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GHANA'S NEED FOR SOCIOLOGICAL JURISPRUDENCE: A CRITICAL APPLICATION OF ROSCOE POUND'S THEORY

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ABSTRACT

This paper critically examines the applicability and relevance of Roscoe Pound's sociological jurisprudence to the legal and educational systems of Ghana. It argues that while Ghana's legal architecture is constitutionally sound and institutionally robust, it remains constrained by inherited colonial formalism, doctrinal rigidity, and cultural alienation. Drawing on Pound's foundational thesis, law must function as a tool for social engineering rather than a self-contained doctrinal system. The paper assesses Ghana's jurisprudential trajectory and identifies a critical need to align legal norms, practices, and education with the socio-cultural realities of the Ghanaian populace. Through a desktop methodology grounded in doctrinal analysis and comparative legal theory, the study interrogates the formalism in judicial reasoning, the marginalization of customary law, and the doctrinal orthodoxy prevalent in legal education. It proposes a sociologically informed legal reform agenda encompassing interdisciplinary legal education, empirical legal research, and context-sensitive judicial interpretation. The study finds that integrating local knowledge systems, advancing community-based legal pedagogy, and democratizing access to justice are essential for the evolution of a Ghanaian legal system that is equitable, dynamic, and culturally responsive.

Keywords: Ghana, Jurisprudence, Sociological Jurisprudence, Legal Reform, Legal Education

INTRODUCTION

Despite the proliferation of legal reforms and constitutional guarantees in Ghana, a palpable disconnect persists between legal doctrines and the socio-cultural realities of the populace. Roscoe Pound, over a century ago, advocated for a

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jurisprudential paradigm that aligns legal development with social needs. His call for a "sociological jurisprudence" emphasized the functional utility of law in promoting social interests rather than serving rigid formalism. In Ghana, the jurisprudential gap lies in the persistent application of inherited colonial laws and Eurocentric legal reasoning which often fail to resonate with Ghanaian customary practices and evolving societal dynamics. This study examines the necessity of adopting a sociological jurisprudence in Ghana that embraces the dynamic interaction between law, culture, economics, and politics. We argue that although Ghana's legal framework is constitutionally grounded and institutionally resilient, it remains constrained by inherited colonial formalism, inflexible legal doctrines, and a disconnect from indigenous cultural and social contexts. It draws on Pound's foundational ideas to critically appraise Ghana's legal system, highlight existing disconnects, and propose a jurisprudence that is responsive to Ghanaian socio-economic and political realities.[3]

This study adopts a desktop research approach, drawing on sources such as statutes, constitutional texts, academic literature, and socio-legal commentaries. A comparative method is also employed, referencing Roscoe Pound's original work on sociological jurisprudence and juxtaposing it with relevant Ghanaian laws, cultural norms, and institutional practices. The desktop approach allows for a thorough theoretical and doctrinal analysis, which is often useful for this type of study.[4]

REFLECTING ROSCOE POUND'S NEED FOR SOCIOLOGICAL JURISPRUDENCE

Roscoe Pound's 1907 essay "The Need of a Sociological Jurisprudence" is a landmark work that critiques the formalistic tendencies of traditional legal theory and advocates for a legal system grounded in the realities and needs of society. Pound argues that the law, rather than being an abstract, self-contained system governed by rigid doctrines, should be a dynamic tool for social engineering. He contends that legal institutions and professionals have become disconnected from

[3] See Pound, Roscoe. "The need of a sociological jurisprudence." *Annu. Rep. ABA* 30 (1907): 911; see also the 1964 reprint in *Crime & Delinquency* 10.4: 385-397.
[4] Bhaghamma, G. "A comparative analysis of doctrinal and non-doctrinal legal research." *ILE Journal of Governance and Policy Review* 1.1 (2023): 88-94.

the social functions they are meant to serve and that this disconnect has resulted in a justice system that is increasingly ineffective and alienating to the public.[5]

Pound opens his essay with observations on the growing public disregard for law and legal institutions, noting how individuals are often more inclined to follow personal standards than to conform to established legal norms. He attributes this trend not to a rejection of justice *per se*, but to a failure of the legal system to reflect contemporary social values and to administer justice effectively. The law, in his view, has lost its hold on the public imagination because it is no longer responsive to the complexities of modern life. Rather than adapting to new social conditions, it clings to outdated concepts rooted in individualism and formalism.[6]

He provides examples of how this disjunction manifests in courtrooms, such as jurors delivering verdicts based on moral intuition rather than legal standards, and judges upholding archaic doctrines that no longer resonate with the public. He points to widespread dissatisfaction with legal outcomes, particularly in personal injury and labor cases, as evidence of a broader systemic failure. For Pound, these instances reveal a gap between law in books and law in action—a gap that can only be bridged by embracing a sociological approach to jurisprudence.[7]

Pound critiques the dominance of individualistic doctrines within legal systems, particularly those inherited from the common law tradition. Legal doctrines such as freedom of contract, property rights, and liability principles have been treated as sacrosanct, but often fail to consider the broader social implications of their application. He argues that the legal system must move beyond an emphasis on individual autonomy to address collective needs and social justice. This requires a fundamental shift in the way laws are formulated, interpreted, and applied.[8]

He outlines the historical evolution of legal thought, tracing the emergence of various jurisprudential schools. These include the comparative, philosophical, analytical, and historical approaches, each of which contributed to the development of legal science but also exhibited significant limitations. The comparative school sought to identify legal principles across different systems; the philosophical school emphasized rational coherence; the analytical school focused on the logical structure of legal systems; and the historical school attempted to explain law through its evolution over time. Despite their contributions, Pound

[5] Ibid 3. Pound critiques rigid formalism and argues for a jurisprudence responsive to social needs.
[6] Ibid 3.
[7] Ibid 3.
[8] Ibid 3.

argues that these schools ultimately fell short because they failed to ground legal principles in empirical social realities.[9,10]

Pound positions sociological jurisprudence as the next evolutionary step in legal thought. This new approach, he asserts, recognizes the law as a social institution that must be studied, evaluated, and developed in light of its real-world consequences. Sociological jurisprudence demands that lawmakers, judges, and legal scholars pay close attention to how legal rules affect the lives of ordinary people and how those rules can be improved to promote social welfare. It is an approach that values facts over fictions, and outcomes over abstractions.[11]

A central tenet of Pound's theory is that legal education and practice must undergo significant reform to align with the goals of sociological jurisprudence. He criticizes law schools for perpetuating outdated doctrines and for training lawyers to prioritize technical proficiency over social insight. He urges educators to incorporate the social sciences into legal curricula, encouraging future lawyers to engage with sociology, economics, and politics. The goal, according to Pound, is to produce legal professionals who understand the social context of their work and who are equipped to make the law a living instrument of justice.[12,13]

Pound emphasizes that law is not a static or sacred entity but a means to an end. Its legitimacy depends on its ability to meet the needs of society and to facilitate the fair resolution of conflicts. He cautions against legal reasoning that relies on fictitious assumptions or contrived doctrines, arguing that such reasoning undermines the credibility of the legal system. Instead, he advocates for a pragmatic approach that evaluates legal rules based on their effectiveness in promoting justice and social harmony.[14]

One of the most powerful sections of the essay deals with the transformation of public expectations regarding justice. Pound notes that while traditional legal systems were built around the ideal of equal freedom, modern societies are

[9] Ibid 3.
[10] Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* (5th edn, OUP 2019) 12–25. Wacks provides a detailed overview of the classical jurisprudential schools and highlights the limitations of each, echoing Pound's call for a more socially grounded legal theory.
[11] Ibid 3.
[12] Ibid 3.
[13] Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Hart Publishing 2003) 45. Bradney reinforces Pound's view by advocating for a broader, liberal legal education that integrates social sciences and prepares lawyers for socially responsible practice.
[14] Ibid 3.

increasingly concerned with the equal satisfaction of wants. This shift reflects a growing recognition that formal equality is insufficient in the face of structural inequalities and social disparities. Law must therefore evolve to address these deeper concerns, embracing a model of justice that prioritizes substantive fairness over procedural uniformity.[15]

Pound explores how legal doctrines related to property, contract, torts, and criminal law have historically embodied an individualistic bias. He explains how modern legislation and judicial decisions have begun to deviate from these doctrines in response to social pressures. For instance, laws have increasingly curtailed absolute freedom of contract in favor of consumer protections, worker rights, and public interest regulations. Similarly, doctrines like contributory negligence, which once denied compensation to injured workers who shared any fault, have been replaced or mitigated by comparative negligence standards and workers' compensation schemes.[16]

These changes, according to Pound, illustrate the law's capacity to adapt to changing social values when guided by a sociological perspective. However, he warns that such adaptations often occur haphazardly and inconsistently when not informed by a coherent jurisprudential philosophy. The role of sociological jurisprudence, then, is to provide the theoretical foundation for these reforms, ensuring that legal change is purposeful, systematic, and grounded in a deep understanding of societal needs.[17,18]

Pound also addresses the role of the judiciary in advancing sociological jurisprudence. He argues that judges must be more than passive interpreters of existing laws; they must be active participants in the development of legal doctrine, informed by social context and empirical evidence. This requires a rethinking of judicial methodology, with an emphasis on responsiveness, flexibility, and a commitment to the public good. Judges should be attuned to the social

[15] Ibid 3.
[16] Ibid 3. Brian Bix, *Jurisprudence: Theory and Context* (8th edn, Sweet & Maxwell 2015) 137–141. Bix discusses how legal doctrines, particularly in contract and tort law, have evolved under the influence of social justice movements and policy considerations, supporting Pound's thesis of a gradual shift away from rigid individualism.
[17] Ibid 3, Also see Cotterrell, Roger. *Law, culture and society: Legal ideas in the mirror of social theory*. Routledge, 2017.
[18] Cotterrell reinforces Pound's argument by asserting that legal reform must be anchored in consistent sociological frameworks to avoid arbitrary and fragmented developments.

consequences of their decisions and willing to innovate where traditional rules fail to serve justice.[19,20]

Furthermore, Pound calls for the establishment of institutional mechanisms to support sociological research in law. He envisions the creation of juridical laboratories and research centers that would gather data on the functioning of legal systems and analyze their social impact. Such institutions would bridge the gap between theory and practice, offering evidence-based insights to guide legal reform. Pound believes that without such infrastructure, legal science will continue to lag behind other disciplines in its ability to contribute to human progress.

In closing, Pound reiterates that the law must be reclaimed as a tool for achieving social ends rather than an autonomous discipline divorced from everyday realities. The legitimacy of the legal system depends on its capacity to respond to the evolving expectations of the public and to reflect the moral sense of the community. Sociological jurisprudence offers a way to make the law more humane, just, and effective by grounding it in the lived experiences of the people it serves. It is not merely an academic exercise, but a necessary framework for transforming the administration of justice and restoring public confidence in legal institutions.

Pound's work thus remains a foundational text for anyone seeking to understand the intersection of law and society. Its insights continue to resonate, offering a compelling vision of a legal system that is empirical in method, ethical in purpose, and deeply responsive to the needs of the time.

POUND'S THEORY AND THE JURISPRUDENCE OF GHANA

Roscoe Pound's enduring work, "The Need of a Sociological Jurisprudence," offers a profound critique of legal systems that are rigid, formalistic, and detached from the social realities they are meant to govern. When applied critically to the jurisprudential framework of Ghana, the relevance of Pound's insights becomes even more vivid. Ghana, like many post-colonial African states, inherited a legal system founded on Eurocentric traditions which, while structurally functional, often stand divorced from indigenous values, social needs, and practical

[19] Ibid 3.

[20] Aharon Barak, *The Judge in a Democracy* (Princeton University Press 2006) 27–35. Barak echoes Pound's view by asserting that judges must interpret laws with sensitivity to evolving societal values and actively shape legal norms to advance justice and democratic governance.

expectations.[21] Applying Pound's thought to the Ghanaian context not only exposes the legal system's philosophical and functional deficiencies but also offers a transformative blueprint toward a more adaptive, empathetic, and socially embedded jurisprudence.

Ghana's legal heritage is deeply rooted in English common law, a consequence of colonialism. While the 1992 Constitution of Ghana has codified a sovereign legal identity and introduced a measure of socio-political reform, the practical application of law often lags in terms of cultural responsiveness and efficacy.[22] Pound's insistence that "law is a means to an end, not an end in itself" challenges Ghana to reorient its legal philosophy. In practice, Ghana's courts continue to adjudicate cases within narrow doctrinal limits, often without accounting for the socio-economic implications of judicial outcomes.[23] The formalism Pound decried is evident in Ghanaian jurisprudence, where technicalities often triumph over substantive justice.

This rigidity is especially troubling in areas of customary law. Although Article 11 of the Constitution[24] recognizes customary law as a legitimate source of Ghanaian law, its application remains inconsistent and frequently subordinated to statutory law.[25] Pound would likely argue that this legal hierarchy diminishes the legitimacy of law in the eyes of the people, breeding apathy, resistance, or informal justice-seeking mechanisms such as traditional arbitration and spiritual recourse. Law, in Pound's vision, must be both reflective and anticipatory—responsive to current needs while envisioning future social cohesion. The Ghanaian state must thus reimagine the role of customary law not as a secondary or supplementary system, but as a vibrant, co-equal framework grounded in the socio-cultural experience of its people. This view is not different from what Ghana's first president, Dr. Kwame Nkrumah, espoused during the opening of the Ghana School of Law in 1962. According to Nkrumah, there was a need to recognize the significance of

[21] Ocran, Modibo. "The clash of legal cultures: The treatment of indigenous law in colonial and post-colonial Africa." *Akron L. Rev.* 39 (2006): 465. Also, see the work of Yakubu, John Ademola. "Colonialism, customary law and the post-colonial state in Africa: the case of Nigeria." *Africa Development/Afrique et Développement* (2005): 201-220.
[22] Kufuor, Kofi. *The African human rights system: origin and evolution*. Springer, 2015. Kufuor discusses how Ghana's legal system, rooted in English common law due to colonialism, continues to exhibit a disconnect between formal legal institutions and indigenous sociocultural realities.
[23] Atupare, Peter A. "Consolidating an integrated rights approach: socio-economic constitutional justice in Africa." *International Journal of Public Law and Policy* 9.4 (2023): 385-417.
[24] 1992 Constitution of the Republic of Ghana.
[25] Asante, Samuel KB. "Interests in Land in the Customary Law of Ghana--A New Appraisal." *Yale LJ* 74 (1964): 848.

customary law and advocate for its integration into the formal legal system, ensuring it met the needs of contemporary society. Nkrumah highlighted the importance of moving away from colonial legal frameworks, advocating for laws that resonate with African traditions and contemporary realities.[26]

Pound's critique of legal education is another area of significant resonance. He was appalled by legal instruction that blindly taught historical doctrines without encouraging students to critically engage with the social implications of legal rules.[27] Ghana's legal education still largely mirrors colonial pedagogical structures, privileging rote learning and doctrinal mastery over contextual analysis and critical thinking. Law faculties, although expanding in number and quality, continue to underemphasize interdisciplinary study.[28] The result is the production of lawyers and judges who may be highly literate in statute and precedent but deficient in understanding the communities their decisions affect. Incorporating sociology, anthropology, and development studies into the legal curriculum would be a step in the Poundian direction of producing not just lawyers, but social engineers.

In his original paper, Pound warned against the excessive reliance on fictional legal reasoning and abstract constructs that bore little relevance to real-life conditions.[29] This critique is particularly applicable to the enforcement of land law in Ghana. The Land Act, 2020 (Act 1036), while ambitious in its attempt to harmonize statutory and customary interests, has encountered implementation difficulties due to its top-down legalism.[30] Many local communities lack the literacy, legal knowledge, or institutional support to navigate the new framework. Furthermore,

[26] On January 4, 1962, at the formal opening of the Accra Conference on Legal Education and the Ghana Law School, President Kwame Nkrumah presented a groundbreaking speech called "Law in Africa." In this address, he expressed his vision for law's role in post-colonial Africa, highlighting the necessity for a legal framework that mirrors the continent's distinctive socio-political landscape.

[27] Ibid 3.

[28] Adebisi, Foluke I., ed. *Decolonisation and the Law School: Dreaming Beyond Aesthetic Changes to the Curriculum*. Taylor & Francis, 2024. Also see Joyce, Yeboah. *Decolonisation of Education: Rethinking Higher Education Curricula and Pedagogy in Ghana*. MS thesis. Oslomet-storbyuniversitetet, 2023. These authors examine the persistence of colonial-era pedagogical models in Ghanaian legal education and call for a curriculum shift toward critical thinking, contextual learning, and interdisciplinary engagement.

[29] Ibid 3.

[30] Kasim Kasanga and Nii Ashie Kotey, 'Land Management in Ghana: Building on Tradition and Modernity' (2001) *International Institute for Environment and Development (IIED)* 17–20. The authors discuss the complexities of integrating statutory and customary systems, emphasizing the disconnect between legal reform efforts and grassroots land governance realities.

the dominance of land administration agencies and legal professionals in land adjudication often sidelines traditional authorities and customary processes. Here, Pound's insistence on empirically-informed legal processes reminds us that law must be evaluated not by the elegance of its texts but by its social efficacy.

Pound's call for empirical study and juridical laboratories in the early 20th century remains a stark reminder of Ghana's need to base legal reform on rigorous data collection and analysis. While the Ghana Statistical Service and other bodies periodically publish legal and demographic reports, there is a glaring absence of sustained legal research institutions with mandates to assess the practical effects of legislation and judicial decisions. For example, although the Domestic Violence Act, 2007 (Act 732) is heralded as progressive, limited follow-up research has been conducted to evaluate its real-world impact on victims and communities. A sociological jurisprudence for Ghana would demand a more robust feedback loop, integrating grassroots experiences into legislative review and judicial interpretation.

Pound emphasized that judges should be more than interpreters of black-letter law; they should be socially aware decision-makers whose rulings reflect prevailing moral and cultural standards.[31] In Ghana, however, the judiciary often wrestles with reconciling traditional values with constitutional norms. Issues such as inheritance rights, marriage practices, and chieftaincy disputes frequently place judges in the difficult position of applying formal legal rules to culturally nuanced situations.[32] Without training in cultural competence and a sociological approach, courts may unintentionally perpetuate injustice by applying legal doctrines out of social context. For instance, intestate succession laws designed to protect widows sometimes conflict with matrilineal inheritance customs, creating tension and undermining community norms.[33] A Poundian response would advocate for a

[31] Ibid 3.

[32] Kuenyehia, Akua. "Women, marriage, and intestate succession in the context of legal pluralism in Africa." *UC Davis L. Rev.* 40 (2006): 385. Kuenyehia examines how Ghanaian courts grapple with applying formal constitutional provisions in cases involving customary law, especially in areas such as marriage, succession, and chieftaincy.

[33] Hammond, Ama F., and Prosper Batariwah. "An Assessment of the Doctrine of Commorientes and Its Implications for the Devolution of Testate and Intestate Property in Ghana." *Journal of African Law* 68.2 (2024): 263-281. The authors explore the legal and social tensions between statutory intestate succession provisions and Ghana's matrilineal inheritance customs, highlighting the complex intersection of formal law and customary practice. Also see the work of Akoto, Augustina. "Marriage, the law and pluralism in Ghana." *Research Handbook on Marriage, Cohabitation and the Law*. Edward Elgar Publishing, 2024. 105-119.

context-sensitive, pluralistic jurisprudence that harmonizes legal uniformity with cultural specificity.

Pound's disapproval of legal individualism,[34] resonates with Ghana's challenges in achieving equitable development. The legal framework in Ghana, despite its developmental rhetoric, often privileges elites and urban populations.[35] Regulatory regimes governing natural resources, urban planning, and environmental protection have been criticized for excluding local communities from decision-making processes. For example, mineral rights laws and the activities of multinational corporations in mining sectors frequently disempower local stakeholders, fostering conflict and environmental degradation.[36] According to Pound, law must be a tool for balancing competing interests, prioritizing societal needs over individual gain when necessary. In Ghana, this balance remains elusive, undermining the democratic promise of its Constitution.

Public perceptions of justice in Ghana also reflect Pound's concern with the law's credibility. The frequent resort to informal justice mechanisms, including traditional authorities and religious figures, suggests a crisis of confidence in the formal legal system. While some may interpret this as a cultural preference, it often stems from the perception that the courts are slow, expensive, and unresponsive to ordinary people. Such perceptions weaken the rule of law and validate Pound's thesis that when legal institutions fail to resonate with the people's sense of justice, they risk becoming irrelevant or even antagonistic. Ghana must invest in making justice accessible, comprehensible, and culturally resonant—a goal entirely compatible with the ethos of sociological jurisprudence.

The challenge of corruption further illustrates the utility of Pound's ideas. Despite the establishment of bodies like the Commission on Human Rights and Administrative Justice (CHRAJ) and the Office of the Special Prosecutor, public frustration with the enforcement of anti-corruption laws persists.[37] Legal

[34] Ibid 3.
[35] Dzodzi Tsikata, "Gender, Land and Labour Relations and Livelihoods in Sub-Saharan Africa in the Era of Economic Liberalisation." *Feminist Africa* 12 (2009): 11-30. Tsikata argues that Ghana's policy frameworks disproportionately benefit urban and elite interests, often to the detriment of rural and marginalized groups, particularly women.
[36] Modimoeng, Keabetswe. *The effects of corporate social responsibility on community dispute resolutions in the South African mining sector*. Diss. Durban University of Technology, 2016. This author reveals, to some extent, how existing legal frameworks marginalize local communities in the governance of natural resources, leading to socio-environmental injustices and local resistance.
[37] See the work of Asamoah and Ofosu-Mensah on the Fruitlessness of Anti-Corruption Agencies: Lessons from the Commission on Human Rights and Administrative Justice in Ghana.

formalism, political interference, and procedural bottlenecks often obstruct accountability. Pound would argue that where legal mechanisms fail to achieve their social purpose, in this case, public integrity and trust, they must be re-evaluated and restructured. Ghana requires an anti-corruption jurisprudence that is not merely punitive but reformative, focused on institutional culture, systemic incentives, and citizen empowerment.

Pound's advocacy for law as social engineering entails not only reactive legal measures but also proactive social planning. In Ghana, legislation is often passed without adequate public consultation or pilot testing, leading to implementation failures. Sociological jurisprudence encourages iterative, participatory lawmaking that evolves through continuous engagement with affected communities. This approach is crucial in sectors such as education, healthcare, and social welfare, where legal rules must align with social behaviors and community expectations to be effective. The implementation of the Free Senior High School policy, for example, has encountered infrastructural and fiscal bottlenecks that legal frameworks did not foresee. A sociologically aware legislative process would integrate social research to anticipate and adapt to such challenges.

Pound's vision for legal reform was not confined to theory but included tangible institutional change. Ghana could benefit from the establishment of legal research institutes, judicial training academies with interdisciplinary curricula, and civic education programs aimed at demystifying the law. These reforms would create a legal culture that is not only professional but also reflective, compassionate, and responsive. In doing so, Ghana would not simply be borrowing from Pound but localizing his universal insight that law must serve life, not abstract logic.

Applying Roscoe Pound’s sociological jurisprudence to Ghana reveals both the promise and the shortcomings of the country’s legal system. His work serves as a mirror and a guidepost, reminding legal scholars, practitioners, and policymakers that jurisprudence must be as dynamic and multifaceted as the society it seeks to govern. By critically engaging with Pound’s ideas, Ghana can transition from a formalist legal tradition to a socially grounded legal system that not only administers justice but embodies it.

https://ugspace.ug.edu.gh/server/api/core/bitstreams/2ee66cc0-c8cf-4776-bc28-fc2f85ecf68d/content

POUND'S THEORY AND LEGAL EDUCATION IN GHANA

Applying Roscoe Pound's sociological jurisprudence to legal education in Ghana offers a necessary critique and a transformative framework for reimagining how law is taught, interpreted, and practiced within a society whose legal roots are entangled in colonial inheritance but whose cultural and socio-economic realities demand a more locally grounded legal consciousness. Pound's central thesis—that law must function as a tool of social engineering rather than a self-contained doctrinal system[38]—has profound implications for legal education in Ghana. The country's law schools and training institutions must confront their foundational philosophies and educational practices, many of which remain steeped in the tradition of Blackstonian formalism and inherited English common law methodology. Through a critical analysis, this paper argues for a contextual, sociologically sensitive overhaul of Ghana's legal education system.

Legal education in Ghana, from undergraduate law faculties to professional institutions like the Ghana School of Law, is dominated by a curriculum that emphasizes doctrinal knowledge, procedural formality, and case law mastery.[39] While this method provides a strong technical foundation, it neglects the broader social, economic, and political contexts in which the law operates. Roscoe Pound criticized this same pedagogical model in the early twentieth century, identifying it as a significant factor in the growing alienation between the law and the public. According to Pound, a law taught and practiced without reference to its social functions cannot achieve justice. In Ghana, this disjunction is evident in how legal education rarely equips students to engage with indigenous legal systems, informal dispute resolution, or the complexities of customary law.

One of Pound's most biting criticisms of early American legal education was that it focused on teaching the "law and the reasons" without critically examining the validity or social relevance of those reasons.[40] Ghanaian legal education finds itself in a similar predicament. Students are often taught to accept legal principles and precedents as sacrosanct rather than being encouraged to question their origins, rationale, or applicability in the Ghanaian context. The notion that a colonial statute from the 19th century or a common law principle developed in industrial

[38] Ibid 3.
[39] Manteaw, S. O. (2005). Clinical and Experiential Legal Education in Ghana: An Introduction and Proposals for Reform. *U. Ghana LJ*, *23*, 55. Also see Manteaw, Samuel O. "Legal education in Africa: What type of lawyer does Africa need." *McGeorge L. Rev.* 39 (2008): 903. Manteaw critiques the overemphasis on doctrinal instruction in Ghanaian legal education and argues for a more context-aware and interdisciplinary approach.
[40] Ibid 3.

England can adequately serve the legal needs of rural farmers, informal traders, or marginalized communities in Ghana is rarely interrogated in law school classrooms. This unquestioning transmission of doctrine produces legal professionals who are well-versed in legal reasoning but ill-equipped to address the social realities of the communities they serve. For example, upon becoming aware that some inmates have been placed on remand awaiting trial but are held for 6 months, 1 year, or even 8 years, whose ethical duty is it to sound the alarm on this grave injustice?[41]

Pound championed the integration of empirical methods and social sciences into legal education.[42] He believed that law students should be exposed not only to legal texts but also to the sociological, economic, and psychological dimensions of the law.[43] This holistic approach allows for a more nuanced understanding of legal problems and fosters a legal consciousness that prioritizes social outcomes over doctrinal purity. Ghana's legal curriculum, however, remains insular. Courses like sociology of law (or law and society), legal anthropology, or law and development are either non-existent or relegated to elective status. This marginalization of interdisciplinary learning is a significant limitation. Without a grounded understanding of how law intersects with culture, identity, and socio-economic status, Ghanaian legal professionals cannot be the social engineers that Pound envisioned. It is not surprising that Nkrumah underscored the necessity of training legal professionals who are not only well-versed in jurisprudence but also committed to the socio-economic transformation of Africa.[44]

Furthermore, Pound's emphasis on legal education as a means of creating a connection between the people and the law is particularly relevant in Ghana,[45] where legal alienation and, most importantly, the lack of legal literacy are persistent problems. Many citizens regard the formal legal system as remote, complex, and hostile.[46] Court procedures are seen as overly technical and

[41] See the PhD of Yin, Elijah Tukwariba. *Religion as an organizing principle in Ankaful maximum security prison, Ghana*. Diss. University of Cape Coast, 2018. Also see the work of Yin, Elijah Tukwariba, Francis Korankye-Sakyi, and Peter Atudiwe Atupare. "Prisoners' Access to Justice: Family Support, Prison Legal Education, and Court Proceedings." *J. Pol. & L.* 14 (2021): 113.
[42] Ibid 3.
[43] Ibid 3.
[44] Ibid 26.
[45] Ibid 3.
[46] Anderson, Michael R. "Access to justice and legal process: making legal institutions responsive to poor people in LDCs." (2003).

expensive[47], and the language of the law—often delivered in English, a colonial language—is alien to many. Legal education that perpetuates this divide by failing to cultivate accessible, community-centered legal practitioners contributes to the erosion of trust in legal institutions. A Poundian reformation of legal education in Ghana would demand a curriculum that emphasizes community legal outreach, local language proficiency, and participatory justice models.

The Ghana School of Law, the apex institution for professional legal training, is a prime site for implementing sociological jurisprudence. Its pedagogy, heavily weighted toward preparing students for bar admission through rote learning and precedent analysis, does little to nurture critical thinking or social awareness. Legal clinics, which could provide students with practical experience in delivering justice to underserved populations, are underfunded and underutilized. According to Pound, legal education must bridge theory and practice not only in technical skills but also in social purpose. Ghana's legal education system would benefit from integrating legal aid services into its training programs, fostering experiential learning rooted in social justice.

Roscoe Pound also denounced the use of fictitious legal reasoning, the reliance on artificial doctrines that obscure rather than clarify the real-world effects of law. Ghanaian legal instruction often replicates this problem by clinging to colonial legal doctrines whose contemporary relevance is questionable. For example, the doctrine of privity of contract or the rigidity of *stare decisis* may be taught without discussing their limitations in the context of Ghana's informal economy or plural legal system. Pound's call for legal education to scrutinize the real-life outcomes of legal rules offers a compelling mandate: students should be taught not only what the law is, but also what it does, whom it serves, and whom it fails to serve.

Another area where Pound's insights apply is in the structure and delivery of legal pedagogy. Pound advocated for legal instruction that was contextual, problem-oriented, and rooted in the realities of everyday life.[48] Ghanaian law faculties largely follow a lecture-based, exam-centric model that promotes passive learning and rote memorization. Few courses employ case studies, simulations, or participatory methodologies. Yet, a sociologically grounded pedagogy would prioritize dialogical learning, community engagement, and field research. Law students should be trained to observe legal practices in markets, religious institutions, traditional courts, and urban neighborhoods. They should be

[47] Yin and Seiwoh argue that procedural complexity and financial barriers continue to alienate many Ghanaians from the formal justice system.
[48] Ibid 3.

encouraged to question how statutory law is received, resisted, or modified by social actors. In short, legal education should not only be about studying the law but also living it.

Furthermore, Pound's insistence on legal realism—a recognition that law is not a system of immutable truth but a human enterprise influenced by political, economic, and moral forces—calls for a redefinition of legal scholarship in Ghana. Academic legal writing is often limited to doctrinal exposition, with little attention paid to empirical research or policy evaluation. Law journals and academic conferences rarely feature studies that measure the impact of laws on public health, education, or gender equality. Legal educators in Ghana must be encouraged to pursue research that bridges the gap between law and society, drawing from sociology, economics, and public policy to inform legislative and judicial reforms. Only then can legal education become a catalyst for national development.

A critical element of Pound's vision was the democratization of law—making it intelligible, accessible, and responsive to the average citizen. Legal education in Ghana has the responsibility to produce lawyers who are not only capable litigators but also public educators, reform advocates, and community leaders. To this end, moot court competitions, policy debates, and law reform projects should be integrated into the core curriculum. Students must be trained to communicate legal ideas in local languages, simplify complex legal doctrines, and use media to advocate for justice. These skills are not peripheral; they are central to a jurisprudence that values social impact over technical precision.

Pound also warned of the dangers of a legal profession dominated by conservatism and a narrow economic focus.[49] He criticized legal education systems that prioritized producing lawyers for private practice while ignoring the broader public service mandate of law. Ghana faces a similar dilemma. The majority of law graduates aspire to work in elite law firms, corporate sectors, or politics, often at the expense of public interest law. Legal education should, therefore, include pathways that encourage careers in legal aid, public defense, civil rights advocacy, and human rights. Scholarships, internships, and mentorship programs should be developed to support students from disadvantaged backgrounds who wish to use law as a tool for social transformation.

Finally, applying Pound's sociological jurisprudence to legal education in Ghana compels a rethinking of institutional accountability and quality assurance. Law

[49] Ibid 3.

faculties and the General Legal Council[50] must periodically review curricula to ensure relevance, inclusion, and adaptability. Stakeholders such as civil society organizations, community leaders, and former students should be consulted in these processes. Feedback mechanisms must be established to assess how well legal education prepares graduates for the practical and ethical challenges of legal practice. Pound believed that legal science must constantly reinvent itself in response to societal change. Ghana must internalize this principle by institutionalizing reform and resisting complacency.

Roscoe Pound's sociological jurisprudence offers not merely a critique but a comprehensive roadmap for transforming legal education in Ghana.[51] His insistence on the social purpose of law, the integration of interdisciplinary methods, and the democratization of legal knowledge aligns closely with the aspirations of a developing country seeking justice, equity, and progress. By reimagining legal education through the lens of sociological jurisprudence, Ghana can train a new generation of lawyers who are not only masters of the law but also stewards of justice. Such transformation is neither optional nor idealistic.[52] Any legal system that seeks to be relevant should also be truly representative of the people it serves.

ROSCOE POUND'S PERSPECTIVE: WAY FORWARD FOR GHANA

The path forward for Ghanaian jurisprudence and legal education, viewed through the lens of Roscoe Pound's theory of sociological jurisprudence, requires nothing less than a bold reimagining of the legal enterprise in Ghana. Pound's argument, that the law should be treated as a dynamic instrument of social engineering, offers an essential corrective to Ghana's lingering dependence on rigid, formalist, and colonial-era legal traditions. His critique resonates deeply with the Ghanaian context, where the divide between legal doctrine and lived reality remains wide and where legal education has not sufficiently evolved to meet the socio-cultural and developmental needs of the nation.

For Ghanaian jurisprudence to align with Pound's sociological vision, the law must first be understood as a social institution, inseparable from the society it serves. This foundational reconceptualization demands that legislators, judges, and legal

[50] The General Legal Council regulates the legal profession in Ghana. Established in 1960 by the Legal Profession Act (Act 32), its primary role is to oversee legal education and practice in the country.
[51] Ibid 3.
[52] Adebisi, Foluke I., ed. *Decolonisation and the Law School: Dreaming Beyond Aesthetic Changes to the Curriculum*. Taylor & Francis, 2024.

scholars abandon the fixation on abstract legal principles that are often alien to Ghanaian customs and norms. Ghana's post-colonial legal order still privileges statutes and common law precedents that were never meant to serve African socio-political systems.[53] The way forward involves systematic reforms that embed local realities, cultural plurality, and social justice concerns into the heart of Ghanaian lawmaking and adjudication.

One vital reform lies in deepening the legitimacy and functionality of customary law within the formal legal system. Although the 1992 Constitution of Ghana recognizes customary law as a source of law, the formal courts often subordinate it to statutory or common law principles, thereby perpetuating legal dualism and disenfranchising local legal orders. Drawing from Pound, Ghana must evolve a jurisprudence that actively synthesizes customary and statutory law into a coherent legal fabric. This synthesis would entail validating community-based norms, integrating traditional dispute resolution methods, and giving indigenous conceptions of justice pride of place in national jurisprudence. Such a reorientation will bridge the gap between law on paper and justice in practice.

Additionally, judicial philosophy must shift from textualism and formalism to legal realism and pragmatism. Pound's disdain for fictitious legal reasoning and outdated legal "reasons" is particularly relevant in Ghana, where court decisions sometimes rely on imported doctrines or inherited technicalities that have little resonance with contemporary Ghanaian life. Judges must be trained and encouraged to adopt interpretive methodologies that prioritize social context, local meaning, and equitable outcomes.[54] This does not require abandoning legal logic or undermining the rule of law, but rather infusing jurisprudence with a deep awareness of its real-world implications. Courts must become places where justice is not merely administered, but experienced and felt.[55]

The other cornerstone of transformation is legal education. Pound's critique of law schools for emphasizing abstract reasoning over social understanding is entirely applicable to Ghana.[56] Legal education in Ghana remains predominantly

[53] Sesay, Mohamed. *Domination through law: the internationalization of legal norms in postcolonial Africa*. Rowman & Littlefield, 2021.
[54] Volokh, Alexander. "Choosing interpretive methods: A positive theory of judges and everyone else." *NYUL Rev.* 83 (2008): 769.
[55] See the work of Oakes, Anne Richardson, and Haydn Davies. "Justice must be seen to be done: a contextual reappraisal." *Adelaide Law Review,* 37.2 (2016): 461-494.
[56] Ibid 3.

doctrinal,[57] with law faculties often mirroring curricula imported from the British tradition. While there have been incremental reforms, these changes have not gone far enough to instill in students the sense that law is a living, breathing social construct. The Ghana School of Law and university law faculties must move beyond training students to pass exams and toward cultivating critical thinkers, community advocates, and policy innovators.

This educational transformation should begin with curriculum reform. Core law courses must incorporate interdisciplinary perspectives, drawing from sociology, anthropology, economics, and political science. Courses on customary law, gender justice, law and development, and alternative dispute resolution should not be electives or afterthoughts, but integral to the curriculum.[58] Clinical legal education must also be expanded significantly. Law students should be required to work in legal aid clinics, rural communities, and traditional councils to understand how law operates on the ground. This experiential learning would cultivate not only skills but values—empathy, contextual intelligence, and civic responsibility.

Equally important is a pedagogical shift. Ghanaian legal education must abandon the didactic, lecture-based style that inhibits intellectual curiosity and critical engagement. Teaching must become dialogical, participatory, and problem-based.[59] Case studies, mock trials, and policy simulations can be used to illustrate how legal rules interact with social forces. Teachers must act not just as transmitters of knowledge but as facilitators of learning and critical inquiry. As Pound envisioned, the modern law teacher should also be a student of the society, aware of how law shapes and is shaped by the forces around it.

The recruitment and development of faculty must reflect this new vision. Law schools should prioritize hiring educators with interdisciplinary backgrounds, field experience, and a commitment to reform.[60] Research output must also evolve. Ghanaian legal scholarship has too often been focused on doctrinal analysis to the

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[57] Chimbwanda, Victor. *Embedding Skills in African Customary Law and Culture in the LLB Curriculum: An Empirical Study of Pedagogical Approaches in Selected African University Law Schools*. Diss. School of Advanced Study, 2022.

[58] Flanagan, Rebecca. "Anthrogogy: Towards Inclusive Law School Learning." *Conn. Pub. Int. LJ* 19 (2019): 93.

[59] Ali, Muhammad Imran. "Bridging the Gap: Integrating Flipped Classrooms into Legal Education in Pakistan." *Journal of Legal Studies "Vasile Goldiş"* 33.47 (2024): 79-98.

[60] Li, Mengyang. "Adapting legal education for the changing landscape of regional emerging economies: A dynamic framework for law majors." *Journal of the Knowledge Economy* 15.3 (2024): 10227-10256. It is ironic that some law faculties/schools, rather lock out potential lecturers with research and multidisciplinary academic backgrounds, insist that all applicants be "barristers" or practicing lawyers even though, to some extent, this is hardly a requirement.

neglect of empirical and impact-oriented studies. Faculty and students should be incentivized to conduct socio-legal research on issues such as access to justice, effectiveness of laws, gender inequality, and customary legal systems. This type of research can inform law reform efforts, policymaking, and the broader democratization of legal knowledge.

Pound also stressed the importance of institutional support for legal science. Ghana should establish national legal research institutes or strengthen existing ones, tasked with studying the operation of law in society. These institutes should maintain databases on court decisions, legal trends, and public opinion on justice issues. They should also produce policy briefs, law reform proposals, and practical guides for communities and practitioners. Such institutions would serve as bridges between the academy, the legal profession, and the public, ensuring that legal reform is both data-driven and people-centered.

Furthermore, Ghana must cultivate a legal culture that values law as a tool for public good rather than private gain.[61] The current emphasis on corporate law and elite legal careers has skewed the aspirations of law students and undermined the public interest mission of the legal profession. Law faculties and professional bodies must champion *pro bono* work, legal aid, and social justice advocacy. The establishment of legal aid programs in all law schools and mandatory public service internships could institutionalize this orientation. In Pound's terms, the lawyer must be repositioned from a mere technician of rules to a guardian of public values.

The integration of technology in legal education and practice also presents opportunities to advance a sociological jurisprudence. Digital platforms can be used to disseminate legal information, facilitate online dispute resolution, and conduct virtual legal clinics. Law students and young lawyers should be trained in legal tech tools that enhance access to justice. At the same time, caution must be exercised to ensure that technological innovations do not widen existing inequalities, particularly between urban and rural populations.

Language is another critical area for reform. The exclusive use of English in legal education and court processes continues to alienate many Ghanaians. If the law is to be socially relevant, it must be linguistically accessible. Legal education should include modules on communicating legal concepts in local languages and using

[61] Hammond, Ama Fowa. *Towards an inclusive vision of law reform and legal pluralism in Ghana*. Diss. University of British Columbia, 2016.

culturally appropriate metaphors and examples.[62] The Bureau of Ghana Languages would be instrumental in this process, coining new legal terminologies and revising or reviving pre-existing ones.[63] Courts should expand the use of interpreters and consider translating key legal documents into major Ghanaian languages. Such efforts would honor Pound's ideal of making the law comprehensible and meaningful to the society it governs.

Finally, reforming the governance of legal institutions is crucial. Law schools, the Ghana Bar Association, and the judicial council must embody democratic values and accountability. Decisions about curriculum, admissions, and professional ethics must be transparent and inclusive, incorporating the voices of students, practitioners, civil society, and marginalized communities.[64] Legal education must itself be governed in a way that models the participatory, responsive ethos it seeks to instill in future lawyers.

The way forward for Ghanaian jurisprudence and legal education lies in a holistic reconfiguration inspired by Roscoe Pound's sociological jurisprudence. This reconfiguration must challenge entrenched traditions, disrupt elitist hierarchies, and embrace a vision of law that is fluid, contextual, and socially accountable. Legal education must evolve from mere professional training into a transformative civic enterprise. Jurisprudence must cease to be a remote intellectual discipline and become a living practice rooted in the values, struggles, and aspirations of the Ghanaian people. Only then can law fulfill its highest promise: to be not just a system of rules, but a force for justice, empowerment, and societal transformation.

CONCLUSION AND WAY FORWARD

In light of the foregoing analysis, it becomes evident that the way forward for Ghanaian jurisprudence and legal education must be founded on a deeply rooted sociological orientation. Roscoe Pound's vision for law as a dynamic mechanism for social engineering compels us to look beyond rigid formalism, doctrinal orthodoxy, and inherited colonial constructs. It urges a transformational mindset

[62] Sierocka, Halina. "Issues in translating, interpreting and teaching legal languages and legal communication." *International Journal for the Semiotics of Law-Revue internationale de Sémiotique juridique* 36.4 (2023): 1629-1638.

[63] The Bureau of Ghana Languages exists to promote the preservation of Ghanaian Languages and Culture through publication, certification and usage of world class systems, technology and collaborations with local and international partners. The Bureau is mandated to render services to the government, organizations, and the general public. See https://bgl.gov.gh/

[64] Mpuangnan, Kofi Nkonkonya, and Sithabile Ntombela. "Community voices in curriculum development." *Curriculum Perspectives* 44.1 (2024): 49-60.

in which law is not simply a matter of rules and procedures, but an evolving body of social tools shaped by the lived experiences, values, and aspirations of the people. The Ghanaian legal system, in its current form, continues to wrestle with the burdens of historical imposition, formalistic rigidity, and elitist detachment. Yet, it is precisely in such contexts that Pound's sociological jurisprudence finds its greatest utility and potential.

Ghana's constitutional and statutory frameworks, although laudable in aspiration, often falter in practice due to the absence of sociological grounding. The law is still perceived by many as a distant, alien authority that does not embody the cultural sensibilities or socio-economic concerns of the average Ghanaian. This disjuncture fosters a disconnect between the law and justice, between legal forms and social functions. In this context, a Poundian reform agenda requires the infusion of legal realism into judicial interpretation, the accommodation of customary law as a legitimate co-pillar of the legal system, and the cultivation of a legal consciousness that prioritizes fairness, participation, and social cohesion.

To bring this vision to fruition, Ghana must first embark on a re-engineering of its legal education. The Ghana School of Law and university law faculties must shift from rote learning and static pedagogy to a curriculum that is interdisciplinary, reflective, and socially engaged. Legal education must not merely prepare students for bar admission; it must equip them with the intellectual tools to understand, critique, and shape the legal system in a manner that reflects societal complexities. Pound's insistence on empirical engagement, social science integration, and pragmatic reasoning should guide the reform of both teaching content and teaching methods. Courses such as sociology of law (or law and society), customary law, legal anthropology, and law and development must occupy a central place in the legal education matrix.

Moreover, a truly reformed legal education must include practical engagement with the law in action. Clinical legal education, legal aid internships, and community-based legal advocacy should be institutionalized. Students must not only read the law but witness and participate in its application, especially among marginalized communities who encounter legal systems with apprehension or distrust. By grounding education in the realities of legal practice, Ghana can begin to nurture legal professionals who are not only competent but compassionate, not only skilled but socially conscious.

In parallel, the judicial arm of government must evolve to embrace sociological reasoning in its jurisprudence. Judicial appointments and training must reflect a new emphasis on cultural competence, social literacy, and interpretive flexibility.

Judges should be encouraged to go beyond black-letter law and engage with the broader social implications of their decisions. In this regard, the Ghana Judicial Training Institute must revise its modules to incorporate socio-legal perspectives and to train judges to think beyond narrow precedents and interrogate the justice implications of legal outcomes.

Another fundamental component of the way forward lies in research and institutional development. Ghana needs juridical laboratories—dedicated research centers within law schools and policy institutions—to study how laws are perceived, applied, and resisted in various segments of the population. Such empirical insights would furnish lawmakers, courts, and educators with data-driven recommendations for reform. Without such grounding, legal reforms will continue to be ad hoc, theoretical, and detached from lived realities.

The issue of accessibility must also be addressed. Language, geography, and cost continue to impede equitable access to justice in Ghana. Pound's sociological jurisprudence implores legal reformers to pay attention to these barriers. Making legal materials available in local languages, decentralizing court services, investing in legal aid systems, and removing procedural bottlenecks are all necessary to make the law more inclusive. Justice must not be a commodity reserved for the few, but a public good accessible to all.

Civic education, particularly on legal rights and responsibilities, must also be expanded. The law must be demystified, not only for students and practitioners but for the general public. Through media engagement, school curricula, and public outreach campaigns, the myths surrounding law and legal institutions can be dismantled, and a culture of legal empowerment can be nurtured. A sociologically grounded jurisprudence is impossible without an informed and legally literate citizenry.

Furthermore, the relationship between law and development must be more clearly articulated and embedded within legal discourse. Ghana's legal system must support its economic ambitions, human rights goals, and democratic ethos. Land tenure, labor relations, environmental regulation, and business law must be reviewed and revised in ways that promote inclusive development. Sociological jurisprudence provides the framework to ensure that these revisions are not only economically rational but socially responsive.

Institutional accountability is another area requiring attention. Legal education institutions, bar associations, and regulatory bodies must commit to transparency, inclusivity, and responsiveness. Law faculties should embrace participatory governance that includes feedback from students, alumni, civil society, and

employers. Regulatory bodies like the General Legal Council must also embrace reform, ensuring that gatekeeping mechanisms such as bar exams and licensing procedures are fair, efficient, and meritocratic.

The legal profession itself must also embrace a new ethos. Lawyers must see themselves not merely as adversarial representatives but as ethical stewards of justice and advocates for societal transformation. Law firms should be encouraged to devote part of their work to public interest litigation, *pro bono* services, and civic education. Incentives such as tax benefits, awards, and public recognition could be introduced to promote this reorientation.

In the final analysis, the transformation of Ghanaian jurisprudence and legal education in line with Roscoe Pound's sociological jurisprudence is not a utopian ideal but an achievable imperative. It calls for courage, creativity, and commitment from all stakeholders in the legal ecosystem. It requires an acknowledgment that the law must evolve, not in isolation from society, but in dialogue with it. Pound reminds us that law is a servant, not a master; a means, not an end; a living institution, not a fossilized doctrine. If Ghana can heed this call, the promise of justice—real, accessible, equitable, and transformative—can become not merely a constitutional ideal but a social reality. In doing so, Ghana would not only localize Pound's universal insights but also chart a uniquely Ghanaian jurisprudence: one that is proudly rooted, dynamically evolving, and profoundly just.

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LAW, PEACE AND SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT

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ABSTRACT

Against the background of cataclysm to humans and lethality to property, rooted in wars and armed-conflicts, at national, regional and global levels and the truism that, without law and peace, no nation can, possibly, stabilise or prosper, this paper interrogates the interconnectivity and convergence of law and peace and their inevitability in ensuring sustainable socio-economic development. The paper finds that since no individual, institution, community, society, or nation can possibly be an island, interrelationships are inevitable because individuals, institutions, communities, societies, and nations are, naturally, duty-bound to interrelate and that this occasionally brews disputes arising from conflicting interests. The paper further finds that wars and conflicts interrupt economies, displace communities, and worsen poverty and inequality and that law is a potent instrument for attaining peace through the mechanism of conflict prevention (proactiveness) or resolution (reactiveness) as a way of ensuring sustainable socio-economic stability and prosperity. It recommends increased use of law, especially alternative dispute resolution models, for the purpose of ensuring national, regional, and global peace. Furthermore, while acknowledging that global and regional institutions are doing their best to ensure peace worldwide. It advocates that more efforts of these institutions are required to guarantee relative peace that is necessary for continuing national, regional, and global socio-economic stability and progress.

Keywords: Law, Peace, Sustainable Peace, Socio-economic Development, War, Conflicts

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INTRODUCTION

> 'Unless we act now, the 2030 Agenda will become an epitaph for a world that might have been.' António Guterres Secretary-General, United Nations[4]

Interrelationships are inevitable because individuals, institutions, communities, societies and nations are, naturally, duty-bound to interrelate as no individual, institution, community, society or nation can, possibly, be an island.[5] Especially because man is, by nature, an endothermic animal, disputations, contestations, controversies and conflicts are a fact of every society, whether micro, or nuclear; such as: family, friendship or small place of worship, or macro or extended; such as: community, workplace, business space or expansive worship centre.[6] Indeed, wherever a minimum of two people interrelate, there is bound to be disputation, one way or the other. This basic fact must have prompted George Amoh to surmise that 'conflict is, indeed, a social process which is a common and essential feature of human existence,[7] and to observe that '…conflicts have been with man since creation...' [8]

The truism that disputations are a fact of life and of human existence is manifestly so, partly, because of various factors, chief of which is that people have differing backgrounds, upbringing, orientation, perspectives, approaches

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[4] United Nations, *The Sustainable Development Goals Report 2023: Special Edition*, 2 https://unstats.un.org/sdgs/report/2023/ accessed 2 April, 2024.

[5] O Oliyide and B Osifeso, 'An Examination of Alternative Dispute Resolution Regime in the Nigerian Banking Industry' (2021) 36 Journal of International Banking Law and Regulation 307-318, 307 citing John Donne, 'No Man is an Island' *John Donne's Devotions* (Folio Society, London, 1624 and 1997) <http://www.foliosociety.com/book/MAN/no-man-is-an-island> accessed 25 March, 2021. Text of the poem by John Donne who reputed to be one of the most respected metaphysical and realistic poets ever, is as follows:

No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less. As well as if a promontory were. As well as if a manor of thy friend's or of thine own were:

[6] J Olakunle Orojo and M Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi and Associates, Lagos, 1999) 1; Henry Ongori, 'Organisational Conflict and its Effect on Organisational Performance' (2009) 3(16) Research Journal of Business 24; Rajasekhara Monly Potluri, et al, 'Organizational Conflicts are Necessary Evils: An Innate View of Indian Perspective' (2014) 6 (6) European Journal of Business and Management 103; JT Knippen and TB Green, 'Handling Conflicts' (1999) 11 (1) Journal of Workplace Learning 27; JL Hocker and WW Wilmot, *Interpersonal Conflict* (4h ed., The McGraw-Hill Companies Inc., 1995).

[7] George Amoh, 'Mediation - The Preferred Alternative for Conflict Resolution' <https://www.gdrc.org/u-gov/conflict-amoh.html> accessed 25 March, 2023.

[8] George Amoh, 'Mediation - The Preferred Alternative for Conflict Resolution' (n 5).

to life,[9] the fact of inconsistent interests, generally, the fact that issues that form the bases of interrelationships are, sometimes, misunderstood by one or both parties in a relationship and the fact of human failings, including innocent error of judgment, negligence, deliberate acts of dishonestly, etcetera, on the part of either or both parties in a relationship.[10] The reality that contestations are part of human relationships and of life imposes an obligation on different spheres of society to devise appropriate, efficacious and acceptable mechanisms for both preventing and resolving these contestations through law and other means, in order to maintain peace, stability and continuing socio-economic growth and development in society.

The planet earth faces various serious threats to human survival. Militarism, human rights abuses, poverty and economic inequity, the rapid growth in the world population, environmental degradation, et cetera, all have become major concerns. Over the past few decades, peace studies' themes have emerged from the search for an alternative world order, an emphasis on sustainable development and the promotion of human rights as well as the prevention of war.[11] Peace touches upon different aspects of life, and the realisation of peace is affected by a complex social environment. The pursuit of a nonviolent and just society is grounded in the empirical understanding of existing problems. Peace theories have specific implications and meanings in interpreting a contemporary world, and they are less abstract and more pragmatic than traditional international relations theories which focus, heavily, on foreign policy decision-making behaviour or the structure of an inter-state system.[12] Goal 16 of the Sustainable Development Goals (SDGs) emphasises promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. People, everywhere, ought to be free of fear from all forms of violence and feel safe as they go about their lives, whatever their ethnicity, faith or sexual orientation.[13]

[9] Rajasekhara Monly Potluri, *et al*, 'Organizational Conflicts are Necessary Evils: An Innate View of Indian Perspective' (n 4) 103.
[10] Rajasekhara Monly Potluri, *et al*, 'Organizational Conflicts are Necessary Evils: An Innate View of Indian Perspective' (n 4) 103.
[11] Ho-Won Jeong, *Peace and Conflict Studies: An introduction* (Routledge 2017) 19.
[12] Ho-Won Jeong, *Peace and Conflict Studies: An introduction* (Routledge 2017) 17.
[13] United Nations, 'Goal 16: Promote Just, Peaceful and Inclusive Societies' <https://www.un.org/sustainabledevelopment/peace-justice> accessed 24 January 2024.

The quest for peace and security remains the most pressing of the challenges facing Africa, as the continent has, over the past decades, witnessed a number of long-term severe, and in some cases, inter-related and violent conflicts.[14] This paper interrogates the role of law and peace in attaining sustainable socio-economic development, especially in the African Continent and the West African Sub-region.

The paper is divided into eight parts. Part one is the introduction, part two is a conceptual clarification of some key terms. Part three consists of the historical analysis of war around the world, types and causes of conflicts and wars are discussed in part four. Part five discusses the interrelationship of law, peace and socio-economic development or Prosperity and part six is on law and other mechanisms for achieving sustainable peace as a model for continuing socio-economic development or prosperity, including the role of international organisations, part seven deals with the role of religious leaders in sustainable peace while part eight is conclusion and recommendations.

CONCEPTUAL CLARIFICATIONS

For the purpose of clarification, it is important to provide key definitions of some terms and concepts such as law, peace, sustainable peace, sustainable socio-economic development, conflict, war, and violence, among others. This section will be devoted to this issue:

Law

Defining law with exactitude has been a subject of much controversy, and this has influenced the conclusion that law has no precise meaning, as there is no universally accepted definition of the concept of law. The controversial nature of the precise meaning of law arises from the intransigence of jurists and legal theorists about precise meaning of law and from their divergent opinions about the meaning of law, which have resulted in the emergence of various schools of legal thought on the subject, including the following: (i) the natural law

[14] Kelechi Johnmary Ani and Lere Amusan, 'ECOWAS, Peace and Conflict Management in West Africa' (2016) 3 (1/2) Journal of African Foreign Affairs 19, 21.

school;[15] (ii) the analytical or positivists school;[16] (iii) the sociological school;[17] (iv) the historical and anthropological school;[18] and (v) the realist school.[19]

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[15] This school is, otherwise, known as 'the philosophical school', 'the ethical school', 'the moral school' or 'the moral theory of jurisprudence' and is founded on the compulsion that law must be founded on morality or ethics and that unless it has moral or ethical content, law cannot qualify as law because, according to the school, law is a logical progression from morals. Aristotle (384 BC-322 BC), ancient Greek philosopher, polymath and 'master of virtues'; Plato (427 BC-347 BC), ancient Greek philosopher and top thinker in philosophy; St. Thomas Aquinas (1225-1274), Italian Dominican friar and priest and influential philosopher; Hugo Grotius (1583-1645), towering Dutch legal scholar and philosopher; Immanuel Kant (1724-1804), foremost German philosopher; Georg Wilhelm Friedrich Hegel (1770-1831) frontline German philosopher; David Hume (1711-1776), John Locke (1632-1704) prime English physician and philosopher; Thomas Hobbes (1588-1679), pre-eminent English philosopher and Rene. Descartes (1596-1650), leading French philosopher, are some of the foremost advocates of the natural jurisprudence

[16] This school, which is also known by other names, such as 'the Austinian School' and 'the Imperative School', believes that law, in its present form, is law and that is notwithstanding whether the law is good or bad or whether it is humane or not. The basis of the belief of the school is that law is an existing direction or command of the sovereign (whether such direction or command is good or bad or whether it is humane or not or whether it meets the demands of morality or not) and that such existing direction or command of the sovereign is, always, backed by sanctions. The proponents of the school are only concerned with law as it exists, presently, and not what it ought to be, presently, or what it was in the past, or what it should be in the future. The proponents also believe that such existing direction or command of the sovereign (or the Law-Maker) is superior to judgments by judges or precedents. Jereme Bentham (1748-1832), renown English philosopher, jurist, social reformer and the founder of modern utilitarianism or positive law, John Austin (1790-1859), father of English jurisprudence, the creator of the school of analytical jurisprudence who developed the theory of positive law, Auguste Comte (1798-1857), the founder and creator of the term 'legal positivism' and Herbert Lionel Adolphus Hart (1907-1992), foremost English legal philosopher, are some of the proponents of the analytical, positivist, Austinian or imperative school of jurisprudence.

[17] This school focuses on the relationship between law and society, insisting that law is a social phenomenon with a significant impact on society and that every problem and change that occurs in society should be viewed from a legal perspective. The school emphasises that law is social scenery and it, directly or indirectly, relates to society. The school seeks to strike a balance between the welfare of the state and that of the individual and it insists that the present-day socio-economic problems cannot be solved by existing laws, in which case, law must be seen and used as a veritable instrument of continuing socio-economic growth and development. Nathan Roscoe Pound (1870-1964), foremost American scholar and educator and Leon Duguit (1859-1928), leading French law scholar are foremost advocates of the sociological school of jurisprudence.

[18] The historical and anthropological school of jurisprudence was propounded by Friedrich Carl Von Savigny (1799-1861), a pre-eminent German Jurist, who believed that the 'law does not fall from the sky. It tends to develop as an expression of a society's peculiar culture, and values'. Sir Henry Sumner Maine (1822-1888), a notable English philosopher, complemented Friedrich Carl Von Savigny in evolving and articulating historical and anthropological

Notwithstanding the difficulty in defining law, with exactitude, as discussed above, a working definition of law can be provided as body of rules, regulations, guides, ethos, idiosyncrasies which are designed or formulated and constitutes the minimum acceptable standard of modulating human conducts or actions and inactions in a particular society, which is imposed and enforced among members of that society for the purpose of ensuring order, stability and structured growth and development of that society.

From the working definition provided above, it is clear that law modulates human actions and inactions and regulates social relations, and without a doubt, this function of law ensures peace and stability across societies. Hobbes[20] recognised this phenomenal pertinence of law and a law-coordinating sovereign when he surmised that, without law and law-coordinating sovereign,

jurisprudence. Sir Henry Maine is reputed for having evolved the anthropological component of the historical school of jurisprudence. The thrust of historical and anthropological jurisprudence is that history, which includes the customs, traditions, peculiar ethos, beliefs, ways-of-life, practices and idiosyncrasies of a society, naturally, plays the most predominant role in the formulation, functionality and advancement of law and justice in that society and that law derives its credibility, legitimacy, authority and force, solely, from minimum social standards (that is, customs, traditions, peculiar ethos, beliefs, ways-of-life, practices and idiosyncrasies) that have withstood the test of time, which are all encapsulated in a popular consciousness, called '*the Volksgeist*' of the people of that society. Georg Friedrich Puchta (1798-1846), leading German legal scholar and ardent follower of Friedrich Carl Von Savigny, is another notable advocate of the historical and anthropological school of jurisprudence. The postulation of a German philosopher, Johann Gottfried Herder, was amplified by Fredrick Charles Karl von Savigny.

[19] The realist school of jurisprudence focuses on law as being the decisions and evaluations of law made by the courts. It opposes classical values and concepts of law by examining what courts and common people are actually doing and insisting that this is law in real sense. This school, particularly, insists on the importance of judicial organisations (or the courts) in the application of the law and that this, in reality, is law. The realist school, therefore, believes that law is real and co-relates law with reality. There are two types of realist schools: (i) the American realist school; and (ii) the Scandinavian realist school. The former learn from their own experiences and also observe judgments while the latter believe in their own experiences, only. Foremost advocates of American realism include John Chipman Gray (1839-1915), Jerome New Frank (1889-1957), Karl Llewellyn (1893-1962) and Oliver Wendell Holmes (1841-1935), all frontline American philosophers and jurists. On the other hand, notable advocates of Scandinavian realism include Axel Hägerström (1868-1939), a pre-eminent Swedish philosopher, Alf Ross (1899-1979), a renowned Danish philosopher and jurist and Anders Vilhelm Lundstedt (1882-1955) and Karl Olivecrona (1897-1980), both frontline Swedish philosophers and jurists.

