal to the initial violence:

> In all states and condition the true remedy of force without authority, is to oppose force to it. The use of force without authority always puts him that uses it into a state of war, as the aggressor, and renders him liable to be treated accordingly'.[102]

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[99]Calvin J., *Calvani Opera*, (ed. G. Baum, E. Cunitz and E. Reuss), 50 volumes (Braunschweig 1863–1900, Volume 29: 557, 636–7)
<https://www.cambridge.org/core/books/african-court-of-justice-and-human-and-peoples-rights-in-context/unconstitutional-change-of-government/3DBC667ED53BF574592ADCD1D5F1281C> accessed 26 January 2023; quoted by S. S. Wolin, *Politics and Vision*, (Expanded Edition, Princeton University Press 2004), at 169.
[100]Ibid; Wolin, at 169.
[101]J Locke, *Two Treatises of Government*, (ed. by Peter Laslett, New York 1965), Second Treatise, 151
<https://www.yorku.ca/comninel/courses/3025pdf/Locke.pdf> accessed 26 January 2023.
[102]ibid, 155.

Nonetheless, Locke immediately qualified his position by pointing out that rebellion would only be appropriate when 'the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended.'[103]

Unconstitutional Change of Government in the Malabo Protocol and the Principle of Non-Intervention

The most important question in this work is to explore whether there are good reasons for African states to elevate the repression of unconstitutional change of government to a supra-national (regional) level. In that context, it is necessary to inquire whether any criminalization of this conduct does not contravene essential rights and prerogatives – as has been done in the previous paragraph above. However, that does not suffice. While the previous section has indeed demonstrated that the offence of unconstitutional change of government does not violate the right to rebel and that states are entitled to restrain and, if necessary, suppress insurrections, it is by no means clear why this offence should come under the jurisdiction of a regional court. The proper yardstick for assessing whether this crime qualifies for 'promotion' is, humbly submitted, whether criminalization surpasses merely parochial interests of the state and epitomizes the idea that it has become the business of a wider community of states.[104]

In the realm of international criminal law, the universal interest in the repression of international crimes can be gleaned from the fact that they qualify as violations of customary international law.[105] Could the argument be made that, by analogy, a regional organization like the African Union can legitimately claim jurisdiction over a crime the prohibition whereof has solidified in (regional) customary law?

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[103]Ibid; 169.

[104]To distinguish between parochial and universal interests as the foundation of the difference between domestic and international criminal law, see G P Fletcher, 'Parochial versus Universal Criminal Law', *Journal of International Criminal Justice* (2005) 3, at 20–34<https://academic.oup.com/jicj/article/3/1/20/888712> accessed 26 January 2023.

[105]Compare, amongst others, A Cassese *International Criminal Law,* (3rd ed. Revised by A. Cassese, at Gaeta, L. Baig, M. Fan, Gosnell C. and Whiting, A. Oxford 2013), at 20<https://global.oup.com/academic/product/casseses-international-criminal-law-9780199694921> accessed 26 January 2023.

Such a line of reasoning is (implicitly) defended by Abass who, after expressing concerns that not 'all crimes (within the jurisdiction of the African Court) are, in fact, 'international' and 'serious' enough to warrant international prosecution', contends that the crime of UCG would certainly meet those criteria:

> The idea that regional customary law could serve as an appropriate legal basis for the selection of crimes that qualify for subject matter jurisdiction of a regional criminal court is interesting. But a thorough research into whether unconstitutional change of government indeed meets this standard is beyond the scope of this article. Moreover, I would hold that the category of crimes under the jurisdiction of the African Criminal Court is not exhausted by those offences that demonstrably belong to the realm of regional customary law.[106]

All of the offences mentioned in Article 28A of the Malabo Protocol are subject of (regional) treaties in which states commit themselves to criminalize the conduct, render mutual assistance in criminal matters and pledge to either prosecute or extradite (*aut dedere, aut judicare*) those suspected of those offences that are found on their territory. The very fact that African states conclude treaties with a view to the common criminal law enforcement in respect of certain offences is proof that they share an interest in their suppression. Any decision to outsource such law enforcement to a regional court is a logical next step that is facilitated by the prior enactment of such treaties. After all, States are not prohibited by international law to establish a regional criminal court and equip this court with jurisdiction over crimes of common concern, provided that such offences are criminalized under their domestic law and the regional court does not apply the law retroactively.[107]

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[106]A Abass, 'Prosecuting International Crimes in Africa: Rationale, Prospects and Challenges', *European Journal of International Law* (2013) (24) 3, 941 <http://www.ejil.org/pdfs/24/3/2433.pdf> accessed 26 January 2023.

[107]For an extensive analysis of these regional suppression treaties, see: H. van der Wilt, 'On Regional Criminal Courts as Representatives of Political Communities', in Kevin Jon Heller *et al, The Oxford Handbook of International Criminal Law*, (Oxford: 2019).

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CONCLUSION

In this paper, we have discussed the increased number of countries under military rule in Africa. The paper also went further to discuss the elements of UCG focusing on the aggravating factors especially maladministration of civilian governments of some African countries. In addition, the paper also discovered that since 2019, there has been an increase of countries coming under military rule in Africa, most especially, the West Africa sub-region. The various reactions of international organisations were also discussed. The AU is unique among continental organisations in that it has a framework against UCG that directs African states in their reaction to coups. The results of this study, however, unequivocally demonstrate that the AU framework has shortcomings, namely the degree to which the AU regularly responds to coups and other unlawful power seizures and its capacity to influence coup-born regimes and, consequently, deter others from planning similar power grabs. It could be time for the AU to fully execute its UCG policy beyond coup situations in order to fortify its frameworks.

If the AU had used its UCG against Mali's Ibrahim Boubacar Keita for trying to prolong his reign, there would have likely been no coup in 2020 and a stronger message sent to other potential plotters. It is evident that the AU has not consistently responded to UCG; her responses to Mauritania and Chad are prime instances of this. If Africa is to advance in the community of nations, the AU cannot treat UCG selectively. This study demonstrates that, as was the case in Mauritania and Burkina Faso, coups can and do thwart the process of democracy and democratic consolidation.

RECOMMENDATIONS

In view of the above discussions, the following recommendations are made. One, there should be elimination of the distinction between UCG and serious human right and democratic deficits. To do this, the sanctions applicable in UCG cases should also be applicable to cases of systematic violations of human rights and democratic principles. Additionally, the AU Peace and Security Council (PSC) should develop mechanisms for establishing close working relationship with the

African Commission and Court on Human and People's Right. Following on this, there should be the establishment of an expert group on the implementation of the AU norm on UCG as it supports in assessing and monitoring different elements of UCG on the continent. It has been proved over and over again that the sanction of suspending violators of UCG has not acted as enough deterrent, there should closure of borders against such nations states and blockages of trade. In addition, such nations could also be made pariah states. There must be no sacred cows amongst states that violate UCG as was done for Mauritania and Chad. Violators must be treated equally to serve as a clear signal that the AU abhors and rejects these undemocratic practices in its entirety.

However, if African countries are to use elections to consolidate and entrench democracy, they must take make certain that incumbent leaders are not able to first, change national constitution to eliminate term and age limits for presidents (as noted above) and other protections that guard the president against various forms of opportunism (as currently taking place in Zambia.[108] Second mandate registration are beyond the reach of many citizen; Third, interfere with freedom of the press to check on the government, provide citizens information about elections, and serve as platform for opposition to bring their message to voter; and four, use security forces to intimidate and strangle the opposition.[109]

Effort must be made to ensure that all of a country's population group, including especially those which historically have been marginalized (e.g., minority religious and ethnic groups), are provided the wherewithal to participate fully and effectively in electrons. In the words, African countries need to make certain that

[108]S Sishuwa, 'How Zambia's Hard won Democracy may soon go up in Flames', *(Mail & Guardian*, 4 June,2023*)*
*<https://mg.co.za/thoughtleader/2023-06-04-how-zambias-hard-won-democracy-may-soon-go-up-in-flames/>*accessed 25 July, 2023.
[109] Ibid.

elections are adjudged credible, not just y observer but also by each country's citizens.[110]

One concrete way to enhance electoral participation is to provide electors information about all the issue that must be decided by the elections. In most African countries, where most citizens are not fluent in their countries' national language e.g., French or English, the government should provide election-related information to citizens in a language that they can understand. For example, studies have determined that for South Africa various subcultures during elections. By expressly recognizing the language of each of its various ethno-cultural groups and providing them election information in their own language, the South African government of these group in elections and, as a result, in governance generally.[111]

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[110] JM Mbaku; Threats to Democracy in Africa: The Rise of the Constitutional Coup' *Brookings* 30 October, 2020 <https://www.brookings.edu/articles/threats-to-democracy-in-africa-the-rise-of-the-constitutional-coup/> accessed 25 July, 2023.
[111] Ibid

<https://www.cambridge.org/core/books/african-court-of-justice-and-human-and-peoples-rights-in-context/unconstitutional-change-of-government/3DBC667ED53BF574592ADCD1D5F1281C> accessed 26 January 2023; quoted by SS Wolin, *Politics and Vision*, (Expanded Edition, Princeton University Press 2004), at 169.

