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2. Manuscripts must not have been previously accepted for publication or published in other journals.

3. Manuscript should be typed in Microsoft Word format in Times New Roman font size 12 with 1.5 line spacing in font size 10 in the footnotes.

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5. Manuscripts should also have an abstract of 200-250 words (indented on both sides) and should contain the essential elements of a quality abstract with maximum of 5 keywords.

6. Contributors are to strictly abide by the NALT Uniform Citation Guide or OSCOLA (4th edn., 2012) numbered seriatim at the bottom of each page.

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Signed:
Prof. C. E. Halliday
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EDITORIAL NOTE

It is my privilege to present to you the second issue of the Nigerian Bar Association Port Harcourt Journal. This edition marks yet another significant step in our shared commitment to fostering rigorous legal scholarship and promoting informed discourse within and beyond our Branch.

I extend my heartfelt gratitude to all our contributors whose well-researched articles and insightful commentaries form the backbone of this Journal. Your dedication to advancing legal knowledge is both inspiring and invaluable. I am equally grateful to our peer reviewers for their meticulous attention to detail and their unwavering commitment to maintaining the highest academic standards.

To our readers—those who have purchased, engaged with, and supported this publication—thank you. Your interest and encouragement affirm the relevance of this Journal and motivate us to continuously raise the bar.

We promise that subsequent editions will be richer in content, broader in perspective, and even more responsive to the demands of a dynamic legal landscape. This Journal will continue to serve as a reliable beacon and the cynosure for authoritative information on contemporary and contentious legal issues.

Thank you for walking this path with us.

Prof. Chidi E. Halliday
Editor-in-Chief
NBA Port Harcourt Journal

FROM THE DESK OF THE BRANCH CHAIRMAN

It is with great delight that I present to you the second issue of the Nigerian Bar Association Port Harcourt Journal. This publication stands as a testament to our collective dedication to intellectual growth, professional excellence, and the continuous evolution of legal thought within our Branch.

I encourage every reader to approach the rich content of this Journal with an open and inquisitive mind. The law, by its very nature, is dynamic—shaped daily by societal shifts, judicial reasoning, and legislative reforms. As academics and practitioners, it is our responsibility to keep pace with these changes, deepen our understanding, and refine our practice accordingly.

I also urge research students, members of the Bar and the Bench, to make deliberate efforts to stay abreast of emerging trends in legal jurisprudence. This Journal provides an invaluable opportunity to do so, and I encourage you to obtain your copies, engage with the scholarship within, and use it as a tool for professional growth.

I commend the Editorial Board for their outstanding work in curating and producing a publication of such high standard. Your diligence, commitment, and attention to detail continue to elevate the quality and relevance of this Journal.

Finally, I invite all members of the Bar and academics to contribute to future issues. Share your research, perspectives, and experiences. Your voice and scholarship are essential to enriching our collective understanding and strengthening the intellectual foundation of our profession.

Cordelia Uwuma Eke LLM (Kent) LLB(RSUST), B.L(Lagos) FICMC, ACIArb(UK)
Chairman, NBA Port Harcourt Branch (2024-2026)

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APPLICATION OF ARTIFICIAL INTELLIGENCE IN JUDICIAL ADJUDICATION: PATTERNS AND PROSPECTS

By

Dr. James Eleonu*

Abstract

In the traditional judicial judgment, the result of the judicial judgment will be affected by the subjective factors of the judge, leading to the injustice of the trial result. Nowadays, artificial intelligence is becoming more widely used. The application of artificial intelligence procedures to the judicial judgment will standardize the judicial judgment process and maximize the fairness of the trial results. This paper on artificial intelligence had carried on the thorough analysis, put forward the principle of using artificial intelligence should follow in the legal processes, and lists the current artificial intelligence in the judicial field to build judicial database, legal knowledge map and criminal evidence system, expected to give artificial intelligence application in the judicial field to provide certain reference. The field of artificial intelligence aims to develop software and hardware that can learn, reason and make decisions like humans, with the goal of creating intelligent machines that can solve problems autonomously. Artificial intelligence prediction had allowed legal experts to deliver their services more efficiently and effectively, resulting in better outcomes for clients. Artificial intelligence could help streamline and expedite legal procedures in Nigeria. This could be beneficial in order to reduce backlog of pending cases in courts, where the legal system can be slow sand laborious. Artificial intelligence excelled at certain tasks, like sifting through vast amounts of data quickly, but it lacked the emotional intelligence and creativity essential in the practice of law. Lawyers had brought a depth of understanding, empathy, and the ability to navigate nuanced situations that artificial intelligence presently

could not replicate. The future likely involves a collaborative approach, where artificial intelligence support the works of lawyers in specific tasks, allowing them to focus on the aspects of law that require a uniquely human touch. This was resolved in this paper which adopted doctrinal research method and examined artificial intelligence in contemporary judicial application and recommended among other things that artificial intelligence can be of significant benefits to legal practitioners in the judicial adjudication if cautiously utilized.

Keywords: Artificial intelligence, application, judicial adjudication, legal profession

1.0 Introduction

The judicial adjudication method used in Nigeria today is still the traditional method. Although this method has a wide range of applications, it will be affected by many subjective factors during the trial process. During the trial, judges may have a subjective concept of discrimination against groups such as homosexuals and women. This concept will lead to special emotions in domestic violence cases and sexual assault cases, which will affect the results of the trial.

This subjective awareness is not conducive to judicial justice. It has strong damage and may even lead to trial error. The judgment of event logic by artificial intelligence will not be affected by subjective factors, and the fairness of judicial judgment has been guaranteed to a certain extent. For instance, artificial intelligence such as virtual assistants, image recognition, natural language processing, machine learning, robotics, expert system as well as e-governance tools such as digital identity management, e-services portal, e-payment systems, online portals, mobile apps and national e-government strategy can help lawyers find relevant legal provisions including cases such as law pavillon, books, articles, judicial judgment data base as in National Industrial court.

However, there are many legal provisions in Nigeria, and it is very troublesome to search through books. Therefore, a judicial judgment database can help lawyers find legal provisions, articles and similar case information to assist in defence of their cases. Although the addition of artificial intelligence can bring many benefits, it is still necessary to be alert to the problems that may arise. This paper elaborates on the best way to use the artificial intelligence in judicial adjudication.[11]

2.0 Origin and Meaning of Artificial Intelligence

Artificial intelligence has appeared in the middle of the 20th century. After entering the 21st century, with the continuous development and popularization of computer technology, the concept of artificial intelligence has gradually become a craze. Artificial intelligence is a branch of computer technology that has recently become an independent discipline[2]. Artificial intelligence is able to simulate the human thinking pattern and deals with some problems according to this thinking pattern[3].

The direction of artificial intelligence research is very wide, including speech recognition, computer vision, natural language

*****Dr. James Eleonu,LL.B (Hons), B.L. (Hons), LL.M, Ph.D (Law), Founder,Eleonu & Eleonu (*Lawgate Chambers*),Legal Practitioners and Notary Public of the Federal Republic of Nigeria.Phone: +2348039375898; E-mail: jameseleonu2020@gmail.com

[1] Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 in India establishes a frame work for lawful electronic surveillance by government agencies.

[2] C. Nweze,'IMF Goldman Sachs Warn Against AI impediments to Business' The Nation Newspaper Vol.3 No.6160 of Monday 12 June 2023 p.27.

[3] J.F Metzi, Information Technology and Human Rights, (1996)(18) Human Rights Quarterly.

processing, machine learning theory, intelligent control robots, unmanned aerial vehicles, information retrieval and so on[4].

In recent years, the concept of artificial intelligence has been continuously introduced into various industries[5]. Artificial intelligence has gradually entered the judicial field in Nigeria, and the development of judicial databases and intelligent case-handling systems has brought good results to the judicial field. It is foreseeable that artificial intelligence will be deeply integrated with judicial adjudication in the next development[6].

Some courts for instance, Lagos State judiciary, Rivers State Judiciary, Federal High Courts and Supreme Court in Nigeria have gradually launched smart judicial software[7]. People can communicate with court staff on this software, which makes judicial work more convenient, promotes the popularization of legal provisions to a certain extent, and reduces the pressure on judges in handling cases. The author submits that Artificial intelligence has powerful computing power, rigorous logical thinking and the ability to continuously learn, these advantages make artificial intelligence have great advantages in judicial adjudication.

It is further submission of the author that in the field of criminal justice, the essence of fact determination is the determination of evidence, and judges may bring in value judgments in the process of determining facts, lacking rational and rigorous logical thinking.

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[4] D.Eileen, 'Human Rights in the Digital Age' Just Security, December, 2014 available at <https//ww.justsecurity.org/18651/human-rights-digital-ages/>last accessed 2nd July, 2025.

[5] A.Bridey, 'Coding Creativity: Copyright and the Artificial Intelligent Author' (2012) (5) Stand Tech L Rev: 1-5.

[6] C.R. Sunstein, Social Norms and Social Roles (1996)(96) Columbia Law Review. 903.

[7] B. Afolabi, 'FG to Release Practice Code for ChatGPT Others' The Punch Newspaper, Vol. 47 No.22997 of Tuesday June 13th 2023 p.32.