[20] Thomas Hobbes, *Leviathan (1651)* (CreateSpace Independent Publishing Platform, 2016) XIII 3, XIII 5-7.

life would be 'solitary, poor, nasty, brutish, and short'. [21] Aspects of Nigerian substantive law includes received English Law (consisting of English common law, principles of equity, and statutes of general application), indigenous customary law and the Sharia. The cross-border nature of conflicts has, also, admirably, yielded to the use of international law and its emerging variants in addressing sub-regional, regional and global conflicts.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a method of settling legal disputes outside of a court of law, in such a way as to help preserve relationships during and after disputes.[22] ADR includes arbitration, mediation, conciliation, negotiation, mini-trial/early neutral evaluation, bargaining, case appraisal and a number of "hybrid" methods, including med-arb, arb-med and other variations fashioned, in response to practical necessities, in spheres of society, in which a neutral third-party assists in mediating legal problems without a formal judgement.[23] Many benefits of ADR make it attractive and increasingly popular in conflict resolution. These benefits include cost-effectiveness, speed of adjudication and justice delivery, relationship-sustenance, expanded access to justice, flexibility, confidentiality, massive involvement of disputants in the resolution process, involvement of an impartial third-party, general involvement of non-adjudicatory or consensual procedures, problem-solving and avoidance of problems associated with enforcement of judgement in litigation.[24] It is submitted that these ADR components are a part of the overall justice sector of any particular country and, within this context, are complimentary and not necessarily alternative to litigation in the justice sector.[25]

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[21] Thomas Hobbes, *Leviathan (1651)* (CreateSpace Independent Publishing Platform, 2016) XIII 3, XIII 5-7.

[22] O Oliyide and B Osifeso, 'An Examination of Alternative Dispute Resolution Regime in the Nigerian Banking Industry' (n 3) 313.

[23] O Oliyide and B Osifeso, (n 3) 313.

[24] O Oliyide and B Osifeso (n 3) 315-316.

[25] See, in support of this submission, S Blake, et al, *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018) 2-3; PO Idornigie, 'What is (and isn't) Alternative Dispute Resolution (ADR)' in DCJ Dakas, et al (eds), *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues* (Innovative Communications 2015) 560-580, 560; see also, the Indian Supreme Court decision in *Salem Advocate Bar Association, Tamil Nadu* v *Union of India* (2005) 6 SCC 344, AIR 2005 SC 3353, (2005) 4 Bom CR 839, where the court, emphasising the nature of ADR as a component of an integrated justice sector,

Oliyide and Emmanuel,[26] Ogunleye and Oliyide,[27] Leigh and Anoba[28] and Ogunyanwo[29] all believe that ADR originated from Africa and that Africa should lay preeminent claim to it. However, in 1976, Sander[30] initiated the contemporary efforts at integrating ADR into the existing court system through his inclusive, one-stop shop justice idea,[31] thereby, building upon the foundation laid by Pound[32] in 1906 as a solution to the problem of tardy justice delivery. Sander's salutary ADR initiative has, since gained traction across jurisdictions, globally, and has proven to be a very potent conflict avoidance, management and resolution model. In *Guru Nanak Foundation v Rattan Singh & Sons*,[33] for instance, the Indian Supreme Court acknowledged the pitfalls of litigation and the relative advantages of ADR and advocated for preference for ADR methods in conflicts resolution.

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enthused that ADR should be included in 'a package system designed to meet the needs of the consumers of justice'.

[26] Olusesan Oliyide and Chinaka Emmanuel, 'Claim to a Pre-eminent African Heritage: A Review of African Customary Arbitration' (2019) 11 Kogi State University Law Journal 65-90, 65.

[27] Olufemi Ogunleye and Olusesan Oliyide, 'Mediation and Conciliation: Traditional Rulers' Panacea for Settling Land Disputes' (2019) (1) (1) Journal of Current Law and Arbitration Practice 1-20, 1.

[28] O A Leigh and O Anoba, 'Alternative Disputes Resolution as Model for Marital Disputes Settlement' in Olusesan Oliyide (ed) *Readings on Matrimonial Disputes Resolution in Nigeria* (TOG Pub., Lagos, 2017) 363-380, 364.

[29] S Ogunyanwo, 'The Role of Multi-Door Courthouse in the Effective Administration of Justice in Nigeria' (being paper delivered the 2016 Ogun State Bar and Bench Forum, Abeokuta, Ogun State, Nigeria), cited by Leigh and Anoba ibid (n 26) 364.

[30] See Adebayo G Adaralegbe, 'Challenges in Enforcement of Arbitral Awards in Capital-importing States: the Nigerian Experience' (2006) 23(5) Journal of International Arbitration 401, 401. Frank E A Sander (1927-2018) was a foremost and long-term Professor of Law at Harvard University and he is reputed to be the pioneer in the area of modern ADR. Contemporary ADR was first adopted by American Federal courts and its adoption has, since, spread across all the continents of the world; see DS Saini, 'Book Review: PC Rao and William Sheffield, *Alternative Dispute Resolution - What it is and How it Works* (Universal Law Publishing Co, Delhi, 1997)' (1999) 41(2) Journal of the Indian Law Institute 296-299.

[31] Adebayo G Adaralegbe, (n 28) 401.

[32] Roscoe Pound (1870-1964) was an earlier Professor Emeritus at Harvard Law School.

[33] 1981 AIR (SC) 2075, 1981 4 SCC 634, 1981 SCALE (3) 1543, 1982 SCR (1) 842, 1982 95 MAD LW 133; see also the Supreme Court of India's decisions in *Food Corporation of India* v *Joginderpal Mohinderpal* AIR 1989 (SC) 1263, 1989 SCR (1) 880, JT 1989 (2) 89 (SC), 1989 1 MAD LAW 440, 1989 (103) MADLW 440, 1989 (2) SCC 347, 1989 SCALE (1) 664 and *Salem Advocate Bar Association, Tamil Nadu* v *Union of India* ibid (n 23).

[31] Johan Galtung, *Theories of Peace: A Synthetic Approach to Peace Thinking* (International Peace Research Institute, 1967) 6.

Peace

Peace is a ubiquitous term that lacks consensus on a precise and conceptually clear definition. This is, primarily, because peace has a variety of meanings that are different, in line with the context of usage. Peace is more recognised by its absence, but according to Galtung, it is an 'umbrella concept', a general expression of human desires, of that which is good, and that which is, ultimately, to be pursued.[34] Webel and Galtung[35] and others[36] propose a distinction between "positive" and "negative" peace, "positive" peace denoting the simultaneous presence of many desirable states of mind and society, such as harmony, justice, equity, et cetera and "negative" peace denoting the 'absence of war' and other forms of wide-scale violent human conflicts. "Negative" peace is, thus, the absence of physical violence while "positive" peace is the absence of all kinds of violence: physical, economic, political, and cultural. In contrast to classical definition of peace as 'the absence of [war, violence, et cetera]', the modern concept of peace is 'the presence of [justice, and other conditions that create social harmony and thus prevent situations of violence that may result in social or armed conflict]'.[37]

Webel enthuses thus:

Peace is a linchpin of social harmony, economic equity and political justice, but peace is also constantly ruptured by wars and other forms of violent conflict. Like happiness, peace remains so near … and yet, like enduring love, so far...[38]

The foregoing underscores that peace is synonymous with and analogous to tranquillity, calmness, restfulness, law and order, prevalence of justice, harmony, accord, amity, amicableness and goodwill and is antonymous and antithetical to lawlessness, disorderliness, nihilism, mobocracy, revolution, insurrection, rebellion, mutiny, disorganisation, violence and anarchy. Hobbes

[34] Johan Galtung, *Theories of Peace: A Synthetic Approach to Peace Thinking* (International Peace Research Institute, 1967) 6.
[35] Charles Webel and Johan Galtung (eds.), *Handbook of Peace and Conflict Studies* (Routledge Taylor and Francis Group, 2007) 6.
[36] Okechukwu Ndeche and Samuel O. Iroye, 'Key Theories in Peace and Conflict Studies and their Impact on the Study and Practice' (2022) 2(2) NOUN International Journal of Peace Studies and Conflict Resolution [NIJPCR] 20, 22.
[37] Charles Webel and Johan Galtung (eds.), *Handbook of Peace and Conflict Studies* (n 33) 6.
[38] Charles Webel, 'Introduction: Toward a Philosophy and Metapsychology of Peace' in Charles Webel and Johan Galtung (eds.) *Handbook of Peace and Conflict Studies* (n 33) 5.

had defined "anarchy", which is the absence of peace and which prevailed in a 'state of nature', as a situation in which human life was 'solitary, poor, nasty, brutish, and short'.[39] According to Jelilov and Aleshinloye,[40] peace implies a situation where people live in safety without fear or threat of violence, and when no form of violence is tolerated in law or in practice. Peace is simply when resolution of conflict can be made, amicably, and without contestation and when people can work, collectively, to improve the quality of their lives.

Leckman posits that peace is defined through four components; namely: (i) peace as an outcome (for instance, it is assessed by the absence or cessation of violence); (ii) peace as a process (for instance, peace-building is characterised by efforts to negotiate freedom from violence through the creation of social bonds within and across groups of people); (iii) peace as a human disposition (for instance, it is a personal and social orientation to secure freedom from distress and to foster a capacity to act, predicated on a fundamental recognition of freedom and dignity of all people); and (iv) peace is a culture (that is, it is distinctive from a culture of violence, and fosters a sense of global citizenship).[41]

Sustainable Peace

The adjective "sustainable" means unceasing, ceaseless, unending, continual, continuous, viable, feasible, imperishable, renewable, et cetera.[42] In the broadest sense, sustainability refers to the ability to maintain or support a process continuously over time.[43] "Sustainable peace", therefore, means tranquillity, calmness, restfulness, law and order, justice, harmony, accord, amity amicableness and goodwill that are unceasing, ceaseless, unending, continual, continuous, viable, feasible, imperishable and always renewable. It means existing in a state where the probability of using destructive conflict, oppression, and violence to solve problems is so low that it does not enter into

[39] Thomas Hobbes, *Leviathan (1651)* ibid (n 18) XIII 3, XIII 5-7.
[40] Gylych Jelilov and Modupe F Aleshinloye, 'Aspect of Inclusion in Sustainable Peace and Development' (2017) 3(1) Pyrex Journal of Business and Finance Management Research 1.
[41] James F Leckman, 'What is peace?' <https://ecdpeace.org/work-content/what-peace> accessed 29 January 2024.
[39] Thesaurus.com, 'Sustainable' <https://www.thesaurus.com/browse/sustainable> accessed 30 January 2024.
[40] Daniel Thomas Mollenkamp, 'What is Sustainability? How Sustainabilities Work, Benefits, and Example' <https://www.investopedia.com/terms/s/sustainability.asp> accessed 22 January 2024.

any party's strategy, while the probability of using cooperation, dialogue, and collaborative problem-solving to promote social justice and wellbeing is so high that it governs social organisation and life.[44] Sustainable peace is peace that is ecologically sensitive, while being, equally, socially and politically relevant and desirable.[45] Thus, sustainable peace is a culture of peace and as such, it promotes peace and peace can be understood in a number of ways, as it impacts so many aspects of life.[46]

Sustainable Socio-economic Development

Development is defined in different ways in various contexts, social, political, biological, science and technology, language and literature. Development is planned and comprehensive economic, social, cultural and political process, in a defined geographic area, that is rights-based and ecology-oriented and aims to, continually, improve the well-being of the entire population and all of its individuals.[47] In socio-economic context, development means the improvement of people's lifestyles through improved education, incomes, skills development and employment. It is the process of economic and social transformation based on cultural and environmental factors.[48] When development is not conceived from a holistic and comprehensive perspective, people suffer from the resulting ineffective social management. Economic growth is only one dimension of development and attention must be given to whether people, really, experience a substantial improvement in life quality. In essence, economic growth must

[41] Mauro Romanelli, 'Towards Sustainable Peace by Technology' in Alexandru-Mircea Nedelea and Marilena-Oana Nedelea (eds) *Marketing Peace for Social Transformation and Global Prosperity* (2019 IGI Global) 86.
[42] Florian Krampe, 'Building Sustainable Peace: Understanding the Linkages between Social, Political, and Ecological Processes in Post-War Countries' (PhD Dissertation, Uppsala University 2016) 20.
[43] Johan Galtung, 'Peace and Conflict Studies as Political Activity' in Thomas Matyók, Jessica Senehi and Sean Byrne *Critical Issues in Peace and Conflict Studies: Theory, Practice, and Pedagogy* (Lexington Books 2011) 3.
[44] Jan Marie Fritz, 'Socioeconomic Developmental Social Work' in Salustiano del Campo et al (eds) *Social and Economic Development* (Vol I UNESCO-Encyclopedia of Life Support Systems, 1995) 2.
[45] National Institute of Open Schooling, 'Socio-Economic Development and Empowerment of Disadvantaged Groups' <https://www.nios.ac.in/media/documents/SecSocSciCour/English/Lesson-25.pdf> accessed 2 February 2024.

march, hand-in-hand, with social development and the enhancement of quality of human life.[49]

Social development is about improving the well-being of every individual in society so they can reach their full potential. The success of society is linked to the well-being of each and every citizen.[50] Social development means investing in people and it requires the removal of barriers so that all citizens can journey towards their dreams with confidence and dignity. It is about refusing to accept that people who live in poverty will always be poor and helping people so they can move forward on their path to self-sufficiency.

Socio-economic development incorporates public concerns in developing social policy and economic initiatives. The ultimate objective of social development is to bring about sustained improvement in the well-being of the individuals, groups, family, communities, and societies, at large.[51] Socio-economic development is the process of social and economic development in a society. Its purpose is to maintain the social and material well-being of the society and its people, with the aim of achieving the highest possible level of human development.

Socio-economic sustainability means supporting people's cultural and social lives through formal and informal processes. People and spaces can develop in an environment that facilitates socio-economic engagement. Social and economic opportunities are provided to people to promote their health and well-being.[52] The Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs), designed by the United Nations (UN), comprise targets that are to be attained for socio-economic and environmental

[46] K. Mok, 'Social and Political Development in Post-Reform China' (2000th edn Palgrave Macmillan 2000) 4.

[47] New Brunswick, 'Economic and Social Inclusion Corporation' https://www2.gnb.ca/content/gnb/en/departments/esic.html accessed 4 April, 2024.

[48] Robert Tweheyo, 'What is Socioeconomic Development' (2021) <https://www.igi-global.com/dictionary/knowledge-co-production-and-sustainable-socio-economic-development/27587> accessed 22 January 2024.

[49] Huo Jie et al, 'Sustainable Energy Policy, Socio-Economic Development, and Ecological Footprint: The Economic Significance of Natural Resources, Population Growth, and Industrial Development' (2023) 81; see also, Muhammad Umer Niaz, 'Socio-Economic Development and Sustainable Development Goals: A Roadmap from Vulnerability to Sustainability through Financial Inclusion' (2022) 35 (1) Economic Research-Ekonomska Istraživanja 3243-3275.

development.[53] In this regard, equitable and inclusive growth is the real agenda of development, also known as sustainable development. Sustainable economic development is the process in which the exploitation of natural resources, the direction of investment, the orientation of technological development, and institutional change or reform, are all in coordination and harmony and enhance both the current and future potentials for meeting human needs.[54]

It is the process and level of social as well as economic development of members of a given state. The process is made up of things to be done in achieving development while the level of development relates to the height of the attainment of development. This level is measured by indicators, such as, the life expectancy of the citizens in that state, the gross domestic product (GDP), level of literacy, employment rate, infrastructural development, such as accessibility to medical care, portable water, transportation, education, and so on.[55] In a nutshell, it is the bringing about of sustained improvement in the well-being of individuals, groups, families, communities and the larger society.[56] The United Nations Brundland Commission defined sustainability as meeting the needs of the present without compromising the ability of the future generations to meet their own needs.[57]

Sustainable socio-economic development is a type of development that is predicated on the present and the future. It is a process of quantitative, qualitative and structural changes that are a result of actions of subjects taken within social (economic) practice. These changes influence life conditions in the following areas: material conditions (possibility of satisfying needs associated with consumption of goods and services; it is related with the phenomenon of economic growth), economic structure and entrepreneurship,

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[50] Huo Jie and others, 'Sustainable Energy Policy, Socio-Economic Development, and Ecological Footprint: The Economic Significance of Natural Resources, Population Growth, and Industrial Development' ibid (n 49) 81; see also, Muhammad Umer Niaz, 'Socio-Economic Development and Sustainable Development Goals: A Roadmap from Vulnerability to Sustainability through Financial Inclusion' ibid (n 49) 3243–3275.

[51] Yu-Yun Wang, 'Sustainable Economic Development' in Manuel Guitián and Robert A. Mundell (eds) *Inflation and Growth in China* (International Monetary Fund 1996) 123, 123.

[52] Thomas Chukwuma Ijere, 'The State, Governance and Socioeconomic Development Realities in Nigeria' (2014) 4(1) Public Policy and Administration Research 46, 47.

[53] Robert Tweheyo, 'What is Socioeconomic Development' (2021) <https://www.igi-global.com/dictionary/knowledge-co-production-and-sustainable-socio-economic-development/27587> accessed 22 January 2024.

[54] United Nations Brundtland Commission, 'Sustainability' (1987) <https://www.un.org/en/academic-impact/sustainability> accessed 25 December 2023.

access to public goods and services (that results in changes in education level, a way of taking care of someone's health et cetera), relations within social system (integration between individuals, trust, security, social conflicts), environment condition, and life satisfaction.[58] Development, as an idea, embodies all attempts to improve the conditions of human existence in all ramifications. It implies improvement in material wellbeing of all citizens that is not limited to the most powerful and rich, in a sustainable way, such that today's consumption does not imperil the future.

Chrisman views socio-economic development as a process of societal advancement, where improvements in the wellbeing of people are generated through strong partnership between all sectors, corporate bodies and other groups in the society. Socio-economic development is the combination of social and economic development. In this case, socio-economic development includes the advancement or improvement in the standard of living and the increase in economic life and conditions of the people.[59] Out of the 17 SDGs, goals 1-9 and 11 are directly related to socio-economic development, thus, emphasising the importance of socio-economic development to sustainable development.[60]

Conflict

Conflict is the struggle between incompatible or struggling needs, wishes, ideas, interests or people. Conflict arises when individuals or groups encounter goals that both parties cannot obtain satisfactorily.[61] It can also be defined as a

[55] Michał Litwiński, 'The Evolution of Idea of Socio-Economic Development' (2017) 16(4) Economics and Law 449, 451 doi:10.12775/EiP.2017.031.
[56] Thomas Chukwuma Ijere, 'The State, Governance and Socioeconomic Development Realities in Nigeria' (2014) 4(1) Public Policy and Administration Research 46, 47.
[57] SDG Goals 1-9 and 11 are as follows: Goal 1 - End poverty in all its forms everywhere; Goal 2 - End hunger, achieve food security and improved nutrition and promote sustainable agriculture; Goal 3 - Ensure healthy lives and promote well-being for all at all ages; Goal 4 - Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Goal 5 - Achieve gender equality and empower all women and girls; Goal 6 - Ensure availability and sustainable management of water and sanitation for all; Goal 7 - Ensure access to affordable, reliable, sustainable and modern energy for all; Goal 8 - Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Goal 9 - Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation; and Goal 11 - Make cities and human settlements inclusive, safe, resilient, and sustainable.
[58] Thomas Chung and Rich Megginson, cited by Sonia Mittal, 'Management of Conflict in Work Team' (2014) 5(6) International Research Journal of Commerce Arts and Science 317.

disagreement between two or more individuals or groups, with each individual or group trying to gain acceptance of its view or objectives over others.[62] Conflict occurs within a nation, which may be due to desire to oust those in positions of authority, to redress grievances, seeking for decentralisation, self-determination, et cetera.[63] The French revolution of 1789, for example, resulted from an unprompted uprising of the masses who were demanding for more land and fewer burdens.[64] Conflict is a process in which two or more parties attempt to frustrate the attainment of the goals of others. The factors underlying conflict are threefold: interdependence; differences in goals; and differences in perceptions.[65]

Conflict occurs when tensions arise due to a divergence of interests or perceived interests between people, organisations, groups or societies. Conflicts are a normal feature of human society, especially during periods of stress or change. Societies, therefore, need the capability to anticipate, manage and resolve them without violence. Conflicts that are not anticipated, managed or resolved risk fostering structural grievances or violence, which can break-out rapidly and spread. People with unaddressed grievances are vulnerable to manipulation by political and violence actors.[66]

Scholars classify conflicts as violent (civil, internal war, riots, coup d'état, terrorism, genocide) or non-violence (strikes, peaceful protest, legal tussles and various forms of civil disturbance). Non-violent conflicts tend to become violent if the regulatory or institutional mechanisms are ineffective and unable to act appropriately by resolving them.[67]

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[59] David L Austin, 'Conflict: A More Professional Approach' (1976) 21 Personnel Administration 28.

[60] Abdul Fattah Farea Hussein and Yaser Hasan Salem Al-Mamary, 'Conflicts: Their Types, and Their Negative and Positive Effects on Organizations' (2019) 8(8) International Journal of Scientific & Technology Research 10.

[61] Editors History.com, 'French Revolution' (2023) <https://www.history.com/topics/european-history/french-revolution> accessed 25 December 2023.

[62] Aslam Khan, 'Understanding Conflict' <https://mgcub.ac.in/pdf/material/20200407005750d5d6d7633c.pdf> accessed 28 January 2024.

[63] International Labour Organisation, *Peace and Conflict Analysis: Guidance for ILO's Programming in Fragile and Conflict-affected Contexts* (ILO 2021) 5.

[64] Anweting Kevin Ibok and Ogar Tony Ogar, 'Traditional Roles of African Women in Peace Making and Peace Building: An Evaluation' (2018) 1 (1) GNOSI: An Interdisciplinary Journal of Human Theory and Praxis 41.

Violence

Like the term peace, violence has several meaning. According to Black's Law Dictionary, violence can be said to mean the use of physical force, accompanied by fury, vehemence, or outrage which may be in the form of physical force unlawfully exercised with the intent to harm.[68] It is the use of physical force in a bid to injure, damage, abuse or destroy the life and or property of another. The World Health Organisation (WHO) sees violence as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting to injury, death, psychological harm, mal-development or deprivation.[69] Violence may be direct and indirect. Direct violence is the act or force, which one or more people use to impart or inflict physical harms or injuries on other people including nature. These acts insult the basic needs of others and include acts of war, torture, fighting, arms violence, physical and emotional abuse and are the example of direct violence.[70] Indirect or structural violence refers to the ways in which social structures or social institutions may cause harm to individuals or disadvantage them.

Conceptualising harm caused by embedded social structures, rather than by violent physical acts, involves socioeconomic and political factors that disadvantage certain individuals or groups and which are embedded into the structure of society, and cause harm to those individuals or groups by denying them the same privileges and life chances as the rest of society. According to Galtung, structural violence, broadly, represents harm done to persons and groups through inequitable social, political or economic structures. Such inequitable structures, such as systemic discrimination based on race, ethnicity, religion, gender, sexual orientation, et cetera, create conditions within society that, directly, disadvantage and oppress members of certain groups. This

[65] Bryan B Garner (ed), *Black's Law Dictionary* (9th edn, West Publishing Co, USA 2009) 1705.
[66] Etienne G Krug et al, 'World Report on Violence and Health' The world report on violence and health (2002) 360 (9339) Lancet 1083-8 doi: 10.1016/S0140-6736(02)11133-0.
[67] Bitstream, 'Structural Violence', <https://egyankosh.ac.in/bitstream/123456789/63422/2/Unit-5.pdf> accessed 16 February 2024.

oppression can inflict profound physical, psychological and socioeconomic harm on individuals.[71]

Structural violence refers to a form of violence wherein social structures or social institutions harm people by preventing them from meeting their basic needs. Although less visible, it is by far the most lethal form of violence, through causing excess deaths - deaths that would not occur in more equal societies. Not only is it the deadliest violence, greater in scope and in implication than any other type of violence, it grows, exponentially, as unequal power differentials are used to create more unequal structures. Since these limitations are embedded within social structures, people tend to overlook them as nothing more than the ordinary difficulties of life. 'Structural violence' refers to social structures-economic, legal, political, religious, and cultural, which prevent individuals, groups and societies from reaching their full potential; structural violence often leads to direct violence.

War

War is a hostile conflict, by means of armed forces, carried on between nations, states, or rulers, or sometimes between parties within the same nation or state,[72] between governments, societies or paramilitary groups. Generally, war is nothing but a duel on a larger scale. It is a physical contest between people, each using force to compel his enemy to do his will.[73] Mostly, war is international and it involves two or more nations fighting on issues that border on contrasting national interests which could be ideology, power, territory, et cetera.[74] It is a policy expressed in an extreme form of an organised violence.[75] War is a specie in the genus of violence; more specifically, it is collective, direct, manifest, personal, intentional, organised, institutionalised,

[68] Candace W Burton, Claire E Gilpin and Jessica Draughon Moret, 'Structural Violence: A Concept Analysis to inform Nursing Science and Practice (2021) 56 (2) Nurs Forum, 382-388. Doi: 10.1111/nuf.12535.
[69] Bryan B Garner (ed), *Black's Law Dictionary* ibid (n 65) 1720.
[70] Hugh Smith, 'Clausewitz's Definition of War and its Limits' (2005) Military Strategy Magazine <https://www.militarystrategymagazine.com> accessed 21 December 2023.
[71] Steven A LeBlanc, 'The Origins of Warfare and Violence' in Garrett G Fagan et al (eds) *The Cambridge World History of Violence* (Cambridge University Press 2020) 39.
[72] Peter Paret, 'The History of War' (1971) https://www.jstor.org>stable accessed 24 December 2023.

instrumental, sanctioned, and sometimes ritualised and regulated, violence.[76] According to international law, war, in principle, can only take place between sovereign political entities, that is, States.[77] Mass or total war may be defined as a type of armed conflict between large nation-States in which populations and resources are rationally and extensively organised for conquest.[78]

HISTORICAL ANALYSIS OF WAR AROUND THE WORLD

Violent conflict is as old as humanity[79] and human violence can take many forms - from intra-family domestic violence, to battles lasting days or months and involving tens of thousands of individuals.[80] Historically, the Amalekites who are descendants of Abraham through Esau became the first nation to go to war.[81] However, the Bible records the war fought between four kings from the east and five kings from the west, as the first war,[82] which resulted in victory for the kings from east and as a result of which many people were taken captive, including Lot, the nephew of Abraham.[83] This led to Abram's (Abraham's) counter-attack to free the captives and their property.[84] Some wars, as accounted for by Denton,[85] include the Franco-Burgundian War of 1464-1465, which was against King Louis XI of France, when the French nobles resisted the attempt of the king to increase his central authority; the Polish-Turkish War of 1671-167, involving Cossacks, Poland and Ukraine; the Demerara Uprising of 1823, involving the British plantation owners and slaves; the Sioux War of

[73] Johan MG van der Dennen, 'On War: Concepts, Definitions, Research Data - a short Literature Review and Bibliography' <https://core.ac.uk/download/pdf/12857871.pdf> accessed 23 January 2024.
[74] Johan MG van der Dennen (n 73).
[75] Johan MG van der Dennen (n 73).
[76] Charles Townshend (ed), *The Oxford History of Modern War* (2000, Oxford University Press) v.
[77] Charles Townshend (ed), *The Oxford History of Modern War* ibid (n 76) v.
[78] Bible Study, 'The Bible's First War!', <https://www.biblestudy.org/maps/first-war-in-bible.html> accessed 22 December 2023; see also, Genesis 14 Abram Goes to War <https://www.ocfusa.org/static/uploads/bible-studies/genesis14.pdf> accessed 22 December 2023.
[79] Bible Study, 'The Bible's First War!' (n 78); see also, Genesis 14 Abram Goes to War (n 78).
[83] Bible Study, 'The Bible's First War!' See also, Genesis 14 Abram Goes to War (n 78).
[84] Frank H Denton, 'Knowing the Roots of War: Analyses and Interpretations of Six Centuries of Warfare' (2003) <https://www.hawaii.edu/powerkills/WAR.ROOTS.HTML> accessed 26 December 2023.
[85] Frank H. Denton, 'Knowing the Roots of War: Analyses and Interpretations of Six Centuries of Warfare' (n 82).

1876-1877;[86] the Sino-Vietnamese War of 1979; the Rwandan Ethnic violence of 1990-1994, between the dominant Tutsi and Hutu tribes; the Nigeria civil war of 1967-1970; and the ongoing war between Russia and Ukraine as well as between Israel and Hamas.

Africa is not left out of the plethora of wars, as, currently, there are over 35 non-international armed conflicts (NIACs) taking place across Africa - in Nigeria, Mali, Republic of the Congo, Ethiopia, South Sudan, Sudan, Cameroon, et cetera and since the 1960s, there have been several other domestic armed conflicts as well as intermittent border and inter-state conflicts, insurgencies, terrorism acts, communal clashes, et cetera.[87]

Over the course of the 20th century, especially, in the period following World War II, pernicious civil conflicts have been responsible for more than 16 million casualties worldwide, well surpassing the cumulative loss of human life associated with international noxious conflicts.[88] Nations plagued by deleterious civil conflicts have experienced significant fatalities from violence, substantial loss of productive resources, and considerable declines in their standards of living.[89] More than a quarter of all nations across the globe encountered the incidence of ruinous civil conflict for at least 10 years during the 1960-2013 time horizon, and although the number of countries experiencing conflicts has declined from its peak of 54, in the early 1990s, as many as 35 nations have been afflicted by the prevalence of brutal civil

[86] Gold was discovered in a region held as sacred by the Sioux and set aside by the US Government for this tribe. The Army failed in its efforts to keep whites from seeking the gold. Sioux anger grew, resulting in the war.

[87] Geneva Academy, 'Today's Armed Conflicts' <https://geneva-academy.ch/galleries/today-s-armed-conflicts> accessed 25 December 2023 and Johnson Olaosebikan Aremu, 'Conflicts in Africa: Meaning, Causes, Impact and Solution' (2010) 4(4) 17 African Research Review 549, 549-550; the author highlighted such wars and armed conflicts as including Sudan (1955-1972 and 1983-2005), Chad (1965-1985), Angola since 1974, Liberia (1980- 2003), Nigeria (1967-1970), Somalia (1990-1995) and Burundi, Rwanda and Sierra Leone (1991-2001); he also noted African border and inter-state clashes as including the Nigeria-Cameroon dispute over the Bakassi Peninsular (since the1970s), the Algeria-Morocco conflict over the Atlas Mountains area (October, 1963), the Eritrea-Ethiopian crisis (1962- 1979), the Somalia-Ethiopia dispute over the Ugandan desert region (1964-1978), the Chad- Libya crisis (1980-1982), the Kenya-Somalia border war, in which Somalia aimed at recovering its lost territories, including the Northern frontier district of Kenya (1963 -1967) and the Tanzania- Uganda crisis (1978-79).

[85] Cemal Eren Arbatli, Quamrul H. Ashraf and Oded Galor, 'The Nature of Conflict' (2015) CESIFO Working Paper No. 5486. These figures are based on the UCDP/PRIO Armed Conflict Dataset, Version 4-2014a.

[86] Cemal Eren Arbatli, Quamrul H. Ashraf and Oded Galor, 'The Nature of Conflict' (n 85).

conflicts since 2010;[90] and as mentioned earlier, currently, the Russian-Ukrainian war and Israeli-Palestinian war rage and ravage.

CAUSES, TYPES AND CONSEQUENCES OF CONFLICTS AND WARS

Causes of Conflicts and Wars

War has been a persistent pattern of interaction between and within states and other political units for millennia.[91] In its many varieties, it is probably the most cataclysmic form of human behaviour.[92] War kills people, destroys resources, retards economic development, ruins environments, spreads diseases, expands governments, militarises societies, reshapes cultures, disrupts families, and traumatises people.[93] Preparation for war, whether for conquest or for protection, diverts valued resources from more constructive social activities, and often undermines security, rather than enhance it.[94]

World over, over 37 million lives have been lost as a result of their involvement in ruinous wars and armed conflicts and adding civilian causalities resulting from these wars and armed conflicts, due to hunger and diseases, will increase the figure.[95] Throughout history, different types of warfare have occurred, in one point to the other.[96] The asymmetric-warfare, biological-warfare, chemical-warfare, cold-warfare, conventional-warfare, cyber-warfare, insurgency, nuclear-warfare, total-war et cetera, have, all, affected human history, in one way or the other.[97]

A general theory of the causes of war is difficult to design because of manifold factors involved in conflicts, over time and space. Traditional theories focus on a disequilibrium of socioeconomic factors between nations and/or between different populations/societies that can lead to war. The most important

[90] Cemal Eren Arbatli, Quamrul H. Ashraf and Oded Galor, 'The Nature of Conflict' (n 85).
[91] Jack S. Levy and William R. Thompson, *Causes of War* (Blackwell-Wiley 2010) 1.
[92] Jack S. Levy and William R. Thompson, *Causes of War* (n 89) 1.
[93] Jack S. Levy and William R. Thompson, *Causes of War* (n 89) 1.
[94] Jack S. Levy and William R. Thompson, *Causes of War* (n 89) 1.
[95] King Kekwop Musa and Benjamin Isah 'War and Peace: The Causes of War and the Conditions for Peace' (2023) 1 (1) Global Peace Community Journal 133, 134.
[96] King Kekwop Musa and Benjamin Isah 'War and Peace: The Causes of War and the Conditions for Peace' (n 93) 134.
[97] King Kekwop Musa and Benjamin Isah 'War and Peace: The Causes of War and the Conditions for Peace' (n 93) 134.

traditional theories on causes of war, as scholars have propounded, are as follows: (i) selfishness, which is intrinsic in man; Hobbes, for instance, inferred that people are naturally selfish and evil and cannot be trusted; therefore, the primitive or "natural" state of mankind is violent and cruel; (ii) conflicts, naturally, arise from clash, incompatibility, incongruity, opposition, variance and differences in interests of people; (iii) bad governance; (iv) poverty and hunger; (v) illiteracy; (vi) man's inhumanity to man, such as the inglorious trans-Atlantic slave trade, modern human trafficking and human organs harvesting; (viii) inordinate ambition; (ix) mutual suspicion; (x) information conflicts;[98] (xi) values conflicts;[99] (xii) relationship conflicts;[100] (xiii) structural conflicts, et cetera.[101]

It is submitted, however, that value conflicts, information conflicts, relationship conflicts and structural conflicts can, simply, be subsumed under interest conflicts and that interest conflicts are caused by competition over perceived or actual incompatible needs. Such conflicts may occur over issues of money, resources, or time. Parties often mistakenly believe that, in order to satisfy their own needs, those of their opponent must be sacrificed.[102]

Apart from the above, there are other several theories on the causes of war which have been associated with ethnicity, religion, politics, economic and social inequalities, extreme poverty, economic immobility, poor government services, high unemployment rate, environmental degradation, individual

[98] Vilendrer Law PC, 'The Five Main Causes of Conflict and How Mediation Can Resolve Them' <https://www.vilendrerlaw.com/five-main-causes-conflict-mediation-can-resolve/> accessed 14 December, 2023; according to Vilendrer Law PC, information conflicts arise when people have different or insufficient information, or disagree over what data is relevant.

[99] Vilendrer Law PC, 'The Five Main Causes of Conflict and How Mediation Can Resolve Them' (n 96); according to Vilendrer Law PC, values conflicts are created when people have perceived or actual incompatible belief systems. Where a person or group tries to impose its values on others or claims exclusive right to a set of values.

[100] Vilendrer Law PC, 'The Five Main Causes of Conflict and How Mediation Can Resolve Them' (n 96); according to Vilendrer Law PC, relationship conflicts occur when there are misperceptions, strong negative emotions, or poor communication; here, one person may distrust the other and believe that the other person's actions are motivated by malice or an intent to harm the other.

[101] Vilendrer Law PC, 'The Five Main Causes of Conflict and How Mediation Can Resolve Them' (n 96); according to Vilendrer Law PC, structural conflicts are caused by oppressive behaviours exerted on others because limited resources or opportunities and organisation structures often promote conflicting behaviour.

[102] Vilendrer Law PC, 'The Five Main Causes of Conflict and How Mediation Can Resolve Them' (n 96).

(economic) incentives, et cetera. For instance, people that see themselves as having similar or common religious and or cultural identity are likely to fight together to preserve their cultural autonomy. Instances of wars emanating from cultural affiliation include the conflict in Matabeleland in post-independence Zimbabwe, where Ndebele identity was used to advance political objectives,[103] the holocaust in which the Nazis in Germany killed over six million Jews,[104] the Rwanda war between Hutus and Tutsi,[105] the Nigerian civil war involving the Biafrans,[106] Muslim consciousness by Taliban,[107] Boko Haram in Nigeria,[108] et cetera. Internal economic cause of wars and conflicts is, usually, rooted in "greed",[109] 'exacerbation of grievances'[110] and breach of the social contract between government and the governed because social stability derives from government discharging its duties under extant social contract between it and the people.[111] State authority will be accepted by the citizens of that state

[103] Katri Pohjolainen Yap, 'Sites of Struggle: The Reorientation of Political Values in Matabeleland Conflict, Zimbabwe 1980-1987' (2002) 6(1) African Sociological Review 17-45; see also, Frances Stewart, 'Root Causes of Violent Conflict in Developing Countries' (2002) 324 (7333) British Medical Journal 342-345 and Jocelyn Alexander, Jo Ann McGregor and Terence Ranger, 'Ethnicity and the Politics of Conflict: The Case of Matabeleland' in E Wayne-Nafziger, Frances Stewart and Raimo Vayrynen (eds) *War, Hunger, and Displacement: The Origins of Humanitarian Emergencies Volume I; Analysis* (Oxford University Press, 2000) 305-311.

[104] United States Holocaust Memorial Museum, *How Many People Did the Nazis Murder?* (United States Holocaust Memorial Museum, Washington DC, USA, 2023) https://encyclopedia.ushmm.org/content/en/article/documenting-numbers-of-victims-of-the-holocaust-and-nazi-persecution accessed 5 April, 2024.

[105] Rina M. Alluri, 'A History of Conflict: The Rwanda Civil War and Genocide' (SwissPeace 2009) <https://www.jstor.org/stable/pdf/resrep11112.8.pdf> accessed 24 December 2023.

[106] Philips O Okolo, *The Nigeria Civil War: Its Causes and Lessons for the Future* (1st edn El-Mercy Publishers, 2010) 25; see also, Daniel Moran, 'Strategic Theory and the History of War' <http://slantchev.ucsd.edu/courses/pdf/Moran%20-%20Strategic%20Theory%20and%20the%20History%20of%20War.pdf> accessed 1 February 2024.

[107] Felix Kuehn, 'Taliban History of War and Peace in Afghanistan' in Anna Larson and Alexander Ramsbotham (eds) *Incremental Peace in Afghanistan* (2018) 27 Accord: An International Review of Peace Initiatives 35.

[108] Rafael Prieto Curiel, Olivier Walther and Neave O'Clery, 'Uncovering the Internal Structure of Boko Haram through its Mobility Patterns' (2020) 5 (28) Applied Network Science 1.

[109] Nikolaos Tzifakis, 'Economic Motivations of Armed Conflict' *Encyclopedia Princetoniensis* <https://pesd.princeton.edu/node/386> accessed 5 April, 2024.

[110] Nikolaos Tzifakis, 'Economic Motivations of Armed Conflict' *Encyclopedia Princetoniensis* ibid (n 107); see also, Daniel Moran, 'Strategic Theory and the History of War' (n 104).

[111] Anthony Addison and Syed Mansoob Murshed, 'The Social Contract and Violent Conflict' in J Hanlon (ed) *War, Intervention and Development* (Open University Press, 2006) 1-34; see

only if the state delivers services and provides reasonable economic conditions (employment and incomes).[112] With economic stagnation or decline and worsening state services, the social contract breaks down, rising levels of poverty emerge and violence or other forms of conflict result.[113] External economic cause of wars and conflicts, on the other hand, generally, result from access to external 'markets and scarce resources, imperialism and 'concerns about the impact of economic interdependence and population growth'.[114]

Types of Conflicts and Wars

Types of conflicts and wars include: (i) civil wars, which refer to a societal conflict that occurs within a country and may be used for forcible snatching or retention of political power;[115] while the involvement of force makes it to be referred to as war, it is civil because it is, usually, within a nation;[116] the Nigerian civil war, which took place between 1967 and 1970, is a typical example;[117] (ii) insurgency, which is a rebellion by an organised irregular armed force taking up arms or by a non-violent means, against a constituted authority or government, so as to overthrow and change its policies, personnel and structure;[118] insurgency may be in different forms, such as non-violent

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also, Daphne Halikiopoulou and Sofia Vasilopoulou, 'Breaching the Social Contract: Crises of Democratic Representation and Patterns of Extreme Right Party Support' (2018) Government and Opposition: An International Journal of Comparative Politics 26-50 and Mark Furness and Bernhard Trautner, 'Reconstituting Social Contracts in Conflict-Affected MENA-Countries: Whither Iraq and Libya?' (2020) 135, World Development 105085 https://doi.org/10.1016/j.worlddev.2020.105085.

[112] Anthony Addison and Syed Mansoob Murshed, 'The Social Contract and Violent Conflict' ibid (n 109) 10; see also, Daphne Halikiopoulou and Sofia Vasilopoulou, 'Breaching the Social Contract: Crises of Democratic Representation and Patterns of Extreme Right Party Support' 36 and Mark Furness and Bernhard Trautner, 'Reconstituting Social Contracts in Conflict-Affected MENA-Countries: Whither Iraq and Libya?' (n 109).

[113] Frances Stewart, 'Root Causes of Violent Conflict in Developing Countries' ibid (n 100) 345.

[114] Nikolaos Tzifakis, 'Economic Motivations of Armed Conflict' *Encyclopedia Princetoniensis* (n 107).

[115] Nicholas Sambanis, 'What is Civil War? Conceptual and Empirical Complexities of an Operational Definition' (2004) 48(6) The Journal of Conflict Resolution 814-858.

[116] Nicholas Sambanis, 'What is Civil War? Conceptual and Empirical Complexities of an Operational Definition' (n 113).

[117] Philips O Okolo, Nigerian civil war (n 104).

[118] Arij Elshelmani, 'What are the Defining Characteristics of Insurgency from Prehistory to Ca. 1975?' (2016) E-International Relations https://www.e-ir.info/2016/03/31/what-are-the-defining-characteristics-of-insurgency-from-prehistory-to-ca-1975/#google_vignette accessed 6 April, 2024.

resistance, coup, terrorism, et cetera;[119] (iii) guerrilla warfare, which involves hit-and-run tactics on legitimate government and military targets;[120] (iv) revolutionary war, which aims at capturing political power through the use of armed force - the American revolution, the French revolution and the India war of independence are examples of a revolutionary war;[121] (v) asymmetric war and terrorism war, which is a type of war in which there is hostility between the powerful and the weak, in which a militarily disadvantaged power, which is usually a non-state actor uses its special advantages to exploit its enemies' particular weakness to achieve its objectives, using guerrilla tactics and propaganda to achieve its aim;[122] examples of asymmetric war are the separatist Chechens against the Russian army and the Palestinians against the Israeli army; terrorism, on the other hand, is a sub-state application of violence or threat to use violence, with an intention to create panic in the society; according to the US State Department, "terrorism" 'is premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience'.[123]

Consequences of Conflicts and Wars

High levels of armed violence and insecurity have a destructive impact on a country's development, while crimes, including sexual violence, exploitation and torture are prevalent where there is conflict and absence of rule of law and this position impose an obligation on countries to take measures, so as to protect those who are most at risk.[124] Conflicts and wars cause immeasurable suffering to humanity, notably, innocent women and children, who die as a result and they pose significant strains on the economic development of any

[119] Arij Elshelmani, 'What are the Defining Characteristics of Insurgency from Prehistory to Ca. 1975?' (n 116).
[120] David G Yurth, *The Ho Chi Minh Guerrilla Warfare Handbook: A Strategic Guide for Innovation Management* (Dandelion Enterprises, 2015) 1.
[121] History.com Editors, 'Revolutionary War' <https://www.history.com/topics/american-revolution/american-revolution-history> accessed 6 April, 2024.
[122] Lukas Milevski, Asymmetry is Strategy, Strategy is Asymmetry' (2014) 75 Joint Force Quarterly 75, 75.
[123] Lukas Milevski, Asymmetry is Strategy, Strategy is Asymmetry' (n 120) 75.
[124]Matsilo Nkabane, 'Impact of Wars and Conflict on Africa's Socio-Economic Development' 2022 <https://www.researchgate.net/publication/362792047> accessed 18 February 2024.

country. Conflicts devastate the African populations, destroy political institutions and economies and undermine development.[125]

Ongoing and new violent conflicts around the world are derailing the global path to peace and the achievement of Goal 16 of the SDGs. The year 2022 witnessed more than 50 per cent increase in conflict-related civilian deaths, largely, due to the war in Ukraine. As of the end of 2022, 108.4 million people were forcibly displaced worldwide, an increase of 19 million, compared with the end of 2021 and two-and-a-half times the number of a decade ago.[126] Civilian deaths directly related to 12 of the world's deadliest conflicts increased by 53 per cent between 2021 and 2022. At least 16,988 civilians were killed, with one in five victims being women.[127]

Structural injustices, inequalities and emerging human rights challenges are putting peaceful and inclusive societies further out of reach.[128] To meet SDGs Goal 16 by 2030, action is needed to restore trust and to strengthen the capacity of institutions to secure justice for all and facilitate peaceful transitions to sustainable development.[129]

Historical evidence shows that conflicts impose immeasurable human sufferings and substantial economic and social costs.[130] The loss of human life,

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[125]Matsilo Nkabane, 'Impact of Wars and Conflict on Africa's Socio-Economic Development' (n 122).

[126] United Nations Statistics Division (UNSD), <https://unstats.un.org/sdgs/report/2023/goal-16/> accessed 12 February 2024; United Nations General Assembly Economic and Social Council, 'Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet - Report of the Secretary-General (special edition) 2023 <https://unstats.un.org/sdgs/files/report/2023/secretary-general-sdg-report-2023--EN.pdf> accessed 12 February 2024.

[127] United Nations Statistics Division (UNSD) (n 124); United Nations General Assembly Economic and Social Council, 'Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet - Report of the Secretary-General (special edition) 2023 (n 124).

[128] United Nations General Assembly Economic and Social Council, 'Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet - Report of the Secretary-General (special edition) 2023 (n 124).

[129] United Nations General Assembly Economic and Social Council, 'Progress towards the Sustainable Development Goals: Towards a Rescue Plan for People and Planet - Report of the Secretary-General (special edition) 2023 (n 124).

[130] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* (IMF 2019) 25; Thai-Ha Lea, Manh-Tien Bui, Gazi Salah Uddin, 'Economic and Social Impacts of Conflict: A Cross-country Analysis' (2022) 115 Economic Modelling 1, 1. The "Conflict trap" refers to the vicious cycle between conflicts and economic performance,

destruction of infrastructure, disruption of labour and human capital, weakening of government institutions, political instability and greater uncertainty associated with conflicts can impede investment and economic growth, not only during conflicts, but also afterwards, making it difficult to escape the "conflict trap".[131] Conflicts complicate public finances, reducing revenue by destroying part of the tax base while increasing military expenditures.[132] Fiscal deficits and public debts rise, as a result and resources shift-away from social and developmental spending, which further accentuates the conflicts' debilitating consequences.[133]

Decreased investment, trade, and productivity, accompanied by human and physical capital destruction (including through forced displacement and devastating effects on education and health care), are some of the key channels through which conflicts impede economic growth.[134] Not only is violence a severe hindrance for development, it can reverse many years of development gains as well as reduce foreign investments, education, life expectancy and increase poverty.[135]

Extant literature on the economic costs of conflict is conclusive; in general, conflicts harm economic development and in particular, adversely affect economic productivity, by devastating cities and infrastructures, interrupting economic activities, deterring investment, and curtailing government spending, thus, hindering economic growth.[136] Conflicts may, also, have long-term negative consequences, especially, because their impacts continue far beyond the conflicts period (up to ten years after the conflicts outbreak) and have

whereby, conflicts retard economic growth and development, in turn raising the likelihood of a conflict.

[131] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* (n 128) 25; Thai-Ha Lea, Manh-Tien Bui, Gazi Salah Uddin, 'Economic and Social Impacts of Conflict: A Cross-country Analysis' (n 128) 1.

[132] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* ibid (n 128) 25; Thai-Ha Lea, Manh-Tien Bui, Gazi Salah Uddin, 'Economic and Social Impacts of Conflict: A Cross-country Analysis' 1.

[133] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* (n 128) 25.

[134] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* (n 128) 25.

[135] IMF, *Regional Economic Outlook: Sub Saharan Africa Recovery amid Elevated Uncertainty* (n 128) 25.

[136] Thai-Ha Lea, Manh-Tien Bui, Gazi Salah Uddin, 'Economic and Social Impacts of Conflict: A Cross-country Analysis' (n 128) 3.

significant long-term adverse consequences for economic growth, private consumption, investment, sector value addition and trade.[137]

At the macro level, conflicts lead to slow economic growth, capital flight, and increased military expenditure. An increase in military expenditure does not impel growth, but rather diverts funds that could have been used to provide infrastructure and social amenities that are growth-enhancing. Moreover, the arms purchased with the diverted funds are, in turn, used to destroy existing infrastructure during the conflicts, resulting in double-loss.[138] Conflicts create an atmosphere of fear and insecurity under which economic activities do not thrive.

Conflict has been a major challenge in recent decades in Africa. Although the continent experienced fewer conflicts in recent years than it did in the 1990s, they are still common in the region, with approximately 30 per cent of African countries affected by them in 2019.[139] In addition, since the mid-2000s, there has been a resurgence of armed conflict on the continent. Conflict causes not only immense human suffering but also extensive economic losses. It places onerous burdens on the social development of countries, by decreasing revenues, increasing defence expenditure, and diverting funds away from social and development initiatives.[140] Conflict has destabilised many African countries, wiping out the achievements of decades of economic and social development.[141]

A major consequence of conflict is displacement of populations. By the end of 2023, there are about 75.9 million Internally Displaced Persons (IDPs) globally, 68.3 million of which were displaced by conflict and violence and 7.7

[137] Thai-Ha Lea, Manh-Tien Bui, Gazi Salah Uddin, 'Economic and Social Impacts of Conflict: A Cross-country Analysis' (n 128) 3.
[138] Daniel Tuki, 'The Effect of Violent Conflict on the Socioeconomic Condition of Households in Nigeria: The Case of Kaduna State' (2022) HiCN Working Paper 373 5.
[139] United Nations Economic Commission for Africa (UNECA), *Socioeconomic Impact of Conflict in Africa* (UNECA 2024) 1 <https://hdl.handle.net/10855/50100> accessed 31 December 2024; Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (Throne of Grace Publishers 2024) 40.
[140] United Nations Economic Commission for Africa (UNECA), *Socioeconomic Impact of Conflict in Africa* (UNECA 2024) 1 <https://hdl.handle.net/10855/50100> accessed 31 December 2024.
[141] Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (n 137) 41.

million by disasters.[142] Sub-Saharan Africa has the largest number of IDPs by conflict, accounting for 46% of the global total.[143] Displacement in sub-Saharan Africa, as well as elsewhere, carries significant economic, fiscal, and social costs for the region involved in conflict, but often also for the nearby regions that host the displaced people.[144] Conflicts also exact a toll on human capital—a critical driver of economic growth. Education, health care and skill development suffer in conflict-ridden areas, impeding the potential for economic advancement.[145]

INTERRELATIONSHIP OF LAW, PEACE AND SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT

The modulating potency of law on human actions, inactions and interrelationships discussed in part two of this paper, explains the function of law in ensuring peace and stability, across societies, and explains the undeniable interconnectivity as well as convergence of law and peace for the purpose of ensuring continuing socio-economic stability and prosperity. Within this context, also, the use of bilateral and multilateral treaties and the emergence of variants of public international law, such as international human rights and international humanitarian law, law of international institutions, et cetera, as interventionist legal models for addressing conflicts, is noteworthy.

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[142] Internal Displacement Monitoring Centre (IDMC), *2024 Global Report on Internal Displacement* <https://www.internal-displacement.org/global-report/grid2024/> accessed 31 December 2024; Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (n 137) 41.

[143] Internal Displacement Monitoring Centre (IDMC), *2024 Global Report on Internal Displacement* <https://www.internal-displacement.org/global-report/grid2024/> accessed 31 December 2024. As at the end of 2023, sub-Saharan Africa had 34.8 million IDPs, 32.5 million of which were caused by conflict and violence. Sudan is the African country with the highest amount of IDPs with 9.053 million people as at the end of 2023. The Democratic Republic on the Congo counted some six million IDPs, in a population of around 90 million people. Somalia had roughly 3.9 million displaced persons, while Nigeria had about 3.4 million.

[144] Saifaddin Galal, 'Number of Internally Displaced Persons in Africa 2023, by Country' (Statista 16 May 2024) <https://www.statista.com/statistics/1237268/number-of-internally-displaced-persons-in-africa/> accessed 31 December 2024.

[145] Ameyavikram Pathak and Armen Baibourtian, 'The Economics of Peace: Exploring the Interplay between Economic Stability, Conflict Resolution and Global Prosperity' *UN Chronicle* (24 June 2024) <https://www.un.org/en/un-chronicle/economics-of-peace-interplay-between-stability-conflict-resolution-global-prosperity> accessed 31 January 2025.

Furthermore, as Oliyide surmised, “prosperity" connotes "blossoming", "fruitfulness", "progress", "success", excellence", et cetera.[146] As Oliyide further enthused, “prosperity” even has scriptural bases, as the Bible says God wishes above all things that humans may prosper and be in good health even as their souls prosper.[147] The socio-economic dimension of prosperity manifests in increasing contribution of the various economic sectors to the Gross Domestic Product (GDP) culminating in continuing increase in the GDP size as well as development in the various parameters for determining the quality of lives of a people, such as critical infrastructure, progress in the real or manufacturing sector, employment generation, security, et cetera.[148] According to Oliyide, “prosperity”, in this context, means economic growth and development from which socio-political growth and development derive.

However, according to Oliyide, ‘economic growth’ and ‘economic development’, while appearing to be synonyms, are two different but interrelated concepts.[149] While ‘economic growth’ refers to a rise in national or per capital income and product, which manifests, wholly, by increase in the value of goods and services produced by each sector of the economy and by increase in overall gross domestic product (GDP), ‘economic development’ means the development of the economic wealth of a country, which is aimed at the overall well-being of the citizens of the country, since those citizens are the ultimate beneficiaries of the development of the country’s economy.[150] ‘Economic development’, therefore, manifests by improvements in the living standards of the people of the country. Although ‘economic growth’ and ‘economic development’ are different concepts, all things being equal, economic growth ought, naturally, to culminate in economic development.[151]

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[146] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (Olabisi Onabanjo University Publishing House, Ago-Iwoye, 2023) (Being the 111th Inaugural Lecture of Olabisi Onabanjo University, Ago-Iwoye, Nigeria delivered on 8 August, 2023) 121.
[147] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (n 144) 121.
[148] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (n 144) 121.
[149] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (n 144) 122.
[150] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (n 144) 122.
[151] O Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (n 144) 122.

Economic growth and development has multiplier effect on social and political development. In fact, all of the concepts are organically and intrinsically related so much that one, naturally, impacts on the others.[152]

As has been canvassed in this paper, peace is a fundamental precondition for social and economic development. Without peace, societies are, often, plagued by conflict, violence, and instability, which can hinder progress and result in the loss of lives and resources. There can, therefore, be no sustainable development without peace and, paradoxically, there can be no peace without sustainable development.[153] Peace is a summation of stability as well as the security that stability brings, together with a society's ability to anticipate, manage and resolve conflicts at all levels without violence, through its institutions, values, habits and behaviours.[154] These, in turn, depend on inclusion and fairness: inclusive, fair access to work and livelihoods, and to the means of security, justice and other aspects of well-being, such as health, education and decent living conditions.[155] Peace also requires responsive and accessible leadership and governance, built on functional, trusting relations among citizens, and between citizens and those with authority over them.[156]

The stability of the socio-economic system can guarantee effective development of both the society and humanity itself.[157] Accordingly, the imbalance in relationships in society could cause negative consequences; for example, an increase in the number of conflicts and the violation of the stability of the social environment.[158] It is noteworthy too, that social life is always aimed at neutralising various kinds of disturbances, both external and internal ones, and also strives for the consensus within the society.[159]

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[152]O Oliyide, *Banking Regulation and Nigeria's Prosperity: Unending Voyage, Definite Destination* (n 144) 122.
[153] United Nations, 'Sustainable Development Goals, Goal 16: Promote Just, Peaceful and Inclusive Societies' <https://www.un.org/sustainabledevelopment/peace-justice> accessed 12 January 2024.
[154] International Labour Organisation, *Peace and Conflict Analysis: Guidance for ILO's Programming in Fragile and Conflict-affected Contexts* (ILO 2021) (n 68) 5.
[155] International Labour Organisation, *Peace and Conflict Analysis: Guidance for ILO's Programming in Fragile and Conflict-affected Contexts* (ILO 2021) (n 68) 5.
[156] International Labour Organisation, *Peace and Conflict Analysis: Guidance for ILO's Programming in Fragile and Conflict-affected Contexts* (ILO 2021) (n 68 5.
[157] Gennady Rublev et al, 'Socio-Economic Model of Sustainable Development' (2021) 244 E3S Web of Conferences 10053 DOI: https://doi.org/10.1051/e3sconf/202124410053.
[158] Gennady Rublev et al, 'Socio-Economic Model of Sustainable Development' (n 155).
[159] Gennady Rublev et al, 'Socio-Economic Model of Sustainable Development' (n 155).

Japan and Germany present examples of how the pursuit of peace can produce unprecedented economic resurgence. The Second World War left Japan in ruins, grappling with the consequences of its engagement in the conflict, which culminated in the atomic bombings of Hiroshima and Nagasaki in August 1945.[160] Following its ultimate surrender, the country gradually disengaged from its former aggressive policies and embraced policies of peace and reconstruction. Japan prioritised economic development over military endeavours, forged strategic alliances with nations around the world, invested heavily in technological innovation and made its education system a cornerstone of its recovery. This saw the emergence of Japan as the world's third-largest economy. The remarkable economic success of Japan underscores how a commitment to peace can propel a nation from ashes to eminence. [161]

Post-Second World War Germany faced a similar challenge of rebuilding a shattered nation. Changing from policies of aggression to those of political stability and democratic institutions, saw Germany emerged as the economic powerhouse of Europe. Like Japan, this German "economic renaissance" serves as a testament to the connectivity between peace and economic prosperity. [162]

MODELS FOR ACHIEVING PEACE FOR SUSTAINABLE SOCIO-ECONOMIC DEVELOPMENT

International Organisations Model

In realisation of the importance of peace to sustainable socio-economic development, the United Nations and regional and sub-regional organisations play a critical role in promoting both peace and sustainable development worldwide.

The United Nations

The devastation caused by the World War II led to the creation of the United Nations (UN) on 24 October, 1945 with the sole mission of maintaining

[160] Ameyavikram Pathak and Armen Baibourtian, 'The Economics of Peace: Exploring the Interplay between Economic Stability, Conflict Resolution and Global Prosperity' (n 143).

[161] Ameyavikram Pathak and Armen Baibourtian, 'The Economics of Peace: Exploring the Interplay between Economic Stability, Conflict Resolution and Global Prosperity' (n 143).

[162] Ameyavikram Pathak and Armen Baibourtian, 'The Economics of Peace: Exploring the Interplay between Economic Stability, Conflict Resolution and Global Prosperity' (n 143).

international peace and security.[163] Peacekeeping is one of the most effective implements which the UN has used to assist countries that have experienced war or conflict, back to the path of peace.[164] In achieving this mission, the UN Security Council was established, with the primary responsibility for international peace and security by helping parties in conflict make peace, deploying peacekeepers, and creating conditions that allow peace to prevail and flourish.[165] By the provisions of Chapter VII of the UN Charter, the UN Security Council has the power to take measures to maintain or restore international peace and security.[166] Such measures include economic sanctions and international military action. The Security Council also establishes UN Peacekeeping Operations and Special Political Missions.[167]

In accomplishing the aim of international peace and security, the UN uses preventive diplomacy and mediation strategy.[168] This is done by preventing conflicts through diplomacy, good offices and mediation, with the creation of special envoys and political missions in those Nations where conflict or war is gathering momentum.[169] For instance, the UN Office for West Africa, in Dakar, Senegal was the first regional conflict prevention and peace building office of the UN and has the obligation of enhancing the contributions of the UN towards the achievement of peace and security in West Africa and the promotion of an integrated regional approach in addressing issues that impact stability in West Africa.[170] It was recently merged with the Office of the Special Envoy for the Sahel (OSES) into a single entity.[171]

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[163] Karen Mingst, Jacques Fomerand and Cecelia M Lynch, 'United Nations International Organisation' *Britannica* https://www.britannica.com/topic/United-Nations accessed 7 April, 2024

[164] UN, '75 Years of United Nations Peacekeeping: Peace Begins with Me' <https://www.un.org/en/exhibits/exhibit/75-years-un-peacekeeping> accessed 7 April, 2024.

[165] UN, '75 Years of United Nations Peacekeeping: Peace Begins With Me' (n 162).

[166] UN, '75 Years of United Nations Peacekeeping: Peace Begins With Me' (n 162).

[167] UN, '75 Years of United Nations Peacekeeping: Peace Begins With Me' (n 162).

[168] BG Ramcharan, *Preventive Diplomacy at the UN* (Indiana University Press 2008) 1-5; see also, JO Opiyo, 'The Challenges of Preventive Diplomacy: The United Nations' Post-Cold War Experiences in Africa' (2012 12(1) African Journal on Conflict Resolution 61-82.

[169] BG Ramcharan, *Preventive Diplomacy at the UN* (n 166) 5; see also, JO Opiyo, 'The Challenges of Preventive Diplomacy: The United Nations' Post-Cold War Experiences in Africa' (n 166) 64.

[170] United Nations, 'Political and Peacekeeping Affairs: UN Office for West Africa and The Sahel (UNOWAS)' <https://dppa.un.org/en/mission/unowas#:~:> accessed 8 April, 2024.

[171] United Nations, 'Maintain International Peace and Security' <https://www.un.org/en/our-work/maintain-international-peace-and-security> accessed 25 December 2023; see also,

The UN also recognises that conflict and instability can undermine development efforts and it works to prevent conflict and promote peace through various other means, including mediation, peacekeeping operations, and disarmament initiatives. The UN Security Council plays a vital role in maintaining international peace and security and has the authority to impose sanctions or authorise the use of force to address threats to international peace and security.