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THE CONVENTION ON BIOLOGICAL DIVERSITY AND ECOLOGICAL PROTECTION-RELATED LAWS AND POLICIES IN GHANA

Thomas Prehi Botchway[1]

ABSTRACT

This study sets out to examine the implementation of the Convention on Biological Diversity (CBD) in Ghana. A key objective of the study was to understand how the country has attempted to achieve sustainable development while reducing the risk to biodiversity and environmental pollution given its abundant natural resources. In an effort to achieve this and other related objectives of the study, the researcher adopted a qualitative approach to research which enabled him to gather relevant information in non-numerical format. The study consequently finds that though the country has introduced several legislations and policies to ensure ecological protection, several challenges still remain. Indeed, in Ghana today, attempting to ensure the functionality, orderliness and the usefulness of ecological protection policies such as those aimed at the effective implementation of the CBD necessarily requires that such policies have firm legitimacy among the local norms; legality alone is not enough. It is in view of this that the study advocates for a *balanced obligation*.

Keywords: Convention on Biological Diversity, environmental protection, sustainable development, Ghana

INTRODUCTION

Ghana, a country located along the Gulf of Guinea and Atlantic Ocean, in the subregion of West Africa, has an area of approximately 239,000 square kilometers (23.9 million ha) and can be divided into six main agro-ecological zones namely: coastal savanna, rain forest, deciduous forest, transition, Guinea savanna and Sudan savanna. The annual rainfall ranges from a low of 800 millimeters in the coastal savanna to a high of 2200 millimeters in the rain forest. The country also

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has a 560 km coastline which runs from the east to the west and is predominantly made up of beaches and several lagoons.[2]

The Ghanaian economy depends principally on a number of traditional exports such as minerals (including gold, diamonds, manganese, bauxite, and iron ore), cocoa, timber and electricity (which has been seriously affected due the ongoing national energy crisis). There are also deposits of tin, titanium and impure graphite. Moreover, periodic occurrences of lead, copper, molybdenum, tungsten, niobium, barytes and asbestos are also known. In addition, the presence of uranium, cassiterite, platinum, molybdenite and tantalite has been reported with large deposits of some industrial minerals also known in the country. The country also deals in some non-traditional exports (NTEs) which include pineapples, yams, tuna, shrimp and lobster, salt, wood products, rubber and handicrafts. In recent years, petroleum, and oil products (crude oil) have been discovered in commercial quantities and are being exported since the last quarter of 2010.[3]

The United Nations Conference on Trade and Development (UNCTAD) in the year 1995 argued that the mounting population pressure on Ghana's natural resource base and the absence of incentives for prudent and sustainable management of these resources combined to fuel an accelerating degradation of the environment – both in terms of natural and man-made. The said report was made available to the Ghanaian government. The question thus remains as to whether the State has been able to mitigate these challenges.

The introduction of economic reforms and the structural adjustment programmes in Ghana during the mid-1980s has impacted positively on the country as the programmes laid the "foundations for sustainable growth and poverty reduction".[4]

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[2] Jan Bossart, E. Opuni-Frimpong, S. Kudaar and E. Nkrumah, 'Richness, abundance, and complementarity of fruit-feeding butterfly species in relict sacred forests and forest reserves of Ghana' [2006] Biodiversity and Conservation 333; Luc Hens and Emmanuel K. Boon, 'Institutional, Legal and Economic Instruments in Ghana's Environmental Policy' [1999] Environmental Management 337; UNCTAD, *Natural Resources Management and Sustainable Development: the Case of the Gold Sector in Ghana* (United Nations Conference on Trade and Development (UNCTAD) 1995).

[3] National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2013 Annual Progress Report (National Development Planning Commission 2014); Thomas Prehi Botchway, 'Implementing effective environmental policies for sustainable development: Insight into the implementation of the CBD in Ghana' (2021) Cogent Social Sciences.

[4] World Bank, *Ghana: Country Environmental Analysis* (World Bank 2006, p. 14).

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Over the last few years, as more capital has been appropriated for achieving growth in Ghana, the need also arose to utilize the country's rich natural resources. This growth according to the World Bank (2006) Country Environmental Analysis (CEA) consequently led to an increase in larger export volumes of cocoa, timber, and other minerals in an unsustainable manner. This in turn leads, not only to reduction in output from the sectors involved (including revenues), but also "jeopardizes future growth and human development potential".[5] The CEA posits that sustainable growth in resource-based economies also requires that living resources must be exploited at a sustainable rate- a condition that according to the report was missing in Ghana.

The World Bank CEA on Ghana in 2006 also stated that "from a broader view, a measure of Ghana's productive base in terms of wealth that includes not only growth in GDP, but also human, natural, and social capital, makes Ghana's recent economic growth achievements look much less impressive and much less sustainable",[6] thus painting a bleak image about the country's future, especially if much efforts were not put in place to remedy the situation. This has been confirmed by a recent study that has shown that the country (particularly the Western Region of Ghana) has a highly degraded biodiversity hotspot.[7]

Ghana became a Party to the Convention on Biological Diversity by ratification on November 27, 1994. However, long before the coming into force of the CBD, the country had been implementing several policies and initiatives that are always aimed at conserving biological diversity. For instance, in 1985, the Government of Ghana entered into an agreement with the Royal Society for the Protection of Birds-UK and BirdLife International to protect sea- and shorebirds (Roseate Tern) and their wetland habitats in the country and in order to implement this agreement, the Save the Seashore Bird Project-Ghana (SSBP-G) was set up to monitor bird populations and carry out other conservation related activities along the coast of Ghana.[8] The creation of the SSBP-G and its related activities eventually became the basis for Ghana becoming signatory to the Convention of Wetlands of International Importance in 1988. It was within this same period the country

[5] Ibid. (p. 14).
[6] Ibid. (p. 17).
[7] Kwame Oppong Hackman and Peng Gong, 'Biodiversity estimation of the western region of Ghana using arthropod mean morphospecies abundance' [2017] Biodiversity and Conservation 2083.
[8] Chris Gordon, Yaa Ntiamoa-Baidu and James M. Ryan, 'The Muni-Pomadze Ramsar site' [2000] Biodiversity and Conservation 447.

introduced the Environmental Action Plan which was spearheaded by the Environmental Protection Council (now Environmental Protection Agency [EPA]).

Consequently, in terms of the implementation and cooperation on international agreements, studies have shown that the country is "a very reliable partner in international conventions" and that even prior to the Stockholm Conference, Ghana had already "participated and signed at least fifteen international conventions and treaties on environmental issues." These include the country's signing of the "International Plant Protection Convention of 1951" and the "Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction in 1972".[9]

According to the findings of the study conducted by Gordon, Ntiamoa-Baidu and Ryan (2000), even in the face of all the attempts by policy makers to implement the CBD and other environmentally friendly treaties, at the time, "all the five Ramsar sites in coastal Ghana are threatened by pollution from domestic waste, habitat destruction from industrial and settlement developments as well as over-exploitation of wetland resources, mainly fisheries".[10] But this was some 21 years ago. This study will therefore elucidate what the current situation is.

Over the years, Ghana has been introducing several environmental policies that aim to balance economic development and the conservation of biodiversity. Among these efforts are the various attempts made in adopting sectoral plans as well as the enactment and introduction specific rules, regulations, and legislations that aims at giving effect to the country's commitments under various MEAs it has acceded to. These efforts which are targeted at meeting the requirements of the CBD are also in line with both Principle 4 and Agenda 21 of Rio, both of which encourages the adoption of strategies and measures that promotes sustainable and responsible development.