The application of artificial intelligence to fact-finding in criminal cases can make up for the logical thinking of judges in the process of fact-finding[8].

With the deepening of artificial intelligence, the situation of unjust, false and wrongful convictions will continue to decrease, and it will save litigation resources and improve litigation efficiency.[9]

3.0 Application of Artificial Intelligence in Judicial Adjudication

When applying artificial intelligence to the judicial adjudication system, the main pursuit is efficiency and accuracy. In the judicial adjudication system, fairness cannot be ignored for the sake of efficiency[10]. In the process of system construction, the value of fairness should be emphasized. The help that artificial intelligence can provide in the field of judicial adjudication includes recommendation of similar cases, sentencing assistance etc, which will affect the accuracy of conviction and sentencing.

The application of artificial intelligence in judicial adjudication should be also consider procedural fairness, especially the impacts on the litigation rights of the parties. The construction of the system should realize the fairness and legitimacy of the procedure by restricting public power and safeguarding the rights of citizens. In artificial intelligence judicial adjudication, one must always insist on putting justice before efficiency. The introduction of artificial into judicial adjudication may lead to emphasis on instrumental rationality while ignoring value rationality in the judicial adjudication process.

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[8] E. Chris and S. Nigel, Information Technology and the law (Macmillan International Higher Education, 1986) 57.

[9] The Application and Regulation of Artificial Intelligence Technology in Judicial Adjudication available at < Bing .com> last accessed on the 20th August, 2025.

[10] D. Eileen, (n.4) 245.

The application of artificial intelligence will cause some people to respect absolute rational tools, and then make people give up the pursuit of value rationality, making the law a ruthless and ruthless tool. The importance of people in judicial adjudication is self-evident, and tools cannot be above people. When building a judicial adjudication assistance system, one should pay attention to balancing the relationship between instrumental rationality and value rationality, and emphasize the auxiliary and service functions of instruments.

Natural language processing is an important part of the judicial adjudication system. How to improve the analysis and processing capabilities of natural language is one of the difficulties in the research and development of artificial intelligence systems, and it is also an important development direction in the future.

Constructing a legal language knowledge graph will help improve natural language processing capabilities. Knowledge graph is to summarize various concepts and their relationship to form a semantic network systems. The purpose of constructing a knowledge map of legal language is to build a forensic linguistic system.

Natural language processing is a way of human-computer interaction. It refers to the recognition, analysis, interpretation and use of human language by artificial intelligence systems. It includes automatic Chinese word segmentation, information retrieval, information extraction, machine translation, natural language generation, etc. The core goal is to enable artificial language to understand the meaning of the natural language. The construction process of legal knowledge graph is the process of knowledge structuring. In the intelligent judicial adjudication system, the amount of training of artificial language processing modes such as Word2vec should be increased to improve the accuracy of natural language recognition.

Technology companies that develop intelligent judicial adjudication should disclose the operation process of the algorithm, which algorithm is used in the system, and what parameters are used. What data is collected, the goals that need to be achieved, the accuracy of predictions, etc, must be disclosed, except for the specific information of the parties involved in the case and the content related to national security. In the process of developing the system, it is necessary to fully explain and elucidate the content of the algorithm part, so that judicial staff can understand the procedures and principles of algorithm operation, and accept the supervision of judicial staff in order to avoid hacking. Before the system runs, the algorithm program in it should be reviewed and tested to ensure the fairness and standardization of the algorithms.[11]

It is the submission of this paper that Artificial intelligence excels at certain tasks, like silting through vast amounts of data quickly, but it lacks the emotional intelligence and creativity essential in the practice of law. Lawyers bring a depth of understanding, empathy, and the ability to navigate nuanced situations that Artificial intelligence presently cannot replicate. The future likely involves a collaborative approach, where artificial intelligence supports lawyers in specific tasks, allowing them to focus on the aspects of law that require a uniquely human touch.

4.0 Artificial Intelligence Patterns

Artificial intelligence has been defined as the simulation of human intelligence processes by machines, especially computer system. In the contemporary world, there is an increasing dependence on its usage in various areas of human endeavors ranging from unmanned drones for military operations to computer assisted leaning to the use of robots and other animated tools for commerce, healthcare delivery and a lot more. For instance, ChatGPT is an Artificial

[11] C. Collins, Artificial Intelligence in Information Systems Research: A Systematic Literature Review and Research Agenda (2021) (60) (10) International Journal of Information Management102-383.

intelligence that uses natural language processing to create humanlike conversational dialogue. The language model can answer questions and compose various written content s such as articles, social medial posts, essays, codes and emails. There is no doubt that the tools can be of significant benefit to the legal practitioners in the course of judicial adjudication if cautiously utilized.

a. Judicial Database

At the present time, judicial databases in Nigeria have gradually become popular, and judicial databases include case information, electronic files, judgment documents, judicial precedents, etc. In criminal cases, the case information of different litigation settlements will be integrated into the judicial database, such as case acceptance information, personal information of the criminal suspects, defendants and the litigation proceedings of the case[12].

For the entire case, case information is the basis for handling formal cases and relevant case information will be stored in the judicial database in the form of data. During the time of criminal justice, the dossier contains a large number of evidence materials and relating to criminal suspects, which are too large and difficult to carry. The electronic file can convert the previous paper file into electronic form and can be combined with video image and capture equipment and intelligent case handling system. Electronic files can also provide users with automatic marking of litigation progress, automatic filing and retrieval viewing.

The Judgment Document Database collects the judgment documents of the courts at all trial levels, which demonstrates the judicial openness and justice system and facilitates later inquiries. The Supreme Court's guiding cases and some more typical cases are integrated in judicial precedents and the relevant judicial judgment opinions are sorted out. It is submitted that this information can be

[12] E. Asein,'Digital Rights Management in Nigeria' (2020) 10 JILT :123.

used as a reference for case handlers in handling cases and judges in the process of adjudication.

b. Legal Knowledge Graph

Knowledge graphs are now widely used in large-scale knowledge bases. A knowledge graph is a knowledge mapping to the target objective world. The knowledge graph can connect various knowledge points and organize the logical relationship between knowledge as a whole. The legal knowledge graph can transform the legal system into a legal framework, which is beneficial for artificial intelligence to perform logical analysis according to legal terms.

There are two ways to build a legal knowledge graph, one can build an expert system, or one can build a machine learning path. The combination of the two methods can better display the knowledge. Building an expert system is to pre-build a knowledge graph model through manual construction, and further build a database. Machine learning, on the other hand, actively constructs a knowledge graph by collecting a large amount of data.[13]

c. Criminal Evidence System

The criminal evidence system can examine a single piece of evidence, and can provide a standard of evidence guide function. In judicial practice, it is necessary to verify the authenticity, legality and relevance of a single piece of evidence. The single evidence review in the criminal evidence system can conduct comparative teaching and research on the collected data in terms of procedure, form and content, and automatically generate review conclusions.

Judicial staff can make supplementary evidence or explanations based on this conclusion. The evidence standard guidance function in the formal evidence system can formulate standards for the specific evidence of each crime, provide case- handling personnel

[13] See Legal Knowledge Graph available at Bing.com> Last accessed 3rd July.2025.

with unified, standardized, concise, detailed, data-based, case-handling guidelines, and provide learning and reference for machine identification and judgment Standard sample.[14]

5.0. Prospects of Artificial Intelligence

Artificial intelligence has developed in some jurisdictions. Recently, the Supreme Court of Nigeria introduced "legal mail" which all counsel must have and all processes must be served through this electronic mail. As from the 16th July, 2018, it became mandatory. The Supreme Court will only serve processes by electronic means (legal Mail) on all matters. Hence, all new fillings as from 16th July, 2018, must bear Counsel's legal email address.

This is a clear effort by the Supreme Court to deviate from manual filling and serving of court processes by keying into emerging technological trends. Today, there are considerable number of artificial intelligence in the form of 'robot' that are programmed in such a way that it can answer any question on laws, particularly, procedural laws. Will it then be correct to say that, very soon, artificial intelligence will take over completely the works of lawyers? The answer is in the negative, and the reason been that, artificial intelligence can only aid the quick dispensation of matters and help in the reduction of the log of cases in courts.

The following are some of the contributions artificial intelligence could bring in aiding the proper administration of justice.

a. The artificial intelligence can be very useful in areas that require research and analysis of laws and procedures. It will be very useful in aiding legal practitioners and judges to locate cases and statutory provisions within a very short time. Since it is programmed, it operates within that sphere

[14] I. Roberts & B. Zuckerman's, Principles of Criminal Evidence, (Oxford Academic,1990) available at Oup.com> last accessed 3rd July,2025.

and so, one literally knows what he expects when using such artificial intelligence.

b. Since it is a computer, programmed to function as per the information impute in it, it will give accurate information compare to if such information is to be obtain manually. For example, if one uses an online search engine to search for a case, it will bring a more perfect match compare to when such search is to be done manually by first going through index of cases before scanning through law reports and one may still end up not getting the information needed.

c. The long hand mode of taking down the submission of counsel in courts could also be overcome by the use of artificial intelligence. This could be done by having a voice recorder in courts, which converts words spoken by counsel into writing. This will also go a long way to help in quick dispensation of cases that are before the courts.