The Council has 15 members, including 5 permanent - China, France, the Russian Federation, the United Kingdom and the United States.[172] At the end of World War II, these five countries played key roles in the establishment of the UN and they conceived that they would continue to play important roles in the maintenance of international peace and security.[173] The other 10 rotating members are elected by the UN General Assembly, for two-year terms, on the basis of geographical representation. Each member has a vote but the permanent members have a veto vote each.[174] The composition of the UN Security Council, especially the permanent members, is injustice in itself, as the African continent has no permanent seat on the Security Council.

In addition to the UN, other international organisations also play a role in promoting global peace and sustainable development. For example, the World Bank works to promote sustainable economic development and reduce poverty,[175] while the International Atomic Energy Agency (IAEA) promotes the safe and peaceful use of nuclear energy.[176] The International Labour Organization (ILO) promotes social justice and decent working conditions,

United Nations, 'Political and Peacekeeping Affairs: UN Office for West Africa and The Sahel (UNOWAS)' ibid (n 166).

[172] United Nations, 'Welcome to the United Nations' <https://www.un.org/en/> accessed 8 April 2024.

[173] Jean de Dieu Kayiranga, 'Sustainable peace for sustainable development - A global challenge that calls for collective action' (2023) <https://www.undp.org/rwanda/blog/sustainable-peace-sustainable-development-global-challenge-calls-collective-action> Accessed 25 December, 2023.

[174] Jean de Dieu Kayiranga, 'Sustainable peace for sustainable development - A global challenge that calls for collective action' (n 171).

[175] United Nations: Department of Economic and Social Affairs, 'World Bank Group' https://sdgs.un.org/statements/world-bank-group-11245 accessed 9 April, 2024.

[176] International Atomic Energy Agency (IAEA), 'Energy' https://www.iaea.org/topics/energy accessed 9 April, 2024.

recognising the importance of fair labour practices for sustainable development.[177]

In recognition of the importance and power of peace, the world marked the 41st International Day of Peace on 21st September 2023 with the theme: 'Actions for Peace: Our Ambition for the GlobalGoals.'[178] It called for the urgent need for collective action to foster global peace, harmony and inclusive and sustainable development, since socio-economic development can only be realised with peace.[179] Rwanda is an example of a nation where the embracement of peace has and is still serving as the pivot upon which socio-economic development rotates.[180] Rwanda celebrated the International Day of Peace under the banner: 'Strengthening unity and resilience for sustainable peace and development', a theme that recalls the country's journey from the dark days of the genocide against the Tutsi in 1994 to today, with Rwanda serving as a model of sustainable development through its persistent pursuit of unity and resilience.[181] As a result of Rwanda's efforts to foster peace, unity, reconciliation and transformative governance, the outcome of the recognition of peace, as the key ingredient of economic progress, is reflected in its economic growth, which registered an average of 7.2 percent a year over the decade to 2019. At the same time, the poverty rate declined from 75.2 percent in 2000 to 52 percent in 2016 and life expectancy increased from 49 years in 2000 to 69.9 years in 2022. Rwanda now ranks among the top nine African countries with the highest life expectancy.[182]

For there to be sustainable peace and socio-economic development, the world should be considered and treated as a system that interlinks space and connects time.[183] This is because of the fact that no country can dispense with other

[177] International Labour Organisation (ILO), 'About the ILO' https://www.ilo.org/about-ilo accessed 9 April, 2024.
[178] United Nations, 'International Day of Peace 21 September' https://www.un.org/en/observances/international-day-peace accessed 9 April, 2024.
[179] United Nations, 'International Day of Peace 21 September' (n 165).
[180] John Prendergast and David Smock, 'Post-Genocidal Reconciliation: Building Peace in Rwanda and Burundi' https://www.usip.org/publications/1999/09/post-genocidal-reconciliation-building-peace-rwanda-and-burundi accessed 9 April, 2024.
[181] Jean de Dieu Kayiranga, 'Sustainable peace for sustainable development - A global challenge that calls for collective action' (n 171).
[182] Jean de Dieu Kayiranga, 'Sustainable peace for sustainable development - A global challenge that calls for collective action' (n 171).
[183] Gylych Jelilov and Modupe F. Aleshinloye, 'Aspect of Inclusion in Sustainable Peace and Development' (n 38) 1.

countries. Conflict or war in one country might negatively or positively affect others. For instance, the conflict between Russia and Ukraine has negatively affected the supply of grains from Ukraine to other parts of the world. So also, the war between Israel and Hamas has negatively affected shipping on the red sea.

Peace and sustainable socio-economic development can be achieved through the combination of various means, such as enthronement of rule of law, good law-making, enforcement and interpretation, good governance, food security, poverty reduction, mutual understanding, adherence to God's commandments and love of God, love of fellow human beings, cooperation, collaboration, tolerance, negotiation, mediation, conciliation, arbitration, civil litigation, discouragement of hostilities and wars, et cetera.

Sustainable development cannot be realised without peace and security; and peace and security will be at risk without sustainable development. The new UN Agenda recognises the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), rule of law and good governance, at all levels, and on transparent, effective and accountable institutions. Factors which give rise to violence, insecurity and injustice, such as inequality, corruption, poor governance and illicit financial and arms flows, are addressed in the Agenda.[184]

African Union

The African Union (AU) has put in place a blueprint and master plan aimed at transforming Africa into the global powerhouse of the future known as Agenda 2063, which aims at enhancing inclusive and sustainable development, unity, self-determination, freedom, progress and collective prosperity pursued under Pan-Africanism and African Renaissance.[185] This declaration was made by the African heads of state and government signed the 50th Anniversary Solemn

[184] United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> accessed 30 January 2024.
[185] African Union, 'The Africa We Want' <https://au.int/en/agenda2063/overview> accessed 9 April, 2024.

Declaration during the Golden Jubilee celebrations of the formation of the OAU (Organization of African Unity) /AU in May 2013.[186]

Prior to the above, the AU through its peace building in Africa, has taken measure in strengthening continental and regional institutions for intervention in the domestic affairs of member States, such as the AU's Peace and Security Architecture (APSA), the African Post-Conflict Reconstruction (APCR), the African Standby Force (ASF), the African Development Bank (AfDB), et cetera. The AU has intervened in some post-conflict countries to help contribute to sustainable peace and development, including Chad, Uganda and Rwanda.[187] In the late 1990s, the Organisation of African Unity (OAU) mediated conflict in the Democratic Republic of Congo (DRC) and it brokered peace between Ethiopia and Eritrea in 2000.[188] AU also made provisions for initiatives, such as the New Partnership for Africa's Development (NEPAD)[189] peace and security agenda, the Conference on Stability, Security, Development and Cooperation in Africa and the Declaration on a Framework for an OAU Response to Unconstitutional Changes in Government (2000),[190] so as to further enhance sustainable peace and socio-economic development in Africa.[191]

In appreciation of the important role of the youth in promoting peace and non-violence, the AU initiated the African Youth Charter, 2006, which obliges state parties to 'strengthen the capacity of youth and youth organisations in peace-building, conflict prevention and conflict resolution through the promotion of intercultural education, civic education, tolerance, human rights, democracy, mutual respect for cultural, ethnic and religious diversity, and the importance

[186] African Union, 'The Africa We Want' (n 183).
[187] Gilbert M Khadiagala, 'The African Union in Peacebuilding in Africa' in Terence McNamee and Monde Muyangwa (eds), *The State of Peacebuilding in Africa: Lessons Learned for Policymakers and Practitioners* (Palgrave Macmillan 2021) 197, 200.
[188] Gilbert M. Khadiagala, 'The African Union in Peacebuilding in Africa' (n 185) 200.
[189] Jeremy Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (2009) 53 (1) Journal of African Law 1.
[190] OAU, 'Declaration on a Framework for an OAU Response to Unconstitutional Changes in Government' (36th ordinary session of heads of state and government of the OAU, Lomé, Togo, 10-12 July 2000) AHG/Decl 5 (XXVI) <https://www.peaceau.org/uploads/ahg-decl-5-xxxvi-e.pdf> accessed 24 December 2023.
[191] OAU, 'Declaration on a Framework for an OAU Response to Unconstitutional Changes in Government' (n 188).

of dialogue, cooperation, responsibility, solidarity and international cooperation'.[192]

Economic Community of West African States

The Economic Community of West African States (ECOWAS), is a sub-regional organisation made up of 15 West African states and was created by the signing of the Lagos Treaty in 1975, with a view to promoting economic integration across the sub-region, in all fields of economic activities, in order to raise the standard of living of the people in the sub-region, while maintaining and enhancing economic stability and fostering relations among member states.[193] The ultimate aim was to achieve a meaningful human centred development in the sub-region in particular and the African continent as a whole. ECOWAS was established to promote multidimensional cooperation that would bring peace and sustainable development in sub Saharan Africa.[194] While ECOWAS tries to attain the goals of the organisation, incessant cases of civil war, internal conflicts and terrorism, persistently, abort the peace that is needed to enthrone sustainable regional development.[195]

The history of regional instability and insecurity is the story of bad governance, characterised by lack of effective and equitable resource management; lack of transparency and accountability; economic sabotage; lack of strong democratic values and institutions; and use of poverty and ignorance as instruments of governance authoritarianism, and impunity.[196] ECOWAS has been at the forefront of creating effective, dynamic, and workable "home-grown" conflict management mechanisms, in order to solve the region's complex security and political challenges.[197]

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[192] AU, African Youth Charter 2006 <https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf> accessed 9 April, 2024; Article 17.
[193] Kelechi Johnmary Ani and Lere Amusan, 'ECOWAS, Peace and Conflict Management in West Africa' (2016) 3 (1/2) Journal of African Foreign Affairs 19, 19.
[194] Kelechi Johnmary Ani and Lere Amusan, 'ECOWAS, Peace and Conflict Management in West Africa' (n 191) 19.
[195] Kelechi Johnmary Ani and Lere Amusan, 'ECOWAS, Peace and Conflict Management in West Africa' (n 191) 19.
[196] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (2009) 1 (2) African Conflict and Peacebuilding Review 183, 185.
[197] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (n 194) 185.

ECOWAS adopted the Non-Aggression Protocol in 1978, Defence Assistance Protocol in 1981, ECOWAS Political Principle in 1991, with the sole aim of promoting peace, sustainable security and good governance that would dislodge the roots of conflict in member states.[198] It intervened in the conflicts in Liberia, in 1990, in Sierra Leone, in 1998, in Guinea-Bissau, in 1999 and 2001, and in Côte d'Ivoire, in 2002. In living up to its aims and objectives, ECOWAS created various institutions and structures, to deal with conflict, such as the Community Court of Justice, which was established in 1991 and came into existence in 1993. The court is saddled with the responsibility of dealing with disputes arising out of the application and interpretation of the organisation's treaty[199] as well as cases involving violation of human rights. ECOWAS also established the Council of Elders aimed at conflict prevention, maintaining peace in post-conflict era. The ECOWAS Mediation and Security Council, which comprised of representatives of ECOWAS member states, has definitive authority to decide whether to intervene in a state. The organisation may intervene when internal conflict threatens to trigger a humanitarian disaster or poses a serious threat to peace and security in the sub-region[200] or in instances of serious and massive violations of human rights and the rule of law and 'if there is an overthrow or attempted overthrow of a democratically elected government'.[201] The Mediation and Security Council may approve interventionist action in any other situation in which it deems intervention to be necessary.[202]

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[198] Kelechi Johnmary Ani and Lere Amusan, 'ECOWAS, Peace and Conflict Management in West Africa' (n 191) 23.

[199] Open Society Justice Initiative, 'ECOWAS Community Court of Justice' <https://www.justiceinitiative.org/publications/ecowas-community-court-justice> accessed 24 December 2023

[200] Jeremy Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (n 187) 26; see ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999), Article 25.

[201] Jeremy Sarkin, 'The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect' (n 187) 26; see ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999) (n 187), Article 25.

[202] ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999) (n 187), Article 25.

ECOWAS also established a Directorate of Defence and Security in the Office of the Deputy Executive Secretary Political Affairs, Defence and Security (DES-PADS) pursuant to article 16 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution Peacekeeping and Security.[203] The Director of the Department of Defence and Security assists the DES-PADS in situations relating to defence and security in West Africa.[204]

The ECOWAS strategy of peacekeeping has been described as waging war to keep peace.[205] Its strategy to resolve the conflict followed two parallel but mutually interactive channels - making and enforcing peace. The former involves negotiations and arbitration while the latter entails the deployment of multinational force to supervise a cease-fire.

While engaging the emerging conflict in the regions, it initiated a proactive strategy of preventing conflicts before they arose. This strategy, which partly entails the use of indigenous methodology and strategy in preventing and resolving conflicts, is known as the ECOWAS Conflict Prevention Framework (ECPF).[206] Peacemaking refers to the use of diplomatic means to persuade parties in conflict to cease hostilities and to negotiate a peaceful settlement of their dispute. It entails the empaneling of a mediatory framework in order to appeal to the sense of reasoning of the parties, mostly through the good offices of eminent international personalities.[207]

The huge sacrifices in human and material resources that ECOWAS Member States deployed to end the devastating civil wars in Liberia and Sierra Leone in the 1990s convinced West African Heads of State of the need to buttress the Community's economic integration project with a Peace and Security Architecture, as aptly captured in the 1993 ECOWAS Revised Treaty.[208]

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[203] Victoria K Holt and Moira K Shanahan, *Architecture of African Organisations: The AU and ECOWAS* (Stimson Center, 2005) 5.
[204] Victoria K Holt and Moira K Shanahan, *Architecture of African Organisations: The AU and ECOWAS* (n 201) 5.
[205] Human Rights Watch, 'Waging War to Keep the Peace: The ECOMOG Intervention and Human Rights' (1993) 5 (6) Human Rights Watch <https://www.hrw.org/reports/1993/liberia/> accessed 18 February 2024.
[206] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (n 194) 187.
[207] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (n 194) 187.
[208] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (n 194) 187.

Consequently, other normative frameworks were developed in quick succession, including in particular, the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999), and the Supplementary Protocol on Democracy and Good Governance (2001).[209] Useful as they were as guiding principles for Community behaviour, these norms were not broken down into actionable interventions.

The ECOWAS Conflict Prevention Framework (ECPF), which was adopted by the ECOWAS Media on and Security Council in January 2008, was designed to fulfil this objective.[210] It does so by providing practical guidance on the factors undermining regional stability and the needed cooperative actions between the ECOWAS system, member states, civil society entities and partners to prevent conflicts and transform conflict dynamics, from the early warning phase to sustaining peace. The ECPF comprises 14 key components that propose collaborative action around key conflict drivers in the sub-region, drawing from the various Community norms. These 14 key components are: (i) early warning; (ii) preventive diplomacy; (iii) democracy and political governance; (iv) human rights and the rule of law; (v) media; (vi) natural resource governance; (vii) cross-border initiatives; (viii) security governance; (ix) practical disarmament; (x) women, peace and security; (xi) youth empowerment; (xii) ECOWAS standby-force; (xiii) humanitarian assistance; and (xiv) peace education (culture of peace).[211]

National Laws Model

National laws, as model for ensuring peace and sustainable socio-economic development,[212] are, primarily, predicated on national Constitutions and other domestic laws having equity, fairness, justice and equal protection of all

[209] Kehinde A Bolaji, 'Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework' (n 194) 187.
[210] ECOWAS, *Plans of Action for the 15 Components of the ECOWAS Conflict Prevention Framework* <https://wpsfocalpointsnetwork.org/wp-content/uploads/2021/07/ECPF-Action-Plans-2018-2020-ENG-1.pdf> accessed 10 April, 2024.
[211] Abdel-Fatau Musah, 'The ECOWAS Conflict Prevention Framework: An Overview' (being paper delivered at WANSED-ECOWAS Consultative Meeting on Enhancing Peace and Security: Challenges and Opportunities held at Abuja, 24-25 July 2008.
[212] Giovanni Tartaglia Polcini, 'The Rule of Law as a Condition for Development Toward Sustainability' (2017) 7(2) International Journal of Social Quality 113-137, where the author explains that the Italian national laws model for peace and sustainable development, was largely inspired by Italy's multilateral and bilateral experiences and national ownership of the underlying values and mores.

persons, as their unmitigated underlying philosophy. National Constitutions, in particular, must be all-inclusive, in terms of meeting the yearnings and aspirations of all ethnic, gender and religious groups, across each country.

Strict adherence to the Constitution and other domestic laws and regulations and the efficient, firm and competent application of law and principles of justice to every citizen, on equal basis, go a long way in ensuring peace and stability necessary for sustainable growth and development and accord with Article 1 of the UN Charter. The centrepiece of the foregoing assertion is strong rule of law, which Mahmutovic and Alhamoudi refer to as 'the empire of laws and not of men'[213] and which emphasises and insists on equality before the law and the wholesale protection of human rights (economic, social, cultural, civil and political rights).[214] These provide assurance of internal peace and cohesion necessary for sustainable socio-economic development.[215] That this is so is affirmed by the UN when it declares that '[t]he rule of law and development are strongly interrelated and mutually reinforcing'.[216] The UN also asserts thus:

> the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to

[213] Adnan Mahmutovic and Abdulaziz Alhamoudi, 'Understanding the Relationship between the Rule of Law and Sustainable Development' (2023) 6 Access to Justice in Eastern Europe 1-28, 1.

[214] It is noteworthy that despite the Nigerian National Action plan 2022-2026, there are still pervasive human rights abuses in Nigeria; see Federal Republic of Nigeria - National Action Plan 2022-2026 (developed pursuant to the recommendations of the Vienna declaration and programme of action, adopted at the World Conference on Human Rights in Vienna, Austria in 1993) <https://www.nigeriarights.gov.ng/files/nap/nap-dec-2021.pdf> accessed 11 April, 2024.

[215] Adnan Mahmutovic and Abdulaziz Alhamoudi, 'Understanding the Relationship between the Rule of Law and Sustainable Development' (n 211) 1-2.

[216] Declaration adopted at the 2012 High Level Meeting of the UN General Assembly on the Rule of Law (A/RES/67/1) cited by Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development (being remarks delivered by Irene Khan, Director-General, International Development Law Organization, New York on 27 February, 2014) <https://www.idlo.int/news/events/statement-rule-law-peace-and-security-human-rights-and-development> accessed 10 April, 2024.

> development, all of which in turn reinforce the rule of law.[217]

The relationship between rule of law and development must also be dynamic and this involves the goodness and suitability of laws and regulations and the fair and efficient administration (including enforcement) of those laws and regulations by transparent and accountable institutions, so that those laws and regulations, as well as their equitable administration, can produce fair outcomes for all, the rule of law being not 'an abstract concept but a concrete basis on which to promote sustainable development';[218] and those fair outcomes include equitable development, economic growth, employment-generation, investment attraction, entrepreneurship facilitation, protection and enforcement of environmental rights, enhancement of environmental stewardship, conservation and promotion of biodiversity. According to Khan, '[w]hen the legal frameworks ensure both the interests of business as well as communities, a unity of mission behind common development goals is assured'.[219]

Goodness and suitability of laws and regulations and their fair administration by transparent and accountable institutions, eloquently, explain the practical and not esoteric interconnectivity of rule of law and sustainable development because laws and regulations, as fairly administered by transparent and accountable institutions, constitute 'fair, stable and predictable legal frameworks',[220] which also encompass internationally recognised and nationally owned mores, values and principles supported by political-will and produce 'substantive justice'[221] that is necessary for all-round development.

The foregoing also establishes that there are interrelationships between rule of law at the national level and international trade, investment, intellectual property, science and technology transfer, innovation and climate change and other environmental frameworks and this is because, the fairer the law and

[217] Declaration adopted at the 2012 High Level Meeting of the UN General Assembly on the Rule of Law (A/RES/67/1) cited by Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' ibid (n 214).
[218] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[219] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[220] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[221] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214.

regulation regime, the easier it is to create 'a more equitable, inclusive and sustainable model of development'[222] that substantially eradicates poverty and generally advance human life. Also, the linkage between rule of law and development is symbiotic. This is because, in the words of Khan:

> Just as the rule of law supports development, development in turn reinforces the rule of law. The two are inter-dependent, and this symbiotic relationship means that support for one should not be conditional on progress of the other. The reality is that in a less than perfect world, the two must proceed hand in hand if governments are to meet the aspirations and demands of their people. [223]

Khan, however, justifiably, laments that despite this critical interrelationship between rule of law represented by 'stable, transparent legal regimes'[224] on the one hand and economic development on the other hand, rule of law is still lacking in many developing countries where:

> the laws and institutions to protect property, ensure sustainable use of land, or attract investment and innovation are outdated or inadequate, weak, ineffective or opaque… [many of the countries] lack laws and institutions on energy generation, natural resources, water management, seed and plant varieties - all of which are essential for sustainable development… Frequently [the] countries do not have the knowledge or capacity to negotiate complex contracts or take advantage of the flexibility and exceptions available under international intellectual property law. [225]

[222] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[223] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[224] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[225] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).

According to Khan, this imperfect system in many developing countries, also, manifests by discriminatory and exclusionary laws (especially against women and children, minorities and other vulnerable groups), incapacity to protect people from crime and violence, pervasive corruption, which distort access to basic services, selective law enforcement in favour of the rich and affluent, forcible and tactical eviction of poor people from their land without redress, which all deepen food insecurity, near-absence of energy, poverty (which the author defines, expansively, as including both lack of income and general powerlessness), fettered access to justice, low legal awareness and aid, low-level use of ADR mechanisms, palpable inequality and injustice, unsustainable management of natural resources, lack of access to life saving drugs, etcetera;[226] which all yield to anguish, despair, disillusionment, et cetera. It is submitted that this imperfect system is, also, not unconnected with the spate of armed and other forms of conflicts ravaging developing countries.

ADR Model

As argued in part two of this paper, conceptually, ADR is not really alternative to the formal justice management sector but is an integral part of and is complementary to it.[227] Although ADR has gained massive attraction across the world, its embrace in developing countries is still relatively low and Khan attests to this when she identified low-level use of ADR as part of the imperfection that characterises rule of law in developing countries.[228] ADR variants, such as, arbitration, mediation, conciliation, negotiation, mini-trial/early neutral evaluation, bargaining, case appraisal and a number of "hybrid" methods, including med-arb, arb-med, et cetera, especially owing to their massive benefits, including, cost-effectiveness, speed of adjudication and justice delivery, relationships-sustenance, expanded access to justice, flexibility, confidentiality, massive involvement of disputants in resolution process, involvement of an impartial third-party, general involvement of non-adjudicatory or consensual procedures, problem-solving and avoidance of

[226] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).
[227] S Blake, et al, *A Practical Approach to Alternative Dispute Resolution* (n 23) 2-3; PO Idornigie, 'What is (and isn't) Alternative Dispute Resolution (ADR)' (n 23) 560.
[228] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' (n 214).

problems associated with enforcement of judgement in litigation, are an integral component of the rule of law regime in a country.[229]

Model of Religion

The influence of religious leaders over their followers cannot be underestimated. Most conflicts, either domestic or international, are triggered by religious intolerance, which occurs when there is competing claim by two or more religious organisations over scarce resources (economy) or status and power (politics) with the sole aim of dominating or eliminating one another. For instance, the prosecution and killings of the Jews,[230] the conflicts between Catholics and Protestants in the 16th and 17th century,[231] the execution of Christians in the 17th century in Japan,[232] the Mormon expulsion from Missouri and Illinois in the 1840s,[233] the killings of Muslims in Kosovo,[234] the conflict between Muslim Pakistan and Hindus in India[235] the Kafanchan religious unrest,[236] the Kaduna Shari'a riot of year 2000 and the post-election crisis of

[229] See the Supreme Court of India decisions in *Guru Nanak Foundation* v *Rattan Singh & Sons, Food Corporation of India* v *Joginderpal Mohinderpal* ibid, *Salem Advocate Bar Association* ibid and *Tamil Nadu* v *Union of India* (n 23).

[230] This is generally known as 'the Holocaust'; see, Alexa Stiller, 'The Mass Murder of the European Jews and the Concept of 'Genocide' in the Nuremberg Trials: Reassessing Raphael Lemkin's Impact' (2019) 13(1) Genocide Studies and Prevention: An International Journal 144-172.

[231] Robert Blackey, 'A War of Words: The Significance of the Propaganda Conflict between English Catholics and Protestants, 1715-1745' (1973) 58(4) The Catholic Historical Review 534-555.

[232] This is what is, otherwise, known as 'the Japan Martyrdom' in which 16 Christians were massacred in Nagasaki, Japan; see, generally, Edward Hagemann, 'The Persecution of the Christians in Japan in the Middle of the Seventeenth Century' (1942) 11(2) Pacific Historical Review 151-160.

[233] See, generally, John E Hallwas and Roger D Launius, *Cultures in Conflict: A Documentary History of the Mormon War in Illinois* (University Press of Colorado, 1995).

[234] This is what is, otherwise, known as 'the Kosovo Massacre'; see, generally, Lawrence Freedman, 'Victims and Victors: Reflections on the Kosovo War' (2000) 26(3) Review of International Studies 335-355.

[235] John P Hoffmann, 'Religion: Morality and Social Control' (2015) 20 *International Encyclopedia of the Social & Behavioral Sciences* (2nd edn) 333, doi: 10.1016/B978-0-08-097086-8.84036-2.

[236] See, generally, Jibrin Ibrahim, 'The Politics of Religion in Nigeria: The Parameters of the 1987 Crisis in Kaduna State' (1989) 45/46 Militarism, Warlords and the Problems of Democracy 65-82.

2011,[237] the Jos crisis of 2001,[238] the Bauchi riot of 2007,[239] the ongoing Boko Haram killings[240] and kidnappings, the numerous killings in Plateau State (all in Nigeria) are all sectarian attacks and reprisals that have been religion-inspired.[241]

Although religion has contributed, significantly, to the outbreak of conflicts and wars, it has also served as a major tool for enhancing sustainable peace. Where there is conflict between adherents of two religions, the religious leaders, on both sides of the dispute, can be mobilised to facilitate peace by importing spiritual dimension into the peacemaking process. For example, African peacemaker, Hizkias Assefa, emphasises the commendable role of religious leaders as an asset in peacemaking,[242] Imam Muhammad Nurayn Ashafa is co-director of the Inter Faith Mediation Centre in Kaduna, Nigeria,[243] the World Council of Churches and the All Africa Conference of Churches mediated the peace agreement in Sudan in 1972,[244] various churches took part in the struggle against apartheid and the peaceful transition to popular governance in South Africa,[245] the Rome-based Community of Sant'Egidio successfully mediated to end the civil war in Mozambique in 1992. [246] In Nigeria, the likes of Bishop Mathew Hassan Kuka, Bishop John Olorunfemi Onaiyekan and His Majesty Sultan Muhammad Sa'ad Abubakar III, are some of notable religious leaders that have been facilitating peace processes in Nigeria and West Africa. In 2023, ECOWAS sent respected Islamic Clerics to

[237] Colette Harris, 'Violence in a Religiously Divided City: Kaduna, Nigeria - From the Shari'a Riots of 2000 to the Post-election Clashes of 2011' (2013) 7(3) Space and Polity 284-299.
[238] Umar Habila Dadem Danfulani and Sati U. Rwatshak, 'Briefing: The September 2001 Events in Jos, Nigeria' (2002) 101 (403) African Affairs 243-255.
[239] Zakka Sara Wadam, Ethno-Religious Violence in Zar Land in Bauchi State and Traditional Methods of Conflict Resolution (Doctorate Degree Thesis University of Jos, Nigeria, 2014) 167-172.
[240] Abimbola Adesoji, 'The Boko Haram Uprising and the Islamic Revivalism in Nigeria (2010) 45(2) Africa Spectrum 95-108.
[241] John P Hoffmann, 'Religion: Morality and Social Control' (n 233).
[242] David R Smock (ed), *Religious Contributions to Peacemaking: When Religion Brings Peace, Not War* (United States Institute of Peace 2006) 1.
[243] David R Smock (ed), *Religious Contributions to Peacemaking: When Religion Brings Peace, Not War* ibid (n 240) 1.
[244] David R Smock (ed), *Religious Contributions to Peacemaking: When Religion Brings Peace, Not War* (n 240) 1.
[245] David R Smock (ed), *Religious Contributions to Peacemaking: When Religion Brings Peace, Not War* (n 240) 1.
[246] David R Smock (ed), *Religious Contributions to Peacemaking: When Religion Brings Peace, Not War* (n 240) 1.

mediate between the Military Junta and the deposed President of Niger Republic.[247]

Private Sector Model

Businesses play a pivotal role in socio-economic development of nations. Conflict and instability not only impact people and the environment, but also pose risks to all parts of the business sector. Society, government and the economic community have started to acknowledge that businesses have a role to play in the society in addition to its core mandate of wealth and job creation.[248] Sustainable, responsible business practices and values are not merely complementary features of long-term successful business, but a pre-requisite. As such, the core business and the way it is conducted is the major contribution of a company – not only as a source of financing, innovation, job creation and growth – but through its impact on stability and governance issues, including anti-corruption, peace and security and the rule of law. Sustainable peace is achievable through inclusive processes such as the promotion of democracy, transparent government, poverty eradication, sustainable development, and the rule of law. These processes and the underlying conditions that support them cannot be created by any single actor but typically involve a combination of stakeholders including politicians, government, humanitarian actors, and businesses.[249] It settled that businesses require socially stable, healthy and economically viable markets to succeed. While the primary responsibility for peace, security and development rests with Governments, businesses have a critical role to play in contributing to the stability and security in conflict-affected and high-risk areas.

Firms can promote stability in five broad ways: providing jobs and economic opportunity; respecting rule of law as well as international labour and environmental standards; espousing principles of corporate citizenship;

[247] Jonathan Nda-Isaiah, 'Niger Crisis - ECOWAS Sends Islamic Clerics on Second mission' <https://leadership.ng/niger-crisis-ecowas-sends-islamic-clerics-on-second-mission/> accessed 10 April, 2024.

[248] International Alert, *Sustaining Business and Peace: A Resource Pack on Corporate Responsibility for Small and Medium Enterprises* <https://www.international-alert.org/app/uploads/2021/09/Sri-Lanka-Corporate-Responsibility-SMEs-Resource-Pack-EN-2009.pdf>; Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (n 137) 76.

[249] Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (n 137) 76; Jay Joseph, John E. Katsos and Harry J. Van Buren III, 'Entrepreneurship and Peacebuilding: A Review and Synthesis' (2023) 62 (2) Business & Society 322, 324

conducting risk assessments unique to the political environment in conflict-affected regions; and in some circumstances engaging in track-two diplomacy.[250] Corporate social responsibility (CSR) can contribute to the reconciliation and peacebuilding efforts of destinations that have or are experienced conflict.[251]

Technological Model

Technology has become an integral part of daily lives. Every field owes its advancement to technology, and this clearly indicates the importance of technology in every aspect of human lives, including peacebuilding. Digital technologies are changing how social innovation and peacebuilding are developed. As the field of technology for peacebuilding grows, attention has been paid to the potential of new technologies for bridging the gap between warning and response. Technology can play a significant role in rethinking relationships between communities in conflict. There is a growing body of work exploring the role of technology in peacebuilding. Technology can contribute to peacebuilding processes by offering tools that foster collaboration, transform attitudes, and give a stronger voice to communities.[252]

In initiatives aiming to prevent the outbreak or escalation of violent conflict, new technologies can allow people to report and react more rapidly. Citizens can also use technology tools to engage and connect at the local level to mitigate conflict or call upon decision-makers at regional and national levels if larger interventions are required to sustain peace.[253] In exploring the application of technology to peacebuilding, it is important to keep in mind that technologies are not neutral. Introducing technology into peacebuilding programming also entails some risks. As enablers and connectors, technologies can be used as important transformative tools for enhancing sustainable human development and preventing violent conflict, technologies can also become dividers in a conflict context. [254] Technology can be useful in data collection

[250] John Forrer, Timothy Fort and Raymond Gilpin, 'How Business Can Foster Peace' United States Institute of Peace Special Report 2012 <https://www.usip.org/sites/default/files/SR315.pdf> accessed 30 December 2024.
[251] Olusesan Oliyide and Oluwakemi Ayanleye, *Law, Peace and Prosperity* (n 137) 77.
[252]Anne Kahl and Helena Puig Larrauri, 'Technology for Peacebuilding' (2013) 2(3): 61 Stability: International Journal of Security & Development 1, 1, DOI:http://dx.doi.org/10.5334/sta.cv.
[253]Anne Kahl and Helena Puig Larrauri, 'Technology for Peacebuilding' (n 250) 2.
[254]Anne Kahl and Helena Puig Larrauri, 'Technology for Peacebuilding' (n 250) 2.

and processing and intelligence gathering which can be helpful for early warning signal in conflict situations.

LESSONS FROM OTHER REGIONS

European Union and Peacebuilding

The EU Global Strategy combines security, development and diplomatic actions in support of common objectives. The EU ensures an integrated approach to conflicts and crises by using the comprehensive toolbox at the EU disposal - at all stages of a conflict, from prevention to crisis management - in order to contribute to sustainable peace. The EU strives to deliver stabilisation and peace, in close coordination with the Member States, combining conflict prevention, mediation and peacebuilding in an effective way. The EU ensures that EU engagements are conflict sensitive and based on a proper analysis. With regard to Conflict Prevention, the EU aims at addressing structural risks of violent conflicts through all relevant policies, tools and instruments in a timely and sequenced manner. In addition to carrying out conflict analysis, the EU uses specific tools such as the EU conflict Early Warning System and the Horizon Scanning, to identify countries at risk of instability and/or of violent conflict.[255] The Early Warning System (EWS) is a risk management tool for identifying, assessing and helping to prioritise situations at risk of violent conflict for non-EU countries. The EWS draws upon evidence-based risk factors, like an economic shock or shrinking political space, adopting a time horizon of four years. [256]

The European Union stands as a testament to how nations, historically at odds, can forge economic alliances after resolving deep-seated conflicts. Regional collaborations not only enhance economic integration but also contribute to a sense of shared stability, minimizing the likelihood of conflicts.

Association of Southeast Asian Nations (ASEAN)

In the early 1960s, Southeast Asia was then regarded as the ‘Balkans of the East’ since the region was rife with conflicts between the maritime states of Malaysia, Indonesia and Philippines, and shadow of the 2nd Indochina wars

[255] The European External Action Service (EEAS), ‘Conflict Prevention, Peace building and Mediation’ <https://www.eeas.europa.eu/eeas/conflict-prevention-peace-building-and-mediation_en> accessed 31 January 2025.
[256] EEAS, ‘Conflict Prevention, Peace building and Mediation’ (n 253).

still looming across the mainland Southeast Asia.[257] For decades since the 1970s, Southeast Asia has enjoyed a period of relative peace. Much of the transformation from an environment characterised by enmity and instability to peace and security was attributed to the conscious efforts by states to come together and establish the Association of Southeast Asian Nations (ASEAN). ASEAN was founded in 1967, and it became a critical regional mechanism for states in Southeast Asia to manage inter-state relations and prevent conflicts. However, ASEAN has a strategy of non-interference with member states internal conflicts. Members are left to contend with internal strife and conflicts. This is akin to AU's policy of non-interference with the internal challenges of member states

African Union can emulate the EU model of regional integration to foster peace and economic integration.

CONCLUSION AND RECOMMENDATIONS

The foregoing discourse underscores that the endothermic nature of man will necessitate conflicts, contestations, disputations, et cetera, at micro and macro levels of society. This endothermic nature of man is exacerbated by man's inherent selfish nature, which propels man to, relentlessly, seek the pursuit and actualisation of his interest alone. This, of course results in conflicts where such interest and its pursuit are both inconsistent with the interest and pursuit of interest of other persons.

Thus, there will always be struggles and contestations between people with opposing needs, ideas, beliefs, values or goals, especially, in a world that is characterised by over population and fewer economic opportunities. Major root-causes of these inconsistent interests include political, economic, and social inequalities; extreme poverty; economic stagnation; poor government services; high unemployment; environmental degradation; and individual (economic) incentives to fight. In today's closely-interconnected world, shots fired in one corner of the globe create ripple effects in other, seemingly far, places. In order to reduce the likelihood of wars and other forms of conflicts, it is essential to promote inclusive development; reduce inequalities between

[257] Noel M. Morada and Mely Caballero-Anthony, 'Re-imagining ASEAN and the Quest for Peace: Challenges and Prospects for Peacebuilding, Conflict Prevention, and Atrocities Prevention' (2023) 26 (2-3) Journal of International Peacekeeping 89-96. https://doi.org/10.1163/18754112-26020001.

groups; tackle unemployment; promote rule of law; and via national and international control over illicit trade, reduce private incentives to fight. Good economic governance, the rule of law and equitable economic development are, particularly, critical prerequisites for peaceful and prosperous communities and nations.

Progress, in whatever form, is vague and abstract in the absence of peace and stability as wars and other forms of conflicts interrupt economies, displace communities, and worsen poverty and inequality. To truly make progress towards peace and the global goals, meaningful actions must be taken, at every level of society, to build a world, not only free of conflicts and wars, but also a world where justice, equality, and human rights are upheld, a world where poverty, hunger, deprivation, inequality, and injustice are relics of the past.

Governments, civil society and communities need to work together to find lasting solutions to conflict and insecurity. Strengthening the rule of law and promoting human rights is, particularly, key to this process, as is reducing the flow of illicit arms, combating corruption, and ensuring inclusive participation at all times. The UN needs to broaden and strengthen the participation of African countries in the institutions of global governance, including the UN Security Council permanent membership.

Businesses play a vital role in promoting industrial stability by creating jobs, generating revenue, and driving innovation. When businesses thrive, they contribute to the overall stability of the industrial sector, which in turn has a positive impact on the broader economy Furthermore, businesses can help mitigate the negative impacts of industrial instability by adopting sustainable practices, investing in research and development, and fostering partnerships with stakeholders.

To engender a culture of peace and to ensure sustainable peace for growth and development, peace education must be included in school curricula, from primary to tertiary levels. There is need to train and retrain peacekeepers on international humanitarian law and other rules applicable in law enforcement situations in operational practices and they must understand that the protection of civilians is, always, at the core of any peacekeeping mission.

There is a universal longing for a world free from conflict, violence, and suffering. A universal longing for dignity, peace, and development. Every

person, government and organisation has a role to play: the power to choose unity over division, dialogue over conflict, and sustainability over short-sightedness.

The UN must take urgent steps to address the underlying causes of conflict to ensure sustainable development, especially, by ensuring the prevalence of rule of law across the globe. The following words of Khan are instructive in this connection:

Understanding better the relationship between the rule of law and development should help the international community and national governments to better address these legal and institutional capacity deficits that are not just barriers to economic growth but also obstacles to eradicating poverty and addressing inequalities within countries and among countries.[258]

Also, guiding principles for community behaviour are very useful for ensuring peace but these norms must be broken down into actionable and workable interventions and within the context of rule of law, especially, the necessity for predictability and pre-eminence of the law and its efficient and unbiased administration as well as expanded access to justice and the massive benefits inherent in ADR, greater use of ADR in both averting and resolving disputes, should be encouraged.

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[258] Irene Khan, 'Statement on the Rule of Law, Peace and Security, Human Rights and Development' ibid.

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COLLABORATIVE FRENEMIES: EXPLORING THE INTERPLAY BETWEEN INTELLECTUAL PROPERTY AND COMPETITION LAW IN GHANA

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ABSTRACT

Intellectual property rights generally put right holders in a dominant position in the marketplace, and rightly so, as their rights grant them some time-limited monopolies. Competition policy, on the other hand, seeks to prevent the abuse of a dominant position by regulating competition to ensure a fair market. In view of the aforesaid, there appears to be a conflict between the two legal frameworks. There are, however, some attempts at responding to the concerns of competition policy in intellectual property laws. The paper recognizes the absence of a comprehensive competition regime in Ghana. Employing a doctrinal approach to data collection and analysis, the paper reviews the points of convergence and divergence between intellectual property laws and competition policy in Ghana. The paper briefly explores the successful and challenging resolution of IP and competition law conflicts in some African countries. The paper concludes that the attempts at addressing competition concerns by the use of intellectual property legal regimes are not enough. The paper calls for proactive steps to be taken toward the passage of a comprehensive competition legal regime to ensure a fairer market, thereby promoting free trade in Africa.

Keywords: Intellectual Property, Competition Policy, Interplay, Monopolies, Free Trade

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INTRODUCTION

Intellectual property law is the legal regime for the protection of knowledge goods. It is the area of law that concerns legal rights associated with creative effort or commercial legal rights associated with creative effort or commercial reputation and goodwill.[3] Intellectual property protection allows a rights holder to exclude others from interfering with or using the property right in specified ways. In other words, intellectual property rights are the exclusive rights conferred upon the creator or the inventor of the property to use and enjoy his creation or invention exclusively. It also affords inventors and authors, in the case of copyright, protection from imitation and gives rights holders substantial discretion over how to use or license their intellectual property.[4] The World Intellectual Property Organization (WIPO) is the United Nations specialized agency responsible for the development and protection of intellectual property rights. It assists governments and organizations to develop the policies, structures and skills needed to harness the potential of intellectual property for economic development.[5] It coordinates international treaties regarding intellectual property rights. Its 184 member states comprise over 90% of the countries of the world, that participate in WIPO to negotiate on intellectual property matters such as patents, copyrights and trademarks.[6]

The role of intellectual property rights (IPRs) in shaping the future of developing economies and least-developed countries (LDCs) cannot be overstated. The Commonwealth Secretariat and the United Nations Conference on Trade and Development (UNCTAD) collaborate to harness intellectual property rights for innovation, development and economic transformation in least-developed

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countries.[7] In addition, the agreement between the UN and WIPO promotes creative intellectual activity and facilitates the transfer of technology related to industrial property to developing countries to accelerate economic, social and cultural development.[8]

Competition law, on the other hand, is the legal framework put in place to regulate competition in the market and to ensure a fair market. It is also referred to as antitrust law. The efficient functioning of market economies depends on an effective competition policy, which is becoming increasingly important in the current environment of deregulation and market globalization. Competition law regulates practices that would otherwise be harmful to competition. These practices include price fixing, market sharing, market restraint, mergers and abuse of dominant positions.[9] Competition law is in vogue within the market economy regulation space. It has emerged as a tool adopted by many jurisdictions to safeguard the competition process within the market.[10]

The purpose of competition law is to ensure a fair marketplace for consumers and producers by prohibiting unethical practices designed to garner greater market share than what could be realized through honest competition. Therefore, competition law preserves competition in the market and tries to prevent monopolization where possible to allow entry of competitors in the market.

Intellectual property rights and competition law are separate legal regimes with distinct objectives and purposes but "both competition law and intellectual property law share the same basic objective of promoting consumer welfare and

[7] UNCTAD, 'Intellectual Property: A Potential Game-Changer for Least Developed Countries' *United Nations Publications: Rights and Permissions.* (29 January 2024) <https://unctad.org/news/intellectual-property-potential-game-changer-least-developed-countries> accessed 20 February 2024

[8] Background Reading Material on Intellectual Property, WIPO publication no. 659E, ISBN 92-805-0184-4, pg. 37-38

[9] Any law, 'Comprehensive Guide To Competition' (Law Thought, 22 May 2023) <https://www.anylaw.com/media/2023/05/22/a-comprehensive-guide-to-competition-law/#:~:text=Competition%20law%20is%20a%20body%20of%20law%20that,other%20practices%20that%20restrict%20or%20limit%20marketplace%20competition.> accessed 14 February 2024

[10] Esther Koomson,"Developing without a Competition Legislation: An Analysis of Competition Law in Ghana and its Impact on Competition and Development" 2020: 1-3

an efficient allocation of resources".[11] Intellectual property laws promote dynamic competition by encouraging undertakings to invest in developing new or improved products and processes. Similarly, competition law puts pressure on undertakings to innovate.[12] Therefore, intellectual property and competition laws are important to support innovation and guarantee competitive operation. On the one hand, intellectual property rights complement the competition policies by safeguarding the inventor's rights in the market from exploitation by other competitors; on the other hand, competition policies prevent any abuse of rights at the hands of the intellectual property owners.[13] Competition law and Intellectual property rights in a way balance each other in the sense that while intellectual property laws protect the innovation and creativity of inventors and creators thereby granting them some form of monopoly, competition law regulates the potential abuse of the monopoly by an intellectual property rights holder.

Although there is a common area where both intellectual property and competition law intersect with each other, their objectives sometimes conflict with each other.[14] The relationship between intellectual property and competition law has some significant focus. This is because the concept of intellectual property generally appears to conflict with competition law principles. The European Court of Justice in *NDC Health v IMS Health*[15] stated that 'competition law and intellectual property have never been easy bedfellows.'[16] While competition law seeks to achieve competition in the marketplace by moving away from monopolies,

[11] Maggiolino M and Zoboli L, '121The Intersection Between Intellectual Property and Antitrust Law' in Irene Calboli and Maria Lillà Montagnani (eds), *Handbook of Intellectual Property Research: Lenses, Methods, and Perspectives* (Oxford University Press 2021) <https://doi.org/10.1093/oso/9780198826743.003.0009> accessed 30 August 2024

[12] Commission Notice - Guidelines on the application of Article 81 EC to technology transfer agreements, (2004/C 101/02)

[13] Singh A, 'Patent and Competition Policies: What Is the Degree of Compatibility' <https://www.globalpatentfiling.com/blog/patents-and-competition-policies-what-degree-compatibility?utm_source=mondaq&utm_medium=syndication&utm_term=Intellectual-Property&utm_content=articleoriginal&utm_campaign=article> accessed 7 February 2024

[14] Kaur Supreet, 'Interface between Intellectual Property and Competition Law: Essential Facilities Doctrine' (West Bengal National University of Juridical Sciences 2011) <https://ssrn.com/abstract=1802450 o> accessed 14 February 2024

[15] NDC Health v. IMS Health [2004] All E.R. (E.C.) 813

[16] Eagles I, 'Copyright and Competition Collide. The Cambridge Law Journal, 64(3), 564–566. Http://Www.Jstor.Org/Stable/4500832' [2005] Cambridge University Press

intellectual property rights generally confer some monopoly rights to creators, which could lead to substantial market power, a situation that competition law generally seeks to avoid.

As innovation and trading take off in the Ghanaian market and, by extension the wider African market, it is expedient that the state of the law on competition and intellectual property are clearly set out to guide business activities and investments. Therefore, this research starts by reviewing the laws on competition and intellectual property in Ghana and how they intersect. The different types of intellectual property rights and their regulating legal regimes are examined in the light of competition law. References are specifically made to copyright and related rights, which, through the copyright law, protect literary, artistic, musical, and choreographic, among other works. For industrial property rights, a discussion of the protection for inventions through patent law, and distinctive marks through trademarks law, among others, are undertaken. As regards both intellectual property rights and competition law, and particularly for competition policy, a review of how sub-regional and regional policies and regulations relate to the national legal framework is undertaken.

The paper further discusses the interaction of IP and competition law in selected African countries, such as South Africa, Tanzania, Kenya, and Nigeria. The paper suggests that Ghana could learn from these countries by balancing international standards with local market dynamics, protecting communal knowledge, and building regulatory capacity for enforcement in the emerging digital market. This paper employs a qualitative content analysis and comparative study.

REGIONAL AND SUB-REGIONAL COMPETITION REGIMES

As earlier indicated, competition encourages innovation and the efficient use of available resources in the production of quality goods and services at favourable prices.[17] It creates a fair opportunity for the growth and development of new enterprises in the markets.

[17] Cornelius Dube, "Intellectual Property Rights and Competition Policy" (CUTS International, 2008)
<https://www.cuts-international.org/pdf/VP-IPRs-CompPolicy.pdf >accessed 7th February 2024

Ghana is a state party to the Economic Community of West African States (ECOWAS). At the sub-regional level the process of establishing a common market in West Africa heavily depends on competition law and, consequently, ECOWAS has made significant provision for competition in collaboration with the West African Monetary and Economic Union (UEMOA). [18] The ECOWAS Regional Competition Policy Framework consists of two supplementary regulations: the Supplementary Community Competition Rules and the Modalities of their application within ECOWAS, and the Establishment, Functions, and Operation of the Regional Competition Authority (RCA) for ECOWAS.

Article 3 of the ECOWAS Supplementary Act on Rules and Modalities provides that the purpose of the Supplementary Act is to promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at the regional level and prohibit any anti-competitive business conduct that prevents, restricts or distorts competition at the regional level.[19] Article 1 of the RCA Supplementary Act[20] establishes a regional body known as the ECOWAS Competition Authority, which implements the ECOWAS Community Competition Rules.

The ECOWAS Competition Regulations serve as a building block for the African Continental Free Trade Area (AfCFTA) Competition Protocol, which requires all state parties to have competition laws.[21] This is well reflected in Article 12(3) of the AfCFTA Protocol on Competition, which provides that State parties without competition law and enforcement bodies shall enact competition laws and establish competition enforcement bodies upon entry into force of this Protocol or their accession to the Fact Agreement.[22] Out of 54 signatories, Ghana is one of the very first countries to have signed and ratified the AfCFTA, hence the need to enforce the provisions and Protocols of the AfCFTA.

[18] Union Economique et Monétaire Ouest Africaine, UEMOA, in French
[19] Supplementary ACT A/SA.1/06/08 Adopting Community Competition Rules And The Modalities Of Their Application Within ECOWAS
[20] Supplementary ACT A/SA.2/12/08 On The Establishment, Functions And Operation Of The Regional Competition Authority For ECOWAS
[21] Ebokpo R, 'Nigeria, Ecowas And The Road To The AfCFTA' (20 February 2020)
[22] Article 12(3) of the Protocol to the Agreement establishing the African Continental Free Trade Area on Competition Policy.

At the continental level, the African Continental Free Trade Area (AfCFTA) aims to create a single market for goods and services and boost intra-African trade. It is no surprise that the objective of the AfCFTA Competition Protocol is to provide for an integrated and unified African continental competition and to enhance competition with the AfCFTA for improved market efficiency, inclusive growth, and the structural transformation of the African economies.[23] The protocol further states that the State Parties shall endeavour to harmonize their competition laws to ensure consistency with the Protocol.[24]

Competition laws and regulations at the sub-regional and continental levels promote fair business practices through healthy rivalry to stimulate innovation for the benefit of consumers. Agreements and practices that restrict fair business practices are prohibited under competition regimes. Restrictive trade agreements are agreements between undertakings or concerted practice of undertakings whose object or effect is to prevent, lessen, or distort competition.[25] Examples of restrictive agreements include exclusivity (exclusive dealing and refusal to deal), formation of cartels (vertical or horizontal along supply chains), price fixing (resale price maintenance or excessive pricing), market sharing, tying and bundling (of copyrighted works), rebate and loyalty systems (especially for dominant distributors), and bid rigging and distorting public tenders.

COMPETITION LAW IN GHANA

The General Legal Framework

Currently, there is no comprehensive competition legislation or regime in Ghana. A draft Competition Bill titled "Competition Act, 2008" had been laid before Parliament but has not yet been passed into law. The principal objective of the Competition Bill is to maintain and encourage competition in markets, to promote and ensure fair and accessible competition, and to protect the welfare and interest of consumers. Under the Competition Bill, provision is made for the establishment of the Competition Commission of Ghana. The Commission's mandate would be to monitor trade activities to safeguard fair trade standards and prevent trade

[23] ibid Article 6
[24] ibid Article 12(5)
[25] Whish R and Bailey D, 'Competition Law', Oxford University Press (2012)

restrictions as per the preamble to the Bill. The Bill also proposes the establishment of a Competition Tribunal to resolve issues related to the decisions of the Competition Commission.

In the absence of a properly so-called competition regime, what comes close to an attempt at addressing the concern relating to anti-competitive practices in the marketplace is the passage of the Protection Against Unfair Competition Act, 2000 (Act 589). This law was passed in apparent response to Ghana's obligation under the Paris Convention for the Protection of Industrial Property of 1883 as revised (the Paris Convention) which requires member States to provide effective protection against unfair competition.[26] As can be gleaned from the provisions of Act 589, the scope of the protection afforded against anti-competitive practices is limited, as it only relates to unfair business practices such as causing confusion with respect to another's enterprise, damaging another's goodwill or reputation, misleading the public, and abuse or breaches relating to trade secrets. Act 589 is not intended to and does not address the core issues of anti-competitive practices that constitute or lead to an abuse of a dominant position in the market.

There are, however, pieces of legislation in specific sectors that seek to regulate competition in the given sector of the economy, most of which border on merger controls.

Sector Specific Competition Laws

In the banking sector, the Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930) provides that the conclusion of certain transactions, mergers, and acquisition arrangements relating to a bank, a specialized deposit-taking institution, or a finance holding company requires the approval of the Bank of Ghana (BOG).[27] In considering the application for approval, the BOG is enjoined to consider, among others, the effect of the proposed transaction on competition.[28]

Pursuant to the Securities Industry Act, 2016 (Act 929), takeovers, mergers and acquisitions in the securities industry are to be reviewed, approved and regulated

[26] Article 10 of the Paris Convention
[27] Section 52 of the Act 930
[28] Section 54 of the Act 930

by the Securities and Exchanges Commission (SEC).[29] The SEC Regulations[30] also mandate the SEC to review the offer documents, but there is no clear requirement for the said review to address the potential for such arrangement to lead to anti-competitive practices. In the mining sector, Section 47 of the Minerals and Mining Act, 2006 (Act 703) requires prior approval of the Sector Minister for any merger of mineral rights. The responsibility for the review of merger applications also rests with the Director of Minerals Commission. Even though provision is made for the prior approval of a merger, neither the principal legislation nor the Regulations[31] impose an obligation to assess the impact of such applications for merger on competition. This is unlike the comparable legislative provision in the banking sector.

The telecommunication sector appears to be the most regulated sector as far as competition is concerned, and this is made possible through the Electronic Communications Act, 2008 (Act 775). Among others, engaging in anti-competitive pricing and other related practices in order to lessen competition is prohibited.[32]The energy sector also has a fair share of anti-competitive provisions in the National Petroleum Authority Act, 2005 (Act 691). The formation of cartels, and the gaining, holding or securing of a monopoly position by a person within that industry is not only prohibited but makes the mere holding of a monopoly illegal per se, and there are criminal sanctions for certain culpability.

Challenges Associated with the Status Quo

Implementation of a comprehensive competition law framework in Ghana may face several challenges, including the complexity of the legal framework, the need for capacity building for regulatory bodies, and the impact of globalisation on competition.[33] This is largely due to the absence of competition legislation or a

[29] Section 3(h) of Act 929
[30] SEC Regulations, 2003 (L.I. 1728)
[31] The Minerals and Mining (General) Regulations, 2012 (L. I. 2173) and the Minerals And Mining (Licensing) Regulations, 2012 (L.I. 2176)
[32] Section 6(1) of Act 775
[33] Kunko IK, 'Unfair Competition Law in Ghana: Unravelling the Scope, Evolving Jurisprudence, Challenges and Future Directions' (2024) 19 Journal of Intellectual Property Law & Practice 853; Aryeetey E, 'Chapter 15: The Institutional and Policy Framework for Regulation and Competition

centralized national policy direction. The first step is to put in place the comprehensive legal framework to enable such a system to be tested when implementation is rolled out. To overcome some of these challenges, it has been suggested that strategic approaches such as harmonization of competition legal frameworks, capacity building, and international cooperation can be adopted.[34] However, the successful implementation of competition law also depends on the broader economic and political context in Ghana, political will, and alignment of competition objectives with national economic goals.[35] Fostering a competitive local business environment through public procurement policies can indirectly support the effectiveness of competition law.[36]

INTELLECTUAL PROPERTY AND COMPETITION LAW

Although Ghana has yet to have a comprehensive competition law, it has intellectual property laws, which appear to have principles conflicting with the general competition law principles. This is because IP laws grant some level of monopoly. Some attempts are, however, made in the intellectual property laws to address anti-competitive practices, and this paper analyses the extent and adequacy of these attempts.

Intellectual property rights are broadly classified into two categories: copyright and related rights on one hand, and industrial property rights on the other hand. Copyright and related rights, through the Copyright Act, protect literary, artistic,

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in Ghana', *Leading Issues in Competition, Regulation and Development* (Edward Elgar Publishing 2004) <https://www.elgaronline.com/view/9781843764823.00025.xml> accessed 18 January 2025

[34] Waked DI, 'Antitrust Enforcement in Developing Countries: Reasons for Enforcement & Non-Enforcement Using Resource-Based Evidence' [2010] SSRN Electronic Journal <http://www.ssrn.com/abstract=1638874> accessed 18 January 2025

[35] Koomson E, 'Developing without a Competition Legislation: An Analysis of Competition Law in Ghana and Its Impact on Competition and Development' [2020] SSRN Electronic Journal <https://www.ssrn.com/abstract=3903953> accessed 18 January 2025; Fox EM and Bakhoum M, *Making Markets Work for Africa: Markets, Development, and Competition Law in Sub-Saharan Africa* (Oxford University Press 2019) <https://books.google.com.gh/books?id=-wJ6DwAAQBAJ>18 January 2025

[36] Khemani RS, *Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries* (World Bank 2007); Dutz M and Khemani RS, 'Competition Law & Policy'

musical, and choreographic works.[37] Related rights under Act 690, also referred to in the literature as neighbouring rights, are mainly the rights of the performer and those of the broadcasting organizations. The Copyright Office, headed by the Copyright Administrator and which falls under the Ministry of Justice and Attorney General, has the mandate to administer copyright and related rights in Ghana. It is noteworthy to add that even though there is a registration system for copyright works, registration of works is not mandatory in Ghana, neither is registration of works a prerequisite for the protection of such works. There is automatic protection of copyright work once it is created.[38]

Industrial property rights, on the other hand, are those rights to other intellectual creations outside of copyright. The key ones are inventions, which are protected through patent law, distinctive marks which are protected by the trademark's legal regime, industrial designs, and designations of origin, and plant varieties, among others. The Ghana Industrial Property Office (GHIPO),[39] also under the Ministry of Justice and Attorney General is the office mandated to administer industrial property rights in Ghana.

Roscoe Pound[40] observed that '*in a civilized society man must be able to assume that they may control what they have discovered and appropriated to their own use, what they have created by their own labour, and what they have acquired under the existing social and economic order'*. This can be considered as the whole idea behind the existence of the regime for the protection and enforcement of intellectual property rights. The objective of intellectual property rights is generally to protect the creativity and innovation of authors and creators of intellectual assets from having their work copied or dealt with without the consent of such creators. In protecting such creations, however, care must be taken to respect the concerns of competition law and policy.

[37] Section 1(1) of the Copyright Act, 2005 (Act 690)
[38] This regime of automatic protection is pursuant to the provision in Article 2(2) of the Berne Convention for the Protection of Literary and Artistic Works which leaves the requirement or otherwise of a registration system as a means of protection to the discretion of member countries of the Berne Union
[39] This office was previously the Industrial Property Office/Section of the Registrar General's Department,
[40] Pound R, Outline of Jurisprudence, in Stone Julius (1870)-1964

What follows is a discussion of how specific intellectual property rights interact with competition policies and their implications for the market and free trade.

Copyright and Competition Law

Copyright and competition law are two distinctive yet intersecting legal domains that play a pivotal role in regulating market dynamics and protecting intellectual property rights.[41] In the current economic environment, the intersection of competition law and copyright law is critical. Each plays a crucial role in their respective fields: while competition law encourages fair competition and prevents market dominance, promoting an open and dynamic marketplace, copyright law on the other hand grants exclusivity for the original works of creators, encouraging creativity and innovation.

In Ghana, the Copyright Act, 2005 (Act 690) regulates copyright in the country. Section 1 of the Copyright Act lists certain works that are accorded copyright protection, and these include literary work, artistic work, musical work, sound recording, audio-visual work, choreographic work, derivative work, and computer software or programmes. A person who has an interest in an artistic work, literary work, music, sound recording, audiovisual work, choreographic work, computer software, a computer programme, or a derivative work, may apply to the Copyright Office for the registration of the person's interest in the work.[42]

The case of *Pearson Education Limited v Morgan Adzei*[43] is one of the notable cases that discuss the extent of application and protection under the Copyright Act. In that case, the respondent, who was the plaintiff in the trial court, was the author of a novel entitled: "Woes of the African Mother". The novel was selected by the West African Examination Council as one of the prescribed texts for prose in the English Language paper for the academic years 2004 to 2006 for the Basic Education Certificate Examination ("BECE"). A recommendation was therefore made that 450,000 copies of the respondent's novel at a unit cost of 20,000 cedis

[41] Bytescare, 'Copyright and Competition Law' (24 August 2023) <https://medium.com/@bytescare/copyright-and-competition-law-4a8d7bb8029> accessed 7 February 2024
[42] Copyright Regulation, 2010 L.I 1962, Regulation 1
[43] [2011] 2 SCGLR 864

be ordered. The respondent's grievance was that the appellant had published a work entitled "Gateway to English for Junior Secondary Schools Pupil's Book 3" which included, as Appendix 6, a summary of the respondent's novel. The respondent averred that by including a summary of his work as Appendix 6 in its publication, the appellant had in effect rendered the recommendation by the GES to purchase 450,000 copies of his novel nugatory and therefore caused him great loss and damage. The court had to resolve whether there was an infringement by the publishers. The Supreme Court of Ghana, interpreting the scope and extent of Section 2 of the Copyright Act, held that what was replicated in the summary was only the general idea of the novel, and was excluded from copyright protection. Thus, the court underscored the principle that copyright protection does not extend to ideas, concepts, procedures, methods or other things of similar nature.

The mere ownership of intellectual property rights cannot confer a dominant position. The exclusive right of reproduction is part of the author's right, so a refusal to grant a license, even if it is the act of an undertaking holding a dominant position, cannot in itself constitute an abuse of a dominant position as was held in the case of *RTE and ITP v Commission***,** commonly known as the *Magill case*.[44] A dominant company may abuse copyright by tying, refusing to license, foreclosing competitors, and using excessive royalties, restricting others from accessing or using their copyrighted work among other tactics, to gain some form of economic power in the market. Copyright holders may try to use their exclusive rights to limit competition or prevent others from using their copyrighted works in certain ways.[45] This can go a long way to hinder innovation and limit consumer choices. The Supreme Court case of *Pearson Education Limited v Morgan Adzei*[46] which reiterated that copyright protects expression of ideas and not ideas per se, offers a fair balance between copyright owner and other users of such protected works, enabling innovation and creativity without undue restriction.