[9] Luc Hens and Emmanuel K. Boon, 'Institutional, Legal and Economic Instruments in Ghana's Environmental Policy' [1999, p. 27] Environmental Management 337.
[10] Gordon, Ntiamoa-Baidu and Ryan n.7 (p. 462).

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RESEARCH OBJECTIVES

The study has two main objectives namely:

1. To ascertain and analyse the laws and regulations that have been introduced in Ghana in order to enhance the implementation of the Convention on Biological Diversity and to promote ecological protection.
2. To evaluate the measures that have been put in place to check the menace of biodiversity degradation in Ghana.

RESEARCH METHOD

This study relies on qualitative data. The study consequently analyses the available laws and policy guidelines related to environmental protection and the implementation of ecologically-friendly related policies in Ghana. These legislations and policies are compared with the extant literature to ascertain the practice elsewhere. Through careful analyses of these legislations and policy guidelines, thematic areas are generated. Thus, through the effective organisation of raw data, and the search for meaning through thematic analysis and interpretation[11], the study explores the efforts that have been made over the years to ensure the implementation of the CBD and sustainable development in Ghana.

THE NATURAL RESOURCES MANAGEMENT PROGRAMME (NRMP), PROTECTED AREAS MANAGEMENT AND WILDLIFE CONSERVATION PROJECT (PAMWCP, 1997-1998) AND THE PROTECTED AREAS DEVELOPMENT PROGRAMME (PADP I AND II, 1997-2010)

The NRMP was a ten-year multi-donor three-phased project that became operational in September, 1999. The organizations that funded the project include the African Development Bank (AfDB), Danish International Development Agency (DANIDA), EU, GEF, Japan International Cooperation Agency (JICA), WB-IDA, etc. It focused on building an institutional framework as well as developing collaborative natural resource management systems that ensures sustainable development patterns. The protection, rehabilitation and sustainable

[11] Zina O'Leary, *The Essential Guide to Doing Your Research Project* (3rd edn, SAGE Publications Ltd 2017).

management of the country's land, forest and wildlife resources were at the core of the NRMP.[12]

The Protected Areas Management and Wildlife Conservation Project (PAMWCP) was a World Bank funded project that undertook a strategic review of the country's wildlife sector and consequently developed an all-inclusive funding scheme (an action plan) for investment in the wildlife sector. Key among its policy guidelines was the plan for community conservation of wildlife resources both within and outside protected areas.[13] Also through the Ghana Dedicated Grant Mechanism for Local Communities project (G-DGM), Forest Investment Project (FIP) and other related projects, the World Bank and its related agencies have supported several communities in Ghana in their efforts at biodiversity conservation and sustainable development.[14]

The European Union funded PADP (I and II) targeted effective conservation in the Bia and Ankasa protected areas. It promoted the concept of Community Resource Management Areas (CREMA) and supported communities in undertaking wildlife conservation in their own designed areas. The CREMA was introduced by the Wildlife Division of the Forestry Commission (FC) in the early 1990s. The Government of Ghana planned to ensure that a minimum of 80 per cent of the potential off-reserve zones in the country's savanna zones were covered by the CREMA project by the year 2020. This target has however not been achieved as at the time of this study.

Moreover, in order to ensure that only legally harvested timber is exported, particularly to the EU from Ghana; the country has agreed and subsequently entered into a bilateral Forest Law Enforcement, Governance and Trade (FLEGT) under the Voluntary Partnership Agreement (VPA) with the EU. These VPAs comprises commitments and action from both parties to halt trade in illegal timber. Thus, there is the introduction of a license scheme to authenticate the legality of timber. The agreements also promote better enforcement of forest law while at the same time promoting an inclusive approach involving civil society and the private sector.[15] The PADPs together with the VPA (which was signed in November 2009) have all in one way or the other enhanced the implementation of the major

[12] Government of Ghana (GoG), *National Biodiversity Strategy and Action Plan* (Ministry of Environment, Science, Technology and Innovation (MESTI) 2016).
[13] Ibid.
[14] World Bank n.3.
[15] European Communities, *The Convention on Biological Diversity Implementation in the European Union* (Update 2008, European Commission 2008).

multilateral environmental agreements such as the Convention on Biological Diversity (CBD). [16] For instance, through the VPA, the country has been able to develop a monitoring system that aids in the assessment of the impact of implementation of environmental policies on some key areas such as revenue generation, people's livelihood, forest governance and condition, as well as forest management and timber market performance and structure.[17]

Marine Biodiversity-Related Legislations and the Ghana Shared Growth and Development Agenda (GSGDA, 2010-2013)

Upon the discovery of oil and gas in commercial quantities and in order to plan effectively for the related problems associated with crude oil extraction, the Ghana Shared Growth and Development Agenda (GSGDA) was put together to mitigate both foreseeable and unforeseeable problems. It was also meant for guiding the efficient management of the Ghanaian economy and the enhancement of diversification and sustainable development. The GSGDA was also in response to addressing the 2008 macroeconomic challenges which was due partly to the global economic difficulties.[18]

Whereas a key objective of the GSGDA was the promotion of the use of science, technology and innovation in accelerating the modernization of agriculture, and by so doing increase productivity while enhancing job creation and maintaining food security, the project promoted good agricultural practices that have positive implications for sustainable development and biodiversity conservation. The project also ensured that the Ghanaian oil and gas industry's practices were in conformity with international standards of environmental sustainability and that the extraction of oil and gas did not affect marine life and other biodiversities negatively. It consequently targets the acceleration of creating employment and the generation of income for poverty alleviation and shared growth through the

[16] See Thomas Prehi Botchway, 'Implementing Effective Environmental Policies for Sustainable Development: Insight into the Implementation of the CBD in Ghana' (2021) Cogent Social Sciences; Ministry of Environment, Science, Technology & Innovation (MESTI), *CBD Fifth National Report - Ghana.* (MESTI 2015).

[17] Forestry Commission of Ghana (FC), 'Ghana FLEGT VPA' (*The Forestry Commission*, 2018) <http://fcghana.org/fctvd/index.php/about-ghana-s-flegt-vpa/detail-history> accessed 18 November 2018.

[18] Institute of Statistical, Social & Economic Research (ISSER), *Policies and Options for Ghana's Economic Development* (K Ewusi ed, 3rd edn, Institute of Statistical, Social & Economic Research (ISSER) 2013); Government of Ghana (GoG), *Medium-Term National Development Policy Framework: Ghana Shared Growth and Development Agenda (GSGDA), 2010-2013* (National Development Planning Commission (NDPC) 2010).

promotion of eco-tourism while at the same time meeting goal 7 of the Millennium Development Goals (MDG 7) – ensuring environmental sustainability and the reversal of loss of natural resources (ISSER, 2013; USAID/Ghana, 2012; National Development Planning Commission (NDPC), 2014; NDPC, 2011; International Monetary Fund (IMF), 2012; GoG, 2010).[19] In a similar manner, the vision of the GSGDA has been reflected in Section 3(b) of the Millennium Development Authority Act, 2006 (Act 702) which mandates the Authority to "take necessary steps to ensure the reduction of poverty through modernisation of agriculture."

Under the GSGDA, efforts have been made to develop a new technique of extracting gold without the use of mercury for small-scale miners. This single development in the small-scale mining industry goes a long way to reduce the pollution and environmental hazards that usually accompanies their operations. It also has positive ramification for the protection of both marine and forest biodiversity. Moreover, in order to control and effectively manage oil spillage that is usually associated with crude oil exploration and extraction, and their negative impact on biodiversity, the State has established the Oil Spill Response Centre at the EPA. In addition, there are several laws relating to oil extraction and eventual spillage and some of these laws actually predates the years of the country's discovery of oil in commercial quantities.[20]

The Ghana National Aquaculture Development Plan has also been implemented to ensure sustainability in fishing and marine biodiversity. Thus, this plan promotes the transformation of aquacultural development and also enhances domestic fish production while reducing indiscriminate fishing practices and their negative

[19] ISSER, *Policies and Options for Ghana's Economic Development* (K Ewusi ed, 3rd edn, ISSER 2013); USAID/Ghana, *USAID/Ghana Country Development Cooperation Strategy 2013-2017* (USAID/Ghana 2012); NDPC, *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2010 Annual Progress Report (NDPC 2011); NDPC, *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2013 Annual Progress Report (NDPC 2014); IMF, *Ghana: Poverty Reduction Strategy Paper* (IMF 2012); Government of Ghana (GoG), *Medium-Term National Development Policy Framework: Ghana Shared Growth and Development Agenda (GSGDA), 2010-2013* (National Development Planning Commission (NDPC) 2010).