6.0 Conclusion

Artificial intelligence can bring higher efficiency and more rational judgment results to judicial adjudication. But in the process of using artificial intelligence, one must keep in mind that artificial intelligence can only be used as an auxiliary means. In the legal field, one must establish a new state of judicial adjudication based on artificial intelligence and on the premise of ensuring the security of citizens' information and data.[15] The legal profession should be diversified so as to make the legal practice area a serene environment for young and striving lawyers. It is believed in this paper that the introduction of artificial intelligence will enhance the administration of justice as in contrast to the view expressed by some individuals that the artificial intelligence is coming to replace

[15] AI in Indian Judiciary Conclusions available at< Bing.com> Last accessed on the 15th July, 2025. See also Nigeria Data Protection Act, 2023.

and totally take away the works of lawyers in the legal practice. Artificial intelligence has come to stay, judiciary should key into it and make the best use of the technological devices that could aid proper, faster and quicker dispensation of justice.

WOMEN BEHIND THE SCENES: MADAMS AND HUMAN TRAFFICKING IN NIGERIA

By

***Ogwezzy, Oluwatosin Omobolanle PhD**

Abstract

Madams are often former trafficking survivors who transformed into recruiters and facilitators of human trafficking, perpetuating a cycle of exploitation. They recruited vulnerable Nigerian women by promising legitimate employment opportunities abroad, primarily in Europe and the Middle East, but instead subjected them to sexual exploitation and forced labour under crushing debts. These women often swear oaths, sometimes involving juju rituals, binding them to exploitative debt bondage agreements. The paper aims to expose and critically analyse the central, yet frequently hidden, roles that women, particularly "madams," play in organising, facilitating, and perpetuating human trafficking in Nigeria, especially for sexual exploitation. This paper adopted the doctrinal research method in conducting the present research. The doctrinal research method is primarily about the examination and discussion of legal doctrines, legal principles, and legal propositions. This paper observed the challenges to the simplistic narrative that traffickers are solely ruthless men coercing passive victims. The paper posited that the human trafficking journey is perilous, involving dangerous routes through Niger and Libya, where victims endure violence, detention, and abuse before reaching Europe. This paper highlighted that despite the severe trauma, survivors face inadequate protection and support upon return to Nigeria. This paper found that the recent high-profile arrests, such as that of Christiana Uadiale ("Christy Gold"), highlighted the organised nature of human trafficking syndicates exploiting spiritual beliefs and imposing brutal control over victims. This paper

concluded that madams play a major and coercive role in trafficking networks by controlling and exploiting women through violence, debt bondage, and traditional rituals, perpetuating trauma and abuse that trap victims in cycles of forced prostitution and labour both within Nigeria and abroad. This paper recommended that addressing human trafficking in Nigeria requires a nuanced understanding of the roles women play both as victims and perpetrators, the socioeconomic drivers behind human trafficking, and the need for policies that consider the perspectives of all actors involved to break this cycle of exploitation.

Keywords: human trafficking; madams; debt bondage;

1. Introduction

Women play a central yet paradoxical role in Nigerian human trafficking networks, functioning as both victims and perpetrators. Many traffickers, known as "madams," are women who previously trafficked themselves. These madams exploit their lived experiences to recruit vulnerable girls through false promises of employment in Europe or the Middle East.[1] For example, Inyang Okokon, a survivor-turned-activist, described how her trafficker a former victim used fear and oaths to enforce compliance.[2] This cycle perpetuates exploitation, as madams seek financial gain and social mobility after enduring similar trauma.[3] Madams target

[*]LL.B (OSU), BL, LL.M(Lagos), LL.M(AAUA-Akungba), PhD (RSU-Port Harcourt), ACIArb (Nigeria). Lecturer, Department of Public Law, Faculty of Law, University of Port Harcourt. Email address: Oluwatosin.ogwezzy@uniport.edu.ng,https://orcid.org/0009-0005-8304-0896,08033273670.

[1] O O Fayomi, 'Women, Poverty and Trafficking: a Contextual Exposition of the Nigerian Situation'[2005](5)(1) *Journal of Management and Social Sciences* ,65-79.

[2] V Ayeni,'From Survivor to Tormentor: How Trafficked Women Transformed into Ruthless Madams' *Punch Newspape*r(Lagos, 25 March 20230<https://punchng.com/from-survivor-to-tormentor-how-trafficked-women-transform-into-ruthless-madams/>accessed 1 May,2025.

[3] *Ibid.*

economically disadvantaged women, often from Edo State, using familial networks and cultural rituals to coerce compliance.[4] Victims of human trafficking are lured with offers of legitimate work in hospitality or childcare.[5] Binding oaths administered by traditional priests instill fear of supernatural retribution if victims disobey.[6]

2. Conceptual Clarification

The concept of madam, women and human trafficking in Nigeria has elicited the research interest of several scholars from diverse backgrounds across the globe. This is because human trafficking has received increasing global attention over the past decades. Ukhurebor[7] has researched on human trafficking in Nigeria with a focus on young girls and women, especially in Edo State. His study examines causes, effects, and remedies of trafficking, highlighting poverty, unemployment, and migration aspirations as key drivers. He recommends empowering agencies like NAPTIP and providing vocational training to vulnerable youths.

Adepitan[8] in his thesis explores human trafficking in Edo State through a postcolonial lens, analysing the legacy of colonialism and its impact on trafficking dynamics. The work addresses cultural,

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[4] Fayomi (n1).

[5] R.A Aborishade and A.A Aderinto, 'Pattern and Processes of Recruitment and Trafficking into Sex Work in Nigeria '[2009](6)(2) *Journal of Contemporary Research* 277-292.

[6] Sarah Adeyinka and Others, 'The Role Juju Rituals in Human Trafficking of Nigerians: A Tool of Enslavement, But also Escape <https://journals.sagepub.com/doi/full/10.1177/21582440231210474>accessed 1 May, 2025.

[7] R.A Ukhurebor, 'Human Trafficking and Nigeria's Development:An Examination of the Benin Metropolis, Edo State Nigeria' [2022] Benue journal of Peace and Conflict studies (BENJOCS) 120-135<https://www.bsum.edu.ng/journals/benjopecs/vol1n1//article8.php>accessed 3 May, 2025.

[8] O Adepintan, 'Decolonizing Human Trafficking: A Case Study of Human Trafficking in Edo State Nigeria' (Unpublished PhD Thesis, University of South Florida 2020).

economic, and political factors influencing trafficking and critiques international anti-trafficking frameworks.

Ibrahim and Omoregbe[9] in their article discuss the causes of human trafficking in Nigeria, including poverty, corruption, and cultural practices. Their work also evaluates government efforts to combat trafficking and suggests increased collaboration and awareness campaigns Historically, trafficking of women and girls for forced sex work and, to a lesser extent, domestic servitude, were the sole focus of advocacy and assistance. But in recent times, there has been recognition that women, children and men are trafficked into many different forms of labour, and sexual exploitation.

Consequently, legal and social science scholars have done juridical and scholarly works on different issues of human trafficking, madam and women in Nigeria. An attempt shall be made to define some concepts in this paper.

2.1 Human Trafficking

Louise Waite defines, human trafficking as the movement of a person from one place to another or the recruitment and labouring of a person for exploitation.[10] The Interpretation Act[11] of Trafficking in Persons (Prohibition) Enforcement and Administration Act defines.[12] that human trafficking involves recruiting, transporting, or harboring people through force, coercion, fraud, or abuse of power for exploitation, including forced labor, slavery, sexual exploitation, or organ removal.[13]

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[9] I M Ibrahim & I I Omoregbe, 'Human Trafficking in Nigeria: Causes, Efforts by Nigeria Government and the Way Forward' [2020](XXII)(1)*Nigerian Journal of Social Studies*.

[10] Louise Waite, *Human Trafficking in International Encyclopedia of Human Geography* (2nd edn 2020)< https://www.sciencedirect.com/topics/social-sciences/human-trafficking>accessed 5 May 2025 .

[11] TIPPEAA, s.82.

[12] *Ibid*.

[13] *Ibid*.

Transnational Organised Crime,[14] defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, using the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation includes at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; the recruitment, transportation, transfer, harbouring or receipt of a child for exploitation. Consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means stated in the definition is used.[15]

The most widely accepted definition of human trafficking is found in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children(Palermo Protocol), supplementing the United Nations Convention against Transnational Organised Crime 2000, which defines trafficking in persons as the recruitment, transportation, transfer, harbouring, or receipt of individuals using threat, force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or payments to control another person, for exploitation.[16] Based on the Palermo Protocol definition, trafficking in persons has three constituents' elements, any combination of which (i.e. any conduct that combines any listed action and means and is carried out for any of the listed purposes)

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[14] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime was adopted on 15 November 2000 and entered into force on 25 December 2003;
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> accessed 5 May 2025.

[15] *Ibid*, Art .3(b).