Exercising an exclusive right by the proprietor may, in exceptional circumstances, amount to abusive conduct if the intention is to prevent the innovation of new products for consumers. To throw more light on this is the *Microsoft* case, where

[44] 7RTE and ITP v Cameroon (Magill) joined cases C-241/91 P and C242/91P[1995] ECR 1-743.
[45] Lexmark Int'l, Inc. v. Static Control Components, Inc., 387 F.3d 522, 528- 29 (6th Cir. 2004).
[46] Pearson (n42)

it was discovered that the copyright holders of the companies were abusing their market position through a variety of means. The European Commission concluded in the Microsoft case [47] that the business was dominant and held computer programme copyright. The investigation began in response to a complaint made by a rival of Microsoft, against whom Microsoft had declined to give information on interoperability that would have allowed rivals to create rival workgroup server software that was Windows platform compatible. After the investigation, the European Commission (EC) fined Microsoft €497 million for abusing its dominant position in the market for multimedia players, work group server services, and PC operating systems.

Among the abuses included, firstly, refusal to supply its competitors with interoperability information for operating PC Windows with other systems and to use that information for the purpose of developing/distributing products competing with Microsoft's products. Secondly, the court found the tied sale of Windows Media Player software together with the Windows client PC operating system abusive, hence leaving no choice for consumers and foreclosing the multimedia player market to smaller competitors. The court ruled that the Copyright Act does not cover Microsoft's defence of the 'right of integrity'. The court completely dismissed the copyright argument and ruled that one must look at the actual intent of Microsoft's action. The court found that, in this case, removing Microsoft's Internet Explorer from the home screen and promoting another Internet browser (for example, the Netscape Navigator) in the boot screen would not compromise Microsoft's creative expression. The court stated, *"a copyright holder is not entitled to employ the perquisites in ways that directly threaten competition"*.

The Ghanaian case of *Ransome Kuti v Phonogram Ltd*[48] examines how an original copyright holder may try to restrict competition even after granting the exclusive right to another party. The plaintiff created and composed a musical work entitled ''Everything Scatter'' in Nigeria and by an agreement made between the plaintiff and Phonogram Ltd. (Nigeria) the plaintiff assigned to Phonogram Ltd. (Nigeria) and their successors-in-title and assigns the sole and exclusive right to produce and reproduce the musical works on records and tapes as a single album as well as

[47] Microsoft Corp. v. Commission (2007; T-201/04)
[48] Ransome-Kuti v. Phonogram Ltd. [1976] 1 GLR 220-223

recordings on cassette tapes and cartridges all over the continent of Africa for a period of three years. Phonogram Ltd. (Nigeria) in turn licensed its sister company, the defendants, to reproduce the said musical work in Ghana for them. The plaintiff alleged an infringement of the copyright in his musical work and sued, praying for an order to restrain the defendant from further publishing and selling the musical works.

The court held that, since the copyright in the musical work was vested not in the plaintiff but in the Nigerian company exclusively for the whole of the African continent for a period of three years, the said company had every right to license the defendant company under Section 10 of the then Act 85[49] to reproduce the tapes in this country which were part of the continent of Africa. The defendants had, therefore, not infringed the plaintiff's copyright, and the plaintiff had no cause of action against them. The court, thus, did not allow the use of copyright to restrict competition and, worse of all, in a situation where a licence had earlier been granted.

In Ghana, the Copyright Act of 2005 regulates copyright in various fields, including literary, artistic, musical, and computer software. Although a dominant company can abuse copyright by tying, refusing to license, foreclosing competitors, using excessive royalties, and restricting access to copyrighted work, the *Pearson Education Limited v Morgan Adzei* case provides a fair balance between copyright owner and users, enabling innovation without undue restriction. According to the Supreme Court of Ghana, copyright protection does not extend to ideas, concepts, procedures, or methods of similar nature. A discussion of the intersection between selected industrial property rights and competition law now follows.

Patents and Competition Law

The Patents Act, 2003 (Act 657) and the Patent Regulations, 1996 (L.I. 1616) constitute the legislative framework for the protection and enforcement of patents in Ghana. The Ghana Industrial Property Office of the Registrar General's Department is the issuing office of a patent in Ghana. The Act defines a patent as

[49] The Copyright Act in force at the material time, which was later repealed and replaced with the Copyright Act, 2005 (Act 690)

the title granted to protect an invention, and an invention is defined as an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology.[50] An invention qualifies for a patent if it is new, involves an inventive step and is industrially applicable.[51] The patent holder is granted an exclusive right to control the use of an invention within the country for a period of twenty years from the filing date or where applicable the priority date.[52] To the extent that the patent regime grants some level of monopoly to the right holder, patent and competition law seem to conflict with each other.

The statutory provision on the duration of a patent means that inventors are granted a temporary monopoly on their inventions, allowing them exclusive rights for a specific duration of twenty years. The concern arises when the exclusivity may be seen or involved in an anti-competitive practice. It is instructive to note that Section 11 of the Patents Act provides that the exploitation of the patented invention in the country by a person other than the owner of the patent shall require the owner's consent. Hence, one cannot exploit or use a patent owner's patent if the owner has not given consent by way of a licence or otherwise. Granting such a licence is at the discretion of the patentee or the owner of the patent as the case may be.

In the Ghanaian case *Rhone-Poulence SA v Ghana National Trading Corporation,*[53] the plaintiffs sought an interim injunction order against the defendant to prevent them from violating the patent rights of the plaintiffs in Ghana, specifically related to the drug metronidazole. The two plaintiffs were limited liability companies, with the first plaintiff being the owner of United Kingdom Patent No. 836854, covering the invention "New imidazole derivations and processes for their preparation." The patent was later registered in Ghana as Patent No. 522. The second plaintiff was a manufacturer that dealt mostly with pharmaceutical and medical preparations and was the sole and exclusive licensee of the first plaintiff in respect of the United Kingdom patent and all other patents sealed in other countries, including Ghana Patent No. 522. The drug in question,

[50] Section 1(1) and (2) of Act 657
[51] Section 3(1) of Act 657
[52] Section 12(1) of Act 657
[53] Rhone-Poulence SA v. Ghana National Trading Corporation (1972) 2 GLR 109

metronidazole, was manufactured and sold by the second plaintiff under the trade name Flagyl, and the plaintiffs claimed that the defendant was infringing on their patent rights related to this drug.

The court held that the defendant, in carrying out its objects, is required to respect the patent rights of others and to conform to the laws of the land, as well as to the generally accepted trade practices as required of any trading firm or organization. The court further held that the second plaintiff was the exclusive licensee, wholly owned subsidiary of the first plaintiff in Ghana, and therefore had every right to take proceedings in respect of infringements committed after the grant of its licence and the patentee can also join the suit as plaintiff.

Aside from pursuing civil remedies for infringement, the Act further provides criminal sanctions for certain scales of infringement. Section 37 of Act 657 provides that a person who knowingly performs any acts referred to in section 11(2) in the country without the consent of the owner commits an offence and is liable to a fine not exceeding two thousand penalty units or to imprisonment for a term not exceeding two years.

To avoid exclusivity and abuse of the dominant position of a patent holder under competition law, the patent holder must grant licenses or permits for the use of the patent under fair, reasonable and non-discriminatory (FRAND) terms. Refusal to license and refusal to supply are two key points of contention when negotiating the complex relationship between intellectual property and competition law, especially concerning patents. This raises the possibility of abuse of the dominant position. In the *Parke, Davis v Probel Case*,[54] it was decided that to establish an abuse of dominance with intellectual property, the following three must exist: a dominant position, abuse of dominant position, and the possibility of distorting trade between member states. Patent ownership does not automatically present the three conditions unless the use of the patent degenerates into abuse.

To avoid abuse of monopoly by a patent holder under Ghana law, a provision is made for the issuance of a non-voluntary licence by the court upon request if the court is satisfied that the patented invention is not exploited or is insufficiently exploited. This request can be made after the expiration of either a four-year period

[54] Parke, Davis, v Probel Case C-24/67[1968] ECR 55

from the date of filing the patent application or a three-year period from the date of patent grant, whichever period expires last.[55] The grant of a non-voluntary licence, however, is not automatic, as the patent owner provides reasons relating to the circumstances that exist, which justify the non-exploitation or insufficient exploitation of the patented invention in the country.[56] The provision for the grant of a non-voluntary licence, otherwise referred to as a compulsory licence, is an attempt by the patent legal regime to reduce the possibility of an abuse of a dominant position by a patent holder. To the extent that reason can be given for the refusal of an application for the grant of a non-voluntary licence, we hold the position that this is an insufficient mode of curtailing a possible abuse of monopoly.

Pursuant to the Patents Act of 2003 and the Patent Regulations 1996, which are the legislative framework for protecting and enforcing patents in Ghana, new, inventive, and industrially applicable inventions qualify for the grant of a patent. The patent holder has exclusive control over the invention for twenty years. The court in Rhone-Poulence SA v Ghana National Trading Corporation emphasized the need to respect the patent rights of others. To avoid exclusivity and abuse of the dominant position of a patent holder under competition law, the patent holder must grant licenses or permits for the use of the patent under fair, reasonable, and non-discriminatory (FRAND) terms.

Trademarks and Competition Law

The most common intellectual property rights concern for champions of competition law and policy relates to trademarks. It is not unusual for trademark owners to seek to impose contractual restrictions that prevent others from exploiting their products. As would be demonstrated soon, a trademark is one of the intellectual property rights which can be potentially held in perpetuity. As a result, the proprietor of a trademark, if not properly controlled, could wield a dominant position in the marketplace to the extent that it could lead to abuse.

The Trademarks Act, 2004 (Act 664) as amended by the Trademarks (Amendment) Act, 2014 (Act 876) hereinafter referred to as the Act or the

[55] Section 14(1) of Act 657
[56] Section 14(2)

Trademarks Act unless otherwise specifically referenced, regulates trademarks. Section 1 of the Trademarks Act defines a trademark as any sign or combination of signs capable of distinguishing the goods or services of one undertaking from the goods or services of other undertakings. A trademark may consist of words, personal names, designs, letters, colours, numerals, shapes, holograms, sounds or a combination of these elements.

The Protection Against Unfair Competition Act, 2000 (Act 589) also provides an all-inclusive and embracing definition for a trademark, according to which a trademark includes marks relating to goods, marks relating to services and marks relating to both goods and services.[57] This broad definition reflects the inclusive nature of trademark protection, covering tangible products, services, and combinations of both. In *Robert Ashie Kotei Ventures v Sadat Car Accessories Enterprise and the Registrar of Trademarks*,[58] the plaintiff's case was that it was the proprietor of the registered trademark "CARRYBOY". Prior to the registration of the mark, it had been the authorized sole dealer of fibreglass canopies and had established goodwill of the goods in Ghana. It was averred that the defendant had infringed the trademark by importing and selling goods identical to those for which the trademark was registered. Mr. Robert Ashie Kotei, the managing director of the Plaintiff Company testified for the plaintiff. His evidence was that the plaintiff had been importing various "CARRYBOY" products since 1998 and was given exclusive distributorship in January 2000 by the manufacturer, TRKB Ltd.

The Defendants contended that the plaintiff did not have title to the said trademark and that at the time the plaintiff purportedly registered the trademark, it had already been validly registered by the manufacturers of the said product. The onus was on the defendant to prove its assertions and it failed to do so. The plaintiff on the other hand proved that the defendant was engaged in the importation of "CARRYBOY" fibreglass canopies from unauthorized sources thus infringing its rights. The court entered judgment for the plaintiff. The ownership of a trademark confers upon the property holder the right to use a particular mark or symbol and the right to exclude others from using the same or similar mark or symbol. This may be contrary to competition law without more, to the extent that competition law frowns upon

[57] Protection Against Unfair Competition Act, 2000 (Act 589), section 10
[58] Unreported High Court Judgment in Suit No. IPR/8/07

monopolies. But the right holder has spent time and other resources in creating the trademark and hence, is entitled to the accompanying rights.

As intimated earlier, a trademark is by far the only intellectual property right, which can potentially be held in perpetuity. This is because the Act does not only provide the duration of a trademark to be ten years from the filing date of the application for the registration, but it goes on to provide that the registration of a trademark may be renewed for a consecutive period of ten years upon the payment of the prescribed renewal fees.[59] The effect of these provisions is that so long as the trademark proprietor or the successors in title continue to renew the registration, the mark and rights attached thereto can be held ad infinitum.

The proprietor of a trademark is granted exclusive right to the use of the registered mark. Thus, a person other than a registered owner of a trade mark shall not use the mark in relation to any goods or services for which the trade mark was registered without the agreement of the owner.[60] This Act confers upon the registered owner to take legal recourse against individuals involved in unauthorized use of the registered mark or activities that could potentially lead to infringement. Act 664 provides that the registered owner may institute court action against any person who infringes a registered trademark by; using a registered mark without permission or performing acts, which make it likely that infringement may occur.[61] This section serves as a key provision safeguarding the exclusive rights conferred upon trademark registration, offering a legal foundation for protection against infringement.

The Trademarks Act, 2004 and the Protection Against Unfair Competition Act, 2000 regulate trademarks, covering goods and services. The Act grants exclusive rights to use the registered mark and allows the owner to take legal recourse against unauthorized use or activities that could lead to infringement. Trademarks are crucial for competition law and policy as they can be held in perpetuity because of the ability to renew every ten years. This may lead to abuse if not controlled.

[59] Section 11 of Act 664
[60] Section 9(1) of Act 664
[61] Section 9(2) of Act 664

Industrial Designs and Competition Law

Design rights protect the aesthetic appearance of a product. In Ghana, design rights are protected by the Industrial Designs Act, 2003 (Act 660). The Act defines an industrial design as a composition of lines or colours, any three-dimensional form or any material, whether or not associated with lines or colours. A textile design is also considered an industrial design where the composition, form or material gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.[62]

The right to register an industrial design lies with the creator of the design. Section 3 of Act 660 states that where a person creates an industrial design, the right to the registration of that industrial design belongs to the creator. This provision gives the sole right of registration to the creator, and the registration of the design shall be for a period of five years from the filing date of the application for registration.[63]

Section 9 of Act 660 also provides that the exploitation of a registered industrial design by persons other than the registered owner shall require the consent of the owner. Therefore, persons cannot use or exploit one's design without obtaining consent from the owner. The section makes it clear that unauthorized use of a registered industrial design is not permissible under the law. It establishes that the owner of a registered industrial design has the exclusive right to control its exploitation, and others must seek the owner's consent before using or exploiting the design in any way. Section 14 of Act 660 establishes the procedures and requirements for submitting license contracts related to registered industrial designs or applications to the Registrar. While maintaining confidentiality, it emphasizes the importance of recording these contracts, with a subsequent publication of references to provide transparency and regulatory oversight within the realm of industrial design licensing.

On the refusal to supply as a concern for competition policy, the European Court of Justice (ECJ) case of *Volvo v Veng*[64] is instructive. In this case, Volvo refused to license its design to spare parts manufacturers. The ECJ held that "the right of

[62]Act 660, section 1
[63] ibid, section 10(1)
[64]Volvo v Veng [1988] C-223/87 ECR 6211, [1989] 4 CMLR 122

the proprietor of a protected design to prevent third parties from manufacturing and selling or importing without its consent, products incorporating the design, constitutes the subject matter of his exclusive right." It follows that a proprietor cannot be obliged to grant third parties licenses over his works even in return for a reasonable royalty. Refusal to deal with another under these circumstances cannot constitute an abuse of a dominant position. Refusal is not prohibited unless it is an exercise exceeding the subject matter. The court held that if the proprietor had refused to supply the spare part that the consumers needed, this would amount to an abuse of dominance.

Like any of the other intellectual property rights, the various transactions and licences that may be granted are susceptible to abuse of that dominant position which has been made possible by virtue of the exclusive rights granted to the right holder. The Industrial Designs Act of 2003 in Ghana safeguards design rights, allowing creators to register unique products or handicrafts. Unauthorized use requires owner consent. Section 14 outlines license contract submission procedures, emphasizing transparency and regulatory oversight. However, exclusive rights can lead to abuse.

EXPLORING CASES IN GHANA WHERE COMPETITION REGIME COULD HAVE MADE A DIFFERENCE

The lack of a comprehensive competition legal and policy regime can potentially lead to unfair competition in the marketplace. The following is a discussion of two cases in which the Ghanaian court could have applied competition laws in resolving them if Ghana had competition laws at the time.

The first case is *Robert Ashie Kotei Ventures v Sadat Car Accessories Enterprise and The Registrar Of Trademark.*[65] In this case, it was seen that the plaintiff had been the authorized sole dealer of fiber glass canopies. This is construed as a monopoly of the trademark under competition law even though the trademark is a lawful right. The plaintiff claimed infringement of his trademark and had the right to restrict others from using the trademark. Although monopolies are not prohibited in Ghana, often the monopolies may result in a dominant position,

[65] Unreported High Court Judgment (n 58)

which would require the watchful eyes of the competition regulators to prevent any abuses. If Ghana had a competition regime, the Competition Commission or the appropriate administrative body could have intervened despite the existence of a trademark. In the absence of a competition regime, the vehicle to investigate and draw conclusions as to the existence or otherwise of an anti-competitive practice is not taken advantage of.

The second case is *Implex Projects Limited v Oware Wiafe and Gabriel Boakye.*[66] The case of the plaintiff was that it was a company registered in the UK, and was the registered proprietor of the trademark(s) BG and/or NEXUS, which was originally owned by Implex (Export Services) Ltd but was subsequently transferred to it. The plaintiff averred that Ghana is its assigned territory and that it dealt in Ghana through Serboat Electricals Ltd and Sardave Electricals Ltd and had succeeded in establishing goodwill and fame for its products. It was averred that the defendants who dealt with electrical accessories had imported into Ghana from an unknown destination and were selling fake electrical goods, namely sockets identical and/or bearing the plaintiff's registered trademark BG and/or NEXUS. The plaintiff alleged that this had caused a drastic fall in its sales thereby occasioning a substantial loss of the plaintiff's earnings. The defendants denied that the plaintiff is the registered proprietor of the trademark or has an exclusive right to import the products into Ghana. The court found that indeed the plaintiff was the registered proprietor of the trademark and entered judgment in favour of the plaintiff.

The existence of a comprehensive competition law in Ghana would have raised a legal issue on market sharing as indicated by the facts as averred by the plaintiff. In addition, an examination of the plaintiff's exclusive right to determine if it amounted to an abuse of a dominant position would have been explored. The absence of a comprehensive competition law and policy denies the courts an opportunity to explore the existence or otherwise of an abuse of a dominant position. Once a finding of fact is made as to the validity of an intellectual property right, infringement is determined without an analysis of possible abuse of the said

[66] Unreported High Court Judgment in Suit No. OCC/31/08

right. The court is a court of law and, understandably, it limits the exercise of its judicial activity within the confines of the law.

In Ghana, two cases, *Robert Ashie Kotei Ventures v Sadat Car Accessories Enterprise* and the *Registrar of Trademarks and Implex Projects Limited v Oware Wiafe and Gabriel Boakye*, demonstrate the potential of a comprehensive regime to address anti-competitive practices. The absence of a comprehensive competition law and policy limits the courts' ability to explore the existence or abuse of a dominant position, limiting their judicial activity within the law.

INTERACTION OF IP AND COMPETITION LAWS IN SELECTED AFRICAN COUNTRIES

In the absence of a comprehensive competition law in Ghana to aid the assessment of the interaction between IP and competition law, this section briefly explores the interface between IP and competition law in selected African Countries. The reconciliation of intellectual property (IP) and competition law in African countries requires a balance between these two legal domains. The African Continental Free Trade Area (AfCFTA) negotiations have highlighted the importance of balancing IP rights with competition policies to promote fair competition and safeguard consumer interests.[67] African countries have engaged in international networks to harmonize competition laws, which helps address cross-border anti-competitive practices and fosters a collaborative approach to enforcement.[68]

IP and Competition in South Africa

The South African Competition Act 89 of 1998 promotes competition to enhance efficiency and facilitate economic development. The South African Competition Commission enforces the Act, which applies to all economic activities, including intellectual property rights (IPRs). The Act has established a robust competition

[67] Gachuiri E, *African Continental Free Trade Area Phase II Negotiations: A Space for a Competition Protocol?* (UN 2020)
[68] Buthe T and Kigwiru VK, 'The Spread of Competition Law and Policy in Africa: A Research Agenda' [2020] African Journal of International Economic Law

regime, facilitating the prosecution of cartels and abuse of dominance, contributing to a more competitive market environment.[69]

South Africa has successfully developed strong competition institutions to implement a robust competition law framework that addresses market barriers and promotes fair competition, particularly in key sectors like telecommunications and finance. [70] However, the interaction of IP and competition laws still faces challenges, particularly in aligning with international standards and addressing local market dynamics,[71] especially through cases such as the Microsoft cases.[72] The pharmaceutical industry in South Africa is the most affected, with GlaxoSmithKline South Africa and Boehringer Ingelheim found to have contravened the Act by abusing their dominance in antiretroviral medicine production. To sustain and build on current successes, South Africa must address the influence of international competition policies and the need for resource enhancement in local institutions.

IP and Competition in Tanzania

Similarly, Tanzania has made progress in reconciling intellectual property (IP) and competition law conflicts, with the Fair Competition Act of 2003(Act 8 of 2003). The Fair Competition Commission (FCC) and Fair Competition Tribunal, as established by the Fair Competition Act, resolve all competition and IP-related issues. The Tanzanian IP legal framework, rooted in Western capitalist principles, often conflicts with communal ownership traditions, particularly concerning indigenous knowledge.[73] However, the Commercial Division of the High Court

[69] Mncube L and Ratshisusu H, 'Competition Policy and Black Empowerment: South Africa's Path to Inclusion' (2022) 11 Journal of Antitrust Enforcement 74
[70] Howell BE and Potgieter PH, 'Effective Competition and Ineffective Mobile Industry Regulation in South Africa' (2022) 46 Telecommunications Policy 102317
[71] Makhaya G, Mkwananzi W and Roberts S, 'How Should Young Institutions Approach Competition Enforcement? Reflections on South Africa's Experience' (2012) 19 South African Journal of International Affairs 43; Wise R, 'Dopamine, Learning and Motivation' (2004) 5 Nature reviews. Neuroscience 483
[72] Hlatshwayo, N., 'The Challenges of IP Protection and Competition Enforcement: An Analysis of the Microsoft Decisions (US and EU) and their Implications for South African IP and Competition Law', 2008(2) *Journal of Information, Law & Technology (JILT)*, <http://go.warwick.ac.uk/jilt/2008_2/hlatshwayo> accessed 18 January 2025
[73] Kihwelo PP, 'Indigenous Knowledge: What Is It? How and Why Do We Protect It?: *The Case of Tanzania*' (2005) 8 The Journal of World Intellectual Property 345

of Tanzania has played a role in interpreting IP matters and aligning with global frameworks like TRIPS, which has aided in the resolution of conflicts between IP and competition laws.[74] The implementation of competition law has significantly increased access to telecommunications, demonstrating the positive impact of a competitive regulatory environment.[75] The FCC's dual role in investigation and adjudication has raised questions about fairness and impartiality in competition disputes including the adequacy of remedies for aggrieved parties.[76] The current IP laws do not adequately protect communal knowledge, highlighting a gap in the legal framework that needs addressing to ensure equitable benefit sharing.[77] A more inclusive IP framework that respects communal ownership and the separation of powers within competition law enforcement bodies are critical areas for improvement in Tanzania.

IP and Competition in Kenya

In Kenya, the Competition Act No. 12 of 2010 has modernized Kenya's competition policy, addressing issues like market dominance and anti-competitive practices.[78] The Communication Authority of Kenya (CAK) has played a crucial role in regulating the telecommunications sector where market dominance persists.[79] Often, resource limitations and overlapping jurisdictions affect the effective regulation of market dominance, particularly in the telecommunications sector and therefore, clearer delineation of roles and mandates is needed to address

[74] Faustin Kihwelo Paul, 'Intellectual Property Rights Jurisprudence in Tanzania: Turning an Eye to the Commercial Division of the High Court' (2006) 9 Blackwell Publishing Ltd 673
[75] Temu G, 'The Role of Competition Law in Promoting Access to Telecommunication Services in Tanzania: Taking Stock of the Developments so Far' in Siti Fazilah Abdul Shukor and others (eds), Advances in Public Policy and Administration (IGI Global 2023) <https://services.igi-global.com/resolvedoi/resolve.aspx?doi=10.4018/979-8-3693-0390-0.ch002> accessed 28 January 2025
[76] Mallya E, 'Powers of the Fair Competition Commission in the Current Inquisitorial Approach of Handling Competition Complaints in Tanzania: A Lesson From South Africa' [2023] SSRN Electronic Journal <https://www.ssrn.com/abstract=4351580> accessed 27 January 2025
[77] Kihwelo (n 72)
[78] Mudida R and Ross T, 'Kenyan Competition Policy After Ten Years of the Competition Act: A Progress Report' (2022) 60 Review of Industrial Organization
[79] Mwakatumbula HJ, Moshi GC and Mitomo H, 'Consumer Protection in the Telecommunication Sector: A Comparative Institutional Analysis of Five African Countries' (2019) 43 Telecommunications Policy 101808

these issues.[80] The Copyright Act of 2001 balances rights holders' interests with users', limiting non-commercial arrangements and patent rights through unfair competition doctrine, which prohibits fraudulent, deceptive or dishonest trade practices related to competitor's trademark, under the Industrial Property Act, Chapter 509. [81] Addressing these challenges requires policy revisions and enhanced cooperation between regulatory bodies to ensure a more cohesive approach to competition and IP law. Although Kenya and Tanzania have integrated competition law to foster innovation in mobile money services,[82] challenges such as diverse development levels, corruption, and digital market dynamics persist.[83]

IP and Competition in Nigeria

The fairly new Nigerian Federal Competition and Consumer Protection Act of 2019 aims to protect consumers and promote fair competition by curbing anti-competitive practices and protecting consumer rights. [84] Nigeria's creative industries, including textiles, fashion, music, and film, are thriving in a competitive market, demonstrating the potential of IP and competition laws to work synergistically.[85] However, integration of IP and competition laws remains fraught with challenges, including outdated IP statutes and enforcement issues.[86] Nigeria's traditional knowledge protection efforts under a sui generis regime highlight the tension between intellectual property (IP) regimes and cultural preservation,

[80] ibid
[81] Jerobon RC, 'The Interface Between Competition Law And Intellectual Property Law In Kenya' (University Of Nairobi 2016) <https://erepository.uonbi.ac.ke/bitstream/handle/11295/99140/Jerobon%20_The%20Interface%20Between%20Competition%20Law%20And%20Intellectual%20Property%20Law%20In%20Kenya.pdf?sequence=1>
[82] Rafe Mazer and Philip Rowan, 'Competition in Mobile Financial Services: Lessons from Kenya and Tanzania' [2016] The African Journal of Information and Communication (AJIC) <https://ajic.wits.ac.za/article/view/13626> accessed 27 January 2025
[83] Tiwari SP, 'Organizational Competitiveness and Digital Governance Challenges' [2022] SSRN Electronic Journal <https://www.ssrn.com/abstract=4068523> accessed 27 January 2025
[84] Enyinnaya Uwadi, 'Prospects and Challenges of Implementing Competition Law in Developing Countries: A Review of the Nigerian Federal Competition and Consumer Protection Act, 2019'
[85] Bankole Sodipo, *Intellectual Property Reform in Nigeria* (1st edn, 2022)
[86] ibid

requiring tailored legal frameworks.[87] Nigeria's legislative gaps and weak institutional capacity also pose significant challenges to effective enforcement.[88] While Nigeria has made strides in aligning IP and competition laws, the journey is ongoing, necessitating reform in IP statutes and improved enforcement mechanisms. Learning from other jurisdictions, such as South Africa and Tanzania, could provide valuable insights into Nigeria's legal evolution.[89]

The Federal Competition and Consumer Protection Act of 2019 in Nigeria presents challenges in implementing competition law in developing countries, including regulatory capacity and judicial efficiency.[90] Alternative perspectives suggest that tailored solutions considering each country's unique socio-economic context may be more effective. Successes in reconciliation included the inclusion of IP and competition policy in the AfCFTA Phase II negotiations and international cooperation. Continuous fostering of regional cooperation and harmonizing laws could enhance the effectiveness of IP and competition law frameworks across Africa.

TECHNOLOGICAL TRENDS AND THE RELATIONSHIP BETWEEN IP AND COMPETITION LAWS

The discussion on the interaction between IP and competition cannot end without examining how the impact of technology is affecting that relationship. Emerging technologies, such as Artificial Intelligence (AI), big data, blockchain, and the Internet of Things (IoT) are significantly altering the relationship between intellectual property (IP) and competition laws.[91] AI ownership concerns include

[87] Ibidapo-Obe O, *Competition Law and Socio-Economic Advancement: Nigeria as a Case Study : Giving a Hungry Man a Silk Tie?* (Middlesex University 2022) <https://books.google.com.gh/books?id=d3y0zwEACAAJ> accessed 28 January 2025
[88] ibid
[89] Uwadi E, 'Prospects and Challenges of Implementing Competition Law in Developing Countries: A Review of the Nigerian Federal Competition and Consumer Protection Act, 2019' [2019] SSRN Electronic Journal <https://www.ssrn.com/abstract=3863955> accessed 28 January 2025
[90] ibid
[91] Weber RH, 'Disruptive Technologies and Competition Law' in Klaus Mathis and Avishalom Tor (eds), *New Developments in Competition Law and Economics*, vol 7 (Springer International Publishing 2019) <https://link.springer.com/10.1007/978-3-030-11611-8_11> accessed 28 January 2025

potential monopolies and stifling innovation due to data amassing. Big data and analytics raise questions about ownership and licensing, while blockchain can facilitate decentralized licensing and ownership models. IoT devices require interoperability and data privacy concerns intersect with IP and competition law. Strategies for addressing these emerging technologies have included modernizing IP frameworks, establishing AI-generated guidelines, developing data ownership and licensing frameworks, and exploring blockchain-based IP, as these technologies transform industries and legal landscapes.[92]

However, the rapid pace of technological advancement often outstrips regulatory capacities, leading to potential conflicts between economic objectives and ethical considerations. Consequently, the traditional legal structures struggle with technological advancements, causing uncertainties, especially with the rise in IP-related competition cases.[93] To effectively protect emerging technologies, guidelines involving strengthening competition enforcement, promoting interoperability, and addressing algorithmic bias are crucial.[94] Implementing the "Essential Facilities Doctrine" can prevent the misuse of IP rights and ensure fair competition.[95] International cooperation on IP and competition policy is also advantageous along with regular monitoring and multi-stakeholder engagement to promote a dynamic regulatory environment. Therefore, amending international agreements like TRIPS can enhance the integration of IP, competition, and human rights laws, warranting access to essential technologies[96] and balancing innovation with responsible practices, fostering consumer trust, and boosting market reputation.[97]

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[92] Ibrahim IA and Zoppolato DG, 'Emerging Technologies and the Law: From "Catch Me If You Can" to "Law by Design"' (2024) 13 Global Journal of Comparative Law 148
[93] ibid
[94] Akpobome O, 'The Impact of Emerging Technologies on Legal Frameworks: A Model for Adaptive Regulation' (2024) 5 International Journal of Research Publication and Reviews 5046
[95] Shashank Jain and Sunita Tripathy, 'Intellectual Property and Competition Laws: Jural Corelatives' (2007) 12 224
[96] Brown A, 'Intellectual Property, Human Rights and Competition: Access to Essential Innovation and Technology' [2012] Intellectual Property, Human Rights and Competition: Access to Essential Innovation and Technology
[97] Kennedy Darvishi, Lee Liu, and Sumner Lim, 'Navigating the Nexus: Legal and Economic Implications of Emerging Technologies' (2022) 16 Institute for Law and Economics Studies 172

CONCLUSION

We have demonstrated in this paper that even though there are pockets of provisions scattered in a few legislations, including intellectual property laws, which appear to deal with anti-competitive practices, they do not come close to dealing with the main concerns of competition regime.

Exclusivity under competition law refers to a situation where a company, often a dominant player in a market, engages in practices that restrict or eliminate competition by granting exclusive rights to certain entities or individuals. Such practices can have significant implications for market dynamics, consumer choice, and overall economic welfare. Competition laws are designed to prevent anticompetitive behavior and maintain a level playing field in the marketplace.

Intellectual property rights (IPR) including copyright, patents, trademarks and industrial designs, can give rise to competition law issues. The majority of the time, IPR holders with significant market power if not outright dominance must exercise extra caution when it comes to the implications of their actions for competition law, as an undertaking enjoying a dominant position is especially obligated to refrain from actions that could stifle competition. Even though there are some attempts to prevent unfair competition within the laws governing the exercise of intellectual property rights, the likelihood of abusing a dominant position with one's IPR is high in the absence of a comprehensive competition law and policy.

Since Ghana does not currently have a working competition law, the specific clashes between intellectual property and competition law may not be capable of being explicitly addressed in the legal framework. However, Ghana can learn from South Africa, Tanzania, Kenya and Nigeria to reconcile the interaction between IP and competition law by balancing compliance with international standards and local market dynamics, protecting communal knowledge, and building regulatory capacity to address enforcement in the emerging digital market.

The enactment of a competition legislation in Ghana will provide a legal framework to address competition-related issues more comprehensively and promote fair competition in the market. Ghana, being one of the very first countries to have signed and ratified the Agreement establishing the African Continental Free Trade Area (AfCFTA), should be at the forefront of concluding a legislative

framework for competition law and policy. This would be a way of showing commitment to the cause of the AfCFTA, whose secretariat is hosted by Ghana.

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Fair Competition Act of 2003 (Act 8 of 2003) of Tanzania

Industrial Designs Act, 2003 (ACT 660)

Minerals and Mining Act, 2006 (Act 703)

National Petroleum Authority Act, 2005 (Act 691)

Patent Act, 2003 (Act 657)

Protection Against Unfair Competition Act, 2000 (ACT 589)

Protocol to the agreement establishing African Continental Free Trade Area on Competition Policy (AfCFTA Protocol)

Securities Industry Act, 2016 (Act 929)

Sherman Anti-Trust Act (1890) of the United States of America

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REDEFINING WORKPLACE SEXUAL HARASSMENT IN GHANA

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ABSTRACT

Sexual harassment became topical in Ghana and Nigeria when BBC Africa Eye released the *Sex for Grades* documentary in the last quarter of 2019. The documentary implicated some lecturers in public universities. Nigeria's Parliament promptly passed an anti-sexual harassment law. However, Ghana's Parliament deliberated on the subject and has yet to pass an anti-sexual harassment law. The current legal regime on sexual harassment in the workplace in Ghana is limited. Accordingly, I advocate for a comprehensive law prohibiting all forms of sexual harassment in the workplace. I use doctrinal analysis to examine the existing laws on sexual harassment in Ghana and recommend redefining them expansively drawing comparative insights from Nigeria and South Africa.

Keywords: Discrimination, Gender, Ghana, Law, Sexual Harassment

INTRODUCTION

Following the 2019 *Sex for Grades* exposé by BBC Africa Eye, which implicated some lecturers in top universities in Ghana and Nigeria,[2] there were calls for comprehensive anti-sexual harassment legislation in both countries. While the Nigerian Senate promptly re-introduced its anti-sexual harassment bill passed in 2020,[3] the Ghanaian Parliament has not been as proactive. In this paper, I argue for comprehensive anti-sexual harassment legislation in Ghana with a focus on the

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[2] Kiki Mordi, '"Sex for grades" Undercover in West African Universities' (*BBC News*, 7 October 2019) <https://www.bbc.com/news/av/world-africa-49907376/sex-for-grades-undercover-in-west-african-universities> accessed 10 December 2019.

[3] Bukalo Adebayo, 'Nigerian senate passes sexual harassment bill' (*CNN*, 8 July 2020) <https://edition.cnn.com/2020/07/08/africa/nigeria-sexual-harassment-bill/index.html> accessed 23 February 2023.

workplace, which most legal frameworks on sexual harassment cover. I use doctrinal analysis of primary and secondary sources to interrogate the current legal regime on sexual harassment and identify gaps to be addressed when developing a comprehensive sexual harassment law, policy, or both. I advocate for a single, all-inclusive sexual harassment enactment as a necessary first step toward eliminating sexual harassment in Ghana by drawing comparative insights from the legal frameworks on sexual harassment in Nigeria and South Africa.

A person is said to be harassed if treated in a humiliating or degrading manner because of their legally protected characteristics. Where the protected characteristic being degraded or humiliated is a person's sex, gender or both, or the harassment is sexual, it may be said to be sexual harassment.[4] The term *sexual harassment* was coined in the 1970s in the United States by Lin Farley[5] and popularised in its connection with discrimination in legal theory by Catharine MacKinnon.[6]

Most countries have only recently interpreted their laws to prohibit sexual harassment or made laws that specifically mention sexual harassment.[7] Until the emergence of anti-sexual harassment laws, most countries condoned sexual harassment.[8] According to Dwasi, in parts of Africa such as Kenya, initial resistance to legislate against sexual harassment or recognise it as a form of

[4] Constantine Ntsanyu Nana, 'Sexual Harassment in the Workplace in South Africa: The Unlimited Vicarious Liability of Employers' (2008) 52(2) Journal of African Law 245.
[5] Enid Nemy, 'Women Begin to Speak Out Against Sexual Harassment at Work' (*New York Times*, 19 August 1975) < https://www.nytimes.com/1975/08/19/archives/women-begin-to-speak-out-against-sexual-harassment-at-work.html> accessed 23 February 2023.
[6] Kyle Swenson, 'Who Coined the Term "Sexual Harassment"' (*New York Times*, 26 November 2017) <https://www.theday.com/op-ed/20171126/who-coined-the-term-sexual-harassment/> accessed 23 February 2023.
[7] Only seven countries had enacted specific legislation against sexual harassment by 1992. Kyle Swenson, 'Who Coined the Term "Sexual Harassment"' (*New York Times*, 26 November 2017) <https://www.theday.com/op-ed/20171126/who-coined-the-term-sexual-harassment/> accessed 23 February 2023.
[7] Deborah Zalesne, 'Sexual Harassment Law in The United States and South Africa: Facilitating the Transition from legal Standards to Social Norms' (2002) 25 Harvard Women's Law Journal 143 (Only seven countries had enacted specific legislation against sexual harassment by 1992). D Smit and V du Plessis, 'Sexual Harassment in the Education Sector' (2011) 14(6) PER 173.
[8] Zalesne (n 6).

discrimination was because there is no word for it in 'the African languages.'[9] Therefore, sexual harassment was considered alien in the African context.[10] This language argument demonstrates how dialect impacts prevailing social norms that condone sexual harassment on the continent. Still, the reality is that sexual harassment is 'a new term for an old phenomenon' that has always existed and pervades modern society.[11]

Today, sexual harassment generally means unwanted or unwelcome conduct of a sexual nature, often in the context of a relationship of unequal power.[12] Unwanted or unwelcome conduct that amounts to sexual harassment includes physical contact that is sexual in nature; verbal forms of sexual harassment, such as innuendos and sexual advances; non-verbal forms of sexual harassment, such as indecent exposure; and quid pro quo harassment, which involves requests or demands for sexual favours by a person in authority over another.[13]

Sexual harassment can occur anywhere - workplace, schools, home, cyberspace and other public or private places and events. In this paper, I focus on the workplace context because most existing legal frameworks and conversations surrounding sexual harassment focus on the workplace. Workplace sexual harassment is also the most prevalent. In Ghana, research has revealed that 74 % of women and 42% of men experience sexual harassment in the workplace.[14] Only

[9] Jane Dwasi, 'Kenya: A Study in International Labour Standards and Their Effect on Working Women in Developing Countries: The Case for Integration of Enforcement Issues in the World Bank's Policies' (1999) 17 Wisconsin International Law Journal 347 at 357.
[10] Ibid.
[11] Ibid.
[12] Sakkie Prinsloo, 'Sexual harassment and Violence in South African Schools' (2006) 26(2) South African Journal of Education 305 citing J V Du Plessis, M A Fouchè and M W Van Wyk, *A Practical Guide to Labour Law* (3rd edn, Durban: Butterworths 1998). Deborah Adetutu Aina-Pelemo, M C Mehanathan and Pradeep Kulshrestha, 'Sexual Harassment at Workplace: Judicial Impact in Nigeria and India' (2018) 4(2) Indian Journal of Law and Human Behavior 208 <http://dx.doi.org/10.21088/ijlhb.2454.7107.4218.8> accessed 25 August 2020.
[13] Cynthia Grant Bowman and Akua Kuenyehia, *Women and Law in Sub-Saharan Africa* (Sedco Publishing Ltd, 2003).
[14] Augustine Kobina Andoh Sexual Harassment in the Workplace: The Ghanaian Experience (2001) Policy Brief No. 9 presented at Centre for Social Policy Studies (CSPS), University of Ghana, Legon < https://www.oocities.org/cspslibrary/sexualharassment.html > accessed 18 January 2025

5% of such cases ever get reported.[15] In a 2021 study on nurses in the Central Region of Ghana showed a 43.6 % prevalence of workplace sexual harassment among nurses.[16]

In international law, the workplace in relation to sexual harassment is broadly defined, yet many national laws provide a narrow definition and interpretation. Article 2 of the International Labour Organization (ILO) Convention No.190 (C190) on Eliminating Violence and Harassment in the World of Work provides:

1. This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, job seekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.
2. This Convention applies to all sectors, whether private or public, both in the formal and informal economy and urban or rural areas.

C190 shows a broad scope of the workplace (formal and informal) and expands the types of workers protected (active workers, former and potential employees, volunteers and interns). However, many sexual harassment laws do not reflect this expansion in the workplace context – Ghana's sexual harassment laws are a typical example. The existing sexual harassment provisions demonstrate a narrow scope of the workplace and workers. Although Ghana has not ratified C190, it is instructive to ensure international compliance with labour laws. In this paper, I examine three enactments that address sexual harassment in the workplace: the Labour Act of 2003, the Domestic Violence Act of 2007, and the Legal Profession Rules of 2020 to show the need to redefine sexual harassment with a broader approach to the workplace and worker contexts. The three selected legislations are among the most popular legislation containing express sexual harassment

[15] Ibid.
[16] Aliu Mohammed, Edward Wilson Ansah and Daniel Apaak, 'Prevalence and Predictors of Workplace Sexual Harassment of Nurses in the Central Region of Ghana: A Cross-sectional Online Survey' (2024) (14) BMJ Open 1.

provisions in Ghana. In addition, I review the relevant constitutional and criminal law provisions from which inferences of actionable sexual harassment claims can be made. This law review is critical to showing how other provisions in Ghanaian law could be applied to conduct that constitutes sexual harassment and the possible criminal dimensions that could be attached to this wrongful act.

The second section of this paper focuses on the current legal regime on sexual harassment in the workplace in Ghana, identifies the gaps and outlines its implications. In the third section, I recommend ways to redefine workplace sexual harassment that are definite and comprehensive, with some comparative inputs from Nigeria and South Africa. The fourth section concludes the analysis.

1. The Legal Regime on Sexual Harassment in Ghana and its Implications

In this section, I give an overview of the current legal regime on sexual harassment in Ghana and its present and future implications. I start with labour law, domestic violence law, and then the legal profession rules. I then discuss the constitutional and criminal laws as they relate to sexual harassment. I conclude with the overall implications of the frameworks examined.

(a) Labour Law

In the 1990s, the pioneering regulatory conduit for sexual harassment in the Ghanaian workplace environment was case law. The *Norvor* case[17] was the first-ever workplace sexual harassment case officially arbitrated in Ghana in 1999.[18]

The brief facts of the case are as follows: Ms. Augustina Salome Tettey, an employee of Fan Airways Ltd, filed a sexual harassment complaint with the Commission on Human Rights and Administrative Justice (CHRAJ), against Prof. Frank Awuku Norvor, owner and managing director of Fan Airways Ltd. Ms. Tettey's claim was that Prof. Norvor dismissed her after she rejected his sexual advances on several occasions including making complimentary remarks about her body and appearance, fondling her, and making forceful attempts to kiss and hug her, hold her hands or hold her from behind. Ms. Tettey also complained of an occasion where Prof. Norvor, in an angry outburst, threatened a reprisal upon

[17] *Commission on Human Rights and Administrative Justice v. Norvor* [2001-2002] 1 GLR 78.
[18] Bowman and Kuenyehia (n 12).

seeing her in another man's car. On his part, Prof. Norvor denied the allegations, stating that Ms. Tettey was dismissed because of her unsatisfactory work performance. CHRAJ conducted investigations into the matter and found that Prof. Norvor's conduct constituted sexual harassment. CHRAJ ordered Norvor, among other things, to pay ¢5 million to Ms. Tettey 'as compensation for injury to her feelings, dignity and self-respect and for the humiliation she suffered because of the sexual harassment and retaliation visited upon her'.[19] However, Prof. Norvor refused to comply with the order, so CHRAJ applied for a High Court order to enforce its decision. Prof. Norvor challenged CHRAJ's application on several grounds, including that CHRAJ lacked jurisdiction to hear the matter since the complaint was a tort or invasion of Ms. Tettey's privacy but did not violate her human rights or discrimination under Article 17 of the 1992 Constitution.

The High Court dismissed Norvor's defence and granted CHRAJ's application to enforce its decision against Norvor. In providing its reasoning, the court referred to several definitions of sexual harassment in foreign textbooks and case law since there was no legal definition locally. Based on the borrowed definitions, the *Norvor* court explained that 'to constitute sexual harassment, a given conduct must be unwelcome and of a sexual nature detrimentally affecting the work environment.' The court further explained that conduct must be sexual in nature and does not mean it has to be overtly sexual so long as it is gender related. This view of the *Norvor* court expanded the meaning of sexual harassment by not confining it only to conduct that is sexual in nature but also those based on sex and/or gender. The court also held that the conduct 'must be shown to be sufficiently severe and persistent to create a hostile environment.' The *Norvor* court referred to psychological sexual harassment, which it also found Ms. Tettey to have suffered. The court listed examples of psychological sexual harassment, including 'relentless proposal of physical intimacy beginning with subtle hints which may lead to overt requests for dates and/or sexual intercourse; sexual favours and propositioning.' Within a year of the *Norvor* case, the Labour Act of Ghana was assented to in October 2003 and entered into force in March 2004.[20]

[19] *Norvor* case at 572.
[20] See the Labour Act (Commencement) Instrument, 2004 (E.I. 3 of 2004).

The first express statutory definition of sexual harassment in Ghana was in the Labour Act of 2003.[21] Section 175 of the Act defines sexual harassment as 'an unwelcome, offensive or importunate sexual advance or request made by an employer or superior officer or a co-worker to a worker, whether the worker is a man or woman.' This definition is gender neutral as it applies equally to men and women. It also covers the two types of sexual harassment: quid pro quo harassment and hostile work environment. Although of the grey areas in the statutory definition, such as non-sexual conduct based on sex or gender and the other forms of sexual harassment that may manifest – physical, non-verbal, psychological – are catered to in the *Norvor* case, more gaps remain, which I unpack in this section.

The Labour Act defines a worker as a 'person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis,' and the workplace as including 'a place where a worker needs to be or to go by reason of the work which is under the direct or indirect control of the worker.'[22] While the definition of the workplace is liberal enough to import remote work or online spaces if that is where a worker needs to be to work, the definition of a worker limits the range of possible claimants of sexual harassment in the workplace. The definition of a worker does not include volunteers, interns, potential employees or other persons who interact with the workplace, who a contract of employment of any kind may not necessarily cover. The Labour Act does not also cover workers in the Armed Forces, Police and Prisons Services, and Security and Agency Services.[23]

Under the Labour Act, sexual harassment is a valid ground for a worker to terminate their employment contract with or without notice to the employer where the employer failed to act on repeated sexual harassment complaints at the

[21] Sexual harassment is also prohibited in the Labour (Domestic Workers) Regulations, 2020 (LI 2408). – a supplementary regulation to the Labour Act regulating domestic workers specifically. A domestic worker is defined in section 175 of the Labour Act as a person who is not a member of the family of a person who employs that person as house help. A domestic worker may terminate their employment on the basis of non-responsive employer action towards sexual harassment complaints under the regulation.

[22] Act 651, s. 175.

[23] This exclusion of these types of workers is provided in section 1 of the Labour Act. These services have their specialised regulations which may or may not provide adequately for sexual harassment.

workplace.[24] Such termination is considered unfair under labour law,[25] and the affected worker is to lodge a complaint of unfair termination with the National Labour Commission (NLC) to investigate. Where the NLC finds that the termination was unfair, it may make any of the following orders: (a) reinstate the worker; (b) re-employ the worker for the same position before termination or other suitable work on the same terms and conditions as before; or (c) pay compensation to the worker.[26]

The Labour Act falls short regarding certain aspects of employer-perpetrator liabilities and victims' remedies for sexual harassment. First, the Act anticipates a sexually harassed worker terminating their employment because of the harassment and then seeking a remedy as a result of that unfair termination, but it does not address situations where the harassed worker has a cause of action that warrants a remedy in the workplace without necessarily terminating their employment. Put differently, the Labour Act does not provide alternative in-house remedies for harassed workers except through the unfair termination route involving the NLC as an external actor. Yet there are a host of other viable alternatives to remedying sexual harassment under the employer's control without the harassed worker necessarily quitting their job, such as issuing verbal or written warning to the harasser, demanding an apology from the perpetrator, transferring the perpetrator or harassed worker (whichever is most appropriate), and adverse performance evaluation of the perpetrator.

Second, the Labour Act does not provide for the vicarious liability of employers where they have not taken internal steps to prevent or protect against sexual harassment and develop a workplace sexual harassment policy. Where employers have not appropriately and reasonably responded to sexual harassment incidents in the workplace, there should be a reporting route provided by law that allows the harassed worker to report to the NLC, for example, without fear of reprisal. The fear of sanctions by an authorised external body and its consequent reputational damage will serve as a check on employers' response to sexual harassment claims.

[24] Act 651, ss. 15(b) and 63(3)(b).
[25] Act 651, s. 63(3)(b).
[26] Act 651, s. 64.

It could also be mandated in law that all employers develop and publicise their anti-sexual harassment policy.

Third, the Labour Act imposes only civil sanctions, not criminal ones, as in other African countries like Kenya, Uganda, and Zambia.

To conclude, the labour laws of Ghana are one of the few legislations that define sexual harassment expressly. Yet, its definition and scope are narrow because it excludes specific categories of workers, does not describe the multiple forms sexual harassment could take, creates limited employer liability and lacks criminal sanctions. Hence, the need for comprehensive legislation.

(b) Domestic Violence Law

The home is a domestic workplace. The Labour (Domestic Workers) Regulations, 2020 (LI 2408), a supplementary legislation to the Labour Act, regulates domestic workers who work in the home and prohibits sexual harassment against them. However, the LI 2408 is limited regarding who qualifies as a domestic worker. A domestic worker is a person who is not a member of the family of a person who employs that person as house help.[27] The definition excludes family members, usually extended family members, who work as house helps – a reality of the Ghanaian domestic workspace. This definition gap in LI 2408 is filled by the Domestic Violence Act of 2007 (hereinafter referred to as 'DVA'). Under the DVA, where the perpetrator and victim have *a domestic relationship*,[28] the victim may bring a claim of sexual harassment because of the broad definition of domestic violence under the Act, which includes sexual harassment. The DVA defines a domestic relationship as one that includes house help without restricting the familial status of the help. Thus, domestic workers who are members of the family they work for can have remedies for 'sexual harassment' presented as 'domestic violence' under the DVA.

[27] Act 651, s. 175.

[28] A domestic relationship is defined under s. 2 of the DVA to mean family relationship, a relationship akin to a family relationship such as engaged couples, courting couples, or those intimate, romantic or sexual relationships or a relationship in a domestic situation such as those of co-tenants, roommates or house helps in a household.

Section 1(c) of the DVA provides: '[d]omestic violence means engaging in the following within the context of a previous or existing domestic relationship: … (c) *harassment including sexual harassment* and intimidation by inducing fear in another person; …'. Harassment under section 42 of the DVA means:

> Sexual contact without the consent of the person with whom the contact is made, repeatedly making unwanted sexual advances, repeatedly following, pursuing, or accosting a person or making persistent, unwelcome communication with a person and includes,
>
> > (a) watching, loitering outside or near a building where the harassed person resides, works,
> >
> > carries on business, studies or happens to be;
> >
> > (b) repeatedly making telephone calls or inducing a third person to make telephone calls to the harassed person, whether or not conversation ensues;
> >
> > (c) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to the harassed person's residence, school or workplace; or
> >
> > (d) engaging in any other menacing behaviour;

Under the DVA, the definition of sexual harassment is subsumed under the general meaning of harassment. From the definition, sexual harassment in domestic relationships includes unwanted sexual contact as well as verbal and non-verbal forms of sexual harassment, such as unwanted sexual advances. If sexual in nature, one can also garner sexual harassment from 'unwelcome communication' such as phone calls, stalking or sending unwanted messages to the harassed person's residence, school or workplace.

While the scope of sexual harassment under the DVA is broader compared to the Labour Act, it also has its limits. First, only domestic workers, family and non-family members can claim under it because it is a specialised legislation. The second limitation is that sexual harassment claims under the DVA by domestic workers can only be made when the wrongful conduct is 'repeated' or 'persistent'

except where the conduct is an unwanted sexual contact.[29] Thus, where a conduct complained of is an unwanted sexual advance or unwelcome communication of a sexual nature, a one-time occurrence may not be sufficient grounds to make a claim. Nonetheless, the DVA does not rule out the possibility of a single act amounting to domestic violence so that a claim can be made based on a single act of unwanted sexual advances or communication where necessary.[30]

Despite these limitations, sexual harassment claims by domestic workers using the domestic violence path offer multiple remedial recourse. Sexual harassment in the domestic workplace under the DVA is a criminal offence punishable by a fine, imprisonment of not more than two years or both.[31] The criminal sanction is the primary sanction under DVA. In addition, the harassed domestic worker has the right to institute a civil action for damages.[32] There is also the option to settle by alternative dispute resolution methods where the harassed domestic worker so desires, the court so directs, or the nature of the sexual harassment is not aggravated.[33] The illustrative definition of sexual harassment in the DVA and the diverse forms of sanctions are instructive for redefining the generic laws on sexual harassment in the workplace, such as in the Labour Act.

(c) Legal Profession Rules

In October 2020, the Legal Profession (Professional Conduct and Etiquette) Rules (L.I. 2423) was passed. It revoked the previous rules of 1969. The new rules prohibit sexual harassment.[34] It is believed that the events following the BBC Africa Eye exposé and awareness of sexual harassment contributed to this new development.

L.I. 2423 prohibits a lawyer from sexually harassing a colleague, a member of staff, or a client.[35] It defines sexual harassment as:

[29] DVA, s. 5(2).
[30] DVA, s. 5(1).
[31] DVA, s. 3(2).
[32] DVA, s. 27.
[33] DVA, s. 24.
[34] L.I. 2423, S. 75.
[35] L.I. 2423, S. 75(1).

> One incident or series of incidents which involves unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature, where:
>
> (a) The conduct is reasonably expected to cause insecurity, discomfort, offence or humiliation to the recipient of the conduct;
>
> (b) Submission to the conduct is made, implicitly or explicitly, a condition for the provision of a professional service;
>
> (c) Submission to the conduct is made, implicitly or explicitly, a condition of employment;
>
> (d) Submission to or rejection of the conduct is used as a basis for any employment decision, including the allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee; or
>
> (e) The conduct has the effect of interfering with the work performance of the person or creation of a work environment which is intimidating, hostile or offensive.[36]

The definition in L.I. 2423 improves on the Labour Act. It specifically allows for a single incident of unwelcome sexual advances to be grounds for a sexual harassment claim. Recalling that the Labour Act is silent on potential employees, L.I. 2423 arguably extends to protect job applicants based on section 75(2)(c), which prohibits submission to a sexual harassment conduct is made an implicit or explicit condition of employment. However, a restraint of L.I. 2423 is that it only applies to lawyers and non-lawyers closely working with or engaging with lawyers. Like the Labour Act, L.I. 2423 imposes no criminal sanctions; any violation of the rules by a lawyer, including those on sexual harassment, is deemed misconduct to be addressed by the Disciplinary Committee.

Aside from L.I. 2423, the Labour Act and its regulation, and the Domestic Violence Act discussed above that expressly mention the term 'sexual harassment,' inferences of sexual harassment can be made as a rights-based claim

[36] L.I. 2423, S. 75 (2).

under the 1992 Constitution and a criminal action under the Criminal Act of Ghana. In the next two sub-sections, I briefly overview how sexual harassment, though not explicitly named in the Constitution and Criminal Act, could be relied on to make actionable claims.

(d) Constitutional law

Article 17 of the 1992 Constitution on equality and freedom from discrimination prohibits gender discrimination against a person. It defines 'discrimination' as 'giving different treatment to different persons attributable only or mainly to their respective descriptions by…*gender*…whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject to or are granted privileges or advantages which are not granted to persons of other description'.[37]

The prohibited grounds of discrimination expressly include *gender* (which the Constitution does not define) but not *sex*. While *gender* and *sex* have different meanings,[38] they are used interchangeably in everyday language and sometimes even in law.

Ghanaian case law has sanctioned the interchangeable use of the term so that *gender* and *sex discrimination* may be construed to mean the same thing. In the *Norvor* case, the High Court affirmed CHRAJ's finding of sexual harassment under Article 17 of the 1992 Constitution on the basis that the sexual conduct complained of was *gender-related sexual discrimination*. The court explained *gender related* to mean that the conduct in question must be such that it would not be directed at the opposite sex. The court said,

> The gravamen of the objection was that even if there was a case of sexual harassment made against the respondent, it did not amount to discrimination as defined in Article 17 of the Constitution, 1992, referred to above. In the said definition, the word 'sex' or its derivatives was not used. Rather the word used was 'gender.' *I do*

[37] 1992 Constitution, art. 17(3).
[38] In the social sciences, *gender* refers to the socio-culturally assigned roles to men and women, while *sex* refers to the 'biological differences between men and women' : Sylvia Tamale, When hens begin to grow: Gender and Parliamentary Politics in Uganda (New York: Routledge 2018).

> *not think this should present any difficulty at all. This is because the two words are synonymous with each other and may therefore be used interchangeably*.[39]

While this judicial opinion may be challenged, the nuances of such controversy are beyond this paper's scope. Consequently, the *Norvor* definition is prevailing and will be relied on. Discrimination, in general, is against the law, irrespective of whether it is based on gender, sex or both. Thus, as a fundamental human right, it is more likely than not that a harassed person who frames their sexual harassment experience as a breach of their constitutional right will be compensated under Article 17 of the 1992 Constitution. Additionally, the importation clause under article 33(5) of the Constitution allows all other fundamental human rights not expressly mentioned in the Constitution (in this case, freedom from discrimination based on sex) to be incorporated into the constitutionally guaranteed bill of rights so far as they are 'considered to be inherent in a democracy and intended to secure the freedom or dignity of man.' Yet, the *Norvor* court still felt specific legislation on sexual harassment was necessary:

> In other words, that sex discrimination is equal to sexual harassment or vice versa has not been put in a legislative form as yet. At this stage, one can only express the hope that sooner than later, the necessary law will be passed so as to bring the state of our human rights laws in step with what obtains in other jurisdictions.[40]

The constraint with pursuing a sexual harassment claim under Article 17 is that because of the dearth of case law, an aggrieved person risks receiving an unfavourable decision if the High Court[41] departs from the *Norvor* decision. The *Norvor* case is a High Court decision that is not a binding precedent for other High Court decisions. Therefore, a High Court judge dealing with a sexual harassment case may depart from the *Norvor* decision when it appears right in law to do so. Furthermore, should the issue of constitutional interpretation of the term *gender* in

[39] *Norvor* case at 89.
[40] *Norvor* case at 90.
[41] In Ghana the High Court has original jurisdiction to enforce fundamental human rights except where an issue of interpretation arises, when the issue will be referred to the Supreme Court.: 1992 Constitution, arts. 130 and 140(2).

Article 17 emerge, the interpretation of the Supreme Court, which has exclusive jurisdiction in constitutional interpretation, may trump or affirm the *Norvor* decision depending on the facts of the case. Consequently, the success of pursuing a sexual harassment case under the 1992 Constitution is not guaranteed and can only be determined on a case-by-case basis. Another limitation of pursuing a constitutional claim of sexual harassment is the exclusion of criminal sanctions, which may be disappointing for a complainant who desires to see the perpetrator behind bars.

The drafters of the Constitution, contemplating that not all matters could be expressly or impliedly addressed, inserted a residual legislative powers clause for Parliament to deal with unaddressed matters.[42] In summary, article 17 of the 1992 Constitution prohibits discrimination based on gender. While the *Norvor* decision suggests this constitutional prohibition would cover sexual harassment, the decision is not binding on superior courts, and the uncertainty of a subsequent court's decision makes litigating under constitutional law risky for a victim. Clarification in a specialised legislation is therefore needed.