[20] See for example the Oil in Navigable Waters Act, 1964 (Act 235); Ghana National Petroleum Corporation, 1983 (P.N.D.C.L. 64)**;** Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L. 84).

consequences for marine biodiversity.[21] In addition, in order to regulate the fishing industry and marine biodiversity, Sections (16) and (17) of the 1991 Fisheries Law (PNDCL 265) respectively prohibit fishing in some specified zones and declares closed seasons for fishing. These provisions are also clarified further in Sections (84-88) of the 2002 Fisheries Act. Section (35) of the Law also prohibits the use of explosives for fishing and prescribes appropriate punishment for offenders including fines, "forfeiture of the catch and the substance or matter used in the commission of the offence", and imprisonment (not exceeding three years). The 1991 Fisheries Law is given a further boost by the enactment of the Fisheries Commission Act, 1993 (Act 457). This Commission is mandated by the Act to be responsible for the regulation and management of the country's fishery resources and to coordinate relevant policies pertaining to the sector. It also has the mandate of fostering the sector's international cooperation and collaboration for the country's benefit.

There is also the 2002 Fisheries Act, (Act 625) which aims to consolidate with amendments the various laws on fisheries. This Act (625) creates a new Fisheries Commission with an expanded mandate and provides for "the regulation and management of fisheries" and "the development of the fishing industry and the sustainable exploitation of fishery resources" and their "connected matters" in the country. As a matter of fact, virtually all the sixteen functions of the Fisheries Commission as identified under Section (2) of the Act are direct reflections of the key targets and objectives of the CBD, particularly those regarding marine biodiversity and their conservation, management and use. For instance, whereas subsection 2(c) calls for ensuring "the proper conservation of the fishery resources through the prevention of overfishing", subsection 2(h) promotes the carrying out of "research and survey work for the assessment of stock of the fisheries resources."

The Act (625) also establishes the Fisheries Development Fund which among other things is meant for "the promotion and development of fisheries in the country", the provision of "assistance to small scale fishery co-operative enterprises", the promotion of "research and studies of the fishing industry", etc. The Act besides mandates the preparation of a fishery plan whose content must be based on international best practices and in tandem with relevant MEAs such as the CBD. Section (45) of the Act also authorises the sector Minister to consult and cooperate

[21] National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2013 Annual Progress Report (National Development Planning Commission 2014).

with foreign governments and States on issues pertaining to fisheries management and ensure "practicable harmonisation" of policies, especially where such cooperation and harmonisation are "necessary to sustain the growth of industrial and artisanal fishing."

Sections (89) and (90) of the Act specifically names marine biodiversity that should not be fished for whatsoever reason and demands that such creatures to be immediately returned to the sea, river or lake when they are accidentally caught. The Act further prescribes punishment and fines for offenders who refuse to return them in this regard. Section 91 mandates the creation of protected marine areas or reserves whose encroachment warrants punishment and fines. In addition, polluting water bodies is regarded by Section 92 as a serious offense since such an action "adversely affects the habitat or health of the fish or other living aquatic resource."

The Fisheries Act, 2002 (Act 625) has been amended by the Fisheries (Amendment) Act, 2014 (Act 880) in order "to give effect to international conservation and management obligations, to empower the Minister to make Regulations to combat Illegal, Unreported and Unregulated fishing in accordance with the international obligations of the Republic and to provide for related matters."[22] The country has also introduced the Fisheries (Amendment) Regulations, 2015 (LI 2217) which amends different aspects of the country's existing fisheries laws. However such changes do not have any negative implications for the content of the Acts and issues discussed above.

Prior to the above elaborated marine biodiversity-related legislations, two years after the ratification of the CBD, the Parliament of Ghana enacted the Water Resources Commission Act, 1996 (Act 522). This Act established the Commission that is "responsible for the regulation and management of the utilisation of water resources, and for the co-ordination of any policy in relation to them" (Section 2[1]). This Act among other things enhances the coordination and regulation of the country's water resources and proscribes punishment for individuals and groups that pollute water resources. The Act also gives the sector Minister the authority to declare through an executive instrument an area to be a "protected catchment area" when s/he is "satisfied that special measures are necessary for the protection of water resources in or derived from an area" (Section 31). Moreover, Section 32

[22] Introduction to the Fisheries (Amendment) Act, 2014 (Act 880).

of the Act also empowers the Commission to develop appropriate schemes for water resources in protected areas.

In the same year, Parliament enacted the Pesticides Control and Management Act, 1996 (Act 528) which regulates the manufacturing, distribution, advertisement, as well as the importation and export, and the selling and usage of pesticides within Ghana. The Act stipulates that without the registration of a pesticide by the EPA (which is to be done in accordance with the Act), no person shall use, sell, manufacture, import, export, and advertise any such product.

Among other things, the Act establishes a Pesticides Technical Committee that has been vested with the authority to carry out several environmental-related responsibilities. Key among such responsibilities is the investigation of "complaints or injury to human beings and animals, or damage to land and pollution of water bodies resulting from the use of pesticides" (Section 31[d]). This section also correlates with Section (15) of the Environmental Protection Agency Act (Act 490) which mandates the EPA's Board to appoint environment protection inspectors to inspect and report on various environmental regulations and their related biodiversity issues. Its provisions consequently have positive effect on biological diversity conservation and protection and the CBD for that matter since the eventual danger that may result from the usage of such pesticides are been effectively controlled.

The provisions of the Pesticides Control and Management Act is actually a reflection of the Part Two of the Environmental Protection Agency Act, 1994 (Act 490) which gives further details on the matter. The responsibilities of the EPA are virtually in line of the various targets of the CBD. For instance, whereas Section 2 (m) of the Act indicates that the EPA has the responsibility "to initiate and pursue formal and non-formal education programmes for the creation of public awareness of the environment and its importance to the economic and social life of the country", Article 13 of the CBD calls for the implementation of policies and educational programmes aimed at the propagation of the sustainable development and environmental awareness among the public. Moreover, as required by Article 9 of the CBD, the EPA's mandate ensures that necessary efforts are made to promote the development of a culture and society that is built around environmental values.

Section 2(i) of the Ghana Maritime Authority Act, 2002 (Act 630) also demands that the Ghana Maritime Authority (GMA) collaborates with the relevant public institutions and agencies to ensure "the prevention of marine source pollution,

protection of the marine environment and response to marine environment incidents." In a similar manner, in order to protect the marine environment and biodiversity, the Ghana Shipping Act, 2003 (Act 645) Section 333(2) requires that upon discovery that "dangerous goods, or goods that in the opinion of the master or owner of the ship are dangerous goods, have been sent on board a ship without the marking or the written notice described" by the Act in Section 332, "the master or owner of the ship may dispose of the goods, together with the package or container in a manner that will not cause damage to the environment."

Curbing the Mining Menace, Restoration of Degraded Forests, Ecological Restoration and Related Laws

The Section 18(1) of the Minerals and Mining Act, 2006 (Act 703) requires that aside the possession of a mineral right, corporations must also obtain all the necessary approvals and permits from the Forestry Commission and the EPA "for the protection of natural resources, public health and the environment." This Act has further been given much clarity and details by the enactment of the Minerals and Mining (General) Regulations, 2012 (L.I. 2173) and the Minerals and Mining (Explosives) Regulations, 2012 (L.I. 2177) which spell out that mining should be done in manner that is not detrimental to the environment and biodiversity.

At the same time, these legislative instruments call for the training of more Ghanaians in the mining industry as well as the patronage of local products to boost the economy. This implies safety for biodiversity in the long run and sustainable development of the Ghanaian economy. Similarly, in an effort to ensure the economic wellbeing of the Ghanaian citizen, Section 50 (1) of the Minerals and Mining Act, 2006 demands the "pursuance of a localization policy." This policy implies that it is mandatory for corporations and entities holding a mining lease to submit to the Minerals Commission "a detailed programme for the recruitment and training of Ghanaian personnel." As a matter of fact, subsection (2) makes the localization policy[23] "a condition for the grant of a mining lease." This policy gives a clear indication of the efforts to reduce poverty while ensuring environmental sustainability and also meeting an international obligation.