[16] Palermo Protocol, Art.3(a).

should be criminalised as trafficking.[17] This definition of Art 3(a) of the Palermo Protocol aligns with international standards and incorporates key elements such as the means, act, and purpose of trafficking, which are critical for understanding the scope of human and this definition will be adopted in this paper.

2.2 Debt Bondage

Debt Bondage, also known as 'debt slavery' or 'bonded labour', is a person's pledge of labour or services as security for the repayment of a debt or other obligation, where there is no hope of actually repaying the debt,[18] the services required to repay the debt may be undefined, and the services' duration may be undefined. Debt bondage is defined as "the status or condition arising from a pledge by a debtor of his services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined".[19]

Debt bondage can be passed on from generation to generation. Currently, debt bondage is the most common method of enslavement with an estimated 8.1 million people bonded to labour

[17] United Nations Global Initiative to Fight Human Trafficking (UN.GIFT),'023 Workshop: The Effectiveness of Legal frameworks and Anti-Trafficking Legislation 'The Vienna Forum to Fight Human Trafficking 13-18 February, 2008, Austria Centre Vienna, Background paper < https://www.unodc.org/documents/human-trafficking/2008/BP023TheEffectivenessofLegalFrameworks.pdf> accessed 8, May 2025.

[18] A Jordan 'Slavery, Forced Labor, Debt Bondage, and Human Trafficking: From Conceptual Confusion to Targeted Solutions', Program on Human Trafficking and Forced Labor. Washington College of Law: Center for Human Rights & Humanitarian Law, February 2011.

[19] Art 1 (a) of Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

illegally as cited by the International Labour Organization in 2005.[20] Debt bondage has been described by the UN as a form of "modern day slavery" hence the Supplementary Convention on the Abolition of Slavery seeks to abolish the practice.[21] Debt bondage can also be regarded as a means of paying off loans with direct labour instead of currency or goods. It is either a kind of indenture or a truck system and is a form of un-free labour.[22] In the United States of America, debt bondage is also referred to as peonage.[23] The definition of Feyisetan will be adopted for the purpose of this paper.[24]

2.3 Madams

According to the Etymology Online, *madam* comes from Old French *ma dame* ("my lady"), from Latin *mea domina*. It became a conventional term of address for women of rank or married women and later took on the meanings of a woman of fashion or pretension, a courtesan, and a brothel owner.[25] The Collins English Dictionary describes madam as a polite term of address for a woman, especially one of relatively high social status, and also as a woman who runs a brothel. It further notes an informal British usage for a precocious or pompous little girl.[26] For the purpose of this paper the definition from the Collins dictionary will be adopted.

3. Historical Context and Emergence of Madams in Nigeria

Human trafficking in Nigeria, particularly involving women known as "madams," has a complex history rooted in cycles of exploitation

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[20] ILO, "Global Report on Forced Labour in Asia: Debt Bondage, Trafficking and State-Imposed Forced Labour Promoting Jobs, Protecting People', (International Labour Organization, 2005), 31.

[21] K Bale, '*New Slavery: A Reference Handbook'*, (ABC-CLIO. 2004), 15–18.

[22] G Feyisetan, *Human Trafficking* (University Press PLC 2015)38.

[23] *Ibid.*

[24] *Ibid*.

[25]Etymonline,'Origin and History of Madam' <https:// www. etymonline.com/ word/madam>accessed 23 May, 2025.

[26] Collins, 'Definition of Madam'<https://www.collinsdictionary.com/ dictionary/english/madam>accessed 23 May, 2025.

and survival.[27] The term "madam" refers to women who were once victims of human trafficking themselves but later became recruiters and controllers within human trafficking networks.[28] This transformation from survivor to perpetrator is a critical aspect of the trafficking phenomenon in Nigeria.

Human trafficking in Nigeria, particularly involving women known as "madams," has a complex history rooted in cycles of exploitation and survival. The term "madam" refers to women who were once victims of trafficking themselves but later became recruiters and controllers within human trafficking networks. This transformation from survivor to perpetrator is a critical aspect of the human trafficking phenomenon in Nigeria.[29] Madams operate at the top of human trafficking hierarchies, controlling victims through debt bondage, violence, and ritualistic practices such as juju oaths. These oaths, often administered in shrines in Benin City, bind victims psychologically and spiritually, ensuring obedience and secrecy. The use of juju is a distinctive control mechanism in Nigerian trafficking networks, reinforcing the power madams hold over trafficked women and girls.[30]

Madams are deeply embedded in organised criminal networks that include corrupt officials and smugglers.[31] They recruit victims from rural and urban areas, often using deceptive promises of legitimate employment.[32] Once victims arrive in destination countries, madams enforce strict control, moving victims frequently to avoid law enforcement and maintaining their subjugation through threats against the victims' families back home.[33]

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[27] Ayeni (n 2).
[28] *Ibid*.
[29] *Ibid*.
[30] Adeyinka and others (n 6).
[31] *Ibid.*
[32] *Ibid.*
[33] Austrian Centre for country of origin and Asylum Research Document and Documentation (ACCORD), Nigeria: COI Compilation of Human

4. Madams as Former Survivors and Recruiters — Recruitment Tactics and False Promises

In Nigerian human trafficking networks, madam women who often were once victims themselves play a crucial role as recruiters and facilitators of trafficking. Their dual identity as former survivors and current exploiters creates a complex dynamic that sustains the trafficking cycle. Many madams began their involvement in human trafficking as victims. After enduring exploitation abroad, they return to Nigeria with the knowledge, contacts, and[34] sometimes financial means to recruit new victims. This transformation is well-documented: survivors who have "paid off" their debts or completed forced labor often become madams to secure economic survival and social mobility. Upon recruitment by madams, victims incur exorbitant debts covering travel, visa, and "processing" fees, often ranging from $20,000 to $50,000. These debts bind victims to madams, who enforce repayment through forced prostitution or labor. Victims frequently recount how initial agreements of two years' service extend to four or more due to hidden costs and punitive penalties.[35] To enforce obedience and silence, victims are subjected to traditional oath-taking ceremonies involving juju (spiritual) rituals.[36] These rituals instill fear of supernatural punishment if victims escape or expose traffickers. This spiritual control is a powerful psychological tool that traps victims in exploitative agreements.[37] Recruitment is often accompanied by deception about the nature and conditions of work. Victims describe harsh realities upon arrival, including confiscation of passports,

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Trafficking<https://www.ecoi.net/en/document/1423730.html>accessed 7 May, 2025.

[34] Ayeni (n 2).

[35] Aborishade& Aderinto (n 5).

[36] N H Msuya, 'Traditional Juju oath and Human Trafficking in Nigeria: A Human Right Perspective[2019] (50)(1) *De Jure Law Journal* 138-162.

[37] Ayeni (n 2).

physical abuse, and confinement. Some are sold to other madams or traffickers in transit countries like Mali or Libya.[38]

Madams' recruitment strategies are deeply intertwined with economic hardship and social expectations.[39] Many women enter trafficking to escape poverty, support families, or achieve upward mobility. The exploitation of cultural beliefs and social networks facilitates recruitment, while the promise of wealth and improved status masks the brutal realities of trafficking.[40] The case, Inyang Okokon, is an example of a survivor who later became a recruiter. Inyang was trafficked from Akwa Ibom State in 1999 and was deceived with promises of legitimate work but was sold into prostitution in Europe. After repaying her trafficker, she gained freedom but later became involved in recruiting and exploiting other young women, effectively becoming a madam herself. Okokon explained that many traffickers were once victims who, after completing their debt bondage, bought other women to exploit.[41]

5. Debt Bondage and Juju Rituals in Human Trafficking

Debt bondage and juju rituals are two interconnected mechanisms frequently used in Nigerian human trafficking networks to control and exploit victims, particularly women and girls.[42] These methods create powerful psychological and economic traps that bind victims to traffickers, making escape or resistance extremely difficult.[43] Traffickers frequently impose overwhelming debts on victims to keep them trapped and exploit them for sexual or labor purposes.[44]

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[38] *Ibid*.
[39] M Rizzotti, 'Chasing Geographical and Social Mobility: The Motivations of Nigerian Madams to enter Indentured Relationships'<https://www.antitraffickingreview.org/index.php/atrjournal/article/view/612/465>accessed 1 may, 2025.
[40] *Ibid*.
[41] Ayeni (n 2).
[42] Adeyinka (n 6).
[43] *Ibid*.
[44] United Nations Office on Drugs and Crime (UNODC). (2020). *Global Report on Trafficking in Persons 2020*.