(e) Criminal Law

Under Ghana's Criminal Offences Act, indecent assault occurs when a person, without the consent of the other person, (a) forcibly makes sexual bodily contact with the other person or (b) sexually violates the body of the other person in a manner that does not rise to the level of carnal or unnatural carnal knowledge.[43] The offence of indecent assault, therefore, carries elements of sexual harassment; however, verbal forms of sexual harassment, such as unwelcome sexual innuendos, jokes and comments, and quid pro quo harassment, are not covered. Similarly, other non-verbal forms of sexual harassment, such as indecent exposure and unwelcome display of graphic sexual pictures, are not covered. Nonetheless,

[42] 1992 Constitution, art. 298.
[43] Act 29, s. 103(2). Carnal or unnatural carnal knowledge is proved by the least degree of penetration: Act 29, s. 99.

depending on the nature and location of the behaviour, there may be a claim under offences relating to gross indecency[44] or obscenity.[45]

The definition of indecent assault also puts a ceiling on the scope of unwanted physical contact; that is, only physical contact described as sexual harassment that does not rise to the level of penetrative sex is covered. Thus, where unwanted physical contact leads to sex, the victim can only bring an action for rape (if the victim is above 16 years) or defilement (if the victim is below 16 years). While the rape or defilement alternative should ordinarily not be a problem, the limitation with charges for either offence is that in Ghana, rape is a gendered crime - only women can be raped or defiled.[46] Consequently, a man who, for example, encounters unwanted physical contact from a woman that leads to penetrative sex will have no remedy under the criminal laws of Ghana, whether under the law on indecent assault, rape or defilement. Undoubtedly, an inclusive sexual harassment law is necessary to fix this gap.[47]

Finally, the law on indecent assault does not also include sexual harassment conduct based on the sex or gender of a person. A person who faces any non-physical wrongful conduct that affects their dignity because of their sex or gender has no redress under the criminal laws of Ghana.

Despite the limited criminal sanctions for sexual harassment, they are essential because they inflict tougher and more stringent sanctions and deter perpetrators in a way that civil remedies do not. Apart from the stern nature of criminal sanctions, crimes differ from civil wrongs in terms of their impact on society. A crime is often seen as a wrong against society, while a civil offence is viewed as a wrong to an individual. Consequently, compared to civil sanctions, criminal penalties arguably serve a communal deterrence function because criminal sentences communicate to the perpetrator the society's disapproval of their actions. Additionally, civil

[44] Gross indecency is where a person publicly or wilfully does a grossly indecent act. It is a misdemeanour: Act 29, s. 278.
[45] Obscenity involves possessing, publishing or circulating obscene materials. This is also a misdemeanour: Act 29, s. 280 and 281.
[46] This limitation is because carnal knowledge is narrowly defined to require penetration by the offender in establishing a case for rape or defilement. Penetration as understood and required to be proven can only be done by men and not women.
[47] Alternatively, a fundamental reform of the rape and defilement law will be helpful.

proceedings are victim-oriented while criminal trials are offender-oriented – both orientations are necessary to create a balance in addressing sexual harassment within the justice system.

Having discussed the nature and limitations of the various existing laws on sexual harassment in Ghana, I will focus on their implications.

(f) Implications of Current Legal Regime on Sexual Harassment in Ghana

As demonstrated, the current legal regime on workplace sexual harassment in Ghana is inadequate. The labour laws do not provide descriptive enough definitions, do not apply to security services personnel, limit employer liability, limit the scope of domestic workers who can bring sexual harassment claims, and do not impose criminal sanctions. The DVA, though expansive in its definition of sexual harassment and offering multiple remedial actions, is restricted to only domestic workers. L.I. 2423 is also broad in its definition of sexual harassment but applies only within the legal profession. The constitutional rights-based claims do not cover all types of sexual harassment and provide no criminal penalties. Under the criminal laws, only limited forms of sexual harassment are covered, leaving a large group of sexual harassment victims without criminal law remedies.

In my view, the lack of criminal sanctions for sexual harassment under labour laws is concerning for multiple reasons. Civil law cases are more victim-oriented because they centre the needs of victims as opposed to criminal cases where victims appear as witnesses and the focus is geared more toward the offender. However, civil actions impose high costs on some victims who cannot afford to initiate civil actions on their own while the state prosecutes criminal actions. A crime is different from a civil offence in that a crime is not only harmful to an individual but also against the norms of public behaviour. Thus, adding a criminal dimension to the labour laws on sexual harassment shows that the offence is not just of concern to the affected individual but a wrong against society. Criminal sanctions have a stronger and more communal deterring effect on everyone. Criminal penalties also empower victims to speak up and report sexual harassment incidents because the nature of the penalties makes them recognise the seriousness attached to the offence and provides a sense of justice that is not quite like civil sanctions. For example, in Kenya, where sexual harassment in the workplace is

criminalised and punishable by a minimum of three years imprisonment, a fine or both,[48] it will be unlikely for people to trivialise sexual harassment. Criminalising sexual harassment may not eliminate it, but it will reduce its occurrence in the workplace compared to civil sanctions. Despite these benefits of criminal penalties, there may be challenges with effective enforcement by the police, not forgetting the higher standard of proof beyond reasonable doubt for crimes. Still, these limitations should not hinder criminalising sexual harassment as a critical step toward redefining it.

While I argue for criminalising sexual harassment, I simultaneously argue for adopting a hybrid approach of criminal, civil and settlement avenues so that the strengths of one avenue supplement the weakness of the other to create a holistic response regime. The proposed hybrid approach should be modelled after those in the DVA. Under the domestic violence laws, a sexual harassment claim is principally a crime, with the option of pursuing a civil action at the instance of the victim and a possibility of settlement by alternative dispute methods (where the conduct is not aggravated, the court deems it fit, or the victim requests for it). A hybrid approach is multi-jurisdictional and will require the full force of law enforcement authorities and other administrative bodies.[49] A hybrid approach also means legislating against sexual harassment should not be done by simply amending the existing laws but instead enacting a new law altogether that will create civil and criminal liabilities and alternative dispute resolution mechanisms.

In addition to the DVA model on a multi-jurisdictional approach to sexual harassment, lessons can be learnt from other jurisdictions' laws on sexual harassment in law. Therefore, the following section focuses on the lessons for Ghana from a comparative perspective.

2. Redefining Sexual Harassment in Ghana: A Comparative Analysis

Based on the significant advances by Nigeria and South Africa in legislating against sexual harassment, they offer helpful insights for redefining sexual harassment in Ghana.

[48] See more in Section 23(1) of Kenya's Sexual Offences Act 2006.
[49] Tyrone Kirchengast, 'The Limits of Criminal law and Justice: "Revenge Porn" Criminalisation, Hybrid Responses and the Ideal Victim' (2016) 2 UNISA Law. Review 96.

Nigeria's response to the BBC Africa Eye exposé on 'Sex for Grades' was to reintroduce its Sexual Harassment in Tertiary Educational Institutions Prohibition Bill of 2016 in Parliament. The bill was reintroduced two days after the viral BBC video.[50] Parliament passed it in July 2020. While the prompt response is commendable, the bill is only reactionary and addresses sexual harassment in tertiary institutions to the exclusion of other spaces where the menace is rife. Aside from this anti-sexual harassment bill, there is no other specific legislation on sexual harassment in Nigeria.

Consequently, at the federal level, sexual harassment in Nigeria is addressed by criminal laws[51] on sexual offences as and when applicable.[52] At the state level, the Criminal Laws of Lagos State 2011 and the Violence Against Persons (Prohibition) Act 2015 contain limited provisions on sexual harassment.[53] In the few sexual harassment cases adjudicated by the Nigerian courts, there has been a heavy reliance on international treaties and the rules of the National Industrial Court.[54] The 1996 Nigerian Constitution can also be relied on by sexually harassed persons since it prohibits discrimination based on sex.[55]

In South Africa, there is a plethora of sexual harassment laws, both general and specific, including the 1996 Constitution of South Africa, the Employment Equity Act 55 of 1998 (EEA), the 2022 Code of Good Practice on the Handling of Sexual Harassment (hereinafter the Code of Good Practice), Protection from Harassment Act No.17 of 2011, Employment of Educators Act 76 of 1998 (as amended by the Education Amendment Act 53 of 2000), and Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). The 1996 South African Constitution prohibits discrimination based on gender or sex and can be relied on to make a sexual harassment claim. The EEA prohibits harassment in the workplace but does not define sexual harassment. Thus, the Code of Good

[50] Queenesther Iroanusi, 'Nigeria: Senate Passes Anti-Sexual Harassment Bill' (*All Africa,* 7 July 2020) <https://allafrica.com/stories/202007080133.html> accessed 25 August 2020.
[51] That is the Criminal code law which applies in the south and the Penal Code law which applies in the north of Nigeria
[52] Paul A. Ejembi and Others, 'The Trajectory of Nigerian Law Regarding Sexual Harassment in the Workplace' (2020) 4(2) African Journal of Law and Human Rights 1.
[53] Ibid.
[54] Aina-Pelemo, Mehanathan and Kulshresth (n 11).
[55] 1996 Constitution of the Federal Republic of Nigeria, s. 15.

Practice, annexed to the EEA, expands on sexual harassment. It defines and lists the types of conduct that constitute sexual harassment, outlines detailed procedures for dealing with and preventing sexual harassment in employment, and prescribes civil sanctions for harassers. Sexual harassment is also prohibited in the Protection from Harassment Act No.17 of 2011. This Act is intended to provide victims of harassment with effective remedies. PEPUDA prohibits sexual harassment as unfair discrimination. It focuses on instances of sexual harassment outside the workplace. The Employment of Educators Act, No.76 of 1998, which applies to educators at schools and other educational centres, prohibits educators from committing sexual or any other form of harassment while on duty.

Despite Nigeria's unilateral anti-sexual harassment law and the plurality of South Africa's sexual harassment laws, there are lessons for Ghana. The comparative analysis in this section will focus on Nigeria's anti-sexual harassment law, South Africa's EEA, its Code of Good Practice and the Protection from Harassment law. These laws are instructive because they specifically address sexual harassment beyond simply prohibiting it.

The Nigerian model is reactionary and specific only to educational institutions. Moreover, it presupposes an as-and-when approach. So, it is likely that in Nigeria, subsequent sexual harassment laws in other sectors will be addressed as and when the need arises. The South African model is also specific to industries such as education, employment, and other non-working contexts, but it is spread out through various laws. Currently, Ghana's legal regime on sexual harassment partly reflects the South African model of having terse provisions on sexual harassment in labour laws, domestic violence laws and L.I. 2423, except South Africa's laws are more detailed.

In redefining sexual harassment in Ghana, there are two main options: to comprehensively amend the existing laws, such as labour, domestic violence, and criminal laws or enact a new sexual harassment law of general application. I argue for the latter. A single comprehensive law on sexual harassment stands a better chance of addressing the nuances of the offence and will be more far-reaching in terms of what it covers. My preference, notwithstanding, is that the recommendations made in this paper will be helpful to law and policymakers regardless of the option they adopt.

Effective sexual harassment legislation must be specific and unequivocal. It must safeguard victims' right to privacy and dignity, properly sanction perpetrators, and guarantee that justice will be served without discrimination based on sex or gender. To realise these goals, some essential elements must be considered: defining the offence and related terminologies, determining the burden of proof and providing for caveats and redress. These elements are the focus of this section.

(a) Defining Sexual Harassment

While the definitional challenge of sexual harassment has been acknowledged, a definition is still necessary to establish the framework to delineate which actions amount to sexual harassment and which do not.

The definition of sexual harassment in Nigeria's anti-sexual harassment law is open-ended, stating that 'sexual harassment includes…'.[56] The listed activities are sexual intercourse; unwelcome sexual attention; unwelcome implicit or explicit behaviour, suggestions, messages or remarks of sexual nature that are offensive, intimidating or humiliating; implied or expressed promise of reward in exchange for a sexually oriented request or demand; and implied or expressed threat of reprisal or actual reprisal for refusing to comply with the sexually oriented request or demand.

In South Africa's Protection from Harassment Act, 2011, the definition of sexual harassment is similar to that of Nigeria except that it does not include sexual intercourse as part of the listed conducts and does not use open-ended words making the definition a closed one.[57] However, the Code of Good Practice (CGP) contains an expansive definition containing detailed constituents of sexual harassment, including harassment through electronic means.[58] It also mentions sexual orientation in addition to sex and gender.

Considering the above, I recommend that in defining sexual harassment, the Ghanaian legal definition should be broad and include all the listed activities in Nigerian and South African legislation. It is important that the definition explicitly mentions *sexual intercourse* in the list of conduct to cater to men who may

[56] Sexual Harassment in Tertiary Educational Institutions Prohibitions Bill, 2016, s. 2.
[57] Protection from Harassment Act, 2011, s. 1.
[58] CPG, item 5.

encounter sexual harassment involving sex, as mentioned earlier in this paper. To cater to conduct that may reasonably fall under sexual harassment in the future, the definition should state that 'sexual harassment includes but is not limited to the following…' as in Nigeria's law. Also, the law should detail the meaning and constituents of each essential element as in South Africa's Code of Good Practice.

The definition in Ghanaian law should reflect the public, private, in-person, online and remote locales where sexual harassment can occur. Taking all these into account, sexual harassment broadly defined in Ghana should read:

> Sexual harassment means an unwelcome, offensive or importunate implicit or explicit behaviour, suggestion, message, remark, request and/or demand that is sexual in nature or threat of reprisal or actual reprisal for refusing to comply with a sexually oriented request or other conduct based on sex and/or gender by a person to another person in a private or public place whether physical or electronic.

Additionally, the law should detail the activities that constitute sexual harassment, stating that 'sexual harassment includes but is not limited to the following activities…'. The law should further explain the essential elements of sexual harassment similar to South Africa's Code of Conduct to include conduct that is unwelcome, sexual in nature and based on sex and/or gender.

(b) Defining Other Related Terminologies

Terms like *sexual intercourse* and *unwelcome conduct* should be defined for clarity. In Nigeria's anti-sexual harassment law, *sexual intercourse* is defined as 'penetration of a sexual nature of the vagina or anus or mouth of [a person] by the penis or mouth or finger of [another person] or any instrument or toy by [a person] and for this purpose, a male… can be sexually harassed by a female…'. It is recommended that the Ghanaian sexual harassment law should adopt this definition, which is broad enough to cover all genders.

Apart from the sexual nature of conduct, *unwelcome conduct* is also central to sexual harassment. Therefore, the different contexts of *unwelcome* conduct should be clarified in law. South Africa's Code of Good Practice explains how a person may indicate that sexual conduct is *unwelcome*, including 'non-verbal conduct

such as walking away or not responding to the perpetrator'.[59] The Code also indicates that previous consent to sexual conduct does not mean that conduct is always welcome. It is recommended that the Ghanaian law on sexual harassment clearly define *unwelcome conduct* as South Africa has done.

(c) Burden of Proof

The burden of proof regarding sexual harassment is especially high where it is a crime. In addition, the standard to prove beyond a reasonable doubt is a challenge as most incidents of sexual harassment occur in the absence of other witnesses apart from the persons involved. To lessen the burden, South Africa's EEA, for example, places the burden of proof on the employer against whom an allegation of sexual harassment as unfair discrimination is made. Therefore, the employer must establish that the alleged conduct was fair.[60] This shift in the burden of proof in employment is fair and needed because the employer is likely to have relevant evidence in some sexual harassment allegations and needs to be put in a position to introduce that evidence.

Within the Ghanaian context, a similar burden of proof could be placed on the perpetrator where discrimination based on sex and/or gender is alleged in terms of sexual harassment conduct. The perpetrator against whom a criminal charge for sexual harassment conduct based on sex or gender is laid must establish that the conduct was not based on sex or gender.

(d) Exceptions

Ghanaian law should expressly state that consensual participation in sexual conduct or withdrawal of consent after the sexual conduct has occurred does not amount to sexual harassment.

The number of incidents of unwelcome sexual conduct that constitutes sexual harassment should also be clearly stated. South Africa's Code of Good Practice allows for a single incident to be considered sexual harassment where necessary.[61]

[59] CPG, item 5.2.1.
[60] EEA, s. 11.
[61] CPG, item 5.3.3.

I recommend that Ghanaian law provides for the same as already done in the DVA. Therefore, single instances of sexual harassment should not be excluded.

(e) Redress/Remedies

In seeking redress for sexual harassment, the Ghanaian law should replicate the multiple platforms for redress in the DVA:

i. Criminal Law Actions

Ghanaian law should criminalise sexual harassment and prescribe a term of imprisonment and/or fine. As mentioned earlier, criminalising sexual harassment has more impact as a deterrent in society.

ii. Civil Law Actions

The law should allow for civil actions to be initiated in addition to criminal actions. Victims should be able to choose whether to pursue civil or criminal action.

iii. Alternative Dispute Resolution

Sexual harassment cases that are less grievous should also be resolved through alternative dispute resolution mechanisms such as negotiation, mediation and arbitration.

iv. Administrative Bodies

An administrative body, new or existing, should be responsible for receiving, investigating and resolving complaints reported to it. In addition, the administrative body should be given special powers to issue subpoenas.

CONCLUSION

In this paper, I have made a case for redefining workplace sexual harassment more broadly in Ghana. I have questioned why the current laws in Ghana only deal with sexual harassment from a civil perspective and have advocated for including a criminal aspect. I have established, among other things, that crime carries sterner sanctions than a civil offence. For this reason, a criminal dimension to workplace sexual harassment should be introduced. In making recommendations for future

legislation on sexual harassment, I have drawn lessons from Nigeria and South Africa. Enacting a law signifies progress towards prohibiting sexual harassment in Ghana. Though enacting laws in itself will not automatically reform society, they are necessary to ensure that perpetrators of sexual harassment, including institutions, would be less likely to engage in and condone sexual harassment or at least not so brazenly if they know of the possible legal actions that could be taken against them under the law. Measures to address implementation barriers such as training programs, public awareness campaigns, and institutional policy reforms, could be explored once the expansive law is enacted. In the meantime, the judiciary has a significant role in using the existing laws to interpret and decide on workplace sexual harassment, as was done in the *Norvor* case. Additionally, in the absence of comprehensive sexual harassment legislation in Ghana, a national sexual harassment policy that deals with the offence in all contexts is necessary. A comprehensive policy framework on sexual harassment is an excellent start toward future legislation and a sign of the nation's anti-sexual harassment commitment that will trigger positive social reforms and attitudes.

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STRIKING A BALANCE: AI, NATIONAL SECURITY, AND PRIVACY RIGHTS IN NIGERIA

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ABSTRACT

Nigeria, like many other nations, is increasingly utilising artificial intelligence (AI) for national security purposes. While AI presents opportunities such as enhanced threat detection and cybercrime prevention, its use also raises concerns about individual privacy and potential misuse. This paper investigates the challenges Nigeria faces in balancing national security with privacy rights in deploying AI technologies. The research employs a doctrinal approach, analysing legal frameworks, government policies, and relevant academic literature, complemented by insights from structured interviews from reputable newspapers and credible publications featuring industry experts in national security and technology. It highlights the benefits and risks of AI in national security while offering recommendations for a national AI strategy tailored to Nigeria's unique context. The proposed strategy emphasizes clear legal frameworks, robust oversight mechanisms, ethical guidelines for data use, and public education on AI and privacy rights. These measures aim to enable Nigeria to leverage AI for national security while safeguarding the rights of its citizens.

Keywords: Artificial Intelligence, Data Privacy, National Security, Nigeria, Oversight Mechanisms

INTRODUCTION

Artificial intelligence (AI) is rapidly becoming a powerful tool for national security, playing a crucial role in several areas such as enhanced intelligence gathering and analysis, planning and support for military operations, autonomous weapon systems (future potential), human-machine teaming, managing and utilizing big data among others.[2] By harnessing the power of AI in these ways, nations can gain a significant advantage in protecting their citizens and deterring

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[2]I Szabadföldi, 'Artificial Intelligence in Military Application - Opportunities and Challenges' (2021) XXVI *Land Forces Academic Review* 157.

potential threats. Therefore, countries, for example, the United States, are actively exploring AI applications across a spectrum of military operations.[3] Research in AI spans intelligence gathering and analysis, logistical support, cyber warfare, information manipulation, command and control systems, and the development of semi-autonomous and autonomous vehicles.[4] Notably, AI has already found its way into military endeavours in regions like Iraq and Syria.[5]

Similarly, countries like China and Russia, regarded as strategic rivals, are heavily investing in AI for purposes related to national security.[6] Nigeria is currently grappling with intricate security issues and is following the global trend of exploring the use of Artificial Intelligence (AI) for enhancing national security measures.[7] Artificial intelligence (AI) refers to the ability of machines to mimic human cognitive functions such as problem-solving, communication, and interacting with the world.[8] AI leverages machine learning, where algorithms sift through mountains of data to identify patterns.[9] These patterns can then be used for making predictions, planning, and problem-solving.[10] AI can be used in big

[3]Congressional Research Service 'Artificial Intelligence and National Security' <https://sgp.fas.org/crs/natsec/R45178.pdf> accessed 9 May 2024.
[4] Ibid.
[5] Ibid.
[6] US Government Accountability Office 'How Artificial Intelligence Is Transforming National Security' (*GOA Watchblog,* 19 April 2023) <https://www.gao.gov/blog/how-artificial-intelligence-transforming-national-security#:~:text=AI%20in%20national%20security%2C%20on,integrate%20AI%20into%20defense%20systemson> accessed 9 May 2024.
[7] R Ibeh, 'Deploying Artificial Intelligence To Tackle Nigeria's Security Challenges' (*National Economy*) <https://nationaleconomy.com/deploying-artificial-intelligence-to-tackle-nigerias-security-challenges/#:~:text=In%20line%20with%20this%2C%20the,and%20information%20and%20communication%20security> accessed 9 May 2024.
[8] H Gil De Zúñiga and others, 'A Scholarly Definition of Artificial Intelligence (AI): Advancing AI as a Conceptual Framework in Communication Research' (2023) 4(2) *Political Communication* 317-344.
[9]Guinn Center for Policy Priorities, 'Introduction Artificial Intelligence Defined' <https://guinncenter.org/wp-content/uploads/2024/04/AI-General-Overview-KBC-Edit-V2-040424.pdf > accessed 23 May 2024.
[10] Ibid.

data analysis and decision-making systems.[11] AI is rapidly developing and having a significant impact on national security capabilities.[12]

Numerous national security challenges confronting Nigeria today stem from diverse terrorist organisations.[13] Nigeria's national insecurity results from several factors, such as elevated poverty and unemployment levels, religious intolerance, income disparities, ethnic tensions, increasing assimilation, demands for resource control, limited industrial productivity, fluctuating and declining exchange rates, soaring inflation, insufficient infrastructure, substantial domestic debt, escalating external debt, and widespread lack of awareness.[14] Since 2009, the activities of the Boko Haram group have presented a significant security challenge for the nation, leading to northern Nigeria, especially the northeast region, being characterized as the most perilous area to reside in.[15]

Boko Haram's activities surged in August 2011, marked by frequent bombings in public areas and churches across north-eastern Nigeria. [16] Since then, the group has continued to carry out attacks, resulting in loss of life, property destruction, exacerbation of food and nutrition insecurity, propagation of infectious diseases, hindrance of education access for millions of children and youths, and a rise in the

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[14] OI Eme and TO Oyinshi, 'Boko Haram and Security Challenges in Nigeria' (2014) 2(11) *Kuwait Chapter of Arabian Journal of Business and Management Review*, 14*;* L Raimi, I Akhemonkhan . and OD| Ogunjirin 'Corporate Social Responsibility and Entrepreneurship (CSRE): Antidotes to Poverty, Insecurity and Underdevelopment in Nigeria' 6th International Conference held in Universiti de Lome, Togo) from 1st to 2nd November 2012), Gubak HD and Bulus K, 'National Security Challenges and Sustainable Development in Nigeria: A Critical Analysis of the Niger Delta Region' (2018) 4 *Global Journal of Political Science and Administration*, 34. J I Ebeh, 'National Security and National Development: A Critique' (2015) 4 IJCR 1.

[15] OI Eme and TO Oyinshi, 'Boko Haram Insurgency in Nigeria: Implications for National Security and Restorative Justice' (2019) 19 *African Journal on Conflict Resolution* 1-17.

[16] Ibid, 16.

number of internally displaced persons in Nigeria.[17] The efforts of state security agencies against Boko Haram have proven ineffective, as the group's activities and membership continue to grow.[18] Similarly, the Nigerian government's conflict-resolution methods, implemented through the military Joint Task Force, have fallen short of fostering peaceful coexistence in the affected communities. [19]

There have been calls for the integration of AI as a tool in combating insecurity, including insurgency, in Nigeria.[20] According to an interview conducted with Senator Jimoh Ibrahim, who represents Ondo South and chairs the Senate Committee on Inter-Parliamentary Affairs, President Bola Tinubu's administration is set to integrate artificial intelligence (AI) into its security strategy to tackle Nigeria's ongoing challenges by 2025.[21] Ibrahim revealed that ₦4.91 trillion has been earmarked for defence and security in the 2025 budget proposal, underscoring the administration's prioritization of national security.[22] Speaking during a televised discussion on *Politics Today*, the senator emphasized the government's intention to deploy advanced technological tools, including AI-driven applications, to monitor and combat threats such as banditry, kidnapping, and terrorism.[23] He predicted that 2025 would mark a turning point in Nigeria's fight against criminal activity, as these innovative measures aim to bolster security efforts across the nation. Currently, Nigeria is developing a comprehensive National AI Strategy by engaging global Nigerian AI experts.[24] The Federal

[17] NS Amalu, 'Impact of Boko Haram Insurgency on Human Security in Nigeria' (2015) 14 *Global Journal of Social Sciences* 35.
[18] Eme and Oyinshi,, (n15) 16.
[19] A Akubo and BI Okolo, 'Boko Haram Insurgency in Nigeria' 1-17 < https://www.accord.org.za/ajcr-issues/boko-haram-insurgency-in-nigeria/> accessed 26 August 2024.
[20] F Olokor, 'Nigeria Can Fight Boko Haram, insecurity with AI, Says Borno's Chief Judge' <https://www.arise.tv/nigeria-can-fight-boko-haram-insecurity-with-ai-says-bornos-chief-judge/> accessed 15 May 2024.
[21] T Ajose, 'Nigeria to Deploy AI for Tackling Insecurity in 2025' (News Central, December 18, 2024) <https://newscentral.africa/nigeria-to-deploy-ai-for-tackling-insecurity-in-2025/> accessed 23 January 2025.
[22] Ibid.
[23] Ibid.
[24] Ibid.

Ministry of Communications, Innovation, and Digital Economy made Nigeria's first National Artificial Intelligence Strategy (NAIS) draft public in August 2024.[25]

However, this growing adoption of AI in national security applications presents a significant challenge: striking a balance between safeguarding a nation and protecting the privacy rights of its citizens.[26] While AI offers undeniable benefits for security, its use raises concerns about mass surveillance, potential misuse of data, and the lack of transparency in decision-making processes. The adoption of AI has introduced new risks concerning the exploitation and manipulation of Nigerian citizens' data highlighting the need for policy interventions to address issues such as algorithmic bias, privacy infringement, lack of transparency, and the challenge of educating Nigerians about their interactions with AI.[27] It is essential to recognize that decisions should not solely rely on AI assessments due to the inherent uncertainty in their predictions.[28] Therefore, Nigeria's AI policy must carefully consider the appropriate roles and limitations of AI systems, particularly in critical public sectors such as law enforcement, criminal justice, immigration, and national security.[29]

This article examines this complex tension in the context of Nigeria's national security strategy. It analyses the alluring benefits of AI in national security and its inherent challenges and risks. It also analyses the current state of legal frameworks governing AI in Nigeria, highlighting the need for a comprehensive framework for AI governance. It compares Nigeria's framework with that of the United Kingdom to draw valuable lessons for Nigeria. It proposes key recommendations for creating a robust national AI strategy in Nigeria.

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[25] NCAIR and NITDA, 'National AI Strategy 2024' <https://ncair.nitda.gov.ng/wp-content/uploads/2024/08/National-AI-Strategy_01082024-copy.pdf> accessed 23 January 2025.

[26] K Srivastava, 'Artificial Intelligence and National Security: Perspective of the Global South' (2023) 2(2) *International Journal of Law in Changing World* 78.

[27] JO Effoduh, 'Towards a Rights Respecting Artificial Intelligence Policy in Nigeria' <https://paradigmhq.org/wp-content/uploads/2021/11/Towards-A-Rights-Respecting-Artificial-Intelligence-Policy-for-Nigeria.pdf> accessed 23 April 2024.

[28] Ibid.

[29] Ibid.

POTENTIAL BENEFITS OF AI IN NATIONAL SECURITY

Overall, AI offers significant benefits for national security by enhancing efficiency, productivity, and overall power in the cyber domain.[30] Incidents of cyberattacks targeting government agencies and organizations are increasing in Nigeria, as well as in other African nations and across the Middle East.[31] Thus using AI in the cyber domain can be of immense benefit to Nigeria. AI use leads to increased efficiency in cyber defence as AI can automate tasks like vulnerability scanning and system monitoring, freeing up human experts to focus on complex threats.[32] This allows for faster detection and response to cyberattacks. Secondly, it leads to enhanced productivity in cyber operations, similar to how digital surveillance tools empower fewer personnel to monitor vast amounts of data; AI can further amplify the effectiveness of cyber defence teams.[33] Cybersecurity experts in Nigeria are in high demand.[34] AI can automate routine tasks like threat detection and incident response, freeing up these experts to focus on complex cyber investigations and strategic planning. AI-powered tools can analyse massive datasets and identify patterns that can be missed by humans, leading to more targeted and efficient cyber defences.[35]

AI can analyse massive datasets of cyber threats, identifying patterns and trends that can be missed by humans.[36] A recent study identified several critical challenges facing Nigeria's intelligence agencies, including data scarcity, underutilised existing data, concerns over data quality, and fragmented data

[30] G Allen and T Chan, 'Artificial Intelligence and National Security' 18 <https://www.belfercenter.org/sites/default/files/files/publication/AI%20NatSec%20-%20final.pdf> accessed 14 May 2024.

[31] T Jaiyeola, 'Cyberattacks on Nigerian Govt Agencies Rise — Report' <https://punchng.com/cyberattacks-on-nigerian-govt-agencies-rise-report/> accessed 13 May 2024.

[32] Allen and Chan, (n 30) 18.

[33] Ibid.

[34] G Elimian, 'Nigeria has only 8,352 Cybersecurity Professionals as Global Demand Rises to 4 Million' <https://leadership.ng/nigeria-has-only-8352-cybersecurity-professionals-report/> accessed 13 May 2024.

[35] Allen and Chan, (n 30) 18.

[36] G Iashvili and M Iavich, 'Enhancing Cyber Intelligence Capabilities through Process Automation: Advantages and Opportunities' in A Lopata *et al Advanced Information Networking and Applications, the 36th International Conference on Advanced Information Networking and Applications* (AINA-2022), Sydney, NSW, Australia, 13-15 April 2022, 92-101.

sharing.[37] These issues include insufficient data to understand threats comprehensively, failure to fully analyse or leverage existing information, inaccuracies or unreliability in available data, and inconsistent management practices that create silos and hinder collaboration among agencies.[38] By leveraging AI, Nigeria's intelligence system can overcome these data challenges and transform its effectiveness in safeguarding national security.

Thirdly, it results in amplified power in countering threats.[39] AI can automate tasks associated with cyber offences as well, such as reconnaissance and probing for vulnerabilities.[40] This can allow Nigerian security forces to quickly identify and exploit the weaknesses in enemy systems.[41] However, it is important to note that responsible use of AI in cyber offences is crucial to avoid escalation and unintended consequences.

THE NIGERIAN LEGAL LANDSCAPE

Black and Murray have argued that instead of building an entirely new regulatory system for AI, existing regulations can be leveraged.[42] Activities already covered by specific regulations would still be subject to those same rules even if AI were involved.[43] Existing regulatory bodies simply need to adapt their approaches to address the unique aspects of AI within their existing frameworks.[44] This can be done by developing specific norms, or guidelines, for AI within their domain. Therefore, this study analyses existing laws and regulations that might be relevant to AI applications and evaluates how these existing frameworks can be adapted to address the use of AI in these areas. It also identifies gaps where new regulations may be needed, or overlaps that need to be streamlined for clarity.

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[37] OO Awotayo and others, ' Intelligence System and National Security in Nigeria: The Challenges of Data Gathering' (November 2023-April 2024) 4(2) *Janus.net e-journal of International Relations* 193
[38] Ibid.
[39] Allen and Chan, (n 30) 18,
[40] Ibid.
[41] Ibid.
[42] J Black and AD Murray, 'Regulating AI and Machine Learning: Setting the Regulatory Agenda', [2010] 10(3) *European Journal of Law and Technology* 10.
[43] Ibid, 10,
[44] Ibid.

However, before delving into the analysis of existing laws and regulations relevant to AI applications, as well as identifying gaps and areas for improvement, it is essential to examine the AI projects Nigeria has adopted and explore other emerging technologies that hold the potential for reshaping the country's national security landscape. This contextual understanding will provide a solid foundation for assessing how the legal framework can be adapted to address these advancements effectively. Nigeria has initiated several AI projects and pilot programs within its national security sector, achieving notable successes while also encountering certain challenges. Other notable examples of AI in the context of national security in Nigeria include:

1. The Nigerian military employs drones and unmanned vehicles, such as unmanned aerial vehicles (UAVs) and tethered hexacopter UAVs, for purposes including intelligence gathering, surveillance, and executing precision strikes.[45] Examples include the Aerostar UAVs for maritime patrol and intelligence during the Niger Delta crisis, although most are now non-operational due to lack of spare parts.[46] The Nigerian Air Force (NAF) employs modern UAVs such as the Wing Loong IIs, CH-4Bs, and CH-3As, armed with missiles and guided bombs, for operations against Boko Haram and ISWAP.[47] Locally developed UAVs, including the Amebo, Gulma, and Tsaigumi, enhance self-reliance and training.[48] Additionally, the Nigerian Navy and Police use advanced systems like the Tekever AR3 and Elistair Orion for maritime and border security, integrating AI for day-and-night surveillance and operational efficiency.[49] These efforts underline Nigeria's commitment to leveraging AI technologies for strategic defence objectives.

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[45] David Oliver 'Pioneering Unmanned Fleet in Sub-Saharan Africa' (*Times Aerospace*, 20 March 2024) <https://www.timesaerospace.aero/features/defence/pioneering-unmanned-fleet-in-sub-saharan-africa#:~:text=Nigeria%20is%20the%20only%20country,have%20used%20them%20in%20combat.> accessed 21 January 2025.

[46] Ibid.

[47] Ibid.

[48] Ibid.

[49] Ibid.

The use of AI-driven technologies like unmanned aerial vehicles (UAVs) for national security in Nigeria faces significant challenges, particularly in the North East. The Operation Hadin Kai Joint Task Force has banned unauthorized drone usage across Borno, Yobe, and Adamawa states due to security concerns.[50] These concerns include the proliferation of drones for domestic and commercial purposes without adherence to regulations, leading to potential misuse by non-state actors and criminal elements for subversive activities.[51] Instances of drones being used to target military installations and critical national infrastructure highlight the risks, further exacerbated by reports of unauthorized drone operations.[52] However, enforcing compliance and addressing the disregard for existing regulations by individuals and organizations continue to pose significant hurdles for the Nigerian military.

2. Nigerian Navy's Adoption of Artificial Intelligence: The Nigerian Navy is adopting artificial intelligence to enhance its operational capabilities and stay aligned with advancements in maritime technology.[53] This initiative was highlighted by Chief of the Naval Staff, Vice Adm. Emmanuel Ogalla, during a presentation by navy participants at the National Defence College.[54] Ogalla emphasized that AI and other emerging technologies are becoming integral to modern shipbuilding, making their adoption essential. Vice Admiral Emmanuel Ogalla emphasized that AI is significantly transforming the maritime industry, and the Navy is embracing it to enhance ship availability and operational effectiveness. Ogalla

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[50] Abisola Adigun, 'BREAKING: Nigerian Military Bans Drone Operation in North Eas' (*Nigerian Tribune*, 15 January 2025) https://tribuneonlineng.com/breaking-nigerian-military-bans-drone-operation-in-north-eas/> accessed 21 January 2025.

[51] Ibid.

[52] Ibid.

[53] African Defence Forum, 'Nigerian Navy to Harness AI' (July 9 2024) <https://adf-magazine.com/2024/07/nigerian-navy-to-harness-ai/#:~:text=Emmanuel%20Ogalla%20made%20the%20announcement,are%20used%20in%20ship%20construction.> accessed 16 January 2025.

[54] Ibid.

made this statement during the presentation of a paper by participants of the National Defence College (NDC) Course 31, titled "Artificial Intelligence and Ship Maintenance: Strategic Options for the Nigerian Navy by 2035."[55] The integration of AI is expected to modernize the Navy's maintenance systems and provide a competitive edge in maritime operations. AI can enhance a Navy's decision-making capabilities by optimizing operations, such as identifying the most fuel-efficient methods to run a vessel.[56] It can also be integrated into navigation systems, radar functions, and threat-detection systems, enabling operators to process information more quickly and effectively.[57] The Nigerian Navy's integration of AI is anticipated to streamline maintenance processes, reduce downtime, and improve the readiness of naval assets. The Nigerian Navy's integration of AI is anticipated to streamline maintenance processes, reduce downtime, and improve the readiness of naval assets.

3. The National Centre for Artificial Intelligence and Robotics (NCAIR) established by the National Information Technology Development Agency (NITDA)[58] serves as a hub for AI, robotics, and other Fourth Industrial Revolution technologies in Nigeria and Africa. The centre focuses on research and development, skills and capacity building, technology transfer, and policy formulation.[59] By promoting the adoption of AI and robotics, NCAIR aims to contribute to national security by developing advanced technological solutions to address security challenges.[60] The centre has significantly boosted Nigeria's AI research and development capacity through upgrades, including 2,500 virtual Central

[55] Agency Reporter, 'Nigerian Navy Adopts AI to Enhance Operational Effectiveness – Ogalla' (*Nation Newspaper*, August 11 2023) <https://thenationonlineng.net/nigerian-navy-adopts-ai-to-enhance-operational-effectiveness-ogalla/> accessed 16 January 2025.
[56] African Defence Forum, (n 53).
[57] Ibid.
[58] NCAIR, <https://ncair.nitda.gov.ng/> accessed 22 January, 2025.
[59] Ibid.
[60] Ibid.

> Processing Units and 1 petabyte of storage.[61] NCAIR is fostering a skilled workforce proficient in AI and related technologies, which is crucial for sustaining and advancing AI initiatives in the security sector. Despite these advancements, ensuring sufficient funding and long-term support for such initiatives remains a challenge.

Mantra, a prominent security services provider in Nigeria, is actively leveraging Artificial Intelligence (AI) to enhance national security through innovative technologies and practices.[62] The company's participation in the American Society for Industrial Security (ASIS) Chapter 206 Lagos reflects its commitment to integrating cutting-edge solutions. At the ASIS AGM, the keynote theme, *"Leveraging Artificial Intelligence for Enhanced Security in Nigeria,"* highlighted critical security challenges, including high crime rates, terrorism, and the difficulty of data collection in remote areas.[63] However, challenges persist, such as difficulties in data collection in remote areas and limited access to technology in certain regions, which hinder the full potential of AI solutions. These initiatives highlight Nigeria's progress in incorporating AI into its national security sector, with successes in improving operational efficiency and capacity building, while challenges related to funding, infrastructure, and data collection continue to be obstacles.

Building on Nigeria's adoption of various AI-driven projects to enhance national security, it is essential to explore how advanced technologies like natural language processing (NLP) and generative AI can further reshape the country's security dynamics, offering new tools and insights to address emerging threats effectively. Natural Language Processing (NLP), a subfield of AI that focuses on computer-human language interaction, offers a powerful solution for analysing the massive amounts of unstructured text generated online.[64] By employing techniques like

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[61] K M Murithi, 'AI News: Nigerian Government Debuts AI Tool with Multilingual Capabilities' (*Coingape*, April 20 2024) <https://coingape.com/ai-news-nigerian-government-debuts-ai-tool-with-multilingual-capabilities/> accessed 17 January 2025.

[62] S Hawkes,'Mantra Embraces Artificial Intelligence in Security' (*Mantra Protection Solutions Limited*, November 25 2024) <https://www.mantraoperations.com/blog/2024/11/25/mantra-embraces-artificial-intelligence-in-security?utm_source=chatgpt.com> accessed 17 January 2025.

[63] Ibid.

[64] F Olaoluwa and K Potter, 'Natural Language Processing (NLP) for Social Media Threat Intelligence' *Preprints* (2024) https://doi.org/10.20944/preprints202409.0488.v1.

sentiment analysis, topic modelling, and entity recognition, NLP enables the automated processing and extraction of valuable insights from this data.[65] Sentiment analysis gauges the emotional tone of the text, topic modelling identifies recurring themes, and entity recognition extracts and categorizes key entities.[66]

In today's data-driven world, Natural Language Processing (NLP) plays a critical role in enabling machines to comprehend and analyse human language.[67] This AI-powered technology addresses the overwhelming volume of unstructured text data by enabling analysts to extract relevant information efficiently. NLP techniques, such as sentiment analysis, topic modelling and entity recognition are instrumental in identifying and mitigating threats, including the spread of misinformation and extremist propaganda.[68] Sentiment analysis gauges the emotional tone of the text, topic modelling identifies recurring themes, and entity recognition extracts and categorizes key entities.[69] For example, AI models can effectively distinguish between factual and fabricated news articles, and identify potential terrorist propaganda by analysing subtle linguistic cues. These insights can significantly enhance threat intelligence efforts. NLP can transform national security by enabling the analysis of vast amounts of text and speech data from various sources, including social media, communication channels, and intelligence reports.

Communications Minister, Bosun Tijani announced that the Nigerian Federal Government has unveiled the nation's first multilingual Large Language Model (LLM) aimed at advancing artificial intelligence (AI) capabilities.[70] This innovative AI system is designed to process and generate text in multiple languages, supporting Nigeria's ongoing efforts to develop AI technology.[71] This multilingual LLM was introduced during a four-day AI workshop held in Abuja,

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65 Ibid.
66 Ibid.
67 E Blasch and others, 'Artificial Intelligence Strategies for National Security and Safety Standards' <https://arxiv.org/pdf/1911.05727> accessed January 21 2025.
68 Ibid; Olaoluwa and Potter, (n 64) .
69 Ibid.
70 Inclusion Times, 'Nigeria Launches First Multilingual AI-Language Model' (April 22 2024) <https://www.inclusiontimes.com/nigeria-launches-first-multilingual-ai-language/#:~:text=The%20Federal%20Government%20has%20launched,relaunch%20in%20partnership%20with%20Cisco.> accessed 17 January 2025.
71 Ibid.

which brought together over 120 AI professionals.[72] The model is specifically tailored to work with five low-resource languages, as well as accented English, with the goal of enhancing linguistic diversity within AI datasets.[73] The development of this model is supported by more than 7,000 fellows from the 3MTTNigeria program and has been created through collaboration between local and international technology companies.[74] These findings suggest that Nigeria's AI policy is actively evolving, with an emphasis on inclusivity, collaboration, and the enhancement of linguistic and cultural diversity in AI applications.

Generative AI offers significant potential for enhancing national security in Nigeria. Enabling advanced simulations can help predict the outcomes of various security strategies and model potential threats like cyberattacks or geopolitical conflicts.[75] However, this powerful technology also presents risks, including the potential for misuse in creating deepfakes and the spread of misinformation, which could undermine public trust and national cohesion.[76] To leverage the benefits of NLP and generative AI while mitigating these risks, Nigeria must prioritize responsible integration.[77] This requires careful consideration of ethical

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[72] Ibid.
[73] Ibid.
[74] Ibid .
[75] D Appel and A Black, 'Generative AI for National Security' <https://www.thecipherbrief.com/column_article/generative-ai-for-national-security> accessed 16 January 2025.
[76] M A Joshi, 'The Security Risks of Generative Artificial Intelligence' (2024) 7(2) *International Journal on Integrated Education (IJIE)* 91-95.
[77] Justin Fanelli, the Acting Chief of Technology Officer to the United States Navy, while discussing the future of AI in the national security and defence stated that AI in national security is not about the technology, it is about measuring mission accomplishment, advantage and including divestment in the actions we take. See Caitlin Dohrman, CEO of Tangram Flex, Mihai Filip, CEO of Oves Enterprises, and Sean Moriarty, CEO of Primer AI discuss the future of AI in the national security and defense sector. 'Putting AI to work for National Security' Atlantic Council, 14 November 2024, Washington DC https://www.youtube.com/redirect?event=video_description&redir_token=QUFFLUhqbGRCTmt6c0J1Z2d6WEhmSU5DUURmSkkxaHBQQXxBQ3Jtc0tteFZQMXNZQ2pfSU10bUZZc2ZYb0kybUc5LXJTYUFtUXVZUm9XU2lYeEIwMTVTSXdpM2dwWk5TU0Z2Qy1tRUdxbFIwSHV5TUdudGRFWVNLbmtYbWVvQ3FDc2hOTS1WUlkwYnd2bHVpcHl5bDFqWGFTcw&q=https%3A%2F%2Fwww.atlanticcouncil.org%2Fevent%2Fputting-ai-to-work-for-national-security%2F&v=dXs7tQiGQaI accessed 9 May 2023.

implications, robust oversight mechanisms, and a proactive approach to addressing potential misuse.

The proliferation of private actors and nascent enterprises engaged in Artificial Intelligence research and development within Nigeria underscores the nation's preparedness to integrate AI-powered advancements.[78] The state itself has demonstrated its commitment to advancing AI technology through the establishment of the National Centre for AI and Robotics (NCAIR).[79] Presently, Nigeria lacks dedicated legislation specifically targeting AI, there are, however, existing general and sector-specific laws applicable to their operations within the country.

As mentioned earlier, there is the draft National AI strategy released in August 2024. Babalola's critique of Nigeria's draft National AI Strategy highlights significant shortcomings that have implications for AI deployment in national security.[80] Babalola observed that the document lacks a clearly defined purpose and fails to outline resource allocation plans, which are essential for effective implementation.[81] Furthermore, it provides insufficient attention to privacy and data protection, mentioning "human rights" only sparingly and omitting critical references to the Nigerian Constitution.[82] The author argues that despite proposing ethical principles, the document omits enforceable privacy protections and fails to integrate these principles into actionable strategies, raising concerns about the ethical deployment of AI.[83] Additionally, the proposal to establish a new AI governance body is problematic, given the existing underfunding of the Nigeria

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[78] J Uba, 'Nigeria: Artificial Intelligence (AI) Regulation In Nigeria: Key Considerations, Recommendations, Legal Framework, And Policy Development For Artificial Intelligence (AI) In Nigeria' <https://www.mondaq.com/nigeria/new-technology/1373830/artificial-intelligence-ai-regulation-in-nigeria-key-considerations-recommendations-legal-framework-and-policy-development-for-artificial-intelligence-ai-in-nigeria> accessed 9 May 2023.

[79] Ibid.

[80] O Babalola, 'The (Draft) National Artificial Intelligence (AI) Strategy: A Diminution of Privacy and Data Protection?' (*Itedgenews*, 7 August 2024) <https://www.itedgenews.africa/the-draft-national-artificial-intelligence-ai-strategy-a-diminution-of-privacy-and-data-protection/#:~:text=By%20Olumide%20Babalola.%20On%20the%203rd%20day,make%20'input'%20and%20'further%20dissect%20its%20contents.'.> accessed 23 January 2025.

[81] Ibid.

[82] Ibid.

[83] Ibid.

Data Protection Commission (NDPC) and the availability of agencies like the National Centre for AI and Robotics (NCAIR), which could be empowered to avoid unnecessary financial strain.[84] These deficiencies could lead to operational inefficiencies, ethical risks, and public distrust, ultimately hindering the deployment of AI technologies for national security. To address these gaps, the strategy must clearly define its objectives, strengthen its commitment to privacy and data protection, align with existing frameworks like the NDPA, and propose practical, resource-efficient solutions for governance and implementation.

A crucial aspect of utilising AI lies in data privacy and AI algorithms require vast datasets for training to ensure accurate outputs.[85] Nigeria adopted a data protection law in 2023, the Nigeria Data Protection Act 2023 that has some notable provisions.[86] The establishment of the Nigerian Data Protection Commission is worth mentioning, a provision relating to the priority of the Act over all other sector-specific legislation on data privacy in Nigeria. [87] The Act also establishes enforcement and accountability methods, including penalties for non-compliance.[88]

However, concerning AI, the Act does not specifically address AI-related data terms like 'data mining,' 'anonymisation,' or 'models.' However, it does cover crucial aspects pertinent to the advancement of AI, such as ensuring data security and regulating data transfer across borders.[89] The Nigeria Data Protection Act 2023 includes provisions that directly and indirectly affect various aspects of AI utilisation in the country. For example, the requirement for a Data Protection Officer (DPO) can indirectly affect AI by creating an additional layer of bureaucracy and potentially slowing down development processes.[90] The right to rectify personal data allows individuals to control the information used by AI

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84 Ibid.
85 S Timi-Koleolu and O Atanda, 'Artificial Intelligence In Nigeria: Legal and Regulatory Guidance' <https://pavestoneslegal.com/newsletters/ > accessed 9 May 2023.
86 For example, the provision for legitimate interest assessment s 23(1), Nigeria Data Protection Act 2023 Federal Republic of Nigeria Official Gazette No.119 Vol. 110 (1 July 2023).
87 Ibid, s 4 and 63.
88 Ibid, pt X.
89 Ibid, s 39-43.
90 Ibid, s 32.

systems.[91] To an extent, the information security measures mandated by the Nigeria Data Protection Act 2023 protect personal data from unauthorised access or misuse.[92] The requirement for clear communication about data use can compel developers to be more transparent about how AI algorithms work.[93] Overall, the Nigeria Data Protection Act 2023 promotes the development of AI that respects human rights by fostering transparency, accountability, and individual control over data. This can help mitigate potential risks associated with AI, such as algorithmic bias and discrimination.

There is also the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 which aims to provide an effective and comprehensive legal, regulatory, and institutional framework for the prohibition, prevention, detection, prosecution, and punishment of cybercrimes in Nigeria.[94] In addition, the Act aims to guarantee the protection of critical national information infrastructure, promote cyber security and protect electronic communications, data and computer programs, intellectual property, and privacy rights.[95]

This study submits that the emergence of AI presents significant challenges to upholding the rule of law, protecting fundamental rights, and maintaining the integrity of Nigeria's national security framework. These challenges are amplified when considering the potential integration of AI-based decision-making tools within the realm of national security. Preserving the core principles of the rule of law, which are grounded in fundamental rights, remains paramount and cannot be compromised for the sake of expediency or cost-effectiveness within the legal framework and its beneficiaries. Therefore effectively navigating this transformative landscape requires the enactment of precise guidelines and regulations, along with a setting well-defined role for AI systems within Nigeria's national security apparatus. In other words, Nigeria needs clear rules for how to use AI safely and fairly in national security. Uba argues that when drafting a comprehensive AI policy, Nigerian authorities and relevant stakeholders should

[91] Ibid, s 34.
[92] Ibid, s 39.
[93] Ibid, s 27.
[94] Cybercrimes Act 2015, s.1 (a).
[95] Ibid.

consider the most effective means to uphold citizens' human rights while fostering an AI-powered economy that follows best practices.[96] These guidelines include ensuring algorithmic accountability, protecting data, maintaining transparency in decision-making based on machine learning, and more.[97] This paper submits that by prioritising these considerations, Nigeria can effectively harness the benefits of AI in enhancing national security while upholding fundamental rights and ethical standards.

There is no national policy on AI deployment for national security purposes in Nigeria. However, it is commendable that Nigeria was the first in Africa to establish a national centre for artificial intelligence.[98] Nigeria currently has seven governmental ministries, departments, and agencies tasked with promoting or overseeing the application of AI within the country.[99] There is a significant shift in how governments are approaching national security in the age of Artificial Intelligence (AI). Traditionally, data privacy, cybersecurity, and national security were seen as separate issues.[100] Now, governments realize that these issues are interconnected, especially when dealing with AI. This new approach aims to develop regulations that protect both privacy and national security from the risks posed by AI in the hands of foreign adversaries.[101] Traditional threats like physical attacks are joined by cyberwarfare, information warfare, and manipulation of public opinion ("soft war") due to rapid advancements in AI.[102] Therefore, strong data privacy laws and information security measures are vital to protect sensitive

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96 Uba (n 78).
97 Ibid.
98 Effoduh, (n 27).
99 These include: the Federal Ministry of Communications and Digital Economy, Federal Ministry of Science, Technology, and Innovation, National Information Technology Development Agency, National Office for Technology Acquisition and Promotion, Nigerian Communications Commission, Securities and Exchange Commission and the Corporate Affairs Commission.
100 Swire P and Sacks S, 'Limiting Data Broker Sales in the Name of U.S. National Security: Questions on Substance and Messaging' https://www.lawfaremedia.org/article/limiting-data-broker-sales-in-the-name-of-u.s.- national-security-questions-on-substance-and-messaging [https://perma.cc/UA98-94Q2 on 15 May 2024, M Hu, E Behar D and Ottenheimer, 'National Security and Federalizing Data Privacy Infrastructure for AI Governance' (2024) 92(5) *Fordharm Law Review* 1831.
101 Hu, Behar and Ottenheimer, (n 100) 1831.
102 Ibid.

information and prevent its exploitation.[103] This is a key foundation for any effective national security strategy.[104] Therefore, regulations are necessary to ensure responsible development and use of AI. The European Union's AI Act and China's AI regulations are examples of attempts to govern the development and use of AI.[105] It has been argued that there is a need to consider the national security implications of AI governance alongside the focus on protecting individual rights from AI's potential harms.[106] Data privacy, cybersecurity, and national security are no longer separate issues. They are interconnected, especially when dealing with AI. This study submits that Nigeria should develop a comprehensive strategy that addresses all three aspects. There is a need to balance national security concerns with protecting individual rights from the potential harms of AI. Striking this balance is crucial for effective AI governance in Nigeria.

CHALLENGES AND RISKS OF AI USE IN NATIONAL SECURITY IN NIGERIA

Considering the evident advantages for military operations through enhanced automation and the highly adaptable civilian applications of AI, outright prohibitions on autonomous weapon systems, robotics, and unmanned vehicles seem untenable from legal, policy, and operational perspectives.[107] States that are in the process of developing new weapons have the responsibility to engage in a continuous review process, starting from the initial conception and design phase, progressing through technological development and prototyping, and culminating in production and deployment.[108] Indeed, AI stands as a profoundly potent

[103] Ibid.
[104] Ibid.
[105] EU 'Artificial Intelligence Act Final Draft (2024)' https://artificialintelligenceact.eu/the-act/ on 15 May 2024 The EU AI Act is a proposed regulation by the EU to establish uniform rules for using AI. For details on China's AI regulations see, Sheehan M, 'Tracing the Roots of China's AI Regulations' <https://carnegieendowment.org/2024/02/27/tracing-roots-of-china-s-ai-regulations-pub-91815> accessed 15 May 2024.
[106] Hu, Behar and Ottenheimer, (n 100) 1832.
[106] Ibid.
[107] MN Schmitt and JS Thurnher, ''Out of the Loop': Autonomous Weapons Systems and the Law of Armed Conflict' (2013) 4 *Harvard National Security Journal* 233.
[108] International Committee of the Red Cross (ICRC), A Guide to the Legal Review of New Weapons, Means and Methods of Warfare (2006) 23

technology, yet it comes with its own set of obstacles.[109] When not used judiciously and accompanied by suitable protections, this technology may have adverse effects on civil liberties and human rights.[110]

While AI holds promise for various military applications, it also presents unique challenges that demand swift responses.[111] For instance, AI for national security can be powerful, but it often relies on collecting and analysing vast amounts of personal data.[112] Some have raised concerns that AI-powered surveillance systems can facilitate the unobtrusive invasion of individual privacy, without obtaining informed consent or providing transparency about data collection practices.[113] Some have argued that AI has the potential to significantly improve data privacy and security, but it is important to address the ethical challenges involved.[114] The successful implementation of an AI strategy hinges on achieving an appropriate balance between data privacy, security, and innovation.[115] This requires meticulous evaluation and well-considered choices.[116] Below are some of the challenges of AI deployment for national security in Nigeria:

1. Uncertainty of AI's Impact on Nigeria's National Security: Nsude lists the potential dangers of AI in warfare in Nigeria. Firstly, AI could make it easier for insurgent groups to develop and deploy weapons, potentially giving them an advantage over traditional military forces.[117] The author submits that the terrorists in Nigeria seem to have access to modern weapons of

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0902.pdf on 13 May 2024, Afsah , (n 13) 461.

[109] I Nsude, 'Artificial Intelligence (AI), The Media And Security Challenges in Nigeria' (2022) 11 *Communication, technologies et développement* 11.

[110] Ibid.

[111] Ibid.

[112] S D Devineni, 'AI in Data Privacy and Security' [2024] *International Journal of Artificial Intelligence and Machine Learning* 44.

[113] S H Park, 'Ethics for Artificial Intelligence: Focus on the Use of Radiology Images' [2022] 83(4) *Journal of the Korean Society of Radiology* DOI: 10.3348/jksr.2022.0036.

[114] Ibid, 38.

[115] Devineni, (n 112) 44.

[116] Ibid.

[117] Nsude (n 109) 11.

warfare.[118] It has been argued that the effectiveness of applying artificial intelligence in Nigeria's fight against Boko Haram and Herdsmen is not solely determined by its deployment but by which side—government or insurgent—adopts it first.[119] This is because it is arguable that advancements in information technology could decrease insurgent attacks by aiding states in gathering intelligence, or conversely, increase attacks by facilitating better coordination among insurgents.[120] If the primary concern becomes insurgent use of AI, development efforts might prioritize offensive capabilities over defensive ones. This could lead to an arms race where both sides develop increasingly sophisticated AI weapons, escalating tensions.[121]

2. Poor Data Infrastructure: Artificial Intelligence (AI) relies on the availability of high-quality, well-structured data to function effectively.[122] However, Nigeria faces significant challenges due to its fragmented and often outdated data systems.[123] Other issues include a lack of robust data infrastructure, privacy concerns, and limited data collection capabilities, hindering the training and effectiveness of AI in various sectors. Studies reveal Nigeria's data and statistical systems are fragmented, suboptimal, poorly coordinated, and largely ineffective.[124] They fail to meet the needs of policymakers, business investors,

[118] Ibid
[119] Ibid
[120] Ibid
[121] KF Maisha, 'AI & Arms Race: The Rivalry Between the U.S. & China in the Field of Tech Supremacy' (BIPSS Commentary) <https://bipss.org.bd/pdf/AI%20&%20Arms%20Race%20The%20Rivalry%20Between%20the%20U.S.%20&.pdf> accessed 13 May 2024.
[122] O Baruwa, 'Nigeria: Is Nigeria Ready for Artificial Intelligence (Ai)?' (*allafrica*, 9 October 2024) <https://allafrica.com/stories/202410100476.html#:~:text=AI%20thrives%20on%20high%2Dquality,currently%20lack%20sufficient%20data%20infrastructure> accessed 23 January 2025.
[123] Ibid.
[124] OE Olubusoye, GO Korter, and O Keshinro, ' Nigerian Statistical System: the Evolution, Progress and Challenges' <http://doi/10.13140/RG.2.1.3136.4569> accessed 22 January 2025.

.and citizens. This deficiency poses significant challenges for deploying AI in national security, as the effectiveness of AI systems depends on reliable, accurate, and well-structured data. Without a robust data infrastructure, the potential of AI to enhance national security initiatives may remain unrealised, limiting its ability to provide actionable insights or support critical decision-making processes. Limited internet access and digital infrastructure, particularly in rural areas, further restrict data collection and the equitable deployment of AI solutions.[125] Additionally, evolving policies on data privacy and governance remain insufficient to address concerns around security, ethics, and accountability in AI systems. The shortage of skilled AI professionals and data scientists further exacerbates these challenges, hindering the country's ability to implement AI technologies effectively. Addressing these barriers is crucial for Nigeria to harness the transformative potential of AI across various sectors, including national security.

3. Resource Constraints: Nigeria faces financial and technological limitations and infrastructural deficits in building robust AI systems.[126] Governments require significant institutional capacities, such as skilled personnel and financial resources, to govern AI effectively.[127] Budgetary constraints often prioritise

[125] A study investigates the cause of digital divide in Nigeria: O F Oluda and C G Josephs, 'The Causes of Digital Divide in Nigeria: The Context of the Nigerian Law Reform Commission' Master Thesis, Lund University School of Economics and Management 2023, <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=9123699&fileOId=9123921> accessed 23 January 2025.

[126] Chibuzo Charles Nwosu and others, 'Artificial Intelligence in Public Service and Governance in Nigeria' (2024) 4(2) *Journal of Governance and Accountability Studies,* 116; Tonye Al-Onyanabo, 'Harnessing AI for Financial Inclusion in Nigeria: Opportunities and Challenges' (2024) <://www.researchgate.net/publication/381161690_Title_Page_Title_Harnessing_AI_for_Financial_Inclusion_in_Nigeria_Opportunities_and_Challenges> accessed 16 January 2025.

[127] MR Martins, 'From On-Premise to Cloud: Evolving IT Infrastructure for the AI Age' (2023) 20(03), *World Journal of Advanced Research and Reviews,* 1898-1934; Jenny Lyons-Cunha, 'What is AI Infrastructure?' (11 December 2024) <https://builtin.com/artificial-intelligence/ai-infrastructure> accessed 16 January 2024; Emmanuel Ogiemwonyi Arakpogun and others

immediate security needs over long-term investments in AI. To overcome these challenges, Nigeria can foster partnerships with private sectors, international organisations, and AI-focused start-ups to pool resources and share costs. The Samyukta Electronic Warfare System is a prominent example of collaboration between India's Defence Research and Development Organisation (DRDO) and Tata Power Strategic Engineering Division (SED).[128] This integrated mobile electronic warfare system was jointly developed by DRDO, Bharat Electronics Limited, Electronics Corporation of India Limited, and the Indian Army's Corps of Signals to support tactical battlefield operations.[129] Tata Power SED played a significant role in the development of the Command and Control Software for the Samyukta system, contributing to its capabilities in surveillance, analysis, interception, direction finding, and position fixing, prioritizing, and jamming of communication and radar signals from HF to MMW frequencies.[130] Another avenue for addressing resource constraints lies in regional collaboration. Establishing cost-sharing agreements with neighbouring countries can facilitate the development of shared AI infrastructure, such as data centres and research hubs, for security purposes. The African Union's Continental AI Strategy provides a framework for

'Artificial Intelligence in Africa: Challenges and Opportunities' <https://researchportal.northumbria.ac.uk/ws/portalfiles/portal/31309999/AI_in_Africa_Opportunities_and_Challenges_Paper_68_Manuscript.pdf> accessed 16 January 2025.