One must also reiterate that Ghana's mining sector contributes immensely to the country's economy. It accounts for more than 6% of GDP and in excess of 40% to export earnings with gold contributing about 95% by the end of the year 2010 and

[23] Subsection (3) of Section 50: For the purposes of subsection (1) "localization" means a training programme designed towards the eventual replacement of expatriate personnel by Ghanaian personnel.

2013.[24] Interestingly, thousands of Ghanaians (and even foreigners) are engaged in small scale illegal mining which has negative implications for the implementation of the CBD though their activities also contribute substantially to the country's export earnings. Eventually, curbing their activities demand providing them with an alternative livelihood project (ALP). Consequently, the Government of Ghana has introduced some alternative livelihood projects which are believed to have created "about 7,500 direct jobs" thus reducing environmental degradation, biodiversity loss, and poverty at the same time.[25] The ALP included the production of 450,000 oil palm seedlings for planting as well as the establishment of about 7,337.50 acres of oil palm plantation in the year 2017 in mining communities. The Government of Ghana promises to undertake and expand such ALPs in subsequent years across the country.[26]

Through the Council for Scientific and Industrial Research (CSIR), the country has completed a series of projects that have ensured the restoration of some degraded forest areas within the country, for instance several indigenous tree species have been planted in the Afram headwaters forest reserve to enhance biodiversity conservation.[27] The CSIR in the year 2017 raised 120,000 seedlings of bamboo for the EPA to restore degraded lands around water bodies in the northern part of the country.[28] The CSIR also has plans to further promote appropriate environmental management schemes as well as green technology through the development of adoptive strategies aimed at combating the effect of climate change and its related problems for biodiversity. Such schemes primarily target rural communities and hope to mitigate unsustainable farming practices through the promotion of "smart agriculture".[29] In addition, laws have been

[24] National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2010 Annual Progress Report (National Development Planning Commission 2011); National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2013 Annual Progress Report (National Development Planning Commission 2014).
[25] See also Thomas Prehi Botchway and Ishmael K. Hlovor, 'Mitigating the Challenges Related to the Implementation of the Convention on Biological Diversity in Ghana' (2019), Journal of Sustainable Development 12.
[26] Government of Ghana (GoG), *The 2018 Budget Statement and Economic Policy of Government: "Putting Ghana Back to Work"* (Ministry of Finance and Economic Planning 2017, p. 85).
[27] NDPC n. 23.
[28] Ibid.
[29] Ibid. (p. 91).

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enacted to establish various funds for specific biodiversity and environmental management policies.[30]

Moreover, through the Ghana Environmental Management Programme (GEMP), the country has embarked on activities that have consequently spearheaded the reversal of land degradation and soil fertility loss, as well as erosion and the loss of vegetative land cover, particularly in the northern parts of the country.[31] The country's Parliament has also enacted the *Plants and Fertilizer Act, 2010 (Act 803)* which seeks to protect plants and seeds, and regulate the usage of fertilizer in the country. The Act also facilitates and regulates the import and export of plants as well as the introduction and spread of plant pests. Issues regarding phytosanitary certification and inspections are also regulated by this Act.

All these activities and regulations have positive implications for the effective implementation of the CBD as they ensure sustainable development and the conservation of biological diversity. It must however be noted that even before independence in 1957, Ghana already had in place relevant policies and laws that governed the use and conservation of land. An example is the Land Planning and Soil Conservation Act, 1953 (No. 32) and its Amendment (the Land Planning and Soil Conservation (Amendment) Act, 1957 [No. 35]). This pre-independence Act sought to "provide for the better utilisation of land in designated areas by land planning and soil conservation" – a process which automatically implied the management and conservation of biodiversity and sustainable development.

A study conducted by the World Bank in 2006 revealed that the Volta River and Lake- the water body that provides several ecosystem services and serves as the source for "a rich biodiversity and other environmental goods" for the country was facing persistent damages due to "severe environmental degradation in the form of lake level fluctuations, water scarcity, nitrification, and siltation mainly from watershed degradation".[32] This situation and others of its nature prompted the State and its development partners to find ways of mitigating such ecological problems. For instance, work has been done to create and manage a 10.2km buffer zone in the White Volta basin for purposes of protecting, conserving and sustaining the

[30] See the Forest Plantation Development Fund Act, 2000 (ACT 583); Section 6 of the Forest Plantation Development Fund (Amendment) Act, 2002 (Act 623); the Fisheries Development Fund (Section 17 of the Fisheries Commission Act, 1993); the National Environment Fund (Sections 16-19 of the Environmental Protection Agency Act, 1994); the Farmers' Welfare Fund (Section 27of the Ghana Cocoa Board Law, 1984 [PNDCL 81]), etc.
[31] Ibid. n.25.
[32] Ibid. n.3 (p. 114).

basin's "fresh water resources." Similarly, the Korle Lagoon Ecological Restoration Project (KLERP) has been one of the major projects that aim at protecting marine biodiversity, especially within the country's capital – Accra.

In addition, the Coastal Development Project (CDP) has been implemented to enhance the maintenance of sanitation and the restoration of biodiversity in the coastal communities across the country.[33] It is important that mention must also be made of the 1999 Wetland Management (Ramsar Sites) Regulations which officially established the country's six Ramsar Sites in accordance with the 1971 Convention of Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention). The sites are the Muni-Pomadze, Densu Delta, Sakumo, Songor, Keta Lagoon Complex, and the Owabi Wildlife Sanctuary. These sites have been very much influential in the country's efforts at implementing the CBD due to the conservation and management practices employed in handling them. These are protected areas and apart from ecotourism and it related activities, all human activities are prohibited, thus enhancing biodiversity conservation and sustainable development.[34]

GHANA'S 1992 CONSTITUTION AND SOME PROMINENT ENVIRONMENT-RELATED LEGISLATIONS

According to Article 36 (9) of the 1992 Constitution of Ghana, "the State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other states and bodies for purposes of protecting the wider international environment for mankind." As a matter of fact, the 1992 Constitution of Ghana mandates the country's Parliament to regulate the exploration, extraction and use of natural resources by providing for "parliamentary ratification of contracts relating to the exploitation of natural resources."[35]

[33] National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2010 Annual Progress Report (National Development Planning Commission 2011).

[34] Sections 2-8 of the Wetland Management (Ramsar Sites) Regulations, 1999 declares "close seasons", designates "core areas", "areas for specific activities", outlines "proscribed" and "restricted" activities, and eventually details out offences and related punishments and fines.

[35] Ibid. n.3 (p. 42).

The country's Constitution, particularly Chapter 21 and other related articles, form the basis for elaborate laws and regulations pertaining to land ownership and the natural resources that are associated with them.

Environmental Assessment Regulation of Ghana, 1999 (Amended 2002)

With the implementation of the National Environmental Action Plan (NEAP) which eventually gave rise to the enactment of the Environmental Protection Agency Act (EPA) 1994 (Act 490), Ghana for the first time instituted a system of legal support aimed at ensuring the implementation of Environmental Assessment (EA). In addition, with the promulgation of the Environmental Impact Assessment (EIA) Procedures into the Environmental Assessment Regulations (LI 1652, 1999), the country went to the extra mile of consolidating EA application nationwide.[36]

Thus, Ghana's Environment Impact Assessment (EIA) system was formally established in 1994 with the legislation the Environmental Protection Agency Act 1994, Act 490 and was given a further boost by the Environmental Assessment Regulations 1999 (L.I. 1652). Ghana's EIA key component focuses on policy framework, legislative instruments, administrative procedures, institutional capacities and responsibilities, as well as public consultation. Thus, the Environment Impact Assessment Regulation of Ghana was passed to give effect to the principle of environmental impact assessment – one of the principal concerns of the CBD.

According to the Regulation, no person shall commence or undertake any activity unless that activity has been registered with the EPA and that; the appropriate permit has also been issued. This is so especially under conditions where the activity is deemed to have any adverse effect on the environment or public health in general. Interestingly, Ghana's EIA Regulation, in order to curb pollution and destruction of biodiversity and the negative implications for the community has retrospective effect on activities which were in place before the commencement of the regulation.