In cases involving women, debt bondage typically happens when traffickers compel them into prostitution to repay illegitimate debts claimed to have arisen from their transportation, recruitment, or even their outright sale.[45] In situations of debt bondage, women are unable to earn back the amount "owed" to the traffickers. If the trafficked women are in a country illegally or do not speak the local language, they have little recourse against their traffickers, who often retain their travel documents and use violence or threats of violence against the victim or her family to further control her. Traffickers may continue to charge costs for other services such as room and board and then fail to apply money earned by the trafficked women to the debt.[46] Victims are trapped by the debt system because the money they earn is rarely credited toward repayment.[47] Traffickers often add hidden fees for food, lodging, fines, or confiscate earnings outright. Victims' passports and identity documents are seized, restricting their freedom and legal recourse.[48]

6. The Rationale and Contributory Circumstances Prompting the Engagement of Madams in the Human Trafficking Networks

The rationale and contributory circumstances prompting the engagement of madams in human trafficking networks are multifaceted and rooted in socio-economic and structural factors. Nigerian madams often enter trafficking networks driven by desires to overcome economic constraints and pursue geographical and social mobility. Their involvement is sometimes framed as part of indentured relationships where both traffickers and victims share aspirations to improve their socio-economic status, despite the

[45] The Advocates for Human Rights, 'Debt Bondag '<https://www.stopvaw.org/debt_bondage> accessed 1 May 2025.
[46] *Ibid.*
[47] *Ibid.*
[48] *Ibid.*

exploitative nature of the arrangement.[49] This reflects a complex dynamic where madams are not only perpetrators but also participants seeking better livelihoods within constrained environments.

Madams operate within broader trafficking structures that include organized crime groups, small-scale operators, and opportunistic traffickers. These networks exploit vulnerabilities such as poverty, migration aspirations, and social inequalities. Madams may serve as intermediaries or coordinators, facilitating recruitment, transportation, and exploitation, often leveraging social and community ties to maintain control over victims.[50]

The role of women in Nigerian networks, especially those with international connections will be examined. For instance[51] in a study of Nigerian networks, it demonstrated that not all women have leading roles or significant ones; some others play secondary positions by conducting subordinated tasks. Age, experience in the field of human trafficking, and the possession of international contacts are facilitating factors promoting members to higher positions in the organization.[52] Two typologies were extracted after a network analysis of Nigerian sex trafficking organizations regarding their betweenness centrality (brokerage): (a) one type of madam with a high hierarchical position in the network who is able to plan all the phases due to its international contacts and financial means; (b) another type of madam who acts predominantly in the exploitation phase and its economic capacity depends on the financial gains obtained by exploitation of the victims[53]. On the

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[49] Rizzotti (n 12).

[50] P Campana,'The Structure of Human Trafficking: Lifting the Bonnet on a Nigerian Transnational Network'[2016](56)(1)*The British Journal of Criminology* ,68-86.

[52] Mancuso, Marina. 2014. Not all madams have a central role: Analysis of a Nigerian sex trafficking network. *Trends in Organized Crime* 17: 66–88: Wijkman, Miriam, and Edward Kleemans. 2019. Female offenders of human trafficking and sexual exploitation. *Crime, Law and Social Change* 72: 53–72.

[53] Manusco (n 49).

other hand,[54], after analyzing two Nigerian cases, concluded that the Nigerian trafficking network structure is less centralised than expected. On the other hand, madams play a key role in generating victims' demand for sexual exploitation and, for that purpose, they are in closer cooperation with recruiters than transporters, whose services are outsourced when it is needed.

Regarding the most prevalent tasks performed by women in trafficking networks[55] found a wide variety of them. They found that the most prevalent consisted of collecting money, housing victims, controlling during work, exploiting victims, taking away and keeping passports and travel documents, recruiting outside the country of destination, connecting with potential customers, pursuing minors for work in prostitution, transporting to customers or workplaces, and arranging forged travel documents and travel tickets. Less frequent were the following tasks: giving work instructions, buying work-related items for the victims, renting prostitution rooms, performing administrative accounting, enrolling in escort agencies, and creating/managing internet advertisements.[56]

In some cases, madams emerge from communities where trafficking is normalized due to limited economic opportunities and social pressures. This normalization, combined with the promise of financial gain, motivates their participation despite the legal and ethical implications.[57]

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[54] Campana (n 48).

[55] Wijkman, Miriam, and Edward Kleemans, 'Female Offenders of Human Trafficking and Sexual Exploitation' [2019] *Crime, Law and Social Change* 72: 53–72

[56] A Gimenez -Salinas, 'Female Offenders in Human Trafficking: Analysing Roles in a Spanish Sample' [2024](13)(11),65.

[57] U M Usman and Others, 'Traficking Twin Error:Mysterious Madam and Voodoo Victimisation in the Case of Nigeria '[2018](8)(1) 392-408 < htt>ps://www.macrothink.org/journal/index.php/jpag/article/view/12765

7. Critical Examination and Deconstruction of Prevailing Legal and Policy Frameworks and Stereotypical Narratives Surrounding Human Trafficking in Nigeria

A critical examination and deconstruction of prevailing legal and policy frameworks and stereotypical narratives surrounding human trafficking involves analysing the limitations, gaps, and assumptions embedded in international, regional, and national anti-trafficking laws and their enforcement. Many existing legal frameworks, such as the anti- trafficking law[58] in Nigeria, have been critically assessed for their inadequacies in fully aligning with international standards such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol). For example Nigeria's anti-trafficking law[59] though comprehensive but faces challenges in enforcement, inconsistent adoption of related laws across states, and limited penalties for some trafficking offenses. The TIPPEA 2015 has been criticised for its limited scope and enforcement challenges. Key inadequacies include: Insufficient penalties for offenders, which may fail to act as effective deterrents Gaps in the definition of trafficking that may exclude certain forms of exploitation. Weak enforcement mechanisms and slow judicial processes delay the prosecution and conviction of traffickers. Limited coordination between agencies, leads to fragmented efforts in combating trafficking. Inadequate provisions for victim protection and rehabilitation, including insufficient shelter facilities and support services. These limitations undermine the Act's overall effectiveness in curbing human trafficking in Nigeria.[60]

Prevailing narratives often frame trafficking strictly in terms of sex trafficking and victim hood, which can obscure other forms of exploitation such as forced labor, domestic servitude, and forced

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[58] Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEAA)2015

[59] *Ibid*.

[60] M. S Amune, 'Control and Regulation of Human Trafficking in Nigeria: A Legal Framework Analysis '[2025] (8)(1) *East African Journal of Law and Ethics*, 27-40.

criminality. For example, the dominant narrative frequently depicts human trafficking as involving young women who are lured or coerced by male traffickers into sexual slavery or exploitation. This binary simplifies trafficking into a story of innocent female victims and malicious male offenders, reinforcing gendered stereotypes.[61] These narratives portray victims as powerless, physically harmed, psychologically broken, and entirely dependent on rescue by external actors. Women are often objectified and dehumanised, reduced to spectacles of victimisation, which can perpetuate voyeurism and distance audiences from meaningful engagement or support.[62] The international framework, anchored by the Palermo Protocol and supplemented by conventions like CEDAW and the UN Convention on the Rights of the Child, establishes obligations for criminalisation, victim protection, and international cooperation. However, implementation varies widely, and some jurisdictions lack comprehensive laws or enforcement capacity, undermining the global fight against human trafficking.[63]

8. Relevant Laws Regulating Human Trafficking in Nigeria

This aspect of the paper deals with the legal and institutional frameworks on human trafficking in Nigeria. It analyses national laws, that is, laws made by the Nigerian legislature which comprises the Senate and House of Representatives, international laws and instruments such as treaties to which Nigeria is a party on human trafficking as well as institutions created to combat the scourge of human trafficking.

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[61] A Heber, 'Damsels, Monsters, Superheroes: Exploring the met narrative of Sex Trafficking' [2023](30)(1)*international Review of Victimology*, 89-108.

[62] *Ibid*.

[63] C N Mmbawanga, The Legal Framework: International, Regional and National<https://www.pas.va/en/publications/scripta-varia/sv148pas/njagi.html> accessed 12 May 2025.

8.1 Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As Amended)

The Constitution of the Federal Republic of Nigeria frowns at trafficking in persons which constitutes a violation of the Fundamental. This is evident in some provisions of Chapter 4 of the 1999 Constitution. The Constitution of the Federal Republic of Nigeria, 1999 (as amended); contains provisions which out-rightly outlaw slavery and forced labour or compulsory labour, sexual exploitation and deprivation of personal liberty of Nigerians. Trafficking in persons violates the provisions of Sections 17, 33,34 35,39and 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Constitution provides that[64] 'the state social order is founded on ideals of freedom, equity and justice'. Trafficking in persons directly contradicts the ideals of freedom and justice, trafficked persons are deprived of their liberty and subjected to exploitation, which undermines the constitutional vision of a just society. The Constitution provides that[65] in furtherance of the social order, the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced. Trafficking violates this by degrading victims through forced labour, sexual exploitation, and other inhuman treatment, thereby stripping them of their dignity. The Constitution provides in the section that[66] the state shall direct its policy towards ensuring that- (f) Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect. Since trafficking disproportionately affects these groups, this provision imposes a constitutional duty on the government to prevent trafficking and safeguard victim. The Constitution[67] serves as a directive for the government to enact laws and implement policies aimed at eradicating trafficking. This is reflected in the establishment of

[64] CFRN 1999,s. 17(1).
[65] CFRN 1999, s .17 (2).
[66] CFRN 1999, s.17 (3).
[67] CFRN 1999,s. 17.

institutions like the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and the enactment of anti-trafficking laws that operationalise the constitutional directive.