[128] Defence Research and Development Organisation 'Programme Samyukta' <https://www.drdo.gov.in/drdo/programme-samyukta>

[129] The system's capabilities include Electronic Intelligence (ELINT), Communications Intelligence (COMINT), and electronic countermeasures (ECM), enabling activities such as signal interception, analysis, direction finding, and jamming. The system operates on 145 ground mobile vehicles, covering an area of 150 km by 70 km, enhancing the Indian Army's electronic warfare capabilities. See Indian Defence Analysis, 'Himshakti: India's Most Lethal Electronic Warfare System' <https://indiandefenseanalysis.wordpress.com/2023/03/25/himshakti-indian-armys-most-lethal-electronic-warfare-system/> accessed 16 January 2024.

[130] Ibid.

regional cooperation to harness AI's transformative potential while addressing ethical, legal, and societal challenges.[131] The strategy emphasizes the development of shared AI infrastructure, such as data centres and research hubs, and prioritizes collaboration among member states to stimulate investment, build capabilities, and foster innovation.[132] By pooling resources and aligning efforts, AU member countries can collectively address critical issues, including national and regional security, through scalable and inclusive AI solutions.[133] This approach underscores the importance of a unified effort in leveraging AI to strengthen security frameworks across Africa. It focuses on key areas such as building AI capabilities, minimizing risks, stimulating investment, and fostering regional cooperation. In the context of national security, this strategy highlights the importance of pooling resources through regional partnerships to develop shared AI infrastructure, such as data centres and research hubs.[134] These facilities can support AI-driven solutions to address security challenges across multiple countries, promoting collaborative frameworks and leveraging Africa's young, tech-savvy population for sustainable and secure growth.[135] Nigeria can leverage the African Union's Continental AI Strategy by collaborating with regional partners to establish shared AI infrastructure, such as data centres and research hubs, for addressing security challenges. By aligning with the strategy, Nigeria can attract funding, build local AI expertise, and utilise its young, tech-savvy population to drive AI-driven national security solutions. The Federal Ministry of

[131] African Union, 'Continental Artificial Intelligence Strategy: Harnessing AI for Africa's Development and Prosperity' (July 2024) <https://au.int/sites/default/files/documents/44004-doc-EN-_Continental_AI_Strategy_July_2024.pdf> accessed 17 January 2024.
[132] Ibid.
[133] Ibid.
[134] Ibid.
[135] Ibid.

Communications, Innovation, and Digital Economy's partnership with Google.org, which provided a ₦2.8 billion grant to Data Science Nigeria, illustrates the importance of nurturing AI expertise.[136] A positive implication of this is that a larger pool of Nigerians with AI skills can strengthen Nigeria's ability to develop and implement AI-based security solutions. In conclusion, addressing resource constraints requires Nigeria to embrace collaboration at both national and regional levels, leverage existing frameworks, and invest in its human capital. By adopting these strategies, Nigeria can overcome financial and technological barriers and harness AI's transformative potential to bolster national security and drive sustainable development.

4. Lack of Expertise: A study published notes that Nigerian policymakers and decision-makers often lack awareness and understanding of AI's potential in the security sector, hindering its integration into existing systems.[137] The same study highlights that Nigeria faces a shortage of skilled AI professionals, stressing the need for expertise in machine learning, data analysis, and cybersecurity to implement AI solutions effectively for national security.[138] This gap affects both the quality and reliability of AI applications in national security. To address the shortage of AI expertise and awareness for national security in Nigeria, the country can implement several strategies. These include initiating training programs in partnership with local universities and global tech firms, fostering public-private collaborations with companies like

[136] Federal Ministry of Communication, Innovation, and Digital Economy, 'Ministry Announce N2.8billion Google Support to Advance AI Talent Development in Nigeria' (October 31 2024) <https://fmcide.gov.ng/ministry-announce-n2-8billion-google-support-to-advance-ai-talent-development-in-nigeria/> accessed 17 January 2025.
[137] Musa Zakari, Implication of Artificial Intelligence on National Security for the Nigerian Security Agencies' (2024) 6(1) *Journal of Terrorism Studies,* 11.
[138] Ibid.

Google and Microsoft, and organizing workshops to raise AI awareness among policymakers. Additionally, Nigeria should invest in AI research and development, possibly by collaborating with regional and international partners, and support the establishment of shared AI infrastructure through regional cooperation. Nigeria can take a cue from Kenya. Kenya's National AI Strategy 2025-2030 aims to position the country as Africa's leading AI innovation hub by focusing on sustainable development, economic growth, and social inclusion.[139] The strategy highlights the importance of building AI digital infrastructure, developing a robust data ecosystem, and fostering AI research and innovation tailored to Kenya's unique needs.[140] It places a strong emphasis on creating a talent pipeline by collaborating with educational institutions and the private sector to cultivate a skilled workforce, ensuring Kenya has the experts needed to drive AI adoption and innovation. The strategy outlines key enablers such as governance frameworks, investment mobilization, and ethical AI practices, all crucial to achieving these ambitious goals.[141] By focusing on the development of skilled AI professionals, Kenya is taking significant steps to leverage AI for sectors including security, further enhancing its role as a leader in Africa's AI revolution.

5. AI-powered tools for creating deepfakes (realistic forgeries) could erode trust in institutions and media.[142] Deepfakes are a

[139] ITedgenews, 'Kenya Unveils National AI Strategy 2025-2030, Aiming to Lead Africa's AI Revolution' <https://www.itedgenews.africa/kenya-unveils-national-ai-strategy-2025-2030-aiming-to-lead-africas-ai-revolution/#:~:text=AI%20revolution%20%2D%20ITEdgeNews-,Kenya%20unveils%20National%20AI%20Strategy%202025%2D2030%2C%20aiming,to%20lead%20Africa's%20AI%20revolution&text=Kenya's%20Ministry%20of%20ICT%20and,AI)%20Strategy%202025%2D2030.> accessed 17 January 2025.
[140] Ibid.
[141] Ibid.
[142] R Chesney and D Citron, 'Deepfakes: A Looming Crisis for National Security, Democracy and Privacy?' *(Lawfare*, Wednesday, February 2018), <https://www.house.mn.gov/comm/docs/d9e1f352-ce1b-46d1-b4e3-2807437b571e.pdf> accessed 15 May 2024.

form of synthetic media, generated by AI-powered or closely related digital tools, which diverge from capturing reality and instead rely on training data. [143] Deepfakes can significantly affect Nigeria's national security efforts when combined with AI use. It can create fake news and propaganda targeting government officials, security forces, or ethnic groups.[144] This can sow discord, incite violence, and undermine public trust in legitimate institutions. Deepfakes depicting fabricated events or statements from leaders can create confusion and demoralize the population.[145] This can make it harder for the government to maintain order and combat threats. Deepfakes can create fake social media profiles or manipulate existing ones to gather intelligence or spread misinformation.[146] This can complicate efforts by Nigerian security forces to identify legitimate threats. Deepfakes have the potential to portray security operations in a negative light, discouraging cooperation from the public. This can make it harder for security forces to gather information and apprehend criminals.

6. Errors or biases in AI algorithms used for intelligence gathering or decision-making could lead to misinterpretations of threats or faulty military actions.[147] AI algorithms are prone to biases, theft, and manipulation, particularly when the training dataset lacks proper curation or protection. [148] For instance, researchers have found racial biases in AI facial recognition systems due to limited diversity in training images, and gender biases in some

[143] I Kalpokas and J Kalpokiene, *Deepfakes: A Realistic Assessment of Potentials, Risks and Policy Regulation* (Springer, 2022) 1.
[144] K M Sayler and L A Harris, 'Deepfakes and National Security' <https://apps.dtic.mil/sti/pdfs/AD1117081.pdf> accessed n 13 May 2024.
[145] Ibid.
[146] Ibid.
[147] Ibid.
[148] D S Hoadley and K M Sayler, 'Artificial Intelligence and National Security' <https://apps.dtic.mil/sti/trecms/pdf/AD1107549.pdf > accessed 13 May 2024.

natural language processing programs.[149] These issues could have significant implications for AI applications in the military, especially if biases are undetected and are incorporated into systems with lethal consequences.[150] Some argue that predictive policing which relies on data-driven analysis to allocate law enforcement resources based on predictions of future crimes, including the identification of potential perpetrators, victims, or target locations should not be employed in Nigeria as a substitute for community involvement and comprehensive crime prevention strategies.[151] The reason is that using past and present crime data, which may include social media content and communication records, can result in biases related to race, ethnicity, and discrimination.[152] Additionally, some opine that any AI system intended to profile Nigerians or designate individuals as potential perpetrators of terrorist activities, or to flag individuals based on their travel history or religious beliefs, could be prejudicial and undermine the constitutional principle of the presumption of innocence.[153] This study submits that while concerns about bias and discrimination in predictive policing are valid, completely rejecting it might overlook potential benefits. However, studies have not conclusively proven a decrease in crime due to predictive policing.[154] Nigeria may consider investing in building trust and collaboration between law enforcement and communities. This can improve information sharing, leading to more effective crime prevention and solving.

[149] Ibid.
[150] Ibid.
[151] Effoduh (n 27) 10.
[152] Ibid.
[153] Ibid.
[154] A Meijer and M Wessels, 'Predictive Policing: Review of Benefits and Drawbacks' (2019) 42(1) *International Journal of Public Administration* 1-9.

7. Accountability Gap: Current legal systems struggle to hold AI accountable for its actions because they are designed for humans and companies with human decision-makers.[155] Nigeria faces similar challenges. The issue is whether AI can ever be truly liable for its own decisions, this issue becomes even more complex when AI systems communicate and coordinate decisions, making it difficult to pinpoint who is responsible (e.g., algorithmic collusion)[156]. While most AI currently relies on human input, there is anticipation of an increase in autonomous AI systems, like care robots.[157] This raises new questions about legal liability. A looming challenge for legal systems is apparent: how to hold AI accountable for its actions in a fair and effective way.[158] Some argue that the accountability gap for AI can be a significant issue, requiring new legal solutions, but it is not always insurmountable.[159] Courts can sometimes address minor accountability gaps by creatively interpreting existing laws.[160] For example, courts in Nigeria could creatively interpret laws related to data privacy (Nigeria Data Protection Act 2023) and cybersecurity (Cybercrimes Act 2015) to address some AI-related issues. Some acknowledge that gaps that are more significant exist.[161] Simply stretching existing laws to cover AI would not work.[162] It would be a doctrinal overreach (trying to apply a law beyond its intended scope) and lead to bad legal outcomes.[163] Legal systems need to be prepared for significant changes to hold AI

[155] K Heine and A Quintavalla, 'Bridging the Accountability Gap of Artificial Intelligence – What can be Learned from Roman law?' (2024) 44 *Legal Studies* 66.
[156] Ibid.
[157] Ibid, 66.
[158] Ibid.
[159] Ibid.
[160] Ibid.
[161] Ibid.
[162] Ibid.
[163] Ibid.

accountable.[164] While there might be ways to adapt existing laws for minor issues, substantial challenges require entirely new legal tools and approaches.[165] Nigeria could develop regulations that address issues like algorithmic bias, data privacy for AI applications, and clear guidelines for AI use in national security. The Nigerian legal system can adapt and introduce new solutions as new challenges arise. It has been argued that Roman law offers a blueprint for creating a legal framework for AI.[166] This could serve as a model for creating a legal framework for AI in Nigeria. Thus, a system can be designed with:

a. Differentiated Liability: The extent of an AI owner's liability would depend on the level of autonomy granted to the AI (similar to praepositio & iussum).

b. Limited Liability Schemes: A "digital peculium" can be established to limit the owner's liability for the AI's actions.

This study submits that overall, the potential dangers of AI in warfare can create a cautious environment for AI deployment in Nigeria. This could lead to missed opportunities for utilising AI for defensive purposes and improving national security.

OVERSIGHT OVER DEPLOYMENT OF AI FOR NATIONAL SECURITY IN NIGERIA

Oversight regarding the deployment of AI for national security purposes is crucial. This involves monitoring adherence to established AI security standards through routine audits and assessments, as well as implementing certification procedures for AI systems and components.[167] This ensures that they meet safety and security criteria before being deployed. While Nigerian law mandates warrants for

[164] Ibid.
[165] Ibid.
[166] Ibid.
[167] C Yu, 'AI as Critical Infrastructure: Safeguarding National Security in the Age of Artificial Intelligence' <https://osf.io/preprints/osf/u4kdq> accessed15 May 2024.

processing personal data in national security cases, the legal framework lacks clear guidelines for courts to assess such warrant requests.[168] This creates an opaque system with inadequate judicial and legislative oversight of intelligence activities. For instance, judicial oversight is limited to the initial stages of surveillance, and there is no requirement for public reports on intelligence agency activities or oversight body actions.[169] These shortcomings are particularly concerning in the context of AI-powered surveillance in Nigeria. AI algorithms can analyse vast amounts of data to identify patterns and predict behaviour, raising significant privacy concerns. Without clear oversight mechanisms, the use of AI in national security could lead to discriminatory profiling, biased decision-making, and potential violations of civil liberties.

A common approach to oversight of AI is to employ human oversight, however, a study has shown that the assumption that humans can effectively oversee these algorithms is questionable and evidence suggests humans may not be able to understand or analyse complex algorithms properly.[170] There have been proposals for a shift from human oversight to institutional oversight.[171] This would involve the justification stage, where government agencies need to prove the algorithm is necessary and that any oversight methods are effective.[172] It also includes the democratic review stage, where public approval should be required before implementing the algorithm with oversight.[173] Currently, Nigeria lacks an oversight authority for AI national security systems. This is worrisome, especially considering the functions of an oversight authority, which include:[174]

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[168] Cybercrimes Act 2015, s 39, Terrorism (Prevention and Prohibition) Act Federal Republic of Nigeria Official Gazette No.91 Vol. 109 (16 May 2022), s 68; the Lawful Interception of Communications Regulations 2019 Federal Republic of Nigeria Official Gazette No.12 Vol.106 (23 January 2019), regs 12 and 13, among others.

[169] Lawful Interception of Communications Regulations 2019, reg 13.

[170] B Green, 'The Flaws of Policies Requiring Human Oversight of Government Algorithms' (2022) *Computer Law & Security Review* 1.

[171] Ibid.

[172] Ibid.

[173] Ibid.

[174] F Patel and PC Tommey, 'An Oversight Model for AI in National Security: The Privacy and Civil Liberties Oversight Board' <https://www.brennancenter.org/our-work/analysis-opinion/oversight-model-ai-national-security-privacy-and-civil-liberties> accessed 20 May 2024.

1. Reviewing national security systems and this includes everything from domestic intelligence programs to autonomous weapons systems.
2. Ensuring compliance with legal and ethical standards, which includes making sure AI use follows privacy, civil rights, and civil liberties guidelines
3. Identifying and mitigating risks: This includes assessing the potential for bias, and algorithmic errors, and ensuring proper data security.
4. Recommending a course of action: The oversight body should be able to suggest stopping the use of a system if the risks outweigh the benefits.
5. Providing transparency and accountability: The public must be informed about the use of AI in national security and the oversight body should work to declassify information where possible.
6. Staying informed of evolving technologies

Such a body must be independent of the agencies being overseen and have sufficient resources to carry out its work effectively.

INTERNATIONAL COMPARISONS

This study compares the United Kingdom with Nigeria, exploring their approaches to AI in national security and highlighting key strengths and weaknesses. While both Nigeria and the UK recognise the potential of Artificial Intelligence (AI) to bolster national security, their approaches and challenges, differ due to varying levels of development and policy frameworks.

Overall, Nigeria can learn from the UK's approach by focusing on adapting and strengthening existing regulatory frameworks to address the challenges and opportunities presented by AI. This can provide a more efficient and effective path for fostering responsible AI development and ensuring public trust. Research shows AI has significant potential to streamline current processes within the UK's national security apparatus, leading to both faster and more impactful results.[175]

[175] A Babuta, M O Oswald and A Janjeva, 'Artificial Intelligence and UK National Security Policy Considerations' (*RUSI Occasional Paper*, April 2020) <https://static.rusi.org/ai-national-security-final-web-version.pdf> accessed 14 May 2024.

The UK intelligence agencies' legal responsibilities are outlined in the Security Service Act of 1989 for the Security Service and the Intelligence Services Act of 1994 for the Secret Intelligence Service and GCHQ.

These laws limit their authority to collect and share information to what is necessary for their operations. Regarding digital investigative powers, such as intercepting communications and accessing data, the Investigatory Powers Act of 2016, (IPA) provides the primary framework.[176] Under the Investigatory Powers Act 2016, the agencies are subject to a large level of scrutiny and oversight. Section 2 of the Investigatory Powers Act 2016 emphasizes the importance of privacy, requiring authorities to explore less intrusive methods before resorting to more invasive measures. Surveillance activities and the use of covert human intelligence sources are governed by the Regulation of Investigatory Powers Act of 2000.[177] The Human Rights Act 1998, which adopts the principles of the European Convention on Human Rights (ECHR) into UK law, safeguards essential human rights and political liberties with certain limitations.[178]

Under Article 8 of the right to privacy can only be restricted on the condition that it is lawful and deemed necessary in a democratic society.[179] On the other hand, the state has obligations under the ECHR to prevent risks to individuals or society, requiring it to take reasonable measures within its powers to do so.[180] The Investigatory Powers Act 2016 reinforced the already-existing safeguards that applied to the use of investigatory powers by introducing ground-breaking oversight systems.[181] It gave these powers a clear legal basis and, ensured that they

[176] The UK Investigatory Powers Act 2016 (IPA 2016) available at <https://www.legislation.gov.uk/ukpga/2016/25/contents/enacted/data.htm> accessed 13 May 2024,

[177] The Regulation of Investigatory Powers Act 2000, available at <http://www.legislation.gov.uk/ukpga/2000/23/pdfs/ukpga_20000023_en.pdf> accessed 13 May 2024.

[178] United Kingdom: Human Rights Act 1998, 9 November 1998, <https://www.refworld.org/legal/legislation/natlegbod/1998/en/48641> accessed 14 May 2024.

[179] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, ETS 5, 4 November 1950, <https://www.refworld.org/legal/agreements/coe/1950/en/18688> accessed May 2024.

[180] European Convention on Human Right, art 2 and 3.

[181] Gov. UK, 'Explanatory Framework for Adequacy Discussions Section H: National Security Data Protection and Investigatory Powers Framework' 18

are only used when necessary for a legitimate purpose and in a manner that is proportionate to that purpose.[182] This test of necessity and proportionality offers national security agencies a set of criteria to evaluate the validity of implementing new technologies, including AI.[183] Under Regulation 7(3) of Nigeria's Lawful Interception of Communications Regulation 2019, a warrant is required to intercept communications in cases involving national security, crime prevention or investigation, the protection of Nigerians' economic well-being, public emergency or safety, or compliance with international mutual assistance agreements.

This paper submits that the Lawful Interception of Communications Regulations 2019 provisions outlined offer some level of protection, but they do not fully match the comprehensiveness of the human rights proportionality test. The Regulation focuses on specific justifications: It outlines five reasons (national security, crime prevention, economic well-being, public safety, and international cooperation) for obtaining a warrant to intercept communication. It is also limited in scope, as it only applies to the interception of communication, not other privacy-invasive measures related to AI use.

The Human Rights Proportionality test is more comprehensive as it goes beyond specific justifications, requiring a balancing act between the importance of the objective (e.g., national security) and the limitations placed on individual rights (e.g., privacy). It considers less intrusive alternatives and encourages exploring options that achieve the objective with less impact on privacy. The test involves weighing the severity of the privacy restriction against the importance of the objective achieved. The Lawful Interception of Communications Regulation 2019 offers a starting point but the human rights proportionality test provides a more robust framework for safeguarding privacy when using AI for national security. Overall, the human rights proportionality test can provide a framework for Nigeria to ensure AI use for national security is necessary and proportionate to the threat and minimize privacy intrusions while achieving security goals. It will also foster

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872239/H_-_National_Security.pdf 13 May 2024.

[182] Ibid. Also, see the work of Yin on Harmonious AI law in Ghana.

[183] Babuta, Oswald and Janjeva, (n 175) 23.

public trust by demonstrating a commitment to balancing security and rights. By applying this test, Nigeria can develop a responsible and effective approach to AI that strengthens national security while safeguarding the fundamental rights of its citizens.

Currently, authorisation processes for agencies in the UK often focus on approving the initial collection of data. The position is the same in Nigeria in the laws that provide for warrants for the interception of information.[184] It has been argued that with AI, the data can be analysed later for new purposes and this creates a gap because the initial approval might not have considered all the potential uses of AI on that data.[185] Therefore emphasising the need for AI use to be demonstrably necessary and proportionate, balancing effectiveness with minimal intrusion on individual rights.[186]

Additionally, transparency and accountability are crucial, ensuring the public understands how these systems work and who bears responsibility for their decisions.[187] There is a need for the Nigerian government to be transparent about the specific AI tools used for national security and the justification behind their deployment. This transparency can help address public concerns about privacy and potential misuse. Human rights law offers a valuable framework for states to guide their decisions on deploying AI technologies.[188] This framework emphasises the need for transparency in justifying the deployment and ensuring it meets a pressing social need.[189] Additionally, it highlights the importance of proportionality, meaning the chosen AI solution should be the least intrusive option that achieves the desired outcome.[190]

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[184] Terrorism (Prevention and Prohibition) Act 2022 Federal Republic of Nigeria Official Gazette No.91 Vol. 109 (16 May 2022), s 68; Cybercrimes Act 2015, s 39; Lawful Interception of Communications Regulations 2019, reg 7.
[185] Babuta, Oswald and Janjeva, (n 175) 23.
[186] Ibid.
[187] Ibid.
[188] D Murray, 'Symposium: How Will Artificial Intelligence Affect International Law? Using Human Rights Law To Inform States' Decisions to Deploy AI' [2020] 114 *American Journal of International Law Unbound* 158-162.
[189] Ibid, 160.
[190] Ibid.

In the UK, there are existing guidance and standards relating to the use of AI for national security purposes. They include the Data Ethics Frameworks issued by the Department for Digital, Culture, Media and Sport UK that sets overarching principles for the use of data such as transparency, accountability and fairness.[191] There is also the Guidance for Secure AI System Development issued by the National Security Agency, National Cyber Security Centre-UK, Cybersecurity and Infrastructure Security Agency, and Partners, which provides guidelines to ensure the secure design, development, deployment, operation and maintenance of AI systems.[192] Notably, in the UK, several organisations are involved in guiding the ethical and responsible utilization of AI.[193] These include the Centre for Data Ethics and Innovation,[194] the Information Commissioner's Office,[195] the Office for AI,[196] and parliamentary and independent committees,[197] among others. Nigeria can draw valuable lessons from the UK's approach to deploying AI for national security by adopting a robust framework that balances security needs with human rights. This includes using a human rights proportionality test to justify AI technologies, developing a unified national AI policy that prioritizes transparency, accountability, necessity, and proportionality, and instituting ongoing reviews to reassess AI's use on collected data. By adapting existing legal frameworks and

[191] Government Digital Service 'Data Ethics Framework' https://assets.publishing.service.gov.uk/media/5f74a4958fa8f5188dad0e99/Data_Ethics_Framework_2020.pdf 13 May 2024.

[192] The National Security Agency (NSA), UK National Cyber Security Centre (NCSC-UK), U.S Cybersecurity and Infrastructure Security Agency (CISA), and other partners 'Guidelines for Secure AI System Development' https://media.defense.gov/2023/Nov/27/2003346994/-1/-1/0/GUIDELINES-FOR-SECURE-AI-SYSTEM-DEVELOPMENT.PDF 14 May 2024. There is also the Government Digital Service and Office for Artificial Intelligence, 'Understanding Artificial Intelligence Ethics and Safety', 10 June 2019 https://www.gov.uk/guidance/understanding-artificial-intelligence-ethics-and-safety 8 May 2024.

[193] Babuta, Oswald and Janjeva, (n 175) 35.

[194] See UK Government, 'Centre for Data Ethics and Innovation', <https://www.gov.uk/government/> accessed 14 May 2024.

[195] ICO <https://ico.org.uk/> accessed 14 May 2024.

[196] Gov. UK, 'Office for Artificial Intelligence' <https://www.gov.uk/government/organisations/office-for-artificial-intelligence> accessed 14 May 2024.

[197] UK Parliament, 'Artificial Intelligence Committee' <https://committees.parliament.uk/committee/376/artificial-intelligence-committee> accesssed 14 May 2024.

clearly defining stakeholder roles, Nigeria can ensure ethical AI deployment that protects individual rights while fostering public trust.

CONCLUSION

This article has explored the challenges and opportunities of using Artificial Intelligence (AI) for national security in Nigeria. It compared Nigeria's approach to AI in national security with the United Kingdom identifying key lessons that Nigeria can learn from these countries. AI can be a valuable tool for national security, but it is important to develop and use AI responsibly. It also discussed existing AI projects in Nigeria as well as other technologies the country can leverage.

The multilingual large language model (LLM) project earlier discussed has received an initial funding of US$3.5 million from both local and international partners.[198] This includes a direct contribution of $1.5 million, with an additional $2 million invested by 21st Century Technologies.[199] Key supporters of the project include the UNDP, UNESCO, and major global tech companies such as Meta, Google, and Microsoft.[200] These funds will support pilot projects and contribute to the advancement of AI systems in Nigeria. Minister Bosun Tijani also highlighted other several key developments in Nigeria's artificial intelligence (AI) landscape, demonstrating the government's ongoing efforts to enhance AI capacity and infrastructure.[201] He reported that Nigeria's government, through partnerships with 21st Century Technologies and the National Centre for Artificial Intelligence and Robotics (NCAIR), is advancing its AI capabilities.[202] The collaboration involves funding the acquisition of GPUs to build the country’s national computing capacity, which will be accessible to local researchers, startups, and government entities for critical AI projects.[203] The GBB data centre in the Federal Capital

[198] Murithi, (n 60).
[199] Ibid.
[200] Ibid.
[201] Inclusion Times, ‘Nigeria Launches First Multilingual AI-Language Model’ (<https://www.inclusiontimes.com/nigeria-launches-first-multilingual-ai-language/> accessed 24 January 2025.
[202] Ibid.
[203] Ibid.

Territory (FCT) will house these resources.[204] Additionally, NCAIR has been relaunched with enhanced capacity, supported by CISCO, to strengthen AI research and development. These initiatives highlight Nigeria's commitment to fostering a robust AI ecosystem through public-private partnerships.

This study submits that Nigeria's growing AI ecosystem reflects promising strides, particularly in fostering public-private partnerships, building infrastructure, and gaining international recognition, but significant gaps remain that could hinder its potential, especially in national security applications. While the $3.5 million funding and partnerships with global tech companies demonstrate a commitment to AI development, the investment scale is modest compared to the vast resources needed for large-scale, security-focused AI projects. The investment scale for large-scale, security-focused AI projects for national security uses can range from hundreds of millions to several billion dollars, depending on the project's complexity, scope, data requirements, research and development needs, and the level of integration with existing infrastructure. For instance, the U.S. Department of Defence and the Department of Homeland Security have collectively invested approximately $700 million in AI projects for over two years.[205]

A comprehensive national AI policy is critical to addressing ethical challenges, data privacy, and algorithmic accountability, especially for applications in surveillance, border control, and counter-terrorism. Workforce development also lags, limiting Nigeria's ability to harness AI effectively in critical areas like intelligence analysis or predictive threat modelling. Additionally, the maturity of Nigeria's data ecosystem is insufficient for advanced AI models, which rely on high quality, representative datasets to support national security applications like identifying extremist activities or misinformation campaigns.[206] While initiatives

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[204] Ibid.

[205] K Hays, 'The U.S. Defense and Homeland Security Departments have Paid $700 Million for AI projects since ChatGPT's Launch' *(Fortune*, October 15 2024) <https://fortune.com/2024/10/14/us-dod-dhs-700-million-ai-projects-past-two-years-increase-since-chatgpt-launch/> accessed 22 January 2025.

[206] According to a report by the GSMA, challenges in fostering AI-enabled solutions in Africa include a lack of open data ecosystems and local, quality data necessary for truly localized AI models. See Tanvi Deshpande, 'Understanding AI for Sustainable Development in Africa' (*GSMA*, 9 February 2024) https://www.gsma.com/solutions-and-impact/connectivity-for-good/mobile-for-development/blog/understanding-ai-for-sustainable-development-in-africa/

like the NCAIR and GBB data centre aim to bolster computational capacity, ensuring their operational efficiency and scalability is crucial for supporting continuous advancements in security technologies. However, without a robust data infrastructure, these efforts may not reach their full potential. Therefore, to leverage AI for national security purposes, Nigeria must prioritize the development of a comprehensive data ecosystem alongside its investments in computational infrastructure. With a well-designed national AI strategy, Nigeria can strike a crucial balance: protecting its people while ensuring a secure future. Nigeria needs to address the challenges and risks of AI use, and it needs to develop a clear legal framework for AI. By doing so, Nigeria can ensure that AI is used for good and that it does not undermine human rights or national security. Below are some recommendations:

1. Increase Investment in AI Research and Development: Allocate significantly more funding for large-scale, security-focused AI projects, comparable to investments made by other nations. This could involve increased government funding, leveraging private sector investment, and exploring international collaborations in the context of AI deployment for national security purposes. The National Centre for Artificial Intelligence and Robotics (NCAIR) should include research efforts on areas with high national security relevance, such as cybersecurity, counter-terrorism, border security, and disaster response.
2. Enhance AI Talent Development: With AI-specific knowledge still in its infancy, the majority of Nigeria's tech talent concentrates on web development, mobile apps, and general IT. Although many of these programs are still in their infancy, universities are starting to offer AI-related courses.[207] Nigerian colleges and international organizations are working together to bridge the AI skills gap, but these initiatives still need to be scaled up.[208] Organizations like Data Science Nigeria (DSN),

[207] Baruwa, (n 121).
[208] Ibid.

the Nigerian Centre for Artificial Intelligence and Robotics (NCAIR), and AI Saturdays are promoting AI capabilities through training and workshops, and there is little doubt that Nigeria has a growing tech community.[209] Nonetheless, there is still a shortage of highly qualified data scientists and AI experts. There is a scarcity of qualified AI and data science specialists in Nigeria. Despite the increased interest, it will take time and money to develop local competence.[210] In Nigeria, instead of roles specialized in AI, a large portion of the talent is concentrated on general software development. Nigeria can expand AI education and training programs at all levels, from primary and secondary education to university and professional training. This includes supporting the development of AI curricula, providing scholarships and fellowships, and establishing AI research centres of excellence. The country can also create incentives to attract and retain top AI talent within Nigeria, such as competitive salaries, research opportunities, and supportive research environments.

3. Develop a Comprehensive National AI Strategy: This can be achieved by establishing and implementing clear ethical guidelines for the development and use of AI in national security, to address issues such as bias, fairness, accountability, transparency, and human oversight. It is also imperative that Nigeria establishes mechanisms for human oversight and control over AI systems used in national security, ensuring that human decision-making remains central. There is also a need to conduct regular reviews and assessments of AI systems used in national security to evaluate their effectiveness, identify potential risks, and ensure compliance with ethical guidelines and legal frameworks.

[209] Ibid.
[210] Ibid.

4. Foster Public Trust and Transparency: This can be done by promoting public awareness and education through engaging in public outreach and education programs to raise awareness about the potential benefits and risks of AI in national security. Nigeria can ensure transparency and accountability in the development and deployment of AI systems for national security.
5. Strengthen Data Infrastructure and Governance: Nigeria should develop a comprehensive national data strategy that addresses data collection, storage, sharing, and use for national security purposes. This should include guidelines for data quality, security, privacy, and ethical considerations. Investing in robust data infrastructure to facilitate efficient data collection, storage and management is imperative. Nigeria can invest in high-performance computing infrastructure by expanding and upgrading existing computing infrastructure, including high-performance computing clusters and cloud platforms, to support the development and deployment of advanced AI models. Finally, Nigeria must develop and implement clear data governance frameworks, including regulations, standards, and best practices for the ethical and responsible use of data in national security applications.

By following these recommendations, Nigeria can develop a robust framework for ethical and effective AI use in national security. This will allow the nation to reap the benefits of AI while safeguarding its citizens' fundamental rights and fostering public trust.

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LEGAL FRAMEWORK FOR THE DETERMINATION OF EMPLOYMENT CONTRACT UNDER THE NIGERIAN LABOUR LAW

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ABSTRACT

The employment contract between employers and employees must adhere to due process at all stages, starting with its creation, continuing through job performance, and concluding with termination or retirement. This paper provides an overview of the determination of statutory employment contracts under Nigerian law. It examines the processes and procedures involved in dismissing an employee, identifies, and appraises issues related to employee determinations. A qualitative research method, relying on both primary and secondary sources, was employed. The primary sources consulted include statutes (the 1999 Constitution of the Federal Republic of Nigeria, the Labour Act of 2004, the Industrial Disputes Act of 2004, and international treaties and declarations from the International Labour Organisation, among others), while secondary sources encompass textbooks, journal articles, conference proceedings, newspapers, and the internet. The findings of this paper reveal that the termination of employment may be lawful or unlawful. It also determined that while employers have the right to terminate an employee's appointment, they also have a duty not to infringe upon employees' rights. It is recommended that in an employment contract, both parties must be aware of their rights, duties, and obligations.

Keywords: Civil Liability, Fair Hearing, Rule of Law, Right to Work, Employment

INTRODUCTION

The central theme of labour, employment and industrial law is the employment relationship expressed in the contract of employment. This contract exists between the employer or master and the employee, worker or servant essentially in the employment relationship. The employment relationship is "the main vehicle through which workers gain access to the rights and benefits associated with

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employment in the areas of labour law and social security. It is the key point of reference for determining the nature and extent of employers' rights and obligations towards their workers."[2] It is regulated by the general law of contract with all the features of a valid contract carefully observed and being recognised as a contract of service.[3]

Employment with statutory flavour is regulated by an extant statute. Civil servants fall under this category.[4] The law, therefore, is that where the employment of an employee with statutory flavour is determined without recourse to the procedure laid down in the relevant statute, the court may order damages or that the employee be reinstated.

The Labour Act stipulates conditions for the determination of appointments of the employee.[5] The Act specifies terms to be included in the employment contract, such as name and address of the employer and the employee including the date of his engagement, rates of wages and the method of its calculation, the nature of the employment and if it is for a fixed term when it would expire and the relevant period of notice to be given by the party who is wishing to terminate the contract as contained under section 11 of the Act. Other statutes may also govern conditions for the appointment and determination of employment of staff, particularly the employment with statutory flavour since each statutory agencies have enabling laws[6].

In statutory employment governed by statute, the mode of employment, rights, privileges, duties and determination are regulated by a statute. Such employment contracts are said to enjoy the statutory flavour. In these contracts, the law must be strictly complied with since the position that where a statute prescribes a

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[2] Oladosu Ogunniyi, *Nigerian Labour and Employment Perspective* (Second Edition, Folio Publishers, 2003)
[3] *Nwanbani v Golden Guinea Breweries Plc* (1995) 6 NWLR 400, 184, 188
[4] E. Emmanuel. 'Nigeria; Damages for unlawful termination under the Nigerian Labour Law' (Modaq, 23 April 2023
< https://www.mondaq.com/nigeria/contract-of-employment/691034/damages-for-unlawful-termination-of-employment-in-nigeria > accessed 22 July 2024
[5] B.O, Aturu. *Nigerian Labour Laws Principles Cases and Materials* (Lagos: Frankard Publishers,2005) 11.
[6] Federal Universities' Act 1992, Cap F22 Law of Federation of Nigeria 2004; Federal Polytechnics (Amendment)Act 2019, etc.

manner or way of doing a thing, it must be strictly followed flows from the general rule that where the statute states a procedure to be followed before a person is deprived of his right, it must be complied with.[7] Failure to do this may be held by the court to be unlawful and thus null and void.[8] The court may then order for the reinstatement of the terminated or dismissed employee.

Rules and regulations in the employment contract have impacts on globalisation and aid labour mobility. These have necessitated that a closer look should be had on the legal framework for the determination of employment in Nigeria. Although there have been many studies focusing on unfair dismissal, duties and obligations of the parties to the contract of employment, few have focused on the determination of statutory employment in Nigeria.

This study aimed at appraising the legal framework for the determination of statutory employment in Nigeria, while the objectives of the study were to:

(i) undertake an overview of the contract of statutory employment in Nigeria
(ii) examine the legal framework for the determination of employment regulated by statutes; and
(iii) identify and appraise issues in the determination of employment regulated by statutes.

The paper adopted a qualitative research method, relying on primary and secondary sources. The primary source includes statutes and case laws, while the secondary source used included textbooks, journal articles, conference proceedings, newspapers and the internet.

[7] *Federal Civil Service Commission (FCSC) v Laoye* (1989) 2 NWLR (Pt 6)262.
[8]Ibid.

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OVERVIEW OF THE CONTRACT OF STATUTORY EMPLOYMENT

Nature of Contract of Service

Contract of employment is the same as used in the general law of contract[9] with a distinction based on its subject matter.[10] It is otherwise referred to as a contract of service. In *Orient v Bilante International Limited*, [11]the Court of Appeal identified the five ingredients of a valid contract at common law to include offer, acceptance, consideration, intention to create legal relationship and capacity to contract. Although the law gives freedom to an individual to embark on any contract provided the basic conditions are present, the contract of employment is subject to various statutory or legal provisions. For instance, an employer is legally inhibited from offering a contract of employment that requires the performance of an illegal duty, proposes to pay the worker or employee salary or wages less than approved minimum wage,[12] circumvents the social security and protection schemes, or permits arbitrary dismissal without compensation.[13]

The word 'employment', on the other hand could mean a number of varied relationships in law and arising from the status of a person as 'employed'. However, though the word 'employment' and 'employed' are frequently used, they appear not to have any precise legal meaning. The notion of employment spreads across many relationships often erroneously regarded as mutually exclusive.[14] This may entail varying and varied relations in works, trades or occupations so that terms like servants, employees, agents, apprentices, independent contractors, partners, bailees and other can be used to describe persons so employed even when the result of such employment may be different in each case.

At common law, it was possible to define employment in the strict legal sense of the relationship of master and servant. The word 'servant' it was stressed had no

[9] Itse Sagay, *Nigerian Law of Contract* (Sweet & Maxwell, London, 1985) 1; Garner, *Black's Law Dictionary* (7th Ed. West Group1999) 318.
[10] Emeka Chianu, *Employment Law* (Bemicov Publishers, Akure,2004) 4
[11] (1997) 8 NWLR 515,41.
[12] National Minimum Wage Act 2011.
[13] 1999 Constitution of Federal Republic of Nigeria, Cap C23, Law of Federation of Nigeria 2004 (as amended), S. 14(2)(b).
[14] Ibid.

meaning other than as a shorthand expression for someone working under a contract of service[15] and most of industrial law was concerned with such servants.

Employment with Statutory Flavour

The idea of employment with statutory flavour under the Nigerian Labour Law appears to have gained popularity after the decision of Supreme Court in *Olaniyan v. University of Lagos*,[16] where it was decided that the appointment of the university professors could not be determined until the conditions of employment set out in the Act setting up were complied with *stricto sensu*. In addition to the full compliance with the terms and conditions of appointment, the establishing statute of the employer,[17] the rules of natural justice must be followed by a public body in the termination of an employee's appointment. For example, in South Africa which was a common law country, Labour Relations Act (LRA)[18] and Basic Conditions of Employment Act (BCEA),[19] constitutional courts and case law regulate mode and tenor of employment, employment rights and duties, including statutory employment. Hence, in both countries an employer is barred from removing an employee either by termination or summary dismissal without the due process as provides in the statutes.. An employee who is removed without regard to the rules of national justice and fair hearing as contained in constitution[20] is unlawfully removed can be reinstated without much ado.

The question that may be asked is when is an employment protected by statute? The nature and character of employment are determined by the contract of employment or service agreement.[21] In *Fakuade v OAUTH*[22] the Supreme Court stated:

> The fact that an organisation or authority which is an employer is a statutory body

[15] Cronin & Grime Labour Law, 6op. cit., 6
[16] [1985] 2 NWLR (Part 9) 599.
[17] Oladosu Ogunniyi, op. cit. 250.
[18] No 66 (1995) (as amended). employment rights
[19] No 75 of 1997(as amended).
[20] *Laoye v Federal Civil Service Commission i(1989) 2 NWLR (Pt. 106) 652; Shitta-Bay v Federal Public Service Commission* (1981) NSCC 19;
[21] *Fakuade v OAUTHC (*1993) 5 NWLR (Pt 291) 47.
[22] Ibid, per Karibi-Whyte JSC, 63.

> does not mean that the conditions of service of its employees must be of a special character ruling out the incidence of a mere master and servant relationship. The court must confine itself to the terms and contract of service between the parties.[23]

Based on this position, the apex court further stated that "the special statutory flavour merely reinforces the security of tenure provided their servant." Hence, the appointment of an employee upon conditions that the determination of the contract is regulated by the enabling statutes. Hence, the contract cannot be determined by the parties but strictly on the statutory pre-conditions that regulate its determinations.[24]

An appointment with statutory flavour is the one in which the appointment or its determination is controlled by the pre-conditions of an enabling statute and or the Staff Regulations and Conditions of Service.[25]

Another question is whether the fact that the Government owns controlling interest in a company makes civil service rules applicable or makes it an appointment with statutory flavour. In *Okomu v Iserhienrhien,*[26] the apex court did not hold that this was the case. It was held that the fact that an employee's contract is with a Federal Government company does not imply that the appointment is automatically regulated by the Federal Public Service Rules, thereby making the appointment qualified to be protected by statute. The court declared that it is only when 'a public officer has been employed by or with the authority of the Federal Civil Service Commission."[27] An aggrieved public employee must furnish proof that the benefits of employment with statutory flavour is applicable to the instant case by stating that (a) the statute setting up the statutory body contains the conditions of his employment, or (b) the conditions are made by a body statutorily empowered to

[23] Ibid.
[24] Ibid.
[25] Oladosu Ogunniyi, op. cit. 252
[26](2001) 6 NWLR (Pt 710) 660.
[27] Ibid, 674-675

do so and it is set out by the way of subsidiary legislation which expressly states that the regulation is made in exercise of the powers conferred by the statue; (c) the conditions directly apply to him or persons in his cadre, (d) the conditions are intended for the protection of his employment, and (e) a condition has been breached in terminating the employment.[28]

Pronouncements of the highest authorities indicate that the employment under the Nigeria labour law and specifically the public service is with statutory flavour because it follows the enabling statutory provisions and relevant rules.[29] In essence, as against the common law master and servant relationship *stricto sensu,* where a willing servant cannot be imposed on an unwilling master, a civil servant wrongly terminated or dismissed may, by the order of the court be reinstated where relevant laws and or rules have been breached.[30] In *Idoniboye- Obu v. NNPC,*[31] the Supreme Court affirmed its earlier decision on the status of a statutory employee.

The pronouncements of the highest authorities indicate that the employment under the Nigeria labour law and specifically the public service is with statutory flavour which can only be determined following the enabling statutory provisions and relevant rules.[32] In essence, as against master and servant relationship *stricto sensu,* where a willing servant cannot be imposed on an unwilling master, a civil servant wrongly terminated or dismissed may, by the order of the court be reinstated where relevant laws and or rules have been breached.[33] In the case of *Idoniboye Obu v. NNPC,*[34] the Supreme Court affirmed its earlier decision on the status of a statutory employee. An employment with statutory flavour **is** distinguished from a mere master and servant relationship by stating that the essence of statutory flavour

[28] 1999 CFRN, Section 36(1)
[29] *Idoniboye-Obu v Nigerian National Petroleum Corporation* [2003] 2 NWLR (Part 805) 589, 650 per Tobi JSC.
[30] *Laoye v FCSC* (Supra).
[31] Supra
[32] *Idoniboye-Obu v Nigerian National Petroleum Corporation* [2003] 2 NWLR (Part 805) 589, 650 per Tobi JSC.
[33] Laoye v FCSC (Supra).
[34] Supra

includes the following: the employer is a body created by statute and the statute makes provisions for the regulation for the discipline of the employee's cadre.

In view of the fact that all these ingredients are present in public service pensionable appointments, they are of statutory flavour. In *Oloruntoba Oju & Ors v. Abdul-raheem,*[35] the court held that:

> Where terms and conditions of a contract of employment or service are specifically provided for by statute or regulations made thereunder, it is a contract protected by statute. That is to say, it is an employment with statutory flavour. Whether a contract of employment is governed by statute or not depends on the construction of the contract itself or the relevant statutes. The duty to construe the contract is exclusively that of the court.[36]

It needs to be stressed here as was rightly observed in *Chief Tamunoemi Idoniboye Obu's (supra)* that a person who claims to be a public servant and seeks the protection of those rules and regulations must show that he was employed subject to those rules and regulation otherwise he cannot rely on them as protecting his employment.

Formation of an Employment Contract

A contract of employment is an example of contracts in general and as such its creation and formation is subject to the general rules of contract[37] in the first place. Such contract, however, may be subject to statute, common law or both (that is common law reinforced or supplemented by statute).[38] The precise law to which a contract of employment is subject may determine its formation. Thus, subject to

[35] (2009) All FWLR (Pt. 497) SC.
[36] Per Adekeye JSC, (2009) All FWLR (Pt 497) 42-43, Paras G - B
[37] *Nwobosi v A.C.B* (1995) 6 NWLR (Part 404) 658; *Daudu v UBA Plc* (2003) LLJR (CA) 276.
[38] *PENGASSAN v. Mobil Producing Nigeria Unlimited* (2013) 32 NNLR (Pt 92) 326-327 para. F-B.

statutory prescription, the parties may now agree to any form of contract of employment containing any terms they desire so long as the agreement does not involve an illegal purpose and not contrary to public policy. For instance, a contract in which a servant becomes the slave of the master without any freedom in his private or public life or affairs, may be void and unenforceable.[39] Section 23 (1) of the Constitution of South Africa equally affirms this position when it states that "everyone has the right to fair labour practices".

Thus, by statutes, the constitution and even public policy, the freedom as to formation could be circumscribed and affecting the nature of contract that the parties can negotiate and actually enter into. The negotiation, which must necessarily involve the twin concept of offer and acceptance, must relate to terms that conform to accepted norms and the law as well as fit to global best practices in labour management into recognised categories. Stated Uwaifo, JCA observed that:

> ... The nature of contract of employment as between employer and employee has been known to belong to different categories. There is the office held at pleasure. This has lost meaning in present day Nigeria, particularly since the 1963 Constitution re-enforced by the 1979 Constitution. Office at pleasure is now mainly a feature of servants of the crown in England... there is another category, which is subject to statutory regulations or conditions… there is a third category where the contract is for a definite period and backed by the constitution…finally there is the ordinary master and servant relationship…[40]

[39] 1999 Constitution of the Federal Republic of Nigeria, Cap C23 Law of the Federal Republic of Nigeria, Section 34, (CFRN).
[40] *Board of Management, FMC Makurdi & Anor v Abakume* (2016) 10 NWLR (Part 1521) 563

The category to which a particular contract of employment intended to be formed falls may determine the nature of its formation. Basically, no particular form is required as a general rule. In the absence of any statutory prescription, formation of a contract of employment could be formal or informal depending on the choice of parties. In other words, a contract of employment is ordinarily created whenever an employee is taken into employment by agreement of the parties, no special formality is required. The contract could be in writing, or could be orally made, a combination of written and oral agreement, and may even be inferred or implied from conduct. To determine whether a contract of employment has been formed, that is, come into existence, it is necessary to establish that there has been a genuine agreement between the parties. This has to be agreement, which the law will appreciate and enforce. In essence, whatever form the contract takes since governed ostensibly by the same rules of contact, it must satisfy all the essential elements of a valid contract[41] regarding formation.

LEGAL FRAMEWORK FOR THE DETERMINATION OF STATUTORY EMPLOYMENT

A contract of employment may be determined by termination or by dismissal on peculiar cases. Basically, in such contracts both termination and dismissal may be governed by common law rules, statutes, agreement of the parties or a combination between the parties.[42] As such, the terms could be defined for the purposes of the particular contract or regulated by operation of the law. In special cases, details of termination and dismissal are specifically stated. In some, the right not to be terminated but for the occurrence of some incidents are enshrined into an employee's contract by virtue of a special status.[43] In others, an employee cannot be dismissed or terminated unless rules of natural justice[44] or other procedures are observed[45] and some other fascinating peculiarities are discernible. The determination of a contract of employment is the ending of a contract of

[41] Smith & Keenan, English Law (Pitman, 1982) 7th Ed. 171
[42] *UBN v. Ogbo* (1995)2 NWLR (Part 380) 647, SC
[43] Federal Universities of Technology Act 1986 (as amended), Cap F22, LFN 2004, Ss. 13, 14, 15 and 16 respectively.
[44] *Ridge v. Baldwin* (1964) AC 40., UKHL 2.
[45] *Olaniyan v. UNILAG* (1985)2 NWLR (Pt 9) 599.

employment between an employer and employee. It occurs principally by termination or dismissal based on the facts peculiar to each case.[46]

Principles of law guide the determination of contracts of employment with statutory or constitutional flavour. The court has to determine the nature of the employment. That an employer is a statutory body does not mean that the conditions of service of its employees must be of a special character, thereby ruling out the relationship of mere master and servant relationship.[47]

In statutory contract of employment, the enabling laws and rules stipulate the terms and conditions for employment, confirmation of appointment, promotion and discipline. These guidelines must be complied with. Hence, when a statute and regulations distilled from it states that a general rule should be followed, a deviation renders the action a nullity.[48] Compared to other situations at common law or agreement of parties, termination of appointment or dismissal should also be in the form agreed. But failure to abide by the agreement connotes only wrongful termination or dismissal and cannot result to the declaration of such termination or dismissal as null and void[49] and of no effect. Thus, a difference exists between wrongful termination or dismissal and unlawful termination or dismissal with its concomitant remedy of automatic reinstatement.

Termination

According to the *Illustrated Oxford Dictionary* to terminate is to end a relationship.[50] Termination, in this sense, means bringing or coming to an end of an event. This can pass for the meaning of termination in the general sense of the word. In the legal sense, termination is the ending of the employment relationship.*[51]* In this termination puts a stop to the contract of employment relationship between the contractional parties, the employer and the employees. An employment relationship is a contract; hence it may also be defined as a

[46] Akintunde Emiola, *Nigerian Labour Law* (4th Edition, Emiola (Publishers) Limited, 2008) 127.
[47] *Fasasi Adebayo v. OAUTHCMB* (2000) 9NWLR (Part 673) 585.
[4848] *Olaniyan v UNILAG* (Supra).
[49] *UBN Ltd. V Ogbo* (supra), at 664 see ante, Cap. 1, classes of employees.
[50] Illustrated Oxford Dictionary.
[51] Oladosu Ogunniyi, op. cit. 219.

dismissal from employment.[52] Termination is therefore an act or circumstances that bring to an end the contract of employment by extinguishing the rights and obligations created by the contract.[53] The usual circumstances of termination can be reduced into termination by notice, lapse of time, operation of law- by subsequent legal events or legal impossibility, by subsequent agreement, or by repudiation.

The mode of determination of an employment relationship depends on the terms and conditions as contained in the contract and the enabling statutes under which the employment is offered. Labour Act 2004[54] provides for methods of termination of employment contract.

> (7) a contract shall be terminated in
> (a) by the expiry of the period for which it was made; or
> (b) by the death of the worker before the expiry of that period; or
> (c) by notice in accordance with section 11 of this Act or in any other way in which a contract is legally terminable or held to be terminated.

While the Act is specific in its subsection 9(7) (a) and (b), subsection (c) gives the option of notice by either of the parties and allows some other methods which do not infringe the rights of the parties to be explored for the termination. However, there are three discernible types of contracts of employment recognised by the statute, namely, a contract that could be determined by notice, a contract for a fixed term, and a contract which has an expiry period based on performance or the satiation of its object.[55]

[52] Ibid.
[53] Akintunde Emiola, op. cit 129.
[54] Cap L1 LFN 2004, s. 9(7).
[55] Ibid

Notice

Termination of a contract of employment with statutory flavour is by notice. The contract provides a period of notice upon which either party contract can exercise the right or for the payment in lieu of the notice.[56] This general statement has assumed an ordinary contract allowing the freedom and liberty of a party to determine by notice. It is however possible for particular contracts of employment to be for a fixed period, in which case it is not open to a party to determine same lawfully by notice on an earlier date except by pay in lieu of such notice for the remainder of the period agreed.[57] Perhaps equally relevant and related here are those few contracts recognized recently as having statutory flavour which group are now held not to be terminable by notice given by the employer without more[58]

Flowing from these rules, it is almost settled, save for few exceptions that an employee cannot compel the employer to retain him no matter how desirable that may be on humanitarian or other grounds. In much the same way, an employer cannot compel an employee to remain in his service no matter how indispensable his services may be to the employer.[59] Thus, the court cannot force an unwilling employer to retain an employee regardless of his impeccable character nor force an unwilling employee to work. The right to determine by notice is available consequently and can be exercised by both parties and when they do so no reasons need to be given.[60] Section 11(1) of the Labour Act, 1974, provides; "Either Party to a contract of employment may terminate the contract on the expiration of notice given by him to the other party of his intention to do so."[61]

However, in Nigeria, only workers within the meaning of the Labour Act are bound by the provision under statutory notice where the contract does not specify period of notice required for termination. For all categories of employees other than workers *stricto sensu,* they are bound by the terms of contract entered by

[56] Labour Act, Section 11(1)
[57] *NPA v. Banjo* (1972)2 SC 175; *Adejumo v UCHMB* (1972) 2 UILR 145
[58] *Olatunbosun v. NISER* (1988) CLR 6 (a) SC.
[59] *Steyr (Nig.) Ltd. vGadzama* (supra); *Newu v CCMA* (2007) 18 (11) CCL,11 (South Africa).
[60] *Calabar Cement Co. Ltd. v. Daniel* (1991) 4 NWLR (Pt 188)750, 758.
[61] Op. cit., Section 11(1) of the Labour Act, 1974.

them. However, in all cases, no law prohibits either party to terminate a contract of employment.

Payment in lieu gives an opportunity to a party who could not fulfil the period which the notice is supposed to run and expire, by paying a monetary sum agreeably commensurate with that period. This is usually calculated using the salary and other entitlements for the stipulated period. This must be paid at the very time the notice of the termination is given otherwise it will be invalid. That is to say that where a contract of service gives a party a right of termination of the contract by either giving a particular length of notice or payment of salary in *lieu of* the length of notice, and the latter course is chosen, the party seeking to put an end to the contract must pay to the other party the salary in *lieu* of notice at the time of the termination of the contract.[62]

Section 11(6) and (9) of the Labour Act recognises payment in lieu of notice by providing that the section does not prevent either of the parties from waiving their rights to notice on any occasion or from accepting payment in lieu of notice. It also provides that in calculating payment in lieu, only the part of the wages which the worker receives in money will be considered.

It should be noted that if an employee accepts salary in lieu of notice of termination of his employment, he may not be heard to complain later that his contract was not validly and properly determined.[63] Generally, in the case of *Julius Berger (Nig.) Plc v. Nwagwu*[64] it was held that where an employee receives his terminal benefits after his employment is brought to an end, he cannot be heard to complain later that his contract of employment was not properly determined because the acceptance of payment by the employee renders the determination mutual.

Expiration of Time

Following a lapse of time, a fixed term contract could be terminated. A fixed term contract has been defined as a contract, which must run for a fixed period and one,

[62] *Chukwurah v Shell Petroleum Development Co. Nig. Ltd* (1993) 4 NWLR (Pt 89)517-522
[63] *Iloabachie v Philips* (2002) 14 NWLR (Pt. 787) 264 CA; *Etim Okon Ante v. University of Calabar* (2001) 3 NWLR (Pt. 700) 231; *Umoh v ITGC* (2004) 4 NWLR (Pt. 703) 281 CA.
[64] (2006) 12 NWLR (Pt. 995) 518 CA.

which cannot thus be terminated earlier except for a gross breach by either party.[65] It may not be difficult to find apparently fixed term contracts, which still contain a clause that either party may terminate the contract by notice. Since such a contract is not bound to run for the whole period, it cannot be a fixed term contract.[66] However, in *Dixon v BBC*[67] the English Court of Appeal held that a fixed term contract existed if it was for a specific term, even though it was terminable by notice on either side during that term.

By Operation of Law

Whatever is the intention of the parties, there are circumstances when an employment has to come to an end because the law regards the contract as determined.[68] In such a case the contract of employment is determined by operation of law. Termination by operation of law implies the occurrence of either a subsequent legal event or subsequent legal impossibility that the law will recognize. That means that by the occurrence the performance of the contract of employment is rendered, impossible by the intervening legal events. Common instances of such legal events include liquidation, bankruptcy, dissolution of partnership and assignment in personal contracts.[69] The other aspect regarding legal impossibility may as well be described as frustration of the contract of employment, cases of death of one of the parties or serious illness.[70]

Frustration implies that there is no fault by any party, and the contract becomes impossible to perform due to an extraneous event: some of such events that are recognized as possible of frustrating a contract of employment include, accident, illness, and imprisonment. To decide whether or not a contract will terminate by frustration, regards must be had to the length of time the employee is likely to be away from his work and thus be unable to perform his contract. It would thus appear that mere absence from work, even for a long time, would not automatically constitute frustration.

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[65] *Swiss Nigeria Wood Ind. Ltd. v Bogo* (1971) IU.L.R. 337, cf. *BBC v. IOANNOU* (1975) QB 781.
[66] *Wood Preservation Ltd v Prior* (1969) 2 All ER 112.
[67] (1979) QB 546.
[68] *County Council v NATHFE* (1980) IRLR 198; Labour Act, Section 9 (7).
[69] *Brace v. Candler* (1895) 2 QB 253.
[70] *Ibid*

Likewise, where an employee has been absent due to sickness, the employer must in addition to the above stated factors consider the nature of the illness (or injury), how long it has continued and the prospects for recovery, as well is the terms of the contract including the provision of sick pay. In *Maxwell v. Walter Howard Designs Ltd*., the court held *inter alia* that the illness must be such as to put an end in a business sense to the contractual engagement of the parties and thus frustrate same.

Death of an Employee

A contract of employment is one personal service thus, the death of either party puts an end to the contract. Death terminates a personal contract that can only be performed during the lifetime of the party contracting it. And where the party dies, his executor does not have the right to sue for breach of the condition occasioned by his death.[71]

By Repudiation

A contract of employment could be terminated by its repudiation by either of the parties to it. Either party may repudiate the contract before it is due to terminated ordinarily. Repudiation may be lawful and justified, or wrongful and unjustified.[72] Whether lawful or wrongful repudiation is deemed to determine the contract and will entitle the other party to treat the contract as at an end. And where repudiation is alleged to have determined the contract, the question is as to whether the acts, conduct, or words of the party alleged to have repudiated evinced any intention no longer to be bound by the contract. If no such intention can be imputed, then it is not repudiation. To amount to repudiation, there must be a deliberate breach of provision of the contract.[73]

A fundamental breach of duty to an employer committed by an employee may entitle the employer to treat the contract as at an end thus justifying dismissal of the employee. The conduct of the employee which is fundamental and goes to the root of the contract is calculated as repudiator misconduct which the employer may accept as annulling the employment relationship. Where an employee is

[71] Erugo, op. cit 187; *Maxwell v. Walter Howard Designs Ltd* (1975) RLR 77.
[72] Fridman, G. *op. cit.*, at 479.
[73] *Ibid.*, at 480

dismissed as a result of misconduct considered to be gross, he is said to be summarily dismissed. The dismissal is hence considered lawful and justified if it occurs following a fundamental breach by the employee. The law relating to repudiation and its condonation was stated in *London Transport Executive v. Clarke.*[74] Thus if a person breaks a contract, the other party has two options: either to accept the breach and treat the contract as being at an end or refuse to accept and treat the contract as subsisting. If he accepts the breach, he terminates the contract. Thus, a unilateral repudiation may equally determine the contract of service where the employee accepts it expressly or by implication.[75]

CHALLENGES TO THE DETERMINATION OF EMPLOYMENT CONTRACTS

The most usual form of breach of contract of employment happens when the contract is determined by a party contrary to the terms of the contract and outside the provisos of the law.[76] A party that brings the contract to an end unjustifiably, without taking cognizance of the statutory provisions backing up such contract, or without giving notice or with a notice which is contrary to the terms of the contract and before the expiration of the agreed terms, is in breach of the contract. This is usually categorised as termination against statutory flavour.

Wrongful Termination of Appointment

In the case of determination, there is a distinction between wrongful termination and unlawful termination which lies in the remedy that accrues to both. Any manner of termination inconsistent with the relevant statute is unlawful, null and void. However, in the common law agreement, parties could terminate the contract in accordance with the form agreed. Failure to comply with the form only connotes wrongful termination or dismissal and not a declaration of it being null and void. Hence, while the remedy of unlawful termination may include payment of damages, and or reinstatement, that of wrongful termination is limited to the award of damages.

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[74] (1981) ICR 355.
[75] *Guinness v Agoma* (1992) 7 NWLR (Part 256) 728.
[76] Erugu Rugo op.cit. Page 400

Courts in determining contracts of employment with statutory flavour have a duty of ascertaining the nature of the employment. Nonetheless, it has been held by the court that an establishment created by a statute does not automatically convert the employment contract of the workers in such establishment to one with statutory flavour. It must be shown that a statute directly regulates the employment, or such regulation was delegated to a body, like the Federal Civil Service Commission.[77]

Common Law Employee

In employment law, a common law employee refers to an individual whose employment is governed primarily by terms and conditions of their employment contract, as well as common law principles. In common law jurisdictions such as India, South Africa and Nigeria, employment contracts typically establish the scope of the employment relationship, including job duties, compensation, and termination clauses. The employment relationship is sometimes referred to as a master-servant relationship.