Consequently, the EIA Regulations demands that before any major project commences there is the need to develop an "environmental impact statement" which shall address the "possible direct and indirect impact of the undertaking on the environment at the pre-construction, construction, operation, decommissioning

[36] Ministry of Lands & Natural Resources (MLNR), *Forestry Development Master Plan (2016-2036).* (Ministry of Lands & Natural Resources 2016, p. 15 - 16).

and post-decommissioning phases…" (Section 14[1]) The section specifically demands among other things that the environmental impact statement must address questions pertaining to:

(b) any direct ecological changes resulting from such pollutant concentrations as they relate to communities, habitats, flora and fauna;

(c) alteration in ecological processes such as transfer of energy through food chains, decomposition and bio-accumulation which could affect any community, habitat or specie of flora or fauna;

(d) ecological consequences of direct destruction of existing habitats from activities such as dumping of waste and vegetation clearance and fillings.

Interestingly, along the stringent measures aimed at environmental protection and biodiversity conservation, EIA also demands that every environment impact statement should also detail out the expected "direct or indirect employment generation" that would result from the project in question. This should also be accompanied by related estimation of immigration and its resultant demographic and cultural changes as well as likely conflict that may arise from immigration and tourism in the area under consideration. Furthermore, it is a must for the mining and other extractive industries to include reclamation plans in their environmental impact statement. In addition, appropriate compensations are to be paid for the disturbance of the land owner's surface rights.[37]

The point must also be noted that even after issuing an environmental impact certificate for a project, the EPA retains the right to "suspend" the permit or certificate "in the event of occurrence of fundamental changes in the environment due to natural causes before or during the implementation of the undertaking." Under such circumstances, the initial report and plan must be "revised on the basis of the new environmental condition." (Section 26[2])

***The Biosafety Act, 2011 (Act 831) and the Biosafety (Management of Biotechnology) Regulations, 2007* (LI 1887)**

According to Section 2 of the Act 831, the primary purpose of this Act is to "ensure an adequate level of protection in the field of safe development transfer, handling and use of genetically modified organisms resulting from biotechnology that may have an adverse effect on health and the environment" and to "establish a

[37] See Sections 73, 74, and 94 of the Minerals and Mining Act, 2006 (Act 703).

transparent and predictable process to review and make decisions on genetically modified organisms…" The Act consequently established two key institutions[38] that have direct influence on the implementation of the CBD in the country; the National Biosafety Authority (NBA) – tasked with the mandate of leading the regulatory system pertaining to the identification, handling, transportation and use of Genetically Modified Organisms (GMOs) in Ghana; and the Technical Advisory Committee (TAC) which is responsible for conducting scientific risk assessment on applications that are submitted to the Authority. The Authority and Committee, due to the nature of their work, liaise with several institutions and agencies in achieving their set goals. Among these institutions are the Ministry of Local Government and Rural Development, Veterinary Services Directorate, Ghana Standards Authority, EPA, etc.

The Act stipulates that without the written permission of the Authority, no person or entity within the country's territory can conduct any experiment or activity involving the use of GMOs or their development, and neither can GMOs be introduced into the environment without doing same (Sections 11[1] and 12[1]). Similarly, the importation and export of GMOs, as well as the transiting of same, and their related issues to, from and through the country are all subject to the prior approval of the National Biosafety Authority.

Moreover, the Act also allows for the operations of regulatory agencies that have the responsibility of monitoring and reporting on the activities of institutions and organisations that apply for the use and experimentation with GMOs. In situations where a regulatory agency discovers that "significant new scientific information" indicates that previously permitted activities with GMOs in recent times might "adversely affect the environment or pose potential risks not previously known", the information must be relayed to the Authority so as to introduce new and appropriate measures that would guarantee the "safe use" of the GMOs in question.[39] Furthermore, when it comes to the notice of a regulatory agency that an "unintentional or unapproved introduction" of GMOs into the environment has occurred, and that the GMOs introduction into the environment has the probability to "have an adverse effect on the environment" the regulatory agency shall "within

[38] Sections 3 and 27 respectively; Section 3 establishes the National Biosafety Authority with subsequent sections detailing its functions. Section 27 establishes the Technical Advisory Committee and requires the Board of Directors of the Authority to establish any other committees when the need arises. See also First Schedule of the Act, specifically Section (1).
[39] See section 31 of the Biosafety Act, 2011 (Act 831)

twenty four hours of having that knowledge, notify the Authority of the occurrence." [40]

The Act also mandates the Authority to appoint Biosafety inspectors who are responsible for verifying the authenticity, compliance, appropriate use of biotechnology and biosafety equipments and their relations to GMOs, and the environment as whole. All these rules and regulations, as well as the other policy guidelines and principles outlined in the country's 2011 Biosafety Act and its related amendments are major steps for meeting the targets of the CBD. For instance, since public education, awareness and participation are key components of the CBD, the Biosafety Act makes it mandatory for the Authority to promote public awareness and participation as well as education relating to issues of biosafety. The Act consequently demands its publication in "as many languages as possible" while also calling for the periodic sensitization programmes such as seminars, workshops and public lectures. The study finds that most these policy recommendations have been duly followed.

Another key legal document that the Ghanaian State has adopted to address a major concern of the CBD is the Biosafety (Management of Biotechnology) Regulations, 2007 (LI 1887). This Regulation actually preceded the Biosafety Act of 2011 and lays the foundations of which the latter has been built. Among other important issues, the Regulation designates the National Biosafety Committee (NBC) as the National Focal Point (NFP) on biosafety and mandates it with the responsibility of liaising with the Secretariat of the CBD for the necessary administrative functions regarding the operations of the Cartagena Protocol on Biosafety. The Regulation also outlines the roles of different institutions and agencies and the respective roles in the implementation of biosafety practices in genetic engineering and biotechnological work in the country. It also encouraged programmes aimed at creating public awareness about biosafety, community participation and education of citizens on the essence of biosafety.

[40] Section 32 of the Biosafety Act, 2011 outlines the details on dealing with unintentional release into the environment.

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FORESTRY-RELATED LAWS AND IMPLEMENTATION OF THE CBD IN GHANA

The Forest Sector Development Projects (FSDP I & FSDP II), Community Resource Management Area (CREMA) and Related Project

The FSDP 1 was an initiative that commenced in 1995 and had the objective of ensuring the establishment of aneffective and efficient forestry service that was capable of implementing the country's forest policy, and to eventually transform the then Ghana Forestry Department (FD) into an autonomous self-financing Forest Service (FS). When the project expired in 1999, it was replaced by phase two (FSDP 2) which spanned April 2000 to 2006. The phase two subsequently aided the Government of Ghana and various stakeholders in the establishment of an institutional framework that promoted sustainable economic growth and enhanced efforts at nationwide poverty reduction.[41]

The World Bank in 2006 estimated that Ghana's pace of deforestation was about 65,000 ha per year, and this has left only 16 (6%) of the 266 designated forest reserves in a healthy state.[42] Other studies have made similar or even worst estimates.[43] Thus, to increase the country's forest cover by 10,000 hectares annually, in the year 2008, the Forestry Services Division (FSD) surveyed and demarcated 1,440 hectares under the Community Forest Management Project (CFMP) and 178 hectares under FSD model plantation programme. In addition, the division prepared 195 hectares under the Modified Taungya System[44], 152 hectares under the FSD model plantation programme and 891 hectares under the CFMP. Moreover, about 789,050 seedlings were also delivered under the modified Taungya system and 104,434 seedlings of various species were raised in FSD

[41] Government of Ghana (GoG), *Medium-Term National Development Policy Framework: Ghana Shared Growth and Development Agenda (GSGDA), 2010-2013* (National Development Planning Commission (NDPC) 2010).
[42] Ibid. n.3.
[43] Kwame Oppong Hackman and Peng Gong, 'Biodiversity estimation of the Western Region of Ghana using arthropod mean morphospecies abundance' [2017] Biodiversity and Conservation 2083; Jan Bossart and others, 'Richness, abundance, and complementarity of fruit-feeding butterfly species in relict sacred forests and forest reserves of Ghana' [2006] Biodiversity and Conservation 333.
[44] The Taungya is a form of agroforestry practice in which short term crops are usually cultivated in the early years of the plantation of a woody perennials species in order to utilize the land, control weeds, reduce establishment costs, generate early income and stimulate the development of the woody perennials species. It is a Burmese word meaning "hill cultivation." See *definedterm.com/taungya_system*.

nurseries during the period under review. Furthermore, under the Heavily Indebted Poor Countries (HIPC) Plantation Programme, 1,127 hectares were surveyed and demarcated during the period while also preparing 1,405 hectares and 752,000 seedlings for delivery and planting.[45] All these policies and activities are means of implementing the obligations of the CBD and they also impact positively on the lives of the people. For instance, over 12,100 workers were engaged under the HIPC Plantation Programme.