The Constitution[68] provides that every person has a right to life, and no one shall be intentionally deprived of life except by lawful execution of a court sentence. Trafficking in persons often exposes victims to life-threatening conditions such as physical abuse, hazardous working environments, sexual exploitation, and deprivation of basic needs like food and medical care. These conditions can lead to injury, illness, or death, thereby violating the constitutional right to life. Even if the trafficker does not directly kill the victim, the exploitation and inhumane treatment inflicted can cause a gradual loss of life or severe harm, which courts increasingly recognize as a violation of the right to life's broader protections. The Nigerian courts have prosecuted and convicted traffickers for offences that have caused significant physical and psychological harm to victims, including injury and illness, aligning with the serious human rights violations inherent in trafficking. The Presiding Judge, Benin Judicial Division of the National Industrial Court, Hon. Justice Adunola Adewemimo has convicted and sentenced Joyce Amenze[NICN/BEN/2C/2022] to one-year imprisonment and payment of N2m as fine on a 2-count charge bordering on Human Trafficking, punishable under Section 18(1) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

A trafficker violates the right to dignity of a person under Nigerian Constitution[69] by subjecting the victim to acts that contravene the constitutional protections guaranteed in that section. Specifically, the Constitution provides that every individual is entitled to respect for the dignity of their person[70]. (a) No person shall be subjected to

[68] CFRN 1999, s. 33
[69] CFRN 1999, s.34
[70] *Ibid*.

torture or to inhumane treatment or to degrading treatments; (b) No person shall be held in slavery; and (c) No person shall be required to perform forced or compulsory labour. The Nigerian courts have interpreted torture and degrading treatment as acts causing extreme pain, anguish, or humiliation, which traffickers routinely perpetrate on their victims .In the case of Uzoukwu v. Ezeonu[71] the Court of Appeal defined "torture" as meaning "to put a person to some form of pain which could be extreme" or "to put a person to some form of anguish or excessive pain." On the other hand, the expression, "inhuman or degrading treatment or punishment" has been defined as any act which deliberately causes suffering not amounting to torture such as withholding medical treatment, cramping in overcrowded and squalid prisons or destruction of homes and personal belongings. Degrading treatment or punishment refers to acts that stimulate in the victim fear, anguish and inferiority thus lowering his dignity or physical integrity such as caning. 'Degrading treatment' is one that "humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity." The phrase 'cruel, inhuman and degrading treatment' has been defined by the Nigerian Court of Appeal in Uzoukwu v. Ezeonu [72]as "any barbarous or cruel act or acting without feeling for the suffering of the other." Trafficking =in persons violates Section 34 by denying victims their fundamental right to be free from torture, slavery, forced labour, and degrading treatment, all of which are essential components of human dignity under the Nigerian Constitution. Human trafficking violates the right to personal liberty[73]of victims of human trafficking, for instance during recruitment through duplicity of documents given to them for desperate journey or false promises violate an individual's right to liberty and security, which

[71] (1991) NWLR (pt. 200) 708 CA
[72] *Ibid*.
[73] CFRN, s 35.

are guaranteed under of the CFRN[74] and article 9 of the International Covenant on Civil and Political Rights.[75]

The CFRN on Freedom of speech and expression[76]is a fundamental right that is protected under our law and in several key international conventions that have been ratified by the country of Nigeria, including the ICCPR, ICSCR, and CEDAW.[77] The provision[78] has been embraced by the government of Nigeria and written into domestic law in the CFRN[79]. The act of oath -taking during the voodoo ceremony administered on human trafficking victims from Nigeria violates the right to freedom of expression as enshrined in the constitution[80]. Furthermore by virtue of section 41 of the 1999 CFRN, the right to freedom of movement of victims of human trafficking is also violated by the seizure of their documentation upon arrival, with the understanding that if they did not obey the traffickers as to what is demanded, they will be threatened and beaten.[81] It is also sad to note that victims whom traditional oath are administered on for trafficking purposes not only experience pressure and abuse of power from traffickers, but also from their own relations.[82] The CFRN on the right to fair-hearing also provides that, no person who is tried for a criminal offence shall be compelled to give evidence at the trial.[93]This provision,[94] violates the right of victim of human trafficking where for instance the victims,

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[74] *Ibid*.
[75] ICCPR, Art.9
[76] CFRN 1999, s.39.
[77] J Millett-Barrett, 'Bound by Silence: Psychological Effects of the Traditional Oath Ceremony Used in the Sex Trafficking of Nigerian Women and Girls' [2019] (4)(3) *Dignity: A Journal on Sexual Exploitation and Violence*1-51<3https://digitalcommons.uri.edu/dignity/vol4/iss3/3>accessed 18 May 2025.
[78] CFRN (n 54).
[79] *Ibid*.
[80] *Ibid*.
[81] N H Msuya, 'Traditional Juju Oath and Human Trafficking in Nigeria: A Human Rights Perspective' [2019] (52)(2)*De Jure Law Journal*,138-162
[82] *Ibid*, 153.
[93] CFRN, s 36(11).
[94] *Ibid.*

voodoo/juju priest, witch doctors are forced to give evidence against the traffickers as to when and where the voodoo ceremony took place. Also section 36(12) of CFRN provides that subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law. In essence, victims of human trafficking should not be convicted of offence not prescribed by law.

Section 42 (2) provides that 'No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth'. In addition, it is interesting to note that a victim of trafficking can challenge the infringement of the above mentioned rights under Section 46 of the 1999 Constitution (as amended). Section 46 states that any person who alleges that his or her fundamental human rights has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that state for redress. Also, the Third Alteration of the Constitution provides that the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters – connected with or related to child labour, child abuse human trafficking and any other matter related thereto.

8.2 The Criminal Code Ordinance 1916(as amended)

Under the Criminal Code, several offenses related to liberty violations and slave dealing can be applied to prosecute cases of human trafficking and prostitution. The law[95]section states that any person who: (1) arranges for a girl or woman under eighteen years old, who is neither a common prostitute nor known for immoral behavior, to engage in unlawful sexual intercourse with another person, whether inside Nigeria or abroad; (2) arranges for a woman

[95] CC, s.223.

or girl to become a common prostitute, either within Nigeria or elsewhere; (3) facilitates a woman or girl leaving Nigeria with the intention of her becoming a brothel inmate abroad; or (4) causes a woman or girl to leave her usual residence in Nigeria with the intent that she becomes a brothel inmate for prostitution purposes, either domestically or internationally, commits a misdemeanor punishable by up to two years imprisonment. The law[1] also criminalizes the act of using threats, intimidation, deception, or drugs to stupefy or overpower a woman or girl with the intent to enable unlawful sexual intercourse, also punishable by two years imprisonment.

Additionally, Sections 365, 366, and 369 address key intimidation tactics employed by traffickers. Section 365 criminalises unlawful confinement or detention against a person's will. Section 366 deals with forcing someone to act through threats, surveillance, or other forms of intimidation, carrying a penalty of one year imprisonment. Section 369 defines slave dealing as the buying, selling, or transferring of individuals to be treated as slaves or held in servitude, including using them as security for debt or entering into agreements to further such purposes. This is punishable by imprisonment up to 14 years.

8.3 Penal Code (Northern States) Federal Provisions Ordinance 1960

The PC applies to the Northern part of Nigeria,it preceded the NAPTIP Act but do not specifically define human trafficking.[2]The PC is one of the early laws enacted during the late era of colonialism in Nigeria; it came into force on the 30th September, 1960. PC applies in the Northern part of Nigeria which is predominantly

[1]CC, s .224.

[2]Access to Justice for Trafficked Persons in Nigeria; *A Handbook for legal Actors and Assistance Providers*
<http://gaatw.org/publications/AtJHandbook_Final.pdf> accessed 6 May 2025.

occupied by Muslims.[3] The enactment of the law was influenced by the Sudanese Criminal Code, which was also promulgated based on the Indian Penal Code. The PC provisions have identified offences of human trafficking and cover the interest of particularly children who are less than 18years of age against all form of exploitative gains. Sections 271 and 272 of the PC impose a punishment of imprisonment for up to 10 years and a fine for kidnapping and abduction[4] of a minor. While section 277 provides that, any person who induces a girl less than 18 years of age "to go from any place or to do an act with the intent that such girl would be or is likely to be forced or seduced to illicit intercourse" is subject to punishment by imprisonment for up to 10 years.[5]

The PC imposes a punishment of up to 10 years and a fine on anyone who "buys, sells, hires, lets to hire, or otherwise obtains possession" of a person less than 18 years of age with the intent of using such a person for "prostitution or other unlawful or immoral purposes."[6] It also imposes a punishment of imprisonment for up to 14 years and a fine for an offense of slave dealing[7] and section 280 of the PC further punishes forced labour with a fine and imprisonment for one year[8]The PC provides that procurement of a woman or a girl for immoral purposes is punishable by imprisonment for up to 7 years and a fine.[9]The PC specified the punishment for slave trading and forced labour while the CC imposes a fine and punishment of one year imprisonment for forced labour alone. The wordings of the PC

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[3]G U Kwagyang and G M Murgan, 'Appraisal of the Legal Framework against Child Trafficking in Nigeria', [2016] (1)(1), *UNIMAID Journal of Private and Property Law (UJPPL)*,39-40. <http://www.unimaid.edu.ng/oer/Journals-oer-law.html>, or <http://www.unimaid.edu.ng/oer/Journals-oer/Law/Private%20Law/3.pdf> accessed 23 August 2021.