Termination of the employment contract of common law employees is done by notice given by the terminating party to the other party or upon payment of salary in lieu of notice. The appropriate manner of terminating the contract including the period of notice is included in the employment contract. In circumstances where the parties do not stipulate a notice period, the law will infer a reasonable notice period, paying attention to the nature of the employment and the employee's status.[78]

Statutory Flavour Employee

Though Labour Act prescribes how a contract can be terminated,[79] it gives room for the parties to also create their terms as to how the contract can be terminated. This is premised on the principle of freedom of contract which have been incorporated from the Bills of Right to constitutions of many nations, including Nigeria. Where parties contract and agree to their terms, it must be complied with. As regards the freedom of the contract of the parties, the present position in Nigeria is that the employees do not have the freedom to contract in employment

[77] *FCSC v Laoye.*
[78] *ACB Ltd v Ufondu* (1997) 10 NWLR (Part 523) 169 at 177.
[79] (1985) 2 NWLR (Part 9) 599

as the employer has the higher bargaining power and in practically all cases he states the terms of the contract.[80] This position is canvassed in a South African case, *Newu v CCMA*[81] where both the Commission for Conciliation, Mediation and Arbitration (CCMA) had found that the CCMA does not have the jurisdiction to hear a case brought by an employer for unfair treatment by an employee. The Court said "it is not thought that employers need any protection against unfair resignations by employees. The majority of workers in this country are still un-unionised and remain vulnerable."[82]

As observed by learned commentators,[83] not protecting the juristic right of the employers as against the employees derogate from the constitutional rights of juristic persons under the statutes such as Companies and Allied Matters Act[84] and United Nations Business and Human Rights.[85] This is contrary to the present day right of the parties in employment and the International Labour Law standards. There is a need for this position to be changed to reflect the parties having equal bargaining power and not one being subordinated or the other being in the advantageous position.

An employer can terminate the employment of a common-law employee for good, bad or no reason at all in so far as there is a compliance with the required notice period. Motive is irrelevant where the employer acts within the ambit of the contractual terms and the enabling statute.[86] The only remedy that has been held to be available to such an employee is damages calculated according to what he should have earned during the period of notice that was agreed upon to end the employment contract.[87] The rationale is that the court cannot force a willing employee on an unwilling employer hence, it will not order specific performance

[80] Emmanuel O.C, Obidinimma, M.I. Anushem and U.J. Ekeneme, 'Unfair Dismissal in Nigeria: Imperative for a departure from the common law' (2016)7 *NAUJILJ.* 134-143
[81] (2007) Vol 16. No 11 CLL11.
[82] Ibid
[83] Obidinima, Anushen & Ekeneme, 134; Ivan Israelstam, 'So What Protection is there for Employers' (LabourGuide, nd) <https://labourguide.co.za/general/so-what-protection-is-there-for-employers accessed 23 January 2025.
[84] (2020) No 3, A1.
[85] UN Guiding Principles on Business and Human Rights, 2011.
[86] Labour Act, Section 11 (1).
[87] *Idoniboye-Obu v NNPC* (2003) 2 NWLR (Part 805) 589.

of an ordinary contract of service.[88] It has been argued that as the employee could also leave the employer upon reasonable notice, there is nothing unfair about this attitude of the courts to common law employment.[89]

Aturu [90] challenges the attitude of the courts to common law employees on the grounds that the practice is obsolete and has been jettisoned in most common law jurisdictions, including England, for its offensiveness to the principles of equity and abandonment of workers' rights.

The court's attitude towards common law employees appears obsolete in view of the present-day industrial economy and the International Labour Organisation Standards. This poses a challenge to Nigerian courts which have to contend with contradictions in common law and statutory employment rules.

REMEDIES FOR WRONGFUL DISMISSAL

Specific Performance

Under the law of contract, the general rule is that contracts of employment will not be specifically enforced. Special circumstances must be shown by the party before the court will exercise its equitable jurisdiction to specifically enforce the contract in favour of an employee whose employment contract has been wrongfully terminated. This exercise will be at the discretion of the court. The reason adduced for this rule was stated by Fry, L. J. in the case of *De Francesco v Barnum*[91] where he declared that:

> …I should be very unwilling to extend decisions to the effect of which is to compel persons who are not desirous of maintaining continuous personal relations with one another to continue those personal relations. I have a strong impression that it is not in the interest of

[88] *Isievwore v. NEPA* (2002) 13 NWLR (Part 784) 417.
[89] B.O. Aturu. 2005. *Nigerian Labour Laws: Principles Cases and Materials* (Frankad, 2005)
[90] Ibid, 18
[91] (1980)

> mankind that the rule of specific performance should be extended to those cases. I think the courts are bound to be jealous less they will turn contacts or services into contracts of slavery……

The court is often hesitant to grant specific performance in favour of an employee because the court may not ordinarily compel an employer to retain in employment an employee in whom she has lost confidence. It is trite law that he who alleges must prove. Therefore, where the employee alleges that the termination of his employment has not been in accordance with the terms of the contract and the conditions of service, he must prove the terms and conditions regulating the employment. The terms of the contract and the condition of services are the bases for and foundation of an employee's case where wrongfulness of termination is in issue.[92]

The Supreme Court in *Modu Aji v Chad Basin Development Authority*[93] held that allegations of breach of the constitutional right to a fair hearing would not shield the claimant complaining of wrongful termination if the conditions of service are not pleaded before the court. Failure to plead and tender the letter of employment may be fatal to the plaintiff's case since the evidence of the contract is the letter. It is the foundation of pleading wrongfulness in the court.

In cases of contracts regulated by statute and not by the employment contract, the scenario may be different concerning the written terms and conditions of employment. Sections 7 and 9(1) of the Labour Act prevent an employer from relying on the failure of the employee to tender his employment letter or evidence of the terms and conditions of service where he (the employer) failed to give the employee a letter of employment. Where the employee successfully proves these facts, the onus shifts to the employer to justify the employee's termination or show why the breach should not be redressable.

By specific performance or reinstatement, an employee is restored to his former job where the court is persuaded that the employment has been terminated

[92] *Texaco Nigeria Ltd. V. Kehinde* (2002) 6 NWLR (Part 708) 224
[93] (2015) LPELR-4562 (SC)

wrongfully as against the statutory flavour by his employer. Although reinstatement is rarely granted to an employee because he has no property interest in his job, recent decisions of the Supreme Court of Nigeria seem to support the view that in an appropriate case, the servant may be granted remedies in a declaratory action ordering reinstatement or an injunction restraining dismissal. This remedy has normally been granted to persons holding offices in the public service whose employments enjoy statutory backing under the Nigerian labour law.[94]

In A.*G. Vitowanu v. Administrative Staff College of Nigeria*,[95] the plaintiff, a principal accountant in the service of ASCON, was dismissed on the 26th of June 1989 on the charge of colluding with a food vendor with the intent to defraud the college to the tune of #5,000.00. When appeals against his dismissal were turned down, he approached to the court for redress. The matter[96] was then subsequently settled out of court and the officer was reinstated. In *Samson Babatunde Olarewaju v Afribank*[97] *(Supr*a), the Supreme Court, following its earlier direction in *Olaniyan v. University of Lagos*[98] *and Shitta-Bey v. FSC*[99] held that: "Where the employment of an employee is protected by statute, the employee who is unlawfully dismissed may be reinstated."[100]

Damages

Due to the peculiar nature of contracts of employment with statutory flavour alluded to, damages are the most common form of remedy available to a party injured by the act of the other party in such employment contract. Originally at common law this was the only remedy, so that once there was a breach of contract of employment, the other party was entitled to monetary compensation as damages for.[101] However, general damages are generally not awarded. In the

[94] *Laoye v FCSC* (supra)
[95] ASCON Suit No. ID/220281 (Unreported) 48.
[96] Op. *cit.*
[97] (2001) SC (Pt 111) 1, 8.
[98] (1985)2 NWLR (Pt 9)599.
[99] (1981) NSCC 19.
[100] (1985) 2 NWLR, 589, 34 and (1981), 1 SC, 40.
[101] Per J.O, Ikpeazu in *Oki v. Taylor (Nig) Ltd*. (1965) 2 NLR 45.

case of New Nigeria Newspapers Limited v. Mr. *Felix* Atoyebi[102] the Court. The Court of Appeal held that "…the award of general damages for wrongful dismissal in a contract of employment, is strange. This is because what is computed for a successful party in such circumstance cannot be general damages but proven as special damages."

The law likewise recognises the right of an employee to claim damages for termination of the employment contract as against the provision of the statutes. This is evident in the case of *Shitta Bay v FCSC[103] and, Olaniyan v University of Lagos.[104]*. Though domestic laws still do not, in most instances, recognise the right of the employee to sue for unfair dismissal or receive compensation for it even where it is not legally wrong, it, however, recognises the fact that the employer must give valid reasons for termination.

Also, in *AfriBank Nigeria v Obi Nwaneze**[105]*** the court held that unless the contract of employment is one of statutory flavour, all that an aggrieved employee is entitled to damages. This is majorly because as stated the court would not force a willing employee on an unwilling employer, especially where the employer has lost confidence in the employee. Forcing an unwilling employer may lead to conditions of work that would most likely be unfavourable for the employee.

The courts may also award compensation asides common law damages. Section 19 of the National Industrial Court Act 2006 provides that it can make an order which may be necessary and appropriate including awarding compensation or damages in matters in which the court has jurisdiction to hear. The court may also declare the unlawfulness of the termination. [106]

Rescission

This is defined as "the retrospective cancellation of a contract, *ab initio*…." by which the contract is destroyed as if its discharge is by breach never impinges

[102] (2013) NGSC 2.
[103]Supra
[104] Supra
[105] New Nigeria Newspaper Limited v. Mr. Felix Atoyebi (unreported) suit no. CA/K/282/2006 Judgment delivered on the 19th of April 2013.
[106] Erugo,op. cit. 405

upon any rights and obligations that have already matured."[107] The contract is deemed cancelled with effect from its time of formation.[108]

Repudiation may arise in two instances, namely, after the agreement had been concluded but before the actual performance by either of the parties or may be constituted by the act or omission of one of the parties during the period of the contract and after a party or both have started performing the duties of the contract.[109]

At common law, a contract could also be repudiated on ground s of fraud. In *Awosile v Sotumbo,*[110] where fraud was pleaded and proven, the contract was held rightly avoided by the injured party. However, repudiation alone cannot end the contract, there must be an acceptance from the other party. Therefore, it is pertinent to distinguish repudiation from rescission as a form of remedy. A repudiation merely avoids the contract but does not put it to an end, while a rescission makes the contract void *ab initio*.[111] In the case of repudiation, a valid and subsisting contract exists, while in rescission, the contract is incurably bad and, therefore, void. Apart from this, a party could have a right of rescission on account of the breach under Section 82 (1)(d) of the Labour Act which gives courts the power to "rescind the contracts upon such terms as to apportionment of wages or other as it may consider…"[112]

Reinstatement

By specific performance or reinstatement in this context, an employee is restored to his former job where the court is persuaded that the employment has been terminated wrongfully as against the statutory flavour by his employer. Although, reinstatement is rarely granted to an employee because he has no property interest in his job, recent decisions of the Supreme Court of Nigeria seem to support the view that in an appropriate case the servant may be granted remedies in declaratory action ordering reinstatement or an injunction restraining dismissal.

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[107] Cheshire, Fifoot and Furmiton, *Law of Contract* (8th Edition, Butterworths, 1972), 593.
[108] *Thorpe v Fairey* (1949) Ch.649.
[109] *Solicitor-General (WS) v Adedeji Adedoyin* (1973) 3 UILR !43.
[110] (1986) 3 NWLR (Pt 29) 471 CA.
[111] *National Coal Board v Galley* (1958)1 All ER 91.
[112] Cap L1, LFN 2004.

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OBSTACLES ACHIEVING THE REMEDIES

Changing Role of the National Industrial Court

The National Industrial Court's adoption of a distinct approach compared to regular courts has helped enormously the course of justice. This may give the court the freedom to consider other remedies, apart from the rigid common law remedies which have proved unsatisfactory.[120] The introduction of severance pay exemplifies this departure from traditional practices.[121] This compensation, calculated based on the employee's years of service rather than contractual terms, reflects a more comprehensive approach to addressing the repercussions of termination. For instance, the court awarded one month's pay for each completed

[113] Laoye v FCSC (supra)
[114] ASCON Suit No. ID/220281 (Unreported) 48.
[115] Op. *cit.,*
[116] (2001) SC (Pt 111) 1, 8.
[117] (1985)2 NWLR (Pt 9)599.
[118] (1981) NSCC 19.
[119] (1985) 2 NWLR, 589, P. 34, 50, 51 & 52 and (1981), ISC, 40, P.34
[120] Supra.
[121] M.A. Qudari, *Unfair Dismissals in the Workplace: An Appraisal of the Available Remedies: The Nigeria Example*. Unpublished Long Essay, Faculty of Law, University of Lagos, Lagos state, 2014.

year of service, illustrating a commitment to providing adequate redress for the terminated employee's circumstances.

Similarly, in *Industrial Cartons Ltd v National Union of Paper and Paper Converters Workers,*[122] the National Industrial Court considered various factors, including the contents of a compromising letter, in its compensation decision. Despite the contract stipulating only one month's salary in lieu of notice, the court granted six months' salary, diverging from established common law principles to ensure fair reparation.

Furthermore, *in Grizi Nigeria Ltd. v Grizi Nigeria Ltd Group of Companies Worker's Union*,[123] the Court's provision of severance pay exceeding initial amounts demonstrates its commitment to addressing termination injustices comprehensively. The awarded severance pays, increasing with the duration of service, showcases the innovations of the court. It also considers the impact of termination on employees' livelihoods.

From these cases, it is apparent that the National Industrial Court endeavours to provide adequate compensation to mitigate the hardships suffered by wrongfully terminated employees. But efforts of the NIC are constrained by the resistance of employers to the new realities that traditional approaches must give way to forward looking strategies of protecting employees' rights. The use of injunctions to stall trials by the defendants/employers and lack of diligent prosecution on the part of counsel, coupled with lack of adequate resources and personnel, prevented the court from achieving its mandate.

Moreover, the Court retains discretionary powers to grant additional remedies, including job security measures, surpassing contractual obligations. This approach ensures that employers are held accountable for unjust terminations, even if beyond contractual obligations, thereby promoting fairness and equity in employment practices.[124] Furthermore, *in Grizi Nigeria Ltd. v Grizi Nigeria*

[122] (1981) NICLR 153.
[123] (1981) NICLR 54.
[124] A.S, Ishola, A.O Adeleye and D.O, Momodu, 'Rethinking the Jurisdiction of the National Industrial Court in Human Right Enforcement in Nigeria: Lessons from South Africa' (2016)3 *The Transnational Human Right Review* < https://www.researchgate.net/publication/378851041_Rethinking_the_Jurisdiction_of_the_Natio

Ltd Group of Companies Worker's Union,[125] the Court's provision of severance pay exceeding initial amounts demonstrates its commitment to addressing termination injustices comprehensively. The awarded severance pay, escalating with the duration of service, showcases a nuanced understanding of the impact of termination on employees' livelihoods. From these cases, it is apparent that the National Industrial Court endeavours to provide adequate compensation to mitigate the hardships suffered by wrongfully terminated employees. Moreover, the Court retains discretionary powers to grant additional remedies, including job security measures, surpassing contractual obligations. This approach ensures that employers are held accountable for unjust terminations, even if beyond contractual obligations, thereby promoting fairness and equity in employment practices.

2009.[126]

Controversies have arisen regarding the finality of decisions rendered by the National Industrial Court and their appeal ability. While decisions on fundamental rights and criminal issues are directly appealable to the Court of Appeal, other matters may require leave from the same court.[127] Section 9 of the National Industrial Court Act stipulates that no appeal shall lie to the Court of Appeal or any other court except as prescribed by the Act itself or another National Assembly legislation. Notably, appeals on wrongful termination, not being classified as fundamental rights issues, necessitate leave from the Court of Appeal. These powers appear too wide and the jurisdiction as the sole court to handle labour and trade union matters appear daunting. It is capable of leading to injustice through undue delays.

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nal Industrial Court in Human Rights Enforcement in Nigeria Lessons from South Africa> accessed 24 April 2024

[125] (1981) NICLR. 54

[126] A.S, Ishola, A.O Adeleye and D.O, Momodu, Rethinking the Jurisdiction of the National Industrial Court in Human Right Enforcement in Nigeria: Lessons from South Africa.

[127]Ibid.

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1999 CFRN Position on Labour Matters

The 1999 Constitution permits victims of rights violations to seek redress from any high court. However, recent efforts aim to streamline this jurisdiction by vesting exclusive authority in the NIC for labour-related human rights disputes.[129] However, concerns have been raised about overburdening the NIC with additional responsibilities, considering the inherent complexity and frequency of employment and labour disputes. Notably, the recent ruling in *Mr. Godson Ikechukwu v First Bank of Nigeria Ltd.,*[130]where the NICN declared statutes limiting actions inapplicable to contracts of service, underscores the need for timely access to justice, albeit without delaying action.

The International Labour Organization

The International Labour Organization (ILO) stands as a cornerstone in the establishment of international labour standards. It holds a unique position within the United Nations system as the only tripartite organization, uniting governments, employers, and workers from its 187 member states to establish labour standards and formulate policies and initiatives aimed at fostering decent work for all individuals. The ILO's overarching mission is encapsulated in its commitment to "promote rights at work, encourage decent employment opportunities, enhance social protection, and facilitate dialogue on work-related matters." At the core of its mandate lies the aspiration to collaborate with member states in achieving full and productive employment and ensuring decent work for all, with a particular focus on women and young people. This objective is firmly

[128]Ibid.
[129] A.S Ishola *et al,* op cit
[130] NICN/LA/402/2018; Fundamental Right Enforcement Procedure Rules, 2009 at Preamble (3) (a)-(b)

enshrined in the ILO's 2008 Declaration on Social Justice for a Fair Globalization,[131] emphasizing the pursuit of social justice within the framework of a globalized world.

The International Labour Organization (ILO) plays a pivotal role in shaping international labour standards, which govern the treatment of individuals within employment settings. Compliance with these standards does not necessitate complex legal manoeuvres; rather, it entails adhering to fundamental principles of common sense and good governance within the workplace.[132]These international labour standards serve as essential tools primarily for governments, guiding the drafting and implementation of labour laws and social policies in consultation with employers and workers. [133]While ratification of ILO Conventions often serves as the starting point for this process in many countries, others align their legislation with ILO standards even without formal ratification, using them as models for crafting laws and policies.[134]

CONCLUSION

The paper analysed the legal regimes for the determination of contract of appointment of employee with statutory flavour in Nigeria. It was noted that Nigerian courts are migrating from the common law remedies for wrongful determination of employee's appointment in favour of the maintenance of the global best practices which favoured additional remedies, including the award of general damages and specific performance. The legal reforms of the National Industrial Court in Nigeria also gave it the freedom to determine employment issues with despatch, taking into consideration the weak position of the employee to that of the employer. Furthermore, the Nigerian labour law stands to gain a lot from the experiences of common law countries on the transition from retrogressive common law posture and attitudes to the rights of workers.

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[131] Ibid.
[132] O.P. Obi, 'The Concepts and Purpose of International Labour Standard' (2008(2)(5) *NJLIR*, 66.
[133] International Labour Organization <mailto:https://www.ilo.org/global/standards/introduction-to-internmational-labour-standards/international-labour-stanadards-use/lang-en/index.htm> accessed 17 April 2024.
[134] Ibid.

Based on the analyses of the paper, it was recommended that the era of common law employment contact is gone as it has been jettisoned in other common law countries. Also, workers' rights to human dignity as affirmed by 1999 CFRN,[135] United Nations Business and Human Rights,[136] International Labour Standards[137]should be strictly implemented. The standards of the ILO on social justice and fair globalisation, freedom of association and workers' rights to work should be considered in extending the jurisdiction of NIC. Furthermore, periodic on the job workers' education should be instituted in Nigeria's workplace to apprise workers of their rights.

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[135] Section 34.
[136] 2011
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National Coal Board v Galley (1958)1 All ER 91.

New Nigeria Newspaper Limited v. Mr. Felix Atoyebi (unreported) Suit No. CA/K/282/2006, 19 April 2013.

Newu v CCMA (2007) 18 (11) CCL,11 (South Africa).

NPA v. Banjo (1972)2 SC 175.

Nwanbani v Golden Guinea Breweries Plc (1995) 6 NWLR 400, 184.

Nwobosi v A.C.B (1995) 6 NWLR (Part 404) 658.

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A CRITICAL ANALYSIS OF THE NIGERIA DATA PROTECTION ACT 2023: ELEVATING STANDARDS TO GLOBAL NORMS

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ABSTRACT

The Nigeria Data Protection Act (NDPA) 2023 marks a pivotal advancement in Nigeria's regulatory framework for data protection. This article critically examines the NDPA, highlighting its alignment with the European Union's General Data Protection Regulation (GDPR) and its implications for Nigeria. Employing a doctrinal research methodology, the analysis delves into the Act's provisions, including definitions, data subject rights, data controller obligations, and the establishment of the Nigeria Data Protection Commission (NDPC). Comparisons with the GDPR underscore both the strengths and potential challenges of the NDPA, particularly in areas such as extraterritoriality, independence of the regulatory authority, and enforcement mechanisms. The article also explores the socio-economic and legal contexts that influence the Act's implementation. Recommendations are provided to enhance the effectiveness of the NDPA in safeguarding privacy rights and fostering trust in Nigeria's digital economy.

Keywords: Data Protection, Nigeria Data Protection Act, GDPR, Privacy Rights, Regulatory Framework

INTRODUCTION

Nigeria's efforts to regulate data protection have advanced significantly with the enactment of the NDPA in 2023. Before this, Nigeria's inadequate and fragmented data protection policy was frequently criticized. Historically, Nigerian laws and policies governing data protection have been disorganized, inconsistent, and incomplete. The Nigeria Data Protection Regulation (NDPR), for example, was published in 2019 by the National Information Technology Development Agency (NITDA).[2] While this was a significant step, it did not succeed in offering a comprehensive legal framework for data protection. The

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[2] Olumide Babalola, 'Nigeria's Data Protection Legal and Institutional Model: An Overview' (2022) 12 International Data Privacy Law 44.

NDPR's narrow scope and frequently criticized enforcement methods were the result of complaints from a range of parties.[3]

The NDPA, influenced by the EU GDPR, seeks to provide a robust legal structure for protecting personal data. The GDPR is widely regarded as the gold standard in data protection legislation globally, and its influence on the NDPA is evident in several key areas. The NDPA incorporates many of the GDPR's principles, such as transparency, accountability, and the rights of data subjects. This transplantation of legal norms aims to elevate Nigeria's data protection standards to international levels, thereby fostering trust and confidence among data subjects and enhancing Nigeria's global competitiveness in the digital economy.

The NDPA aims to address the shortcomings of previous regulations by establishing clear definitions, roles, and responsibilities for data controllers and processors. It establishes extensive safeguards for the protection of personal data, such as strict consent requirements, obligations for notifying data breaches, and the creation of the Nigeria Data Protection Commission (NDPC), which is in charge of monitoring compliance and enforcement.

This article provides a critical analysis of the NDPA, examining its provisions, strengths, and potential pitfalls. It compares the NDPA with the GDPR to highlight similarities and differences, and assesses the implications of adopting such a comprehensive data protection framework in the Nigerian context. Key areas of focus include the scope and objectives of the Act, the concept of extraterritoriality, the independence of the Nigeria Data Protection Commission, and the exemptions for personal or household data processing. The analysis also explores the challenges of enforcing the NDPA, considering Nigeria's socio-economic landscape, legal infrastructure, and the readiness of stakeholders to comply with the new regulations.

By critically evaluating the NDPA, this article aims to provide insights into the effectiveness of the Act in addressing data protection issues in Nigeria. It also offers recommendations for enhancing the NDPA's implementation and enforcement, ensuring that it not only meets international standards but also addresses the unique needs and challenges of the Nigerian environment. The ultimate objective is to contribute with the development of a strong legal

[3] Patrick Chukwunonso Aloamaka, 'DATA PROTECTION and PRIVACY CHALLENGES in NIGERIA: LESSONS from OTHER JURISDICTIONS' (2023) 3 UCC Law Journal 281.

framework that protects people's right to privacy and fosters the expansion of the digital economy, as well as to contribute to the continuing conversation about data protection in Nigeria.

REGULATORY FRAMEWORK AND LEGISLATIVE TRANSPLANTATION

The influence of the GDPR is evident in the structure and content of the NDPA, reflecting a clear case of legislative transplantation.[4] Legal transplantation, a method of comparative law, involves adopting legal frameworks from other jurisdictions and adapting them to fit the local context.[5] The GDPR, recognized globally for its stringent data protection standards and comprehensive approach, serves as a model for the NDPA. This transplantation aims to bring Nigeria's data protection regime in line with international best practices, thereby enhancing the country's global standing in the digital economy and providing stronger protections for individuals' personal data.

Data Protection Laws in African Nations and Emerging Markets

The global surge in digital activities has underscored the critical importance of robust data protection frameworks. While the GDPR has set a high standard, various African nations and emerging markets have developed their own data protection laws, reflecting diverse approaches tailored to their unique socio-economic contexts. This analysis explores the data protection frameworks of select African countries and emerging markets, drawing lessons that could inform and enhance Nigeria's data protection regime.

Data Protection Frameworks in African Nations

Kenya

Kenya's Data Protection Act, enacted in 2019, aligns closely with the GDPR, emphasizing principles such as lawful processing, data minimization, and purpose limitation. The Act establishes the Office of the Data Protection Commissioner, an independent body tasked with overseeing compliance, handling complaints, and enforcing data protection rights.[6] Notably, the Act

[4] Olumide Babalola, 'The GDPR-Styled Nigeria Data Protection Act 2023 and the Reverberations of a Legal Transplant' (2024) 3 British Journal of Cyber Criminology 1.
[5] George Mousourakis, 'Legal Transplants and Legal Development: A Jurisprudential and Comparative Law Approach' (2013) 54 Acta Juridica Hungarica 219.
[6] Republic of Kenya, *Data Protection Act* No. 24 of 2019, s 5.

mandates Data Protection Impact Assessments (DPIAs) for high-risk processing activities and requires organizations to appoint Data Protection Officers (DPOs) under specific conditions.[7] Kenya's experience highlights the importance of clear regulatory structures and the proactive assessment of data processing risks.

South Africa

South Africa's Protection of Personal Information Act (POPIA), fully effective since 2021, provides a comprehensive framework for data protection. It introduces conditions for lawful processing, including accountability, openness, and security safeguards.[8] The Act establishes the Information Regulator, an independent authority responsible for monitoring and enforcing compliance.[9] POPIA's emphasis on accountability and the establishment of an independent regulator underscore the need for autonomous oversight bodies to ensure effective enforcement.

India

India's Digital Personal Data Protection Act (DPDP) 2023 also provides insights relevant to Nigeria. Unlike the GDPR, DPDP focuses heavily on compliance-driven enforcement, requiring companies to notify regulators within strict deadlines about breaches. [10] India's approach, which emphasizes a balance between innovation and regulatory compliance, could offer Nigeria additional insights into developing effective enforcement strategies without stifling economic growth.

While Kenya and South Africa offer valuable examples of data protection implementation in Africa, the Nigerian NDPA demonstrates an even closer alignment with the GDPR. The NDPA and GDPR share core tenets regarding privacy protection, data subject rights, and the responsibilities of data controllers and processors. The concepts of lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity,

[7] Rogers Alunge, 'Consolidating the Right to Data Protection in the Information Age: A Comparative Appraisal of the Adoption of the OECD (Revised) Guidelines into the EU GDPR, the Ghanaian Data Protection Act 2012 and the Kenyan Data Protection Act 2019' in Jessica Thorn, Assane Gueye and Adam P Hejnowicz (eds), *Innovations and Interdisciplinary Solutions for Underserved Areas* (Springer International Publishing 2020).
[8] Republic of South Africa, Protection of Personal Information Act 4 of 2013, s 4.
[9] Protection of Personal Information Act 4 of 2013, s 39.
[10] India, Digital Personal Data Protection Act 2023, s 8(5).

confidentiality, and accountability, for instance, are adopted by the NDPA from the GDPR. These guidelines are intended to guarantee that personal data is handled in a way that upholds people's right to privacy and fosters confidence in data processing operations.

While this approach can be beneficial, it must consider the cultural, socio-political, and economic contexts of the recipient country.[11] Legal transplantation is not merely a matter of copying and pasting laws from one jurisdiction to another; it requires careful adaptation to ensure that the transplanted laws are effective and relevant in the new context. In the case of the NDPA, several contextual factors must be considered to ensure its successful implementation.

Scope and Objectives of the NDPA

The NDPA aims to protect the privacy rights of individuals by regulating the processing of personal data. Unlike the GDPR, which explicitly recognizes data protection as a fundamental right, the NDPA extends the protection to all fundamental rights under the Nigerian Constitution.[12] This broad scope could lead to enforcement challenges, as it may create unrealistic expectations about the Act's applicability to various fundamental rights.

The NDPA applies to data controllers and processors domiciled, ordinarily resident, or ordinarily operating in Nigeria, as well as those processing personal data of data subjects within Nigeria.[13] This wide-reaching application is intended to ensure comprehensive protection of Nigerian citizens' data, regardless of where the data processing occurs.

Extraterritorial Application

One of the most ambitious aspects of the NDPA is its extraterritorial reach,[14] mirroring the GDPR's attempt to regulate data processing activities beyond its geographical boundaries.[15] Although this provision attempts to safeguard Nigerian subjects whose data is handled wherever it is processed, it presents serious jurisdictional issues. Nigerian courts may struggle with enforcement

[11] Ugo Mattei, 'Efficiency in Legal Transplants: An Essay in Comparative Law and Economics' (1994) 14 Int'l Rev L & Econ 3.
[12] Nigeria Data Protection Act 2023, s 1.
[13] Nigeria Data Protection Act 2023, s 2.
[14] Ibid.
[15] General Data Protection Regulation (EU) 2016/679, art 3.

issues, particularly when dealing with international data controllers and processors.

The GDPR's extraterritorial provisions have similarly faced scrutiny and challenges, particularly in enforcing compliance across different jurisdictions.[16] The NDPA's extraterritorial ambitions could encounter similar difficulties, especially given the complexities of international law and differing national regulations.

Independence of the Nigeria Data Protection Commission (NDPC)

The NDPA establishes a Nigeria Data Protection Commission (NDPC) responsible for overseeing compliance and enforcement. However, the Act's provisions regarding the NDPC's independence are problematic. The appointment of NDPC officers on the recommendation of a cabinet minister and the insecure tenure of these officers undermine the Commission's independence.[17] This could result in executive interference, compromising the NDPC's ability to enforce data protection regulations impartially.

Comparatively, the GDPR mandates a higher degree of independence for supervisory authorities, ensuring they operate without external influence.[18] This independence is crucial for maintaining public trust and ensuring unbiased enforcement of data protection laws.

Enforcement and Compliance Trends under the NDPA

The Nigeria Data Protection Commission (NDPC) has reported a significant financial impact from data protection enforcement under the Nigeria Data Protection Act (NDPA) 2023. In 2024 alone, the government generated approximately ₦12 billion from data protection activities, a notable increase from ₦4 billion in 2021.[19] This growth is largely attributed to heightened regulatory enforcement, increased corporate compliance, and the expansion of data protection services. Furthermore, compliance-related revenue surged from

[16] Oskar Josef Gstrein and Andrej Janko Zwitter, 'Extraterritorial Application of the GDPR: Promoting European Values or Power?' (2021) 10 Internet Policy Review 1.
[17] Nigeria Data Protection Act 2023, s 14.
[18] General Data Protection Regulation (EU) 2016/679, art 52.
[19] Sami Tunji, 'Govt Earned N12bn from Data Protection in 2024 – NDPC' *Punch Newspaper* (2024) <https://punchng.com/govt-earned-n12bn-from-data-protection-in-2024-ndpc/> accessed 26 January 2025.

₦24.5 million in 2021 to ₦1.5 billion in 2024.[20] The number of Compliance Audit Returns (CARs) filed by organizations also grew substantially, from 1,864 in 2020–2021 to 4,691 in 2023–2024, reflecting a growing culture of adherence to data protection regulations.[21]

The sector's expansion has also led to job creation, with employment in data protection roles increasing from 10,123 jobs in 2023 to 23,000 jobs in 2024.[22] Additionally, the number of Verified Data Protection Officers (DPOs) rose from 362 in 2021 to 2,888 in 2024, while Data Protection Compliance Organizations (DPCOs) expanded from 103 in 2021 to 246 in 2024.[23]These figures highlight the increasing demand for specialized data protection expertise in Nigeria's digital economy.

The NDPC's regulatory enforcement has also intensified, with the Commission conducting 213 investigations into data breaches and compliance violations in 2024, up from 177 in 2023.[24] Many of these cases involved privacy breaches, unauthorized data sharing, and corporate non-compliance with NDPA provisions.[25] The NDPC has stated that stricter enforcement measures and higher penalties will be implemented in the coming years to ensure stronger compliance with the Act.[26]

Furthermore, Nigeria has strengthened its international collaborations in data protection. The NDPC has signed Memoranda of Understanding (MoUs) with data protection authorities in Canada and Dubai, emphasizing Nigeria's commitment to global privacy standards.[27] The NDPC has also actively participated in international regulatory networks, such as the Global Privacy

[20] ITEdgeNews, 'NDPC Holds National Privacy Week, Reports N12bn Revenue' (*ITEdgeNews*29 January 2025) <https://www.itedgenews.africa/ndpc-holds-national-privacy-week-reports-n12bn-revenue/> accessed 29 January 2025.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Emmanuel Elebeke, 'How NITDA Impacted IT Industry in 2024 - Report' *Vanguard News* (19 December 2024) <https://www.vanguardngr.com/2024/12/how-nitda-impacted-it-industry-in-2024-report/> accessed 26 January 2025.
[25] Ibid.
[26] 'NDPR (Lite) Performance Report 2019–2020' (Rapporteur on Data Protection, April 2021) https://www.rapdp.org/sites/default/files/2021-04/NDPR%20%28Lite%29%20Performance%20Report%20%202O19-2O2O.pdf accessed 29 January 2025.
[27] Sami Tunji (n 14).

Assembly and the Network of African Data Protection Authorities, further positioning Nigeria as a regional leader in data protection.[28]

These empirical insights provide tangible evidence of the NDPA's impact on regulatory enforcement, compliance, job creation, and international cooperation. They reinforce the argument that Nigeria's adoption of global data protection norms is strengthening its digital economy and fostering trust in data governance practices.

Personal or Household Processing Exemptions

The NDPA includes exemptions for personal or household data processing, similar to the GDPR.[29] However, the NDPA's approach to these exemptions is inconsistent and potentially confusing. The Act exempts personal data processing for household purposes unless it violates the fundamental right to privacy.[30] This contradictory provision undermines the clarity and effectiveness of the exemption, as it creates a legislative loophole that complicates enforcement.

The GDPR also provides exemptions for personal or household activities but is more explicit in its definitions and conditions.[31] This clarity helps avoid confusion and ensures that exemptions are applied consistently and fairly.

Data Protection by Design and by Default

The NDPA misses an opportunity to incorporate the concepts of data protection by design and by default, which are fundamental to the GDPR.[32] Data controllers must incorporate data protection safeguards into their systems and processes from the beginning in accordance with these principles. Including these concepts in the NDPA would enhance its proactive approach to privacy risk mitigation and strengthen overall data protection practices.

The GDPR's emphasis on data protection by design and by default has been pivotal in encouraging organizations to prioritize privacy and security from the

[28] *IT Edge News* (n 15).
[29] Nigeria Data Protection Act 2023, s 3(1).
[30] *Ibid*.
[31] General Data Protection Regulation (EU) 2016/679, art 2(2)(c).
[32] General Data Protection Regulation (EU) 2016/679, art 25.

beginning of their operations.[33] Implementing similar requirements in the NDPA could significantly improve data protection standards in Nigeria.

Age of Consent

The NDPA sets the digital age of consent at 13 years, aligning with the lower end of the GDPR's range.[34] However, this provision is inconsistent with other Nigerian laws, such as the Child's Right Act, which sets the age of consent at 18 years.[35] This discrepancy creates confusion and undermines the protection of children's data. The NDPA needs to harmonize its age-related provisions with existing laws to provide clear and consistent guidelines.[36]

The GDPR allows member states some flexibility in setting the age of consent between 13 and 16 years, reflecting differences in national legislation.[37] This flexibility has helped ensure that data protection laws align with broader legal frameworks within individual countries. For instance, if a member state chooses to set the age of consent below 16 years, it must not be lower than 13 years. This means that the minimum age for a child to consent to data processing under the GDPR is 13, and member states can set the age requirement within this range.

Consent and Automated Decision-Making

Gaining valid consent from data subjects is another vital aspect of data protection. According to the NDPA, consent must be freely given, specific, informed, and clear. Consent should be affirmative and not based on pre-selected confirmations.[38] This aligns with the GDPR's stringent requirements for consent, which mandate that consent be clear, distinguishable, and intelligible, using plain language.[39]

The NDPA also prohibits automated decision-making in terms of obtaining consent, ensuring that each data subject has the right to either accept or reject the provision of consent and not be subject to decisions based solely on

[33] General Data Protection Regulation (EU) 2016/679, art 25; Sara Gustavsson, 'An Assessment of Privacy by Design as a Stipulation in GDPR' (Masters Thesis2020) 12.
[34] Nigeria Data Protection Act 2023, s 31(5).
[35] Child's Right Act 2003, s 277.
[36] Olumide Babalola, 'The GDPR-Styled Nigeria Data Protection Act 2023 and the Reverberations of a Legal Transplant' (2024) 3 British Journal of Cyber Criminology 4.
[37] General Data Protection Regulation (EU) 2016/679, art 8(1).
[38] Nigeria Data Protection Act 2023, s 26.
[39] General Data Protection Regulation (EU) 2016/679, art 7.

automated processing.[40] This reflects similar provisions in the GDPR, which aim to protect individuals from potentially harmful automated decisions.[41]

However, the NDPA's prohibition on assumed consent from silence or inactivity is a clear and necessary distinction that enhances data protection.[42] Ensuring that consent cannot be inferred from a lack of response helps protect data subjects from unintentional or coerced consent.

Data Protection Impact Assessments (DPIAs)

Data processing operations have risks that must be identified and mitigated, and this is where DPIAs, come in.. The NDPA and GDPR both mandate DPIAs where processing operations are likely to result in high risks to the rights and freedoms of data subjects.[43] This involves systematically describing the envisaged processing and assessing its necessity and proportionality, as well as evaluating risks and outlining measures to mitigate them.[44]

The GDPR provides more detailed requirements for DPIAs, including specific conditions under which they must be conducted and the need to consult supervisory authorities.[45] These requirements are outlined in Articles 35 and 36 of the GDPR. The NDPA lacks these detailed provisions, which could lead to inconsistencies in how DPIAs are performed and evaluated.[46]

Data Protection Officers (DPOs)

Both the GDPR and NDPA mandate the appointment of Data Protection Officers (DPOs) for certain organizations.[47] The requirements make sure that organizations handling sensitive data or high-risk processing operations designate a DPO to monitor adherence to data protection laws and safeguard the rights of data subjects. Specifically, DPOs are in charge of managing data protection strategies and making sure that all applicable laws are followed.[48] These tasks ensure that the DPO plays a critical role in an organization's data

[40] Nigeria Data Protection Act 2023, s 37.
[41] General Data Protection Regulation (EU) 2016/679, art 22.
[42] Nigeria Data Protection Act 2023, s 26(3).
[43] Nigeria Data Protection Act 2023, s 28; General Data Protection Regulation (EU) 2016/679, art 35.
[44] General Data Protection Regulation (EU) 2016/679, art 35(7).
[45] General Data Protection Regulation (EU) 2016/679, art 35 and art 36.
[46] Nigeria Data Protection Act 2023, s 28.
[47] General Data Protection Regulation (EU) 2016/679, art 37 and art 39; Nigeria Data Protection Act 2023, s 32.
[48] General Data Protection Regulation (EU) 2016/679, art 39(1).

protection framework, helping to manage compliance with data protection laws and mitigate risks associated with data processing activities. The GDPR provides detailed criteria for when a DPO must be appointed, such as when an organization processes large-scale data or monitors individuals systematically.[49] By mandating the appointment of a DPO under these specific conditions, the GDPR ensures that organizations with significant data protection responsibilities have a dedicated person to oversee compliance and protect data subjects' rights

The NDPA's criteria for appointing DPOs are less specific, stating only that controllers or processors of major importance must appoint a DPO.[50] The term "data controller of major importance" is defined in the Act, but it leaves some flexibility in determining which organizations fall under this category. Essentially, the NDPA requires significant data controllers and processors to appoint a DPO but does not provide an exhaustive list of specific criteria or thresholds for this designation, focusing instead on the scale and significance of the data processing activities. This vagueness could lead to inconsistent applications and potentially inadequate data protection practices in smaller organizations.

The GDPR also allows for the appointment of a single DPO by a group of similar establishments, a provision not explicitly mentioned in the NDPA.[51] This means that companies that are part of a corporate group, such as subsidiaries or affiliates, can appoint one DPO to oversee data protection compliance for the entire group. This is particularly beneficial for multinational corporations with multiple branches or subsidiaries, as it ensures a consistent. This flexibility can help smaller organizations share resources and expertise in managing data protection responsibilities.

Data Protection Compliance Experts

The NDPA and GDPR both emphasize the role of data protection compliance experts in monitoring and auditing compliance.[52] By emphasizing these roles, the GDPR and NDPA ensures that organizations have dedicated experts to oversee and enhance their data protection compliance efforts, thereby

[49] General Data Protection Regulation (EU) 2016/679, art 37(1).
[50] Nigeria Data Protection Act 2023, s 32.
[51] General Data Protection Regulation (EU) 2016/679, art 37(2).
[52] General Data Protection Regulation (EU) 2016/679, art 37-39; Nigeria Data Protection Act 2023, s 32 and s 33.

protecting data subjects' liberties and rights. However, the NDPA requires these experts to be individuals with the necessary expertise in data protection are responsible for advising, monitoring, and auditing compliance within organizations, thereby enhancing the overall data protection framework.[53]

In a similar vein, the GDPR requires that the appointment of DPOs be contingent upon certain requirements concerning the type and scope of data processing operations.. The DPO must be a person (or a team) with the requisite expertise and independence to oversee the organization's compliance with data protection laws .[54] The GDPR does not require that DPOs be bodies; rather, it focuses on the appointment of individuals or teams who can fulfil the DPO role effectively.

Rights of Data Subjects

The NDPA and GDPR both grant data subjects a range of rights, including the "right to access," correct, and "erase their data."[55] These rights ensure that data subjects can exercise significant control over their personal data, compelling data controllers and processors to maintain high standards of data protection and transparency. The GDPR provides more detailed provisions for these rights, including the requirement to inform data subjects of the recipients of their data and the obligation to take reasonable steps to notify third parties of any rectifications or erasures.[56] Under the GDPR, controllers are obliged to ensure transparency and take necessary steps to communicate any changes or actions taken regarding personal data to both the data subject and relevant third parties.

The NDPA includes similar rights but lacks some of the detailed procedural requirements found in the GDPR.[57] This could lead to inconsistencies in how data subjects' rights are implemented and enforced.

[53] Nigeria Data Protection Act 2023, s 32 and s 33
[54] General Data Protection Regulation (EU) 2016/679, art 37-39.
[55] General Data Protection Regulation (EU) 2016/679, art 16, art 17, art 18, art 20 & art 21; Nigeria Data Protection Act 2023, s 34.
[56] General Data Protection Regulation (EU) 2016/679, art 15, art 16, art 17(2) & art 19.
[57] Nigeria Data Protection Act 2023, s 34-38.

Sensitive Personal Data

Both the NDPA and GDPR impose restrictions on processing sensitive personal data, also referred to as "special categories of personal data."[58] These categories include information about a person's racial or ethnic background, political views, religious or philosophical convictions, trade union membership, genetic information, biometric information used to uniquely identify an individual, health information, and information about a person's sexual orientation or sex life. The GDPR includes additional provisions for processing data related to criminal convictions and offences, which are not explicitly addressed in the NDPA.[59] This omission could lead to gaps in protection for sensitive data in Nigeria.

The GDPR also requires that sensitive data be processed under the supervision of professionals bound by confidentiality obligations, a requirement not explicitly stated in the NDPA.[60] This could impact the security and confidentiality of sensitive personal data processed in Nigeria.

Data Security

Both the NDPA and the GDPR place emphasis on the necessity for data processors and controllers to put in place suitable security measures.[61] However, the GDPR includes more detailed provisions for ensuring that all personnel with access to personal data are properly authorized and trained.[62] These requirements ensure that data controllers and processors take a proactive and comprehensive approach to data security, protecting personal data from various threats and ensuring compliance. The GDPR also allows for the use of certifications to demonstrate compliance with security measures, a provision not explicitly mentioned in the NDPA.[63] These provisions allow organizations to use certifications to demonstrate their adherence to the GDPR's requirements, including security measures. Certification can serve as a visible

[58] General Data Protection Regulation (EU) 2016/679, art 9; Nigeria Data Protection Act 2023, s 30.
[59] General Data Protection Regulation (EU) 2016/679, art 10.
[60] General Data Protection Regulation (EU) 2016/679, art 9(3).
[61] Nigeria Data Protection Act 2023, s 39; General Data Protection Regulation (EU) 2016/679, art 32.
[62] General Data Protection Regulation (EU) 2016/679, art 32(4).
[63] General Data Protection Regulation (EU) 2016/679, art 42- 43.

indicator of compliance and commitment to data protection standards, which can build trust with data subjects, business partners, and regulatory authorities.

Trans-Border Data Transfer

The NDPA and GDPR both regulate the transfer of personal data to third countries.[64] The NDPA limits transfers to countries that provide an adequate level of data protection.[65] By doing this, the NDPA protects the rights and liberties of data subjects in Nigeria by ensuring that personal data can only be transferred to nations or areas that have been evaluated and found to offer a sufficient degree of data protection.

While the GDPR also includes provisions for transfers to international organizations.[66] This is to ensure that the transfer of personal data outside the European Economic Area EEA is conducted in a manner that maintains the high level of protection guaranteed by the GDPR, thereby safeguarding the rights and freedoms of data subjects. This broader scope in the GDPR provides more flexibility for international data transfers, while ensuring that adequate protections are in place.

The GDPR also mandates continuous monitoring of the recipient country's data protection practices and allows for the suspension or repeal of transfer approvals if adequate protections are no longer ensured.[67] This comprehensive approach ensures that personal data transferred outside the EEA is consistently protected in line with GDPR standards. This ongoing oversight is not explicitly required under the NDPA, potentially limiting its effectiveness in ensuring long-term data protection in international transfers.

Certification

The NDPA provides for the certification of data processing operations, but this is not mandatory, which is outlined in Section 33 under Part V – Principles and Lawful Basis Governing Processing of Personal Data.[68] While the NDPA allows for the certification and licensing of individuals or entities to provide data protection compliance services, it does not make such certification

[64] Nigeria Data Protection Act 2023, s 41- 43; General Data Protection Regulation (EU) 2016/679, art 44-50.
[65] Nigeria Data Protection Act 2023, s 42
[66] General Data Protection Regulation (EU) 2016/679, art 45, art 46, art 47 & art 49.
[67] General Data Protection Regulation (EU) 2016/679, art 45(3), art 45(5).
[68] Nigeria Data Protection Act 2023, s 33.

mandatory for all data controllers and data processors. The certification process serves as a mechanism to ensure that entities engaged in data processing comply with the standards set forth in the Act, but organizations are not obligated to undergo certification to operate.

Moreover, the GDPR also includes provisions for certification mechanisms and data protection seals, which serve as evidence of compliance with data protection laws, which are outlined in Articles 42 and 43 of the GDPR.[69] By incorporating these provisions, the GDPR hopes to raise the standard of data protection across the EU by encouraging best practices in data protection and provide a framework for organizations to demonstrate their compliance. The GDPR mandates that all certification mechanisms be publicly available, enhancing transparency and accountability.[70] This requirement is designed to ensure that both the certification process and the results are open to scrutiny, thereby fostering trust and confidence in the data protection measures adopted by organizations.

JUDICIAL APPROACH TO DATA PROTECTION IN NIGERIA

Before the enactment of the NDPA, Nigerian courts played a role in data protection through their interpretations of the right to privacy under the Nigerian Constitution. The Nigerian Constitution,[71] specifically Section 37, guarantees the right to privacy. Nigerian courts have interpreted this provision to include data protection, as demonstrated in several cases.

In *Digital Rights Lawyers Initiative (DRLI) v National Identity Management Commission (NIMC)*,[72] the court determined that a data subject's right under the NDPR is the rectification of personal data, and that this right should not involve payment. Similarly, in *Incorporated Trustees of Digital Rights Lawyers Initiative (DRLI) v Central Bank of Nigeria (CBN)*,[73] the court

[69] General Data Protection Regulation (EU) 2016/679, art 42 and art 43.
[70] General Data Protection Regulation (EU) 2016/679, art 42(8), art 42 (5), & art 43.
[71] Constitution of the Federal Republic of Nigeria 1999, s 37.
[72] Digital Rights Lawyers Initiative (DRLI) v National Identity Management Commission (NIMC), Appeal Number CA/IB/291/2020.
[73] Incorporated Trustees of Digital Rights Lawyers Initiative (DRLI) v Central Bank of Nigeria (CBN), Unreported Suit No. FHC/AB/CS/76/2020.

affirmed that data protection is a fundamental right covered by the Fundamental Rights Enforcement Procedure Rules and is subject to litigation.[74]

In *Incorporated Trustees of Digital Rights Lawyers Initiative v L.T. Solutions & Multimedia Limited*,[75] The court ruled that the protection of a citizen's personal information is covered by their right to privacy. However, the court's decision in this case also highlighted the challenges in proving the infringement of this right.[76]

In *Incorporated Trustees of Digital Rights Lawyers Initiative v Minister of Industry, Trade, and Investment & 2 Ors*,[77] the court emphasized the need for data controllers to demonstrate compliance with the NDPR, particularly in terms of data protection officer (DPO) appointments and privacy policy publications.

These cases illustrate the evolving judicial attitude towards data protection in Nigeria and the increasing recognition of data protection as a fundamental right.

CHALLENGES OF ENFORCING THE NDPA

One of the significant challenges in enforcing the NDPA is the lack of capacity-building initiatives and resources for proper implementation. A key strategy to overcome this is enhancing training programs for data controllers and processors to ensure compliance with data protection standards. Additionally, public awareness campaigns are essential to educate individuals about their data rights and responsibilities.

Another major challenge is the need for stronger international partnerships. Nigeria can benefit from collaborations with global data protection authorities, such as the European Data Protection Board and the African Union, to develop best practices and harmonize regulations. Establishing bilateral agreements with countries that have advanced data protection laws can also facilitate smoother cross-border data transfers and regulatory cooperation.

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[74] Ikenga KE Oraegbunam and Tega Edema, 'EXAMINING the JUDICIAL ATTITUDE to DATA PROTECTION in NIGERIA' (2023) 4 LAW AND SOCIAL JUSTICE REVIEW 3.
[75] *Incorporated Trustees of Digital Rights Lawyers Initiative v L.T. Solutions & Multimedia Limited*, Suit No. HCT/262/2020.
[76] Ikenga KE Oraegbunam and Tega Edema, 5.
[77] *Incorporated Trustees of Digital Rights Lawyers Initiative v Minister of Industry, Trade, and Investment* & 2 Ors, Unreported Case Suit No. FHC/AWK/CS/116/2020.

Emerging technologies like AI, blockchain, and big data analytics present new challenges for data protection. AI-driven decision-making, for example, raises concerns about algorithmic bias and transparency in data processing. Blockchain, while enhancing data security through decentralization, creates challenges regarding data rectification and the right to be forgotten under the NDPA. Nigeria's regulatory framework should integrate automated compliance monitoring systems, leveraging AI to detect and prevent data breaches more effectively. The NDPA could benefit from sandbox initiatives similar to the UK and Singapore, allowing companies to test AI and blockchain-based privacy solutions within a controlled regulatory environment.

By addressing these challenges through capacity-building, international partnerships, and technological advancements, Nigeria can ensure a more effective and efficient enforcement of the NDPA, fostering a stronger data protection culture in the country.

THE ECONOMIC IMPLICATIONS OF THE NDPA

The NDPA is more than a legal framework for privacy protection; it serves as a catalyst for economic growth by fostering investor confidence, innovation, and digital inclusion. By creating a transparent and regulated data ecosystem, the Act strengthens Nigeria's global competitiveness and digital economy.

1) Attracting Foreign Investment: A robust data protection framework enhances investor confidence, making Nigeria a preferred destination for multinational corporations, tech firms, and cloud service providers. By aligning with international standards such as the GDPR, the NDPA ensures compliance with data security regulations, reducing risks in cross-border data transfers.[78] This regulatory clarity has attracted leading technology companies, such as Google, Meta, and Amazon Web Services, which require strong data protection laws before expanding into new markets.[79] Additionally, the NDPA facilitates

[78] NDPA 2023, s. 41.
[79] Prince Nwafor, Hi-Tech Editor and Adanna Nwankwo, 'How Google Injected $1.8b in Nigeria's Economy in 2023' (*Vanguard News*3 October 2024) <https://www.vanguardngr.com/2024/10/how-google-injected-1-8b-in-nigerias-economy-in-2023/> accessed 29 January 2025.

seamless data mobility, strengthening Nigeria's role as a regional hub for digital trade.[80]

2) Fostering Innovation and Digital Growth: Nigeria's digital economy is driven by fintech, e-commerce, and AI startups, which benefit from the NDPA's clear guidelines on data governance. The Act has the potential to promote privacy-first innovation, ensuring compliance from the outset, particularly for fintech and healthtech startups.[81] It also supports data-driven business models, enabling companies leveraging big data, AI, and blockchain to operate securely and efficiently. As the fintech sector continues to expand, with companies like Flutterwave, Paystack, and Opay, the NDPA enhances data security in financial transactions, strengthening consumer trust and attracting venture capital investment.

3) Promoting Digital Inclusion and Consumer Trust: The NDPA can help by bridging Nigeria's digital divide by enhancing trust in digital services, particularly in rural and underserved areas. By ensuring secure handling of personal data, the Act encourages wider adoption of mobile banking, e-commerce, and online services. Additionally, it fosters government-private sector collaboration in digital literacy and cybersecurity awareness initiatives, empowering more Nigerians to engage safely with digital platforms. With clear privacy safeguards, the NDPA promotes financial inclusion, expands access to digital services, and strengthens Nigeria's leadership in Africa's digital economy.

RECOMMENDATIONS

To enhance the NDPA, the following recommendations are proposed:

1. Recognize Data Protection as a Fundamental Right: Explicitly recognizing data protection as a fundamental right would align the NDPA with global standards and provide a clearer legal basis for enforcement.

[80] NDPA 2023, s. 42.
[81] Mercy King'ori, 'Nigeria's New Data Protection Act, Explained' (*https://fpf.org/*28 June 2023) <https://fpf.org/blog/nigerias-new-data-protection-act-explained/> accessed 27 January 2025.

2. Clarify the Scope of Exemptions: Simplify and clarify the exemptions for personal or household data processing to ensure they are practical and enforceable.
3. Ensure Independence of the NDPC: Strengthen the independence of the Nigeria Data Protection Commission by ensuring secure tenure for its officers and minimizing executive interference.
4. Incorporate Data Protection by Design and by Default: Integrate these principles into the NDPA to promote proactive privacy risk management.
5. Harmonize Age of Consent Provisions: Align the age of consent for data processing with other Nigerian laws to provide consistent protection for children.
6. Enhance Public Awareness and Education: Conduct extensive public awareness campaigns and educational programs to ensure that data subjects and controllers understand their rights and obligations under the NDPA.
7. Provide Detailed Guidelines for DPIAs: Include specific conditions under which DPIAs must be conducted and ensure continuous oversight by the DPA to improve risk assessment practices.
8. Expand Provisions for Sensitive Data: Include detailed requirements for processing sensitive data related to criminal convictions and ensure that such data is processed under strict confidentiality obligations.
9. Improve Data Security Measures: Mandate certifications for data security measures and ensure continuous training and authorization of personnel with access to personal data.
10. Enhance International Data Transfer Regulations: Implement continuous monitoring and oversight of recipient countries' data protection practices to ensure long-term compliance.

By addressing these issues, the NDPA can become a robust and effective legal framework that protects the privacy rights of individuals and promotes a culture of data protection in Nigeria

CONCLUSION

The Nigeria Data Protection Act (NDPA) 2023 represents a significant step towards strengthening data protection in Nigeria, aligning the country's regulatory framework with international standards. By adopting principles from the GDPR, the NDPA aims to provide a comprehensive and robust legal structure for the protection of personal data. However, successful implementation requires careful consideration of Nigeria's unique socio-economic and legal landscapes. Challenges such as enforcement, regulatory independence, and public awareness must be addressed to ensure the Act's efficacy. This article highlights the importance of these factors and offers recommendations for enhancing the NDPA's impact. Ultimately, a well-implemented NDPA can not only protect individual privacy rights but also boost Nigeria's digital economy by fostering trust and confidence in data processing activities.

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Constitution of the Federal Republic of Nigeria 1999, s 37

General Data Protection Regulation (EU) 2016/679, arts 2(2)(c), 3, 7, 8(1), 9, 9(3), 10, 15, 16, 17, 17(2), 18, 19, 20, 21, 22, 25, 32, 32(4), 35, 35(7), 36, 37, 37(1), 37(2), 37-39, 39(1), 42, 42(8), 42(5), 43, 44-50.

India, Digital Personal Data Protection Act 2023, s 8(5), s 8(6).

Nigeria Data Protection Act 2023, ss 1, 2, 3(1), 14, 26, 26(3), 28, 30, 31(5), 32, 33, 34, 34-38, 37, 39, 41-43, 42.

Republic of Kenya, Data Protection Act No. 24 of 2019, s 5.

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TYRON MARHGUY V. BOARD OF GOVERNORS ACHIMOTA SENIOR HIGH SCHOOL: A COMMENTARY

Idowu A Akinloye[1] & Maruf Adeniyi Nasir[2]

INTRODUCTION

This comment is a reflection on the 2021 Ghanaian case of *Tyron Marhguy v. Board of Governors Achimota Senior High School and Anor*[3] (hereafter, *Marhguy*) and brings to the fore the Ghanaian judicial standpoint on the enforcement of the right to freedom of religion and belief. In the case, the Applicant successfully contested the violation of his fundamental human right to freedom of religion and belief. Jurisprudentially, *Marhguy* is phenomenal, being a *locus classicus* setting out the judicial approval to the constitutional protection of religious liberty in Ghana. More importantly, Ghana is a country with constitutional democracy and religious pluralism, and the effect of the case may ultimately shape religion-state relations in the country. Expectedly, given the religiosity of Ghanaians, the court decision elicited much public commentary and debate;[4] but as significant as the case, there has not been much legal and academic discourse on it.[5] The issues that resonated in the case touch on constitutionally guaranteed human rights, including the right to freedom of religion and belief, the right to education, and the right to human dignity. However, the focus of this commentary is limited to the issues concerning the right to freedom of religion. Thus, after a summary of the facts of the case and the decision of the court, this discussion primarily evaluates only the issues

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[3] (Suit No. HR/0055/2021) (2021) JELR 107192 (HC).
[4] See 'Achimota: You Deny Rastafarians but Admit 'White' Students with Hair – Twitter Rants' (Ghanaweb 23 March 2021) <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Achimota-You-deny-Rastafarians-but-admit-white-students-with-hair-Twitter-rants-1212883 16 June 2022> accessed 12 November 2022; 'Rastafarian Students Win Case Against Achimota School-Court Orders Admission' <https://avenuegh.com/rastafarian-students-win-case-against-achimota-school-court-orders-admission/> accessed 12 November 2022.
[5] One of the few scholarship on the case is: C Prempeh, 'Balancing Religious Freedoms and the Right to Education of Minorities in Ghana: A Focus on Access to Public Senior High Schools by Rastafarians' in M.E. Addadzi-Koom, M. Addaney, L.A. Nkansah (eds) *Democratic Governance, Law, and Development in Africa* (Palgrave Macmillan, Cham. 2022) 193-222.

concerning the tenets of the right to freedom of religion and belief articulated in the case. Overall, the conclusion is that the judgement is a welcome development, and it is hoped that it will be a gateway to inspire people to contest the violation of their religious liberty in Ghana. The case may also encourage state institutions and organisations in the country to embrace religious tolerance and respect the rights of minority groups and new religious movements.