As at 2009, the HIPC Plantation Programme alone had accomplished the establishment of 26,600 hectares of plantation forest – a step which greatly enhances sustainable development. The programme has also facilitated the establishment of 15,000 hectares of plantations in off-reserve forests under its CFMP, whilst 3,000 hectares under its Urban Component have been planted. It also supplied 4,000,000 seedlings to the Greening Ghana Programme.[46]

For a country that has over 280 forest reserves covering a total area of about 23,729 km2, or 11% of its total land area, and given the fact that about 75% of these reserves have been designated as "production reserves" for the exploitation of timber, with the remaining 25% been "protection reserves" – thus not currently under exploitation, probably because of "inaccessibility", it only becomes a necessity to involve the local people in such areas in the management and conservation process.[47] Hence the introduction of the Community Resource Management Area (CREMA) becomes a welcome project. It must be reiterated that the CBD encourages the involvement and participation of local people in the conservation and management of biodiversity.

The CREMA as a concept was initiated by the Ghana Wildlife Division under the country's Protected Areas Development Programme (PADP) as a mechanism for encouraging communities bordering the protected areas to "manage and sustainably utilize wildlife resources within a defined area through a Community Participatory Approach".[48] The system, as indicated by the World Bank "goes further than any other system in Africa in devolving both the authority and responsibility for wildlife to the level of the individual farmer." The Bank has consequently argued that the "importance of this approach has gone largely

[45] Government of Ghana (GoG), *Budget 2009: Investing in A BETTER GHANA* (GoG 2009).
[46] Ibid.
[47] Government of Ghana (GoG), *National Biodiversity Strategy and Action Plan* (Ministry of Environment, Science, Technology and Innovation (MESTI) 2016, p. 12).
[48] Ibid. (p. 14).

unnoticed despite its implications for off-reserve wildlife management as an extra-farm resource in high forest, transition, and savanna areas".[49]

The CREMA subsequently allows the indigenous people in and around the country's protected areas to practice efficient management and sustainable use of the wildlife resources within these areas. It has thus become an important first step that empowers local communities to actively participate in the conservation of wildlife both outside the forests and in the protected areas.[50]

The Forestry Development Master Plan (FDMP)

With regards to the forest sector and forestry management and policies related to the CBD and biodiversity conservation, the country has over the years introduced several Forestry Development Master Plans. These include that of 1996, 2012, and the most recent one – the 2016-2036 FDMP. These FDMPs have over the years spearheaded the introduction of relevant strategic initiatives and legislative reforms that have helped in improving and developing forest and wildlife resources which have positive implications for the implementation of the CBD across the country. For instance, through the 1996 FDMP, the country had the revised Forest Plantation Fund Act, 2000 (Act 583), the Forest Protection Amendment Act, 2002, etc.

It is important to note that Ghana's forestry and timber related policies have almost always had their accompanying legal backings.[51] Moreover, considering the fact that recent statistics indicate that the overall contribution of the major extractive and related sectors such as gold, crude oil, cocoa, and timber to the real GDP are among the country's top export earners in 2015, and accounted for 78 per cent of the country's export revenue,[52] the introduction and eventual implementation of such FDMPs and other related policy documents becomes a necessity. In sum, the FDMPs have over the years aimed at achieving "an inclusive and resilient economy, equitable and tolerant society, safe and sustainable communities, effective and efficient institutions and contributing to world peace and justice".[53]

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[49] Ibid. n.3 (p. 47).
[50] *Ghana* (Ministry of Environment and Science 2002).
[51] See for instance the Timber Resources (Legality Licensing) Regulations, 2012 (L.I. 2184); Forestry Commission Act, 1999; Timber Resource Management Act, 1997 (Act 547); the Ghana Forestry Commission Act, 1980 (Act 405); the Forest Protection Decree of 1974 (NRCD 243), etc.
[52] Ibid. n.35.
[53] Ibid. (p. 12).

The current FDMP is a 20-year well-articulated plan that spans the period 2016 to 2036. It has been prepared with the vision of among other things ensuring "cooperation, coordination, coherence and synergy in forestry-related issues at all levels." It also has the targets of "promoting good governance through accountability and transparency" as well as enhancing the modernization of the country's forest activities "as a means of job creation for the rural and urban poor" while also "promoting timber plantation development." More importantly, the FDMP also seeks to ensure "biodiversity conservation and ecotourism development" and to pursue "sustainable financing of forestry sector activities".[54] The Plan is a reflection of the country's development agenda, the UN Sustainable Development Goals, as well as relevant MEAs that are in tandem with the targets of the CBD and clearly identifies "the goal of eradicating poverty and achieving sustainable development" as the key components of its objectives.[55]

The current FDMP also outlines plans to "cede out" some of the Forestry Commission's activities to the private sector, particularly in areas where the private sector has a "comparative advantage." This transfer of responsibilities is to be carried out after "a sector wide technical and financial audit" and the development of appropriate legislations.[56] The underlining reason for this is to ensure biodiversity management and sustainable development. The current FDMP is expected to cost roughly $8.9 billion over the 20 year period. Consequently, the Government of Ghana bears 52% of the cost while internally generated funds from the Forestry Commission and donors take 23% and 25% respectively.[57]

The Government of Ghana has also engaged in Public Private Partnerships (PPP) that has enhanced the implementation of innovative afforestation projects across the country.[58] There are also in place several other measures that are all geared at addressing the various environmental and biodiversity-related issues across the country. These include the Government/HIPC Plantation Development

[54] Ibid. (p. v).
[55] Ibid. (p. 52).
[56] Ibid. (p. 96).
[57] Ibid.
[58] African Development Bank Group, 'African Development Bank and Forest Investment Program sign loan with Form Ghana Ltd to restore Ghana's forests' (*African Development Bank Group*, 7 March 2017) <www.afdb.org/en/news-and-events/african-development-bank-and-forest-investment-program-sign-loan-with-form-ghana-ltd-to-restore-ghanas-forests-16768/> accessed 18 November 2018; National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2010 Annual Progress Report (National Development Planning Commission 2011).

Programme, Forest Investment Programme (FIP), Community Forest Management Project (CFMP), Forest Resources Management Project (FORUM), Forest Preservation Programme (FPP), etc which are all under the auspices of the country's Forestry Commission (The Forestry Commission of Ghana (FC)).

The FIP, for instance, aims at addressing the fundamental causes of deforestation and enhancing critical transformation by "providing upfront investment to support the implementation of the REDD+ strategy" and generating needed "information and experience for policy and regulatory changes".[59] It invests in four major areas and focuses on the high forest zones (HFZ) of the country. These four areas include the coordination of activities such as inter-agency dialogue, enforcement of adopted policies and landscape planning. Secondly, the Project promotes legal and policy reforms, especially in private investment within the forestry sector and on tree tenure. The piloting of projects and schemes are also spearheaded by the FIP. These usually include issues pertaining to benefit-sharing schemes, comprehensive variants of forest reserves management systems, etc. Finally, the FIP undertakes direct investments in the private sector that pursues sustainable forest and agriculture through a REDD+ investment program and also supports technical assistance programs to scale up impact.[60]

Another key project is the Cocoa Farming and Biodiversity in Ghana Project which explores the viability and possibility of increased cocoa production in biodiversity rich surroundings, while establishing cocoa farm tourism in the project community. It also conserves and increases biodiversity on selected farms through the management of a sustainable cocoa ecosystem, and improves farmers' earnings through improved output and ecotourism.

Forestry-Related Laws and Biodiversity Conservation in Ghana: Dealing with Deforestation and Timber Harvesting

For a country that official statistics hints that "logging is at about 4 times the sustainable rate", the introduction and implementation of stringent and robust measures, as well as effective conservation-related legislation becomes a necessity.[61] In order to conserve forestry biodiversity, the Government of Ghana, through the Forestry Division of the Forestry Commission once selected about 29 forest reserves that covered an estimated area of 117,322 ha, as Globally

[59] Ministry of Lands and Natural Resources (MLNR), *Ghana Investment Plan for the Forest Investment Program (FIP) 2012*. (Ministry of Lands and Natural Resources 2012, p. iv).
[60] Ibid. (p. v).
[61] Ibid. n.11. (p. x).