[4]PC, s272 .

[5]*Ibid*,s 277.

[6]*Ibid*,s278.

[7]*Ibid*,s279.

[8]PC,s 280.

[9]*Ibid*, s281.

seem to offer more protection to the girl child but the CC lump together the girls and women adult for protection

8.4 The Nigerian Immigration Act 2015

The Nigeria Immigration Act, 2015, prohibits all types of illegal migrant smuggling. It also implements the Protocol against the Smuggling of Migrants by Land, Sea, and Air within Nigeria, complementing the United Nations Convention against Transnational Organized Crime. Key provisions include: Section 64, which forbids all forms of migrant smuggling in Nigeria; Section 65, which outlines various offenses related to smuggling of migrants; Section 66, which prohibits exploiting the vulnerability of smuggled migrants; Section 67, which forbids facilitating illegal residence; Section 68, which bans the procurement of fake travel or identity documents; Sections 69 and 70, which criminalize aiding and abetting migrant smuggling; and Section 73, which addresses escape and assisting escape from custody.

8.5 Child's Right Act CRA)2003

The Child's Rights Act of 2003, forbids exposing children to the use, production, and trafficking of narcotic drugs as stated in Section 25. Section 26 broadly prohibits involving children in any form of criminal activity. Violations of these provisions carry a penalty of fourteen (14) years imprisonment. Additionally, Sections 31 and 32 of the Act prohibit all forms of sexual abuse and exploitation of children under eighteen (18) years old, with penalties ranging from fourteen (14) years imprisonment to life imprisonment, depending on the offence.

8.6 Edo State Trafficking in Persons (Prohibition) Law 2018.

The intention of the Edo State Trafficking in Persons (Prohibition) Law, 2018 is to make provision for an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution, and punishment of human trafficking and

related offences. The law seeks to address the scourge of human trafficking and irregular migration in Edo State. Section 13 of the TIPPL provides that all acts of human trafficking are prohibited in the State and the punishment when the offence is committed.[10]Section 14 of the TIPPL deals with importation and exportation of person forced into prostitution in Edo State or while in transit. Section 15 deals with the offence of procurement of persons for sexual exploitation. Section 16 deals with procurement and recruitment of persons under 18 years for prostitution or other forms of sexual exploitation. Procurement and recruitment of persons for sexual pornography is stated in section 17 of the TIPPL.[11]Section 18 of the TIPPL provides for the offence of foreign travels which promotes prostitution and sexual exploitation.

The offence of procurement or recruitment of person for use in armed conflict is contained in section 19 of the TIPPL. Section 20 deals with the offence of procurement recruitment for organ harvesting. Section 21 deals with the prohibition of selling and buying of human beings for any purposes while section 22 provides that no person should be recruited for forced labour and no place must be used to work for as forced labour. Section 23 prohibits the employment of a child under the age of 12 as domestic worker and inflicting grievous harm on a child. Section 24 and section 25 deals with trafficking in slaves and slaves dealing. Section 26 provides for offences relating to fraudulent entry where a person because of financial or material benefit allows an alien into the state unlawfully. Section 27 deals with the offence of conspiracy where a person conspires with another to commit offence under this law[12].Section 31 provides that the corporate body shall be liable in respect of any offence that relates to human trafficking under the law while section

[10]TIPPL, 2018, s 13(1-4).
[11]TIPPEAA, s17.
[12]*Ibid.*

34 for an offence tampering with the evidence of a witness, intimidating, or threatening a witness.

8.7 Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015

This is Nigeria's inaugural main law specifically targeting the problem of human trafficking within the country. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 comprises 83 sections and 2 schedules. Section 1 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 provides the objectives of this Act which are to provide an effective and comprehensive Legal and Institutional framework for the prohibition prevention, detection, prosecution and punishment of human trafficking and related offences in Nigeria as well as protect victims of Human Trafficking and lastly to promote and facilitate National and international co-operation. Part III, of the TIPPEAA, 2015, focuses on the prohibition of human trafficking and outlines specific offences and penalties.[13]

Section 13(1) explicitly states that all acts of human trafficking are prohibited in Nigeria. This provision that the recruitment, transportation, transfer, harbouring, or receipt of a child for exploitation is considered trafficking, even if no force or coercion is involved.[14] Section 13 outlines the *actus reus* (prohibited acts) and *mens rea* (mental intent) required to constitute trafficking offenses, while also addressing penalties and victim protections. Section 13 states that (1) *"*All acts of human trafficking are prohibited in Nigeria*"* This blanket prohibition applies to all forms

[13] Trafficking in Persons (Prohibition)Enforcement and Administration Act 2015TIPPEAA 2015, s.13.

[14]Trafficking in Persons (Prohibition)Enforcement and Administration Act 2015, s .13 (4)(b).

of exploitation including forced begging, sexual exploitation and forced labour.

Section 13(2) criminalises specific acts of trafficking. A person commits an offence if they recruit, transport, transfer, harbor, or receive another person using threats, force, abduction, fraud, deception, or abuse of power/vulnerability giving/receiving payments to control a person for exploitation. Conviction attracts imprisonment of not less than 2 years and a fine of not less than ₦250,000.13(2)(ii) clarifies that abuse of vulnerability includes exploiting an individual's personal, situational, or circumstantial vulnerability (e.g., poverty, disability, or age) to coerce them into trafficking. While Section 13 of the Trafficking in Persons (Prohibition)Enforcement and Administration Act 2015. The TIPPEAA 2015 focus on protecting vulnerable individuals and prohibiting various forms of exploitation makes it a crucial tool in combating human trafficking in Nigeria.

Nigeria has ratified and is a signatory to a number of international conventions which are directly or indirectly related to trafficking. These conventions include United Nations Universal Declaration Of Human Rights; United Nations Convention Against Transnational Organized Crime; Convention On The Rights Of The Child; Convention On The Elimination Of All Forms Of Discrimination Against Women; African Charter On Human And People's Rights; ECOWAS Declaration And Plan Of Action Against Trafficking In Persons (2001); Forced Labour Convention, 1930; Minimum Age Convention (No. 138) 1973; Worst Forms of Child Labour Convention (no. 182) 1999; Memorandum of understanding between Nigeria and Republic of Benin on cross-border crimes, smuggling, human trafficking and drug trafficking, signed on 14th August, 2003.

9. Jurisdiction

The Act confers Jurisdiction to try and punish all offences created under the Act on the High Court[15]. This means that all cases involving human trafficking offences are to be prosecuted in the High Court, which has the authority to adjudicate such matters.[16] Section 36(2) empowers the court, upon conviction of a trafficking offence, to order the forfeiture of any property, asset, funds (including accrued interest), articles, substances, devices, materials, or conveyances that were used or facilitated the commission of the offence or that are proceeds of the unlawful activity. These forfeited items are directed to the Victims of Trafficking Trust Fund, which is intended to support victims of trafficking.

10. Cases of Madams as Women Behind the Scenes Convicted of Human Trafficking in Nigeria

Several madams have been convicted at the Federal High Court in Nigeria for human trafficking offenses, particularly involving the recruitment and exploitation of women and girls for prostitution and other forms of trafficking. In *FRN v. Ukor Omebere Mercy* [17] Mercy Ukor was convicted on 12 counts related to the exportation of persons, organizing foreign travels promoting prostitution, and procuring illegal entry into foreign countries. She was sentenced to 5 years imprisonment on most counts and 7 years on others, alongside fines totaling 12 million naira payable to the Federal Government .Also in *FGN v Charity Omoruyi* ("Jeff Joy")[18] a high-profile madam extradited to Italy after being convicted there for running a prostitution ring and trafficking women between Nigeria and Europe. She was arrested in Nigeria, remanded by the Federal High Court Abuja, and later extradited under a treaty with Italy.

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[15]TIPPEAA 2015, s 36.

[16]Amune

[17]FHC/ASB/15c/2021.

[18]Charge No. B/31C/2004

Omoruyi's case highlights the cross-border nature of Nigerian madams' trafficking networks.

*FRN v. Linda Terna Doosuu*r[19] convicted for trafficking three victims to Ghana, Linda was sentenced to 2 years imprisonment per count, running concurrently, and fined 900,000 naira in total. The court considered her status as a nursing mother and first-time offender in sentencing. FGN v Felicia Osaigbovo[20], also known as "Nutcracker," was convicted by the Federal High Court in Benin in March 2023. She was sentenced to 12 years imprisonment and fined 24 million naira for assisting trafficking activities and organizing foreign travels promoting prostitution involving twelve victims in Belgium.