THE CASE

The Applicant's case

The Applicant, a minor of 17 years, sued through his next friend — his father. The first Respondent is the Board that governs and directs the affairs of the Achimota Senior High School (hereafter, the School), a prominent public pre-tertiary institution in Ghana. The second Respondent is the Attorney General who represented the state in the case. The Applicant claimed that before he registered for the West African Examination Council to sit for the June 2020 Basic Education Certificate Examination (BECE), he was required to select a number of schools, among which is Achimota Senior High School, the 1st Respondent School. He contended further that the selection was for the purposes of the Computerised School Selection and Placement System (CSSPS). The CSSPS is described as an automated merit-based system for the selection of schools and placement of pupils or candidates in various senior high schools across Ghana based on their choices of schools and performance in the examination. The Applicant wrote the qualifying examination and passed. The CSSPS thereafter posted him to Achimota Senior High School. The Applicant, a Rastafarian by religion who kept dreadlock braids (long hair), proceeded to the School, obtained the prospectus, and purchased necessary items. On the date of resumption, the Applicant was isolated from other students in the queue undertaking the necessary procedures for admission and enrolment. He was not allowed to complete his registration on the grounds that he kept dreadlocks. By the regulation of the School, male students must keep their hair low. The Applicant maintained that the keeping of his hair is not for stylistic preference; rather, it is his religious' injunctions; yet the School refused him religious exemption. The Applicant subsequently instituted this suit at the Human Rights Division of the High Court in Accra. He claimed among other things: (i) a declaration that the failure and refusal of the 1st Respondent to admit and enroll him in the School on the basis of his Rastafarian

religious inclination, beliefs and culture characterised by his keeping of long hair is a violation of his fundamental human rights and freedoms guaranteed under the 1992 Constitution particularly Article 12 (1); 23; 21 (1)(b)(c); 26(1); 17(2) and (3); (ii) an order directed at the 1st Respondent to immediately admit or enroll him to continue with his education unhindered.[6]

The Respondents' case

The Respondents denied violating the Applicant's right to freedom of religion. They contended that the issue of freedom of religion is a private affair in which the Respondents will not interfere. The Respondents premised their response on the ground that the School has rules and regulations (Achimota School's Revised Rules and Regulations, 2019) and that the Applicant merely misrepresented the rules. The rules and regulations apply to all students without discrimination or reference to race, colour, or religion. According to the rules which have been applied for several years, all the male students are to keep their hair low and neatly trimmed irrespective of their religious inclinations and backgrounds. The rules are made to enforce discipline, foster academic excellence, morality and hygiene among the students. The Respondents contended that allowing only the Applicant to keep long hair would mean other students who had their religious inclinations but are not allowed to manifest them would be discriminated against. Moreover, the Applicant's religion would then be elevated over the religions of other students. In addition, exempting the Applicant to keep long hair following his religious belief might encourage other students to come up with different religious manifestations that may be incompatible with the school standards. To the Respondent, this may lead to a breakdown of the school structure and breed anarchy and indiscipline in the School. Thus, the Respondents canvassed that it is in the public interest that the School authorities maintain a high level of discipline and decorum by putting in place the rules and regulations. The Respondents further contended that the Applicant's claim cannot be justified because the Applicant accepted the offer by voluntarily completing the Admission Acceptance Form-2021 and signed same to affirm his "promise to abide by all regulations governing students in the school" and that if he disobeyed, "the school authorities reserved the right to apply the appropriate sanctions against him".[7]

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[6] *Marhguy* (n 1) *2.*
[7] *Marhguy* (n 1) 6.

Court's Decision

The presiding judge acknowledged Rastafarianism as a religion to which the Applicant subscribes, and which is protected in terms of the Constitution. She also acknowledged that rules and regulations are critical for effective governance and administration of the School. She, however, noted that human rights, including the right to freedom of religion and belief, are not absolute in terms of section 12(2) of the Constitution. These rights are usually subject to the public good and public interest. Similar to what is obtained in other jurisdictions and other human rights cases in Ghana,[8] the court went on a voyage of balancing the competing rights of the Applicant to freedom of religion and the Respondents' duty to protect public interest in the light of the provisions of the Constitution of the Republic of Ghana.[9] The court pointed out that "every rule, regulation, order or even a law can operate legitimately only if it conforms to the constitutional tenets…where a rule is made which rule frowns or seeks to restrict a person without any legitimate or justifiable basis from professing his religious faith, such a rule clearly will cease to be efficacious."[10] The primary question the court asked was what overriding or legitimate public interest is being achieved by requesting the Applicant to keep his hair low.

The judge held that the Respondents were unable to proof that the present state of hair of the Applicant will impact negatively on his educational good or those of the community of students, neither did they "weigh on the mind of the court to trump the constitutionally guaranteed right of the Applicant for the public good or interest of the community of students.[11] Based on the balancing of the competing rights, the court held that the limitation of the Applicant's right by the Respondents was not constitutionally justified and directed the Respondents to admit and register the Applicant in the School. The court noted:

> " …as already pointed out, rules and regulations are essential to overriding discipline in schools, the rules must be consistent with the Constitution. Where the rules sin against the constitutional guarantee of a person to practice and manifest any religion

[8] See for instance, *Raphael Cubagee v. Michael Yeboah Asare and 2 Orthers* (Ref. No. 16/04/2017); *The Republic v. Eugene Baffoe-Bonnie and 4 Ors* (Ref. No. J1/06/2018).
[9] *Marhguy* (n 1) 13-16
[10] *Marhguy* (n 1) 15.
[11] *Marhguy* (n 1) 25.

> without legitimate justification, then, in my respectful view, same is unconstitutional. To insist, that a person should suspend the manifestation of his religion by cutting his dreadlocks before being enrolled in your institution, in my view, is clearly unconstitutional and sins against the Constitution, 1992."[12]

ISSUES ARISING

A few salient themes geared towards the advancement of the right to freedom of religion resonate in the judgment of the court. Three of them are briefly discussed under the headings below.

Increased Human Rights Awareness

Similar to other countries such as Nigeria, South Africa and the United States of America, Ghana is a religiously pluralistic country that practices constitutional democracy.[13] Chapter 5 of the Constitution of Ghana, 1992 provides the legal framework for the protection of fundamental human rights. The country has signed and ratified multiple international instruments, treaties and conventions that protect fundamental human rights, such as the African Charter on Human and Peoples Rights[14] and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[15] It appears Ghanaians are already maximising the protections offered in these various legal instruments by contesting violations of their fundamental rights.[16] Justice Addo, the presiding judge in *Marhguy*, acknowledged that Ghanaian courts are fraught with cases between individuals and the state regarding the extent of the enjoyment of a particular right.[17]

There is no report known to the authors that presents empirical statistical data on the prevalence of religious discrimination in Ghanaian society, particularly

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12 *Marhguy* (n 1) 20.

13 S Nkrumah-Pobi and S Owusu-Afriyie, 'Religious Pluralism in Ghana: Using the Accommodative Nature of African Indigenous Religion (AIR) as a Source for Religious Tolerance and Peaceful Coexistence' (2020) 3(1) *International Journal of Interreligious and Intercultural Studies* 73-82.

14 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

15 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly Resolution 36/55 of November 1981).

16 Abena Ampofoa Asare, *Truth Without Reconcialiation: A Human Rights History of Ghana* (University of Pennsylvania Press, Philadephia 2018) 1-15.

17 *Marhguy* 1.

in schools. However, there have been increased media reports indicating that students and parents are becoming more aware of their rights including freedom of religion and are protesting against violations of these rights. For example, about a decade ago, some Muslim groups protested against religious discrimination in Ghanaian public schools. Bolaji recalled:

> In the 2015 complaints, some Muslims stated that certain public schools' authorities were compelling Muslim students to attend compulsory Christian morning devotions and Sunday worship. In fact, in its submission to the National Peace Council (NPC) the Muslim Caucus in Parliament alleged that 58 educational institutions were culpable (Akweiteh 2015a). In addition, the Ghana Muslim Students' Association (GMSA) also complained that some public school authorities were not allowing Muslim students to observe their five daily prayers (Al-Alawa 2015). A related grievance was that female Muslim students/nurses were unable to wear the hijab (the Muslim headscarf) due to the restrictions imposed by their schools/workplaces. Consequently, these grievances culminated in a peaceful demonstration in the Western Region on 20 February 2015. This demonstration pitted students, parents, and politicians against educators and religious leaders, among others.[18]

Also, in December 2024, Wesley Girls' High School in Ghana was sued for religious discrimination and intolerance.[19] This prestigious Methodist mission school has a tradition of including Christian religious practices to its curriculum. The lawsuit challenges the school's policy that requires all students, regardless of their religious beliefs, to take part in Methodist religious activities, such as compulsory chapel services.[20] It is contended that the school's policy fails to acknowledge and respect the interests of students from other faiths, especially Muslims.

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[18] M.H.A. Bolaji, 'Secularism and State Neutrality: The 2015 Muslim Protest of Discrimination in the Public Schools in Ghana' (2018) 48 *Journal of Religion in Africa* 65-104 at 67.

[19] Evans Effah 'Wesley Girls' High School Sued Over Compulsory Religious Practices' *3 News* 24 December 2024, <https://3news.com/news/education/wesley-girls-high-school-sued-over-compulsory-religious-practices/> accessed on 19 January 2025.

[20] Ibid.

Article 21(2) of the Ghanaian Constitution guarantees the right to freedom of religion as well as to manifest the religion. It provides that "All persons shall have the right to freedom to practice any religion and to manifest such practice." Section 17(2) also prohibits discrimination on the basis of religion. A number of scholars have explored the efficacy of these provisions protecting the right to freedom of religion and belief in Ghana, but they further acknowledged a limited judicial perspective to these provisions.[21] Only a handful of relevant cases touching on freedom of religion have ended before the Commission on Human Rights and Administrative Justice, an administrative quasi-judicial body.[22] The reason why Ghanaians hardly contest the violation of religious liberty is, however, outside the scope of this commentary.

Marhguy is thus a striking case, being the first time the Ghanaian court is coming up with the judicial perspective on these provisions. The presiding judge in *Marhguy* confirmed that the case is 'novel' in the Ghanaian jurisprudence.[23] The step taken by the Applicant in *Marhguy* by invoking the jurisdiction of the court to challenge the violation of his religious liberty may be viewed from two perspectives. First, it may be said to justify the aforementioned findings that there is an increasing citizens' awareness and consciousness in challenging violation of their rights. Secondly, the case may be said to have broken the barriers that were limiting the citizens from contesting specifically the violation of their religious liberty, which have hitherto been less contested. Accordingly, *Marhguy* might become a gateway to encourage more Ghanaians to come out to challenge the violation of their right to freedom of religion. *Marhguy* perhaps prompted the aggrieved party to sue Wesley Girls' High School,[24] and more similar cases may be expected. The

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[21] Elom Dovlo, 'Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking, 1989-2004' (2005) Brigham Young University Law Review 629; C Y Nyinevi and E N Amasah, 'The Separation of Church and State under Ghana's Fourth Republic" (2015) 8(4) Journal of Politics and Law 286; K Quashigah, 'Religion and the Secular State in Ghana' in J Martinez-Torrón, WC Durham Jr, and D Thayer (eds). *Religion and Secular State: National Reports* (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense de Madrid, 2010) 331, 333: Quashigah, a Ghanaian, says: "There is not any case law that directly asserts the right to religious freedom."

[22] See for instance, *Achene v Raji* (Casebook on the Rights of Women in Ghana, 1959-2005) 289*; Alhasuna Muslim Faith v. Regional Police Commander, Bolgatanga* 1994-2000] CHRAJ 191.

[23] *Marhguy* (n 1) 1.

[24] Evans Effah 'Wesley Girls' High School Sued Over Compulsory Religious Practices'.

case can also serve as a check to institutions and organisations that commonly violate the right to freedom of religion of Ghanaians.

The increasing number of human rights lawsuits related to the protection of religious liberty in Ghana appears to support the findings of Hackett,[25] an American professor, and Akinloye,[26] a Nigerian scholar, both of whom have conducted extensive research on human rights in Africa that there is an increased human right awareness and culture in Africa. For example, countries like Nigeria,[27] Kenya[28] and South Africa[29] are also seeing a rise in lawsuits challenging violations of the right to freedom of religion in schools. The recent decision by the Nigerian Supreme Court in *Lagos State Govt. and Ors v. Asiyat Abdulkareem*[30] perfectly illustrates this trend. In this case, two 12-year-old female Muslim students were prohibited from wearing *hijabs* to school (a public school). The school claimed it was not part of the school uniform policy. Despite appeals and interventions from various organisations, the school remained adamant in enforcing the ban on *hijabs*. The students, along with a non-governmental organisation, sued the school and the government, seeking a declaration that their rights to freedom of thought, conscience, religion and education had been violated. The Supreme Court upheld the Court of Appeal's ruling that the ban on *hijabs* in public schools was unconstitutional. The Court emphasised that the state cannot regulate the religious practices of students in a way that violates their constitutional rights. The court rejected arguments that allowing *hijabs* for Muslim girls would lead to discrimination and unrest among students of different faiths. It deemed these claims as unsubstantiated and speculative.

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25 R I J Hackett, 'Regulating Religious Freedom in Africa' (2011) 25 *Emory International Law Review* 853.

26 Idowu A Akinloye, "The Right to Freedom of Religion or Belief: African Perspectives", in Ferrari S, Hill M, Jamal AA and Bottoni (eds). *Routledge Handbook of Freedom of Religion or Belief* (Abingdon and New York: Routledge, 2021) 189.

27 *The Provost, Kwara State College of Education, Ilorin & 2 Ors vs. Bashirat Saliu & 2 Ors* (Appeal No. CA/IL/49/2006).); *Lagos State Govt. and Ors v. Asiyat Abdulkareem* (Suit No.: SC 910/2016).

28 *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero [2023]* (Civil Appeal No. 173 of 2020); *Seventh Day Adventist Church (East Africa) Limited v Minister for Education & 3 others* [2017] KECA 751 (KLR).

29 *MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC).

30 *Lagos State Govt. and Ors v. Asiyat Abdulkareem* (Suit No.: SC 910/2016).

Recognising Rastafarianism as a Religion and Rejecting Sameness of Religion

The Applicant claimed to be a practicing Rastafarian. According to the *Macmillan English Dictionary*,[31] a Rastafarian is "a member of black religious group based in Jamaica that believes that West Indians will one day go back to Africa". According to the Applicant, Rastafarianism is a religious movement that began in Jamaica in the 1930s and has spread to other parts of the world. The religion's philosophy combines protestant Christianity, mysticism, and a pan-African political consciousness.[32] One of the key tenets of the religion is the wearing of dreadlocks. This is drawn from the Nazarite vow in the Old Testament of the Bible, specifically, Numbers 6:5 which states: "All the days of the vow of his separation there shall no razor come upon his head: until the days be fulfilled, in which he separateth himself unto the Lord, he shall be holy, and shall let the locks of the hair of his head grow." A similar experience is also recorded concerning Samson in Judges 13:5. Wherein it was recorded after God visited Samson's mother that: "For thou shall conceive, and bear a son; and no razor shall come on his head: for the child shall be a Nazarite unto God from the womb: and he shall begin to deliver Israel out of the hands of the Philistines."

Arguably, given the time of its establishment, Rastafarianism can be described as a new religious movement. Its members, mostly a minority religious group in most of the countries where it is practiced, face a lot of discrimination. Sibanda observes that the religion is "stigmatized, misunderstood, demonized and criminalized minority movements located on the margin."[33] Specifically in Africa, many Rastafarians have complained discriminations on the basis of religion. A number of them have successfully contested such discriminations in jurisdictions like Kenya,[34] South Africa,[35] and Zimbabwe,[36] among others.

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31 *Macmillan English Dictionary* (2nd ed. 2007) 1228.
32 *Marhguy* (n 1) 3.
33 See Fortune Sibanda, 'Repositioning the Agency of Rastafari in the Context of Covid-19 Crisis in Zimbabwe' in F. Sibanda, T Muyambo and E Chitando (eds) *Religion and the Covid-19 Pandemic in Southern Africa* (Abingdon and New York: Routledge 2022) 213.
34 *JWM (Alias P) v. Board of Management High School & 2 Ors* (2019) EKLR.
35 *Department of Correctional Services & Another v. Police and Prisons Civil Rights and 5 Ors* (2013) ZASCA 40.
36 *Dzova v. Minister of Education, Sports and Culture and Ors* (2007) AHRLR 189; (ZWSC 2007).

With *Marhguy,* Ghana has joined the league of nations that recognise and protect Rastafarianism as a religion.

One of the arguments that the Respondents canvassed in *Marhguy* was that the students of the School came from different religious backgrounds, yet all of them are made to comply with the School's rules, irrespective of whether the rules align with the students' religious beliefs.[37] This argument has assumed that all the students would be able to practice their religion within the scope and context of the School rules. This can be described as an attempt to 'forcing a sameness of religion on the students', and it is at odds with the tenets of the right to freedom of religion that guarantee the autonomy, uniqueness, and s*ui generis* of each religion. The Applicant in *Marhguy* challenged this existing *status quo* and rejected the School's attempt to make his religious beliefs equal to other religious tenets. The court also rejected the School's argument to force sameness of religion on all the students. This is the argument of the court when the judge averred that the construction of the right to freedom of religion must be contextualised and hinged on "treating equal persons equally and unequal person unequally".[38] This aligns with the precepts of the right to freedom of religion.

One possible effect of the *Marhguy* decision is that it has recognised the legal status and constitutional protection of minority religions and cultural groups. Ghana is a religiously pluralist state with several established and emerging minority religious and cultural groups. Some of these minority groups, which may have previously experienced systemic religious discrimination, can now use the *Marhguy* decision as a template to challenge violations of their religious liberty.

Freedom of Religion versus School Regulations

Religious intolerance in schools is a global issue,[39] including in Africa.[40] Thus, a number of scholarships in different jurisdictions have explored contests

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37 *Marhguy* (n 1) 8-9.

38 *Marhguy* (n 1) 17.

39 K Fosnacht and C Broderick, 'Religious Intolerance on Campus: A Multi-Institution Study' (2020) *Journal of College and Character*, 21(4), 244–262.

40 W.C. Iheme, 'Religious Intolerance, Witchcraft, Superstition, and Underdevelopment in Africa' (2020) 25(2) *Skeptic* 22-24; Alfred L Matambo, 'Implications of Religious Intolerance on State Security in Africa: A Case Study Lilongwe in Malawi' (Thesis – University of Nairobi); J.L. Van der Walt, 'Religious Tolerance and Intolerance: 'Engravings' on the Soul' (2016) 50(1) *In die Skriflig* 1-8.

between school rules and regulations and the right to freedom of religion of the students.[41] It is customary for schools to prepare and adopt rules and regulations to maintain standards in the school. In many instances, the school rules do conflict with the students' manifestations of religions; accordingly, some students seek religious exemptions from the school rules. This issue also arose in *Marhguy.* The court asserted the Ghanaian' judicial standpoint in the case that schools cannot make rules to offend the letters and spirit of the constitutionally guaranteed rights. It is also decipherable from the tenor of the judgement that a school cannot rely on the student's 'waiver' of the right to offend the students' constitutional right. This is similar to the Nigerian court's decision in *Ariovi v Elemo*,[42] where it held that fundamental human rights cannot be waived:

> The fundamental rights entrenched in our 1963 and 1979 constitutions are in my opinion out of the reach of the operation of the law of waiver. Our oath of office is to protect and defend the Constitution over all other laws to ensure that the right to life, right to personal liberty, right to *freedom of expression, thought, conscience and religion*, right to peaceful assembly and association which are vital to human existence and democracy in our nation, is preserved and thus cannot be waived.

What is further apparent from the judgment of *Marhguy* is that for a school to make rules to limit the rights of students, the school must be able to proof that the limitation of the constitutional rights will benefit the complainants and the general public, and that the non-restriction of such constitutional rights will be detrimental to both the complainants and the public for such restriction to be constitutional. This Ghanaian judicial stance aligns with the position of some other countries with religious pluralism. For instance, in the South African case of *MEC for Education, KwaZulu-Natal v Pillay,*[43] there is a good illustration

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41 Alison Mawhinney, 'The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools' (2006) Education Law Journal 102; Ilene Allgood, 'Faith and Freedom of Religion in U.S. Public Schools: Issues and Challenges Facing Teachers (2016) 111(3) *Religious Education* 270-287; Leni Franken, 'The Freedom of Religion and the Freedom of Education in Twenty-First-Century Belgium: A Critical Approach' (2016) 38(3) *British Journal of Religious Education* 308-324.

42 (1983) JELR 49375 (SC)

43 2008 (1) SA 474 (CC).

of this requirement. In the case, the claimant, an Indian student of Durban Girls' High School, pierced her nose and inserted a small gold stud in contravention of the school code. It was argued that, as a young Indian girl, wearing the nose stud was not for fashion, but part of a religious and cultural ritual to honour and bless her. In deciding that the claimant held a sincere belief that the nose stud was part of her culture and religion, the Constitutional Court evaluated the claimant's conduct when opposed by the school in order to stay true to her belief. The court was further influenced by the claimant's steadfastness in her belief despite facing a lot of "cold shoulder" from media publicity and her peers.[44]

Similarly, in the recent Kenyan case of *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero*,[45] the applicants who are members of the Jehovah Witness denomination challenged mandatory Catholic Mass and attendance of non-class religious activities in their school (a public school) as a violation of their constitutionally guaranteed right to freedom of religion. The Court of Appeal, affirming that the school cannot compel students to forsake or compromise their religious beliefs held:

> I have little difficulty finding that compelling the appellants to participate in interfaith activities, particularly the Friday Mass, contrary to their belief, was a violation of their fundamental right and freedom as envisaged in Article 32(4), and they were entitled to protection of the law…While I agree that Holy Mass is a very integral part of the life of a Catholic, one cannot, without violence to the right to freedom of religion, be compelled to attend it…Essentially therefore, I am of the view, as was admitted by parties herein, that the school would not have suffered any hardship by exempting the appellants from the 30-minutes Friday Mass.[46]

From the decided cases in *Marhguy* (Ghana), *Pillay* (South Africa), *Phillip Okoth* (Kenya) and *Abdulkareem* (Nigeria), the primary question the court needs to consider in determining if a practice or belief qualifies as a religion protected under the Constitution is the centrality of how important the belief or

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44 *MEC for Education, KwaZulu-Natal v Pillay* para 58.
45 (Civil Appeal No. 173 of 2020).
46 *Phillip Okoth and LSK v BOM, St Anne's Primary Ahero* pp. 21, 25-26.

practice is to the claimant's religious identity. In other words, does the claimant profess a sincere belief?

An issue which is not very clear in the judgment is to determine whether the same rule in *Marhguy* will be applied to a privately owned school. The question is, would the court have arrived at the same decision if Achimota Senior High School is privately owned, probably by a religious organisation whose religious' inclination is against dreadlocks? We shall explore answers to these questions from two viewpoints. Firstly, if a faith-based school accepts funds from the state government, then the rule in *Marhguy* would apply to it regardless of its religious standpoint. The basis is that by accepting and using public funds, which are taxpayers' money, the school has accepted to protect the constitutional rights of the tax payers, including their freedom of their freedom of religion. A school cannot accept people's money and reject their beliefs. The fact is, religious organisations may be influenced by the agenda of their funding source — the government. However, the concern here is that the government's financial support of religious organisations may erode the religious autonomy of these groups. Politicians and state officials who are religious bigots may use state funding of faith-based schools to further their own selfish ends. Therefore, it may be best for religious bodies to avoid state funding to run their schools. Van Coller, a South African legal scholar, warns:

> "The more they [religious bodies] operate in the public sphere and are dependent on public funds, the greater the need for accountability and the potential loss of independence and vitality. If this is not taken seriously, it can lead to the erosion of the separation of church and state and to interference by the state in the internal organisation of religious organisations to pursue their own public policy agendas."[47]

The second viewpoint is that as long as faith-based schools are not funded by the state, they can rely on their right to group or institutional religious freedom to reject practices that are inconsistent with their rites and faith. The point is

[47] H. Van Coller, 'Church Polity and 'Constitutionalism'" in LJ Koffeman and J Smith (eds) *Protestant Church Polity in Changing Contexts II* (2014) Lit Verlag: Zurich.162; See also, K Quashigah, 'Religion and the Republican State in Africa: The Need for a Distanced Relationship' (2014) 14 *African Human Rights Law Journal* 78 at 80. Quashigah argues that "If the relationship between religions and the political authority is left unchecked, politically-hungry individuals or groups can manipulate religion to serve their political ends."

that since no freedom is absolute, it should be enjoyed without violating the rights of others. Therefore, a pupil or student cannot impose his or her religious inclinations on another religious institution. This argument is based on the idea that the right to freedom of religious freedom guaranteed in the constitution protects both individual religious liberty and group religious freedom. Group religious freedom, commonly referred to as institutional or collective religious freedom, protects the religious autonomy of a religious group.[48]

It is noticeable from the judgment that the court expects institutions and authorities of government to embrace religious tolerance given the religiously pluralistic Ghanaian society. The court emphatically pointed out in the case: "Religious intolerance is undemocratic. Any state that fails to tolerate the practice and manifestation of the religions of its citizens and people with the state portends a serious anarchy in the state. Therefore, any attempt to project a rule or regulation to a character that expediently frowns upon the manifestation of a person's religion without reasonable grounds, must be frowned upon in our democracy."[49]

CONCLUSION

Marhguy has successfully presented Ghanaian's judicial viewpoint and readiness to affirm the right of citizens to enforce their right to religious liberty. The case presented a balancing of religious freedom in state schools, their rules about uniformity of hairstyles, and the rights of Rastafarian students to wear dreadlocks. The case is a gateway for minority religious and cultural groups whose rights are frequently violated to seek justice. We also believe that civil society organisations have a vital role to play in promoting social justice, progressive transformation, and awareness of human rights, including the right to freedom of religion. The invaluable contribution of civil society in promoting the protection of human rights is now well recognised.[50] They use tactics to hold states accountable for respecting, protecting and guaranteeing

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48 Idowu A Akinloye, 'Legal Issues Involving Succession Disputes among South African Churches: Some Lessons' (2021) 23(2) *Ecclesiastical Law Journal* (2021) 160-190; Idowu A Akinloye, 'Acquisition and Protection of Church Property under Nigerian Law: Issues, Challenges and some Lessons for Churches' (2021) 47(4) *Commonwealth Law Bulletin*, 741-761.

49 *Marhguy* (n 1) 20.

50 OV Vieira and AS Dupree, 'Reflections on Civil Society and Human Rights' (2004) 1 *Sur International Journal of Human Rights* 47-65; K Tsuitui and CM Wotipka 'Global Civil Society and International Human Rights' (2004) 83 *Social Forces* 587-620

universal human rights, as required by international human rights law.'[51] Therefore, considering the stance of the Ghanaian judiciary on the promotion of the right to freedom of religion, civil society organisations such as religious ecumenical bodies need to raise awareness within Ghanian society about the importance of religious tolerance, mutual understanding, and respect for all religious groups. This is because religious intolerance is dangerous as it leads to intolerance and disrespect. As a result, the antidote to religious intolerance is religious tolerance, which involves accepting or accommodating the opinions and practices of those with different or opposing beliefs. The Kenyan Court of Appeal emphasised this in *Phillip Okoth* when it held that 'in compliance with the concept of reasonable accommodation, the school ought to have adjusted its rules to enable all students to practice their respective religions while still complying with the school rules and regulations…The school should have worked out a reasonable accommodation for the appellants, especially considering the fact that it was a public school, a school maintained or assisted out of public funds.'[52]

We also recommend the need for increased intra and inter-religious dialogue. Further, the benefits of religious tolerance and the dangers of religious intolerance should be taught from an early age in schools, rather than waiting until higher levels when religious intolerance has already been ingrained by religious bigots. Teaching toolkits and information technology through social media platforms could also be utilised to sensitise the populace in this regard.

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[51] Joseph Yaw Asomah, 'Cultural Rights Versus Human Rights: A Critical Analysis of the *Trokosi* Practice in Ghana and the Role of Civil Society' (2015) 15(1) *African Human Rights Law Journal*. 129, 141-143.

[52] *Phillip Okoth* pp. 27-28.

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INTERNATIONAL NEGOTIATIONS: CHALLENGES AND STRATEGIES FOR AFRICAN COUNTRIES

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ABSTRACT

Negotiation is a very vital tool for resolving disputes amicably and ensuring harmony in international relations. Further, it is the process of engaging in 'dialogues or discussions' with the sole object of reaching an acceptable agreement by the parties involved in a dispute. Essentially, negotiation aims to achieve fairness and security among states. It is voluntary, non-adjudicative, informal and flexible. This article seeks to identify and analyse the challenges and limitations African countries face in negotiating with international bodies and other countries as well as propose strategies, approaches and attitudes they must adopt to ensure a more favourable negotiation outcome. The paper is divided into eight sections, which are based on secondary data analysis and literature review that covers the area of study in addition to other theoretical and legislative enactments on international negotiation in Africa. The review of the literature examined information from several important sources which covers the major area of the paper.

Keywords: International Negotiations, Bargaining, Development, Multilateral Diplomacy, Africa

INTRODUCTION

African countries' involvement in both international as well as multilateral diplomacy has increased significantly and become more complex due to a myriad of challenges such as high incidence of poverty, disease, conflict and

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marginalisation in international affairs, particularly during the Cold War.[4] These challenges have been reinforced by Francis Fukuyama who posits that "Africa has so many problems that its lack of political and economic development seems overdetermined".[5] Thus, from various fronts, states within the African continent remain minor powers still "hemmed in" by unequal and immovable structures, high incidence of poverty and underdevelopment, which are often characterised by fragile economies and weak political and military capabilities.[6]

These challenges faced by African countries have become huge setbacks on the continent's capacity to negotiate with international institutions such as the International Monetary Fund (IMF), the World Bank and other developed countries like China and United States of America in order to implement deals to its advantage.[7] This informs why Africans always have to go to these Bretton Woods institutions for assistance to stabilise their economies as well as finance a number of projects more than any other continent as well as engage in Trade Negotiations, Power Purchase Agreements, Economic Partnership Agreement, Climate Change Convention negotiations among others. Africa has now come to realise that, to achieve the best deals in negotiations, there is an imperative need to use its numbers to negotiate favourable terms by adopting common interests in international negotiations.[8] This strategy adopted currently has enabled the continent's representatives in international bodies such as the United Nations and other international platforms to play a much more effective and efficient roles when it comes to international diplomacy compared to the time past.[9]

In spite of these successes, African countries continue to encounter certain challenges and drawbacks during negotiations with international bodies and other developed countries which tend to hinder them from executing better deals to their benefit. This paper identifies and analyses some of the challenges together with

[4]Z Siphamandla, Africa in international negotiations: A critique of African common positions (2011) <https://www.open.ac.uk/socialsciences/bisa-africa/files/africanagency-seminar1-zondi.pdf> accessed March 2024.
[5] F Fukuyama, Second thoughts. (The national interest 1999) 19.
[6] Brown, A question of agency: Africa in international politics, 33 (Third World Quarterly 2012) 10, 1889–1908.
[7] Zondi (n 1) 2.
[8] Ibid.
[9] Ibid.

the limitations African countries face in their quest to negotiate favourable terms with international bodies and other countries. Further, proposals, strategies, approaches and the needed skills that must be adopted to ensure a more favourable negotiation outcome are also discussed.

NATURE AND STYLES OF NEGOTIATION

Whenever there are desires that demand to be satisfied and needs that are to be met, then potentially an occasion for negotiation has arisen. In addition, when people exchange ideas with the intention of changing existing relationships to reach a settled agreement, then the parties are negotiating.[10] Negotiation occurs at various levels in society including business, government, or within the family, anytime people have to make decisions.[11] Negotiation can be categorised into deal-making or dispute-resolution. Deal-making negotiation involves negotiating the terms of a contract or some other relationship of a commercial nature whereas dispute-resolution involves dealing with a dispute that has already arisen, or preventing a potential dispute from occurring in an ongoing relationship.[12] *Zartman* defines negotiation as a "process of two or more parties combining their conflicting points of view into a single decision of mutual interest".[13] *Ferraro* also defines negotiation as "a process between people who share some common interests, people who stand to benefit from bringing the process to a successful conclusion".[14] While Zartman emphasises negotiation as a means of resolving conflicts, Ferraro believes negotiation to be an approach to better cooperation. In "Getting to Yes," [15] negotiation is defined as a "back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed."

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[10] E Wertheim, Negotiations and Resolving Conflicts: An Overview, College of Business Administration Northeastern University, <http://www.cba.neu.edu/~ewertheim/>
[11] R Fisher, Urry W, Patton B, *Getting to Yes: Negotiating agreement without giving in* (2nd edn, New York: Penguin Books Ltd 1991) 6.
[12] Ibid.
[13] W Zartman, Negotiation as a joint decision-making process, in the negotiation process: Theories and applications, (Beverly Hills: Sage 1978) 67-86.
[14] GP Ferraro, The Cultural Dimension of International Business (Upper Saddle River: Pearson Education 2002) 127.
[15] Fisher, Urry and Patton (n 8).

Even though there is no universally accepted definition for negotiation, most scholars are of the view that where two or more parties have both 'common and conflicting interests', and interact with each other with the ultimate purpose of reaching a mutually acceptable agreement amongst themselves, then negotiation has taken place. Negotiation simply entails a situation where participants involved in the process, find common grounds of convergence in a competitive national or regional interests that they demand to reach an acceptable outcome through an agreement.[16] Usually, in bilateral negotiations, the process of finding a 'common ground' is easier, because the interests are normally two to reconcile.[17] However, in multilateral negotiations, where there are more than two parties and sets of interests on the table, reaching an amicable settlement is quite often a lot more complex exercise.[18]

Negotiation, as a dynamic and multifaceted process, is deeply influenced by cultural, historical, and contextual factors. While the foundational definitions provided by scholars like Zartman and Ferraro emphasise conflict resolution and cooperative interests, the styles of negotiation often reflect the sociopolitical ethos of the parties involved. For African nations, negotiation styles are frequently shaped by collectivist values, historical legacies of colonialism, and contemporary challenges such as economic dependency. For instance, the *Ubuntu philosophy*,[19]emphasising communal harmony and interdependence, often permeates African negotiation practices, prioritising relationship-building over transactional gains. This contrasts sharply with individualistic Western styles that prioritise assertiveness and immediate outcomes.

Globalisation has further complicated negotiation dynamics. Digital platforms and virtual negotiations, accelerated by the COVID-19 pandemic, have introduced new dimensions to cross-border dialogues. African negotiators now contend with hybrid models where face-to-face diplomacy merges with teleconferencing, altering traditional rapport-building techniques. However, limited access to

[16] J Lönnroth, United Nations Convention: An analysis of ten years of negotiations, 25 (International Migration Review 1991) 96.
[17] Zondi (n 1) 3.
[18] Ibid.
[19] Ncube, Lisa B. "Ubuntu:A transformative leasership philosophy." Journal of Leadership Studies 4.3 (2010): 77-82

advanced technological infrastructure in some African regions can exacerbate existing power imbalances, as developed nations leverage superior resources to dominate virtual spaces.

Moreover, Emotional Intelligence (EI) plays a critical yet understudied role in negotiation styles. Skilled negotiators harness EI to read counterparts' unspoken cues, manage stress, and foster empathy skills particularly vital in multicultural settings.[20] For example, during the African Continental Free Trade Area (AfCFTA) negotiations, delegates from diverse linguistic and cultural backgrounds relied on EI to navigate sensitivities around tariff reductions and trade barriers[21]. Such nuanced styles highlight the need for adaptive strategies that blend traditional relational approaches with modern procedural rigour.

PRINCIPLES OF NEGOTIATION

There are four basic principles of negotiation.[22] The first, and foremost is that, one must always separate the 'parties involved' from the main problem. In resolving issues that may surface, the focus must be on the interests and not positions. Further, in reaching an amicable settlement in negotiations by the parties, there must be the invention of options for mutual gain. The last, but not the least principle is that the resolution to settle by the parties must be based on some objective criteria. Negotiation is also less costly, and one of the most flexible methods in resolving disputes. It allows the parties autonomy to control the process. The four key characteristics of a good negotiated settlement are fairness, efficiency, application of sound reasoning and transparency.

The four principles of negotiation, separating people from problems, focusing on interests, inventing mutual gains, and relying on objective criteria are universal in theory but face unique challenges in practice for African countries. Consider the principle of separating parties from the problem. In contexts where historical grievances, such as colonial exploitation or unequal trade agreements, linger,

[20] Kim, K., Cundiff, N. and Choi, S. "The Influence of Emotional Inteligence on Negotiation Outcomes and the Mediating Effect of rapport: A structual Equation Modeling Approach." Negotiation Journal 30(1), 2014.
[21] https://www.tralac.org/blog/article/15746-the-role-of-negotiating-principles-in-the-design-of-the-afcfta.html
[22] Fisher, Urry and Patton (n 8) 6.

African negotiators often grapple with deeply entrenched mistrust. For instance, during renegotiations of mineral extraction contracts with former colonial powers, emotional narratives of resource exploitation can overshadow objective problem-solving. To mitigate this, mediators like the African Union[23] have advocated for "truth and reconciliation" frameworks in economic dialogues, aiming to acknowledge past injustices while fostering forward-looking collaborations.

The principle of focusing on interests rather than positions is equally complex. African nations frequently negotiate from positions of structural weakness, such as debt dependency or climate vulnerability, which pressures them to adopt short-term concessions over long-term strategic interests. For example, in climate negotiations, African states' urgent need for adaptation funding often forces them to accept conditional loans rather than demand reparations for historical carbon emissions. Here, the principle clashes with systemic inequities, necessitating coalition-building with other Global South nations to amplify shared interests, such as the G77+China bloc in United Nations forums.[24]

Inventing options for mutual gain requires creativity constrained by resource limitations. When negotiating infrastructure loans with China, African governments have experimented with "resource-for-infrastructure" barters, such as Angola's oil-backed loans[25] and Ghana's bauxite deal.[26] While these deals offer immediate project financing, they risk long-term resource depletion. To enhance mutual gain, experts recommend integrating local content agreements (e.g., mandating Chinese firms to hire African engineers), thereby aligning external investment with capacity-building objectives.

Lastly, objective criteria must be contextualised to address Africa's unique developmental priorities. For instance, during the Economic Partnership Agreements (EPAs) with the EU, African nations argued that "fair" trade terms should account for asymmetrical industrial capabilities. By invoking the World Trade Organisation's Special and Differential Treatment (SDT) provisions, they

[23] https://au.int./en/decisions/accra-proclamation-reparations
[24] http://www.g77.org/doc/
[25]https://china.aiddata.org/projects/53063/

[26] https://www.scmp.com/news/china/diplomacy/article/3037993/ghana-goes-ahead-us2-billion-chinese-bauxite-barter-deal-has

anchored their demands in internationally recognised criteria, though enforcement remains inconsistent.[27]

APPROACHES TO NEGOTIATION

There are several approaches to negotiation. *Fisher, Ury, and Patton* have distinguished between the two main approaches to negotiation: distributive or positional bargaining and integrative or interest-based negotiation.[28] The positional negotiation is categorised into soft and hard negotiation while the interest-based negotiation deals with principled negotiation**.**[29]

Distributive/positional negotiation (Competitive, Win-Lose)

In positional negotiation, the resources to be shared are fixed, such that when one party wins, the other party loses it forever.[30] According to Fisher, Urry, and Patton, "Parties usually adopt positional bargaining where each side takes a position argues for it, and makes concessions to reach a compromise".[31] Fisher, Urry, and Patton argue that positional bargaining does not usually lead to good agreements, because the agreements reached tend to neglect the parties' involved interests and destroy the relationship. This situation makes it inappropriate to adopt positional bargaining when many parties are involved.[32]

Hard positional bargaining

This involves a contest of will, application of pressure, threat, and demands concessions as a condition of the relationship.[33] Such negotiation type involves individuals that are hard on the problem and the persons and since the goal is to win, individuals engage in competition with the other party in order to have their own interests satisfied without concern for the other party's interest.[34] If only one party feels satisfied and the other party gets disappointed, then the purpose for entering into such negotiation has been defeated. This is because all negotiation methods should be assessed by three key criteria, which include producing an agreement that is logical, if the agreement is possible, and the presence of an

[27] Adetula, Victor, and Chike Osegbue. "Trade and the Economic Partnership Agreements in EU-Africa relations." The Routledge Handbook of EU-Africa Relations. Routledge, 2020. 211-223.
[28] Ibid.
[29] Ibid.
[30] Wertheim (n 7).
[31] Fisher, Urry & Patton (n 8) 7.
[32] Ibid (8).
[33] Ibid (7).
[34] Ibid.

efficient and improved or at least not damaged relationship between the parties involved.[35] The moment these criteria have been compromised, then the hard positional bargaining becomes problematic and cannot be relied upon when, especially, relationships are of the essence.

Soft positional bargaining

This involves accommodating the interest of the other party which is the opposite of competing. In this instance, the individual forgoes his or her own interests to satisfy the concerns of the other person, obeying the other person's orders when he or she would prefer not to or yield to the other person's point of view. Since their goal is an agreement, they engage in concessions to cultivate the relationship.[36] While concession in negotiation is mandatory, research has shown that people who usually concede to the other party's interests easily and more quickly do not always explore all comprehensive and mutually beneficial solutions.[37]

Integrative or interest-based negotiation (win-win or problems solving approach)

This style adopts an objective criterion, to establish conditions of mutual gain by all parties involved and emphasise the importance of information exchange and problem-solving amongst the group. [38] It helps facilitate problem-solving, co-operation, and joint decision-making for mutual gains. This approach in negotiations entails collaborative decision-making by participants to achieve a mutually beneficial outcome. With this negotiation style, interests are covered, options are developed and there is a search for commonalities between parties.[39]

Principled negotiation

In order to avoid the problems associated with the positional approach, *Fisher*, *Urry* and *Patton* developed another kind of negotiation designed solely to produce 'wise outcomes' efficiently called principled negotiation.[40] This approach in negotiation entails two or more parties sitting together harmoniously to best address their mutual interests that benefit them all with creative and objectively fair solutions.[41] It involves exploring interests and developing multiple options to

[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] A Tanya & Cungu A, Negotiation theory and practice: A review of the Literature (2008) 15.
[39] Ibid.
[40] Fisher, Urry & Patton (n 8) 10.
[41]A Noda, Getting to Yes by Roger Fisher and William Urry: Critical summary (2015)< http://abinoda.com/book/getting-to-yes> accessed 4 March 2025.

choose from in order to arrive at standards independent of will and to resolve conflicting interest fairly, taking into account community interest.[42] The five basic principles that undergird negotiations are needed to guide interest-based negotiators. These are first, and foremost, isolating the people from the problem at stake; focusing on the interests brought by each party; generating various options that are mutually beneficial and satisfying to all the parties; having an on objective criteria in place and developing 'Best Alternative to Negotiated Agreement' (BATNA). [43]

CHALLENGES AND LIMITATIONS OF AFRICAN COUNTRIES IN NEGOTIATING

Everyone enters into a negotiation agreement to have a favourable deal. However, most of the negotiations African countries enter into with international bodies and developed countries are usually not favourable due to problems such as lack of proper preparation and research, differences in negotiation styles among countries, lack of well-informed teams or experts, power imbalance and unknown key players whose influence affect the outcome of the negotiation. These challenges and limitations are analysed in detail below.

Lack of preparation and research

Many of the difficulties encountered by African countries during negotiations stem from their failure to do proper preparation and research prior to the negotiation process. As a result, they lose the confidence to negotiate effectively. Lack of preparation includes failure to gather accurate and needed information about the issues to be satisfied and the available alternatives. A party going to the negotiation table must acquire the needed information about the other party's interests which they intend to pursue, stated positions, and the approach or style to be pursued which does not only lead to a better outcome but also minimises the frustrations as well as the anxiety of negotiation.[44] For instance, prior to the awarding of contracts, African governments failed to consult civil societies on fundamental issues that confront their societies in the health sector, experts needed to address those issues,

[42] Fisher, Ury & Patton (n 8) 10.
[43] Ibid.
[44] https://us.sagepub.com/sites/default/files/upm-assets/60654_book_item_60654.pdf

technology transfer, Corporate Social Responsibility (CSR), and Sustainable Environmental Management practices.[45]

Also, cultural differences in terms of values, behaviours, negotiation skills and laws make it essential that African countries engage in research to equip themselves very well before going to the negotiation table. However, most African countries rush to get deals done and therefore do not scrutinise things carefully nor weigh the options available. According to Page,[46] it is evident that negotiations between the European Union and its associated African, Caribbean and Pacific (ACP) countries entailed less serious participation and showed no signs of success for developing countries as trade relations were non-reciprocal. This arises from the fact that ACP countries were unable to mobilise opposition to the new regime and unable to secure consultation in the face of new arrangements with other countries which reduced their margin of preference. All these stem from their feeling of disadvantage, inexperienced delegation, lack of research by countries before embarking on negotiations, and lack of adequate knowledge on how negotiations are done.[47]

Differences in bargaining power

Most often, the power imbalance between African countries and developed countries during negotiation affects the confidence of African countries due to their disadvantaged position of poverty and underdevelopment.[48] Due to the heavy reliance on international bodies and developed countries, these donors, having taken a hard position in negotiation, sought to capitalise on the weaknesses and problems of these African countries and present unfavourable conditions, whereas African countries often present soft negotiation style of conceding to whatever conditions that are presented. Whitfield and Fraser have opined that the negotiating strength and capacities of some African governments like Mozambique, Mali, Ghana, Tanzania, and Zambia are very weak due to the fact that all these countries

[45] https://www.managementstudyguide.com/negotiation-challenges.htm
[46] S Page, Developing countries: Victims or participant. Their changing role in international negotiations (Overseas Development Institute 2003) 2.
[47] S Page, Developing countries in international negotiations: How they influence trade and climate change negotiations 35 (IDS Bulletin1 2009) 71-81.
[48] L Whitfield and Alastair F, Negotiating aid: The structural conditions shaping the negotiating strategies of African governments (International Negotiation 2010) 15, 363.

are confronted with huge debts and balance-of-payments challenges. Consequently, these setbacks weaken their negotiation abilities and make it possible for donors to exert undue influence over their macro-economic policies during the period of structural adjustment.[49]

There is a general perception among the international community that African countries usually accept the terms offered during negotiations, under the notion that if they do not take what has been offered another country might accept it.[50] For instance, in Ethiopia, the development of an electric train line which spans Addis Ababa to Djibouti, and was fully funded by the Chinese cost around US$3.4 billion for 756 kilometers.[51] A similar one in Kenya costs more than that of Ethiopia and some of the reasons assigned for the difference were that the environment was different and the need for the Kenyan one to carry higher volumes of cargo. However, many experts believe other factors come into play, such as a lack of proper research before going for the negotiation and not undertaking due diligence during the negotiation process.[52] There is often deep information asymmetry between the parties in the negotiation and as a result, African governments tend to have access to less information on projects than the investors with whom they are contracting, making them vulnerable in the negotiation process.[53]

Unknown players and their influence on the negotiation

International negotiations just like domestic negotiations mostly involve unknown players or parties who are not physically present at the negotiation table and are less obvious, even though they have an interest in the subject matter of the negotiation and as a result, they formally or informally influence the deal in one

[49] Ibid.
[50] Interview with Folashade Soule, How to negotiate infrastructure deals with China: Four things African governments need to get right, Senior Research Associate (University of Oxford: Oxford 3rd January 2019).
[51] Ibid.
[52] Ibid.
[53] https://extractiveshub.org/topic/view/id/44/chapterId/478

way or the other.[54] Many International donor agencies have influence worldwide which makes them more powerful than the parties with interests who will be making the deal.[55] Therefore, when African countries go to the negotiation table without investigating these extra players, their decisions and the influences of these informal and formal negotiation players that can make or break a deal put them at risk of getting unfavourable deals.[56] For instance, making deals with the United States of America usually involves extra players beyond those represented such as the Federal Trade Commission and the Justice Department among others.[57]

Differences in Negotiation Style

Different procedures as well as negotiation styles in other developed countries can pose challenges for African countries. Failure to understand these procedures and styles of countries one negotiates with can act as a barrier to the attainment of a successful negotiation. Further, the inability to know ahead what the other party's ways of negotiating are can lead to difficulties in reaching a wise conclusion that is beneficial to all the parties.[58] Sometimes there may be differences in values, culture, attitudes, and interests which may call for a particular negotiation style and if this is not managed well can lead to results which one may not have anticipated. This can lead to misunderstanding and disagreement and if not managed well may damage business relationships.[59] According to Gulbro and Herbig, a negotiation style which is effective in one culture can be totally ineffective and inappropriate in another jurisdiction where the culture is different and can be more harmful than good.[60] For instance, Ghanaian cultural values entail verbal indirectness as a proper way of speaking unlike what pertains to Western

[54] JK Sebenius, The hidden challenge of cross-border negotiations (2008) Harvard Business Review< https://hbr.org/2002/03/the-hidden-challenge-of-cross-border-negotiations >accessed March 2025.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] LT Wells, International business: Negotiating with Third World Governments (Harvard Business Review January 1977).
[59] HS Woo, Negotiating in China: Some issues for Western women 14 (Women in Management Review 1999) 115-120.
[60] R Gulbro and P Herbig, Cross-cultural negotiating processes 96 (Industrial Management & Data Systems 1996) 17-23.

cultures which encourage assertiveness and candid expression of views. African states' behaviour is collectivist in nature, and does not see states as independent entities existing all by themselves, but are rather "a group animated by the spirit of solidarity".[61] Since Africans value relationships, they are more likely to adopt soft negotiation styles. In contrast, countries with an individualistic culture like Australia, who value individual autonomy pursue individual interests, and encourage competition, are most predisposed to adopt hard negotiation styles.[62] The Chinese also have an attitude of take-it-or-leave-it approach, and in several instances, the collectivist approach of the Africans may not make them confrontational enough in return to identify the best negotiation style to adopt in order to achieve a more favourable negotiation.[63]

Lack of comprehensive team/ experts and stakeholders

There are a myriad of key challenges that confront African governments in their negotiations. One of these is instances, where African government delegations fail to harmonise inter-ministerial coordination and end up in a ratio of one African to three Chinese in negotiations, sometimes without the key experts on the field.[64] African countries mostly go to international negotiation sessions with fewer representatives due to a lack of human (qualified experts) and financial resources. Unlike African countries, the industrial or developed economies have the capacity to put up coalitions and resources that are able to canvass the interests of their countries comprehensively. Experts such as lawyers, economists, scientists, diplomats, and researchers most often accompany their negotiating teams and give them briefings during the negotiations.[65] Lack of different kinds of skills and talents within the negotiating team or within the negotiating coalitions and where

[61]O Obinna, Protection of human rights in Africa and the African Charter on Human and People Rights: A comparative analysis with the American and European Systems Human Rights (1984) 48.
[62] FLK Hsu, Americans and Chinese: Passage to Differences (Honolulu: University Press of Hawaii 1985).
[63] Interview with Soule (n 39).
[64] Herve Lado, Folashade Soule, ''Tips For African Negotiators Doing Deals With China: Rebalancing Asymmetries'' (2020) < https://resourcegovernance.org > accessed 25 February 2020.
[65]M Mace, Maruma E, Bruch C, and Salpin C, Guide for negotiators of multilateral environmental agreements" https://www.cbd.int/doc/guidelines/MEAs-negotiators-guide-en.pdf.

to turn if technical information is required can become a hindrance to implementing a favourable deal.[66]

Sometimes, African countries fail to involve the public and all interested stakeholders in order to have meaningful input and public debates before the team can represent their countries in the negotiation. For instance, the laws of Ghana require all international business transactions to be ratified by parliament.[67] With respect to the Power Purchase Agreements resulting from negotiation between the Government of Ghana and a foreign investor, it was held to be an international business transaction which needed to receive the necessary parliamentary approval and, without that, it was unenforceable[68]

THE APPROACHES, STRATEGIES AND ATTITUDES THAT MUST BE ADOPTED BY AFRICAN COUNTRIES TO ENSURE A MORE FAVOURABLE NEGOTIATION OUTCOME

International negotiators employ certain negotiating strategies, approaches, and attitudes that are meant to increase their bargaining power, which automatically impacts their negotiation outcomes positively.[69] The strategy here means "a set of behaviors or tactics that are observable in principle and associated with a plan to achieve some objective through negotiation".[70] In order to ensure more beneficial negotiation outcomes, African countries can engage in proper preparation and research, principled negotiation or a combination of negotiation styles, develop a negotiation position (BATNA), build informed negotiation teams, and increase their knowledge base.

Preparation and Research

There is no doubt that all successful negotiators prepare well far in advance before the actual day that the negotiations take place. African countries' preparations require that they investigate the culture of other countries with regard to how their

[66] Ibid.
[67] Republic of Ghana, Constitution (Art 181(5) 1992).
[68] *The Attorney General vrs Balkan Energy Ghana Ltd and Others* (J6/1/2012) [2012] GHASC 35 (16 May 2012)
[69] Odell, Creating data on international negotiation strategy 7 (International Negotiation 2002) 39-52.
[70] Ibid.

values, behaviour, language, attitudes, and interest affect their negotiation styles. It is also necessary to conduct research on the extra players who have an interest in the subject matter of the negotiation and the roles they play to influence the outcome of the negotiation because, sometimes, they may be the actual actors behind the scenes and pushing an agenda.[71] Preparation may involve assessing existing legal regimes. This includes a comprehensive review of the national laws and regulations of an opposing party, together with international agreements and norms that may be binding or non-binding which may take care of present environmental issues.[72] It also requires training parties on the best approach to negotiating skillfully. For delegations from the African continent to be successful, it is imperative to have a comprehensive understanding of the country's interests as well as position on the issues under negotiation, and an appreciable sense of the interests of other delegations.[73]

Adequate preparation and research before the negotiation allow a party to gather crucial information on a project's historical assets, its impact on the economy of a country, and its likely risk profile, which all make it possible for a team to be able to negotiate well. Ideally, the interests, needs, and position of a country entail a wide range of activities, which spans broader ministerial, departmental, and inter-agency consultations, targeted scientific studies, and input from all stakeholders who may be involved in the project (business and industry bodies). This may sometimes include Non-Governmental Organisations and Civil Society groups.[74] The final position of the state involved in an issue should then have the necessary political endorsement, in order to enable the team to have confidence in the position taken during the negotiation process.[75]

Involvement of all stakeholders

There should be the involvement of private sector actors and the affected committee in parliament in the process prior to negotiations by presenting all key

[71] JK Sebenius (n 43).
[72] Mace, Maruma, Bruch & Salpin (n 54) 11.
[73] J Gupta, On behalf of my delegation: A survival guide for developing country climate negotiators (CSDA/IISD 2000) 49.
[74] Mace, Maruma, Bruch, Salpin (n 54).
[75] Ibid.

contracts for their consideration and approval. Locally elected officials should also be involved in the preparation of negotiations in order to strengthen the government's position.[76] National assemblies' opinions must be solicited in the contractual stage of negotiations through oversight and accountability measures to help increase transparency and create a barrier for corruption, ratification, and the adoption of measures to hold governments responsible.[77]

Build an Informed Negotiation Team or Expertise

African governments would benefit from restructuring their negotiation teams to improve both size and expertise. A negotiation team representing legal, political, operational, finance, geological, environmental, technical, and economic disciplines may offer the best chance of success and ensure that investment is aligned with national and sector development goals.[78] Resources must be invested to train the negotiation team. The negotiators must have tenacity, endurance, physical fitness, and confidence as their characteristics during negotiations.[79] Where the required capacity is unavailable in government, getting an external advisor or local experts is advisable, accompanied by a due diligence process to assess the expert's eligibility.[80] External expertise can be useful in areas where the African side lacks capacity in terms of legal expertise such as the one offered by the African Legal Support Facility of the African Development Bank or the Germany-based CONNEX programme.[81] Also, the Natural Resource Governance Institute (NRGI) has been providing support to a number of governments on financial and tax modeling used during negotiations to build the governments' positions solidly.[82] As complex deals tend to be dominated by politics, especially where natural resources are used to back loans, their terms should be exposed to the public and national oversight entities' scrutiny to ensure accountability.[83]

[76] https://extractiveshub.org/topic/view/id/44/chapterId/478
[77] Ibid.
[78] Ibid.
[79] J Emily, *Negotiating against the odds: A guide for trade negotiators from developing countries* (UK: Palgrave Macmillan 2013) 13.
[80] https://extractiveshub.org/topic/view/id/44/chapterId/478
[81] Ibid.
[82] Ibid.
[83] Ibid.

On this, Mace, Maruma, Bruch, and Salpin opine that:

> Once the negotiating team is formed, the 'head of delegation' should act as a team leader and all decisions should pass through him or her. The negotiating team can appoint a deputy head to negotiate when the head of delegation is absent. A clear division of labour should be made well in advance of the negotiations. For example, one team member might work on talking to other delegations with similar interests, while another team member might focus on monitoring and coordinating the national position across different issues. Different team members may focus on different issues. It may also be very important for someone to be responsible for obtaining important documents from the Secretariat, drafting text, taking notes during sessions, developing new positions, and maintaining communications.[84]

ENGAGE IN PRINCIPLED NEGOTIATION OR A COMBINATION OF APPROACHES WHERE NECESSARY

African countries often adopt the soft negotiation style due to their vulnerability, prioritising relationship preservation with donor countries. They usually give away concessions on the substance of the matter more quickly and are less likely to explore all integrative and mutually beneficial solutions leading to bad agreements.[85] According to the authors of ***Getting to Yes***, it is appropriate to engage in an interest-based negotiation rather than positional bargaining because it is an all-purpose strategy and whether the other side is more experienced or less, a hard bargainer or a friendly one, it can be used.[86] Adopting the principled negotiation style will help parties to be soft when dealing with the people in negotiation and hard when dealing with the substance of the problem by distinguishing the issues or problems from the parties involved in the dispute.[87] Parties must then focus on the underlying interests and needs rather than their stated positions by listing issues at stake and inventing options for resolving each

[84] Mace, Maruma, Bruch, Salpin (n 54).
[85] Fisher, Urry & Patton (n 8) 10.
[86] Weitheim (n 7).
[87] Ibid (n 12).

issue through brainstorming sessions for mutual gain and each option is evaluated based on objective criteria of fair standard which is independent of the will of the parties.[88]

When African countries' negotiators become problem-solving negotiators, they are able to explore and cultivate shared interest, which would help them maintain good relationships, and also achieve a more favourable negotiation outcome.[89] Also, depending on the nature of the subject matter of the negotiation, a combination of styles may be appropriate since it would ensure a common solution to the issues at stake with actions that place little emphasis on joint gains (value-claiming).[90] This would enable them to explore and cultivate shared interest which would help them maintain good relationships and also achieve a more favorable negotiation outcome or agree to treat partial agreements as provisional until all issues are settled.[91]

DEVELOPING A NEGOTIATION POSITION (BATNA) BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT

According to Jeswald W. Salacuse, "The less powerful party in international negotiation is not necessarily at the mercy of a more powerful party because the smaller party can increase its power through the skillful use of negotiating strategies and skills".[92] Considering the fact that international bodies and the developed countries are more powerful in their bargaining positions, larger and resourced, it is essential for Africans to know their worst and best-case scenarios of the outcome of negotiations, and the best and worse alternatives. BATNA is a term derived from '*Getting to Yes: Negotiating Without Giving In*'[93] and this concept is described as the standard against which any proposed agreement should be measured.[94] Using the BATNA would protect most African countries from

[88] Ibid 23-24.
[89] Ibid.
[90] Odell (n 58) 39-52.
[91] Ibid.
[92] JW. Salacuse, Lessons for practice: In power and negotiation (University of Michigan Press 2000) 257.
[93] Fisher, Urry & Patton (n 8) 52-54.
[94] Ibid.

accepting terms that are too unfavourable and from rejecting terms that would be in their interest to accept.[95]

Emily Jones posits that "Other sources of potential leverage that African countries need to identify include controlling resources such as raw materials, minerals, land and water that are in high demand, diplomatic recognition, forming coalitions with others, having access to information, ability to make moral arguments and the personal qualities of negotiators such as being vigilant and confident at the negotiation table".[96] Thus, the more easily a party can leave the negotiation table, the greater the capacity to affect its outcome.[97]

INCREASE KNOWLEDGE

Influencing negotiations is about increasing bargaining power.[98] African countries need to increase their knowledge base by getting information regarding international bodies and other countries with which negotiations are to be conducted, their experience, expertise, reputation, mode of operation and performance in other countries, as well as expectations and motivations from the project.[99] Also, they need to acquire information on the various interest groups, their reputation and credibility, their way of thinking, their degree of influence in the decision-making process in the subject matter of the negotiation, and information on recent concessions.[100] These would aid in finding out the potential enemies and predict the strategy the opposition is bringing on board during negotiations.[101] African countries can take every opportunity to share lessons or experiences in negotiations with the international bodies and the other countries with one another.[102] If you are a member of a small delegation, you may wish to

[95] Ibid.
[96] Emily Jones (n 68) 32.
[97] Ibid (n 82).
[98] A Moerland, Do developing countries have a say? Bilateral and regional intellectual property negotiations with the EU IIC 48 (Published online: 6 October 2017) 774.
[99] Emily Jones (n 68) 23.
[100] Fisher, Urry & Patton (n 8) 7.
[101] Ibid.
[102] Mace, Maruma, Bruch, Salpin (n 54) 32.

team up with other delegations from like-minded countries to share information and increase your negotiating strength.[103]

African universities can also set up centers for international negotiation where research on international bodies and potential donors can be made to close the gap in information and knowledge.[104] Also, they can employ some external interventions. For instance, in Togo, Senegal, and the current government in Benin, the cabinet hires international law firms with experts who have worked in the Chinese government and its development banks to help provide information regarding Chinese negotiations.[105] This is to help bridge the gap in negotiation styles between African countries and other countries.

On a broader note and in an increasingly interconnected yet unequal world, African states face daunting challenges when negotiating international agreements with economic and political giants such as the EU, China, and the United States. Individually, many African countries, often small in economic size and geopolitical influence, struggle to secure fair terms in trade deals, climate accords, or investment partnerships. However, by pooling their strengths through regional blocs such as the African Union, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), or the East African Community (EAC), African nations can transform their negotiating power, ensuring outcomes that prioritise continental prosperity over external exploitation. By negotiating as a bloc, African countries can amplify their influence and secure equitable outcomes.

CONCLUSION

Africa's predominant political practices, high levels of poverty, underdevelopment, and the poor economy have placed a great burden on African governments to depend on international bodies and other countries for assistance. They have also entered into trade negotiations, climate change negotiations, power purchase agreements, and other agreements with these donors in order to support development projects and reduce poverty. However, when African countries

[103] Ibid.
[104] Interview with Soule (n 42).
[105] Ibid.

engage in negotiation with these international bodies and other countries, they are confronted with a lot of challenges such as the strong bargaining position of the donor parties which hinders them from achieving a favourable negotiation outcome, lack of preparation and research, cultural differences in negotiation styles, lack of informed negotiation teams or experts and unknown key players whose influence affect the outcome of the negotiation.

In order to achieve a favourable negotiation outcome, proper preparation and research are the first thing to do which requires identifying the nations' interests and developing a national position as well as the interest and position of the other country. This also involves identifying key players whose influences impact the outcome of the negotiation. In order to allow for meaningful input and debate by societies, negotiating partners must ensure that detailed and timely information on the content of the agreement is made available through public sources so that, they can have meaningful and equal opportunities to influence the negotiated outcome. They must mobilise experts who have the necessary skills in the subject matter of the negotiation and provide all the necessary resources they will need to implement a successful negotiation as well as training on negotiating skills and use of BATNA. All these will go a long way to help African countries achieve a favourable negotiation outcome.

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