Significant Biodiversity Areas (GSBAs). The rationale for the establishment of these GSBAs is quite simple: the forests in question houses lofty concentrations of biodiversity of worldwide conservation value. Consequently, several anthropogenic causes of biodiversity as such as logging and other commercial extractive activities are prohibited in these areas.[62]

Several legislations have also been passed with the same rationale. The Timber Resource Management Act (Act 547)[63] was enacted in 1997 and assented to by the President on March 17, 1998. The Act provides for the granting of "timber rights" in a way that aims at securing the "sustainable management and utilization" of the country's "timber resources" and "to provide for related purposes." The Act, in order to manage and conserve the country's forest biodiversity resources prohibits the harvesting of timber in designated areas unless the person has obtained "timber rights in the form of a timber utilization contract" in accordance with the Act. To make the regulation firmer, Section (2) of the Act stipulates that "No timber utilisation contract shall be entered into with any person under this Act unless the person is a body incorporated under the Companies Code, 1963 (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152)." The Timber Resource Management Act together with the Voluntary Partnership Agreement/Forest Law Enforcement, Governance and Trade (VPA/FLEGT) and related forestry legislations and policies forms a solid basis for sustainable development of Ghana's forest resources and consequently enhances the implementation of the CBD. The Act has also been given a further boost by the promulgation of the Timber Resources Management Regulations, 1998 (LI 1649).

Section 3 (3e) of the Act 547 calls for individuals and groups that apply for a timber utilization contract to present "proposals to assist in addressing social needs of the communities who have interest in the applicant's proposed area of operations." Section 4(2) of the Act also specifically dictates that: "No timber rights shall be granted in respect of- (a) a land with forest plantations… (d) lands with farms; without the authorization in writing of the individual, group or owner concerned." In addition, Section 18(k) of the Act also mandates the sector Minister to make

[62] Ministry of Environment and Science (MoES), *National Biodiversity Strategy for Ghana* (Ministry of Environment and Science 2002).

[63] The Act has been given further boost by the promulgation of the Timber Resources (Legality Licensing) Regulations, 2012 (L.I. 2184). This legislative instrument establishes the Timber Validation Committee whose duties include monitoring and ensuring that the agencies tasked with verification of timber and related matters perform their work in a credible manner.

appropriate legislative instruments that regulates the prescription of species of trees considered "depleted", "threatened", "endangered", or "economically extinct" and also specify "the conditions under which they may be felled" upon the recommendations of the Forestry Commission.

In a similar vein, during the reign of the Armed Forces Revolutionary Council (AFRC), the military administration decreed the Economic Plants Protection Decree, 1979 (AFRCD 47) which provides for "the prohibition of the destruction of specified plants of economic value and for related matters." The decree consequently prescribes a compensation, fine and punishment for offenders. These rules and regulations eventually give an indication of the extent to which the State is willing to protect forestry resources and their sustainable use and the implications such resources should have on the communities in which they are located. Moreover, with the introduction of relevant laws and regulations[64], the incidence of bush fires (which is a major cause of biodiversity loss) across the country has been reducing over the years.[65]

In recent times, one of the most comprehensive legal documents that have been enacted by the Ghanaian State to ensure sustainable development and the conservation of biodiversity, particularly forest resources and timber, is the Timber Resource Management and Legality Licensing Regulations, 2017. This legislative instrument has been welcomed by both citizens and corporations in the forestry and environmental sector at home and abroad. It has especially been welcomed by the EU since it is seen as an important milestone in achieving not just the targets of the VPA/FLEGT, but also for the CBD as whole.[66] As a matter of fact, the

[64] See the Control and Prevention of Bushfires Act, 1990 (P.N.D.C.L.229). This Act among other things prohibits bush fires; defines what it means to start a bushfire; calls for the creation and training of fire volunteers; makes it duty for all citizens to report bushfires; prescribes offences and related punishments, etc.

[65] National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2013 Annual Progress Report (National Development Planning Commission 2014); National Development Planning Commission (NDPC), *The Implementation of the Ghana Shared Growth and Development Agenda (GSGDA)*, 2010-2013: 2010 Annual Progress Report (National Development Planning Commission 2011).

[66] European Forest Institute, 'New regulations in Ghana important milestone for full VPA implementation' (*EU FLEGT Facility*, 22 November 2017) <www.euflegt.efi.int/ghana-news/-/asset_publisher/FWJBfN3Zu1f6/content/new-regulations-in-ghana-important-milestone-for-full-vpa-implementati-1> accessed 10 December 2018; Frederick Asiamah, 'Ghana: New Timber Legality Law Good for Ghana-EU Vpa' (*AllAfrica*, 20 November 2017) <https://allafrica.com/stories/201711200769.html> accessed 10 December 2018.

introduction and adoption of this L.I. boosts the country's "efforts to be the first country in Africa, and only the second in the world, to meet the stringent timber-legality requirements of the lucrative EU market" (FLEGT.org Info, 2017).[67]

Among the several key issues addressed by the new Regulation is the requirement by section (26) for all companies seeking commercial logging permits to negotiate appropriate Social Responsibility Agreements with the adjacent communities where their activities are to be carried out. The Act also spells out the requirements to determine the suitability of lands to be granted timber rights. Key among these requirements is the compliance of the applicant with existing environmental regulations and the soundness of the techniques involved in their operations and the likely implications such techniques will have on the forest biodiversity. Section (19) of the Act stipulates that with regards to small scale timber rights, the failure of "a successful applicant" "to comply with the requirements" of the Regulations within the specified time would mean a nullification of the right by the sector Minister. This implies that the timber right is tied to the strict adherence to existing environmental regulations and the acceptance of the social responsibility agreement[68]- in effect sustainable development- a focal issue for the CBD.

CONCLUSION

The overarching goal of the study was to examine the implementation of the provisions of the CBD and other related environmental regulations in Ghana amidst the hope of sustainable development. This goal is motivated by the idea that despite the existence of seemingly so many rules regarding conservation of biodiversity in Ghana, there are still evidence of destruction and pollution of the environment which in turn destroys biodiversity in the long run.

The attempt to describe, analyze and explain Ghana's efforts at biodiversity conservation and sustainable development amidst the growing menace directed the researcher to situate the study in the qualitative research design. The reason is that the qualitative design is deemed appropriate for descriptive and explanatory studies. The qualitative design enabled the researcher to obtain relevant data in

[67] FLEGT.org Info, 'New regulations in Ghana important milestone for full VPA implementation' (*FLEGT.org*, 17 November 2017) <www.flegt.org/news/content/viewItem/new-regulations-in-ghana-important-milestone-for-full-vpa-implementation/17-11-2017/154> accessed 10 December 2018.

[68] Section 22 of the Timber Resource Management and Legality Licensing Regulations, 2017 gives further terms and conditions regarding the use of the timber rights, contracts, and their monitoring procedures.

non-numerical form which generated rich, in-depth insight into the research questions.

In responding to the two main research questions raised by the study, firstly, with regards to the question on the laws and regulations introduced in Ghana to enhance the implementation of the CBD, as the findings have indicated, several laws, rules, and regulations exist in Ghana that target the implementation of the CBD. These legislations as a matter of fact cover every perceivable issue of biodiversity conservation and environmental protection in the country. They include forestry and wildlife protection laws, ecological and marine-related laws, minerals and natural resources exploration laws, biosafety regulations, etc. These legislations have over the years served as the linchpin around which the implementation of the CBD and other related MEAs revolve.

Secondly, with regards to the question on the measures that has been put in place to deal with the degradation of biodiversity, the study finds that several policies have been introduced and implemented since the coming into force of the CBD notwithstanding that environmental protection effort in the country predates the CBD. Thus, programmes and policies such as the Community Resources Management Area (CREMA), Coastal Wetlands Management Project (CWMP), the Forestry Development Master Plans (FDMPs), the HIPC Plantation Project, Ghana Shared Growth and Development Agenda (GSGDA), National Biodiversity Strategy and Action Plan, etc. have all targeted curbing issues of biodiversity degradation in one way or the other.

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