Also in *FRN v Zarma Ibrahim*[21] was sentenced to 10 years imprisonment without option of fine by the State High Court Maiduguri in September 2023 for sexual exploitation of minors, including victims as young as 6 years old. In the case of *FRN v Linda Terna Doosuur*[22] the defendant was sentenced in 2023 by the Federal High Court Makurdi to 2 years imprisonment and fines for trafficking three victims to Ghana, with the sentence running concurrently. Christiana Uadiale Jacob, a senior member of a trafficking syndicate, was convicted in absentia by the Federal High Court Asaba in March 2024. She had absconded but was rearrested later; sentencing is pending her presentation before the court.She was eventual recaptured with the collaboration of INTERPOL Nigeria, the National Intelligence Agency (NIA), and the Nigeria Immigration Service,.

These cases illustrate the role of madams as former survivors turned recruiters and controllers within trafficking networks, often

[19]FHC/MKD/CR/130/2022

[20]Case No. B/NAPTIP/4C/21.

[21]Case No. BOHC/MG/CR/119/2023.

[22]FHC/MKD/CR/130/2022.

managing victims through coercion, debt bondage, and cultural rituals. The Federal High Court in Nigeria has actively prosecuted such offenders, imposing significant prison terms and fines to disrupt trafficking operations.

11. Conclusion

Madams play a crucial and worrisome role in the human trafficking networks in Nigeria, often emerging as former victims who transform into perpetrators, perpetuating a cycle of exploitation and abuse. These women operate both overtly and covertly, frequently using legitimate businesses as fronts to recruit and traffic vulnerable girls and women domestically and internationally, especially to Europe. The human trafficking industry in Nigeria is deeply entrenched, fueled by economic hardship, gender inequality, and organised criminal syndicates that exploit the hopes and desperation of many. Despite increased law enforcement efforts and convictions, the persistence of madams highlights the complexity of dismantling these networks. Effective intervention requires comprehensive strategies that address the root socioeconomic causes, provide protection and rehabilitation for survivors, and disrupt the organized structures enabling madams to thrive. Only through sustained, multi-sectoral collaboration can Nigeria hope to break the cycle of human trafficking and reduce the influence of madams behind the scenes.

PROTECTING THE DIGITAL BORROWER: A CRITICAL APPRAISAL OF THE FCCPC'S 2025 DEON CONSUMER LENDING REGULATIONS

By

Anthony O. Madukwe, Esq. ACArb.

Abstract

The past decade witnessed a rise in digital lending in Nigeria. With a population vastly underserved in financial services, digital lending represents financial inclusion while simultaneously exposing consumers to privacy breaches, predatory lending practices, and invasive debt recovery tactics. On 21 July 2025, the Federal Competition and Consumer Protection Commission (FCCPC) issued the Digital, Electronic, Online or Non-Traditional (DEON) Consumer Lending Regulations 2025, in exercise of its powers under Section 163 of the Federal Competition and Consumer Protection Act 2018. Under the lenses of the doctrinal model, this article considered relevant statues and the Regulations itself, including a voyage into Kenya, India, the UK, South Africa and the US for comparative analysis. In doing so, the article critically examined the efficacy of the Regulations and accessed the implications for consumer and lender rights and juxtaposed same with financial innovation needs of the Nigerian economy. Part of its attraction is the requirement for full disclosure of digital loan terms, mandatory registration of digital lenders, prohibition of pre-authorised lending, strict debt collection terms, and sanctions for non-compliance. Also, data protection obligations stand tall as a key component of the framework. However, the Regulations failed to provide clear interest rate caps; limited enforcement capacity, and potential overlap with existing money-lending regimes. Moreover, the costs of compliance could

prove a burden for smaller lenders and undermine credit access for low-income consumers. The article argued that the success of the DEON Regulations rests on practical enforcement, and recommended that public awareness, harmonization across regulatory regimes and periodic review of the regulations are key to its sustained success. Effectively implemented, the Regulations could place Nigeria as a global leader in digital consumer rights protection.

Keywords: Consumer Protection; Digital Lending; DEON Regulations 2025; FCCPC (Nigeria); Data Privacy**.**

1. Introduction

The rise of the smartphone and its use across the Nigerian population created a pathway for all kinds of access. One of these is credit. As more low- and mid-income Nigerians gained access to the digital world, they were welcomed on the other side by digital actors promising quick, stress-free lending ("loan apps")[1]. These non-traditional lending apps had the lure of instant credit but with this came significant harm. The digital world is insufficiently regulated and in such a world, commercial decency is not promised. From data privacy breaches to exploitative interest rates, hidden fees and the most perverse debt recovery tactics, Nigerian consumers were left unprotected in a wilderness of pervasive exploitation.

In response, the Federal Competition & Consumer Protection Commission (FCCPC) issued the Digital, Electronic, Online or Non-Traditional Consumer Lending Regulations 2025 (DEON

[1] E Utebor and T Omidoyin 'Digital Lending and the Challenges of Data Protection in Nigeria's Financial Sector'https://www.researchgate.net/publication/374034101_Digital_Lending_and_the_Challenges_of_Data_Protection_in_Nigeria's_Financial_Sector accessed 30 September 2025.

Regulations) which came into effect on 21 July 2025[2]. It is a crucial regulatory framework aimed at enforcing decency in the digital lending space by enforcing consumer rights, regulating digital lenders and imposing penalties for default. This analysis ties a critical thread from the legal foundation for the DEON Regulations through its regulatory strengths, gaps and possible unintended consequences. We ask the question: how well does the Regulations serve Nigeria's towering consumer protection needs?

2. Conceptual Clarification

Consumer: Regulation 30 of the DEON Regulations defines a Consumer to include any person who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or a person to whom a service is rendered.[3] The term "person" refers to both natural and artificial entities with attendant legal rights.[4]

Digital Lending: While the term "digital lending" is not defined within the Regulations, it generally refers to the process of facilitating, processing, and managing loans through online platforms as against traditional, paper-based processes.[5]. It extends beyond mobile apps to include general electronic platforms that process customer credit without requiring physical bank visits and stringent procedure.

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[2] FCCPC, 'Digital Lending: FCCPC Tackles Abuses, Issues Landmark Regulations https://fccpc.gov.ng/digital-lending-fccpc-tackles-abuses-issues-landmark-regulations/?utm_source=chatgpt.cm accessed 29 September 2025.

[3] DEON Regulations, Regulation 7

[4]-Merriam Webster Dictionary https://www.merriam-webster.com/dictionary/person#:~:text=an%20actor's%20mask%22-,Legal%20Definition,personhood%20noun accessed 4 November 2025

[5] Maclear 'What Is Digital Lending?' https://www.maclear.ch/blog/what-is-digital-lending#:~:text=04.07.2024,Users%20and%20Stakeholders accessed 4 November 2025

Data privacy: this refers to the legally guaranteed right of a person to determine for themselves when, how, and to what extent private and/or personal information about them is shared with or communicated to others and in what ways such data is used, stored, and conveyed to third parties.[6]

3. Legal and Regulatory Foundation of the DEON Regulations

By Sections 17 and 18 of the Federal Competition and Consumer Protection Act 2018,[7] the FCCPC is authorised to initiate broad based policies to regulate anti-consumer practices in the country as well as impose sanctions for violators. Section 163 (1) also authorises the FCCPC to make regulations in furtherance of the objectives of the Act and it is in exercise of this power, that the FCCPC issued the DEON Regulations 2025.

The move follows recent developments in consumer protection and lending practices in Nigeria. In April 2024, the Federal Government established the Nigerian Consumer Credit Corporation (CREDICORP) tasked with expanding access to affordable consumer credit.[8] Similar frameworks include the Nigerian Data Protection Act 2023 aimed at critical data protection. There are also sub-national legislations like the Osun State Consumer Protection Agency Law 2024[9] which signals broader awareness of the vacuum in consumer protection. The DEON Regulations seek to fill a regulatory vacuum in the sphere of digital lending.

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[6] Cloudflare 'What is data privacy?' https://www.cloudflare.com/learning/privacy/what-is-data-privacy/ accessed 4 November 2025.

[7] FCCPA.

[8] Statehouse, 'President Tinubu Approves Takeoff of Consumer Credit Scheme' https://statehouse.gov.ng/president-tinubu-approves-takeoff-of-consumer-credit-scheme/ accessed 29 September 2025.

[9] Daily Post, 'Osun Assembly passes Consumer Protection Agency Bill, 2024 into law'https://dailypost.ng/2025/04/07/osun-assembly-passes-consumer-protection-agency-bill-2024-into-law/ accessed 30 September 2025.

4. Notable Strengths of the DEON Regulations

Considering the existing regime on consumer protection in Nigeria, the following represent notable strengths in the DEON Regulations as it relates to consumer protection *vis-a-vis* digital lenders in Nigeria:

4.1 Clear Regulatory Scope and Registration Mandate

The DEON Regulations mandates all undertakings involved in the provision of unsecured digital lending services in Nigeria – whether through cash, airtime, data, cashback or related means – to register with the FCCPC within 90 days of commencement of the Regulations.[10] It also requires registration with the Corporate Affairs Commission (CAC) and/or relevant sector regulators. This addresses the niggling problem of unregistered "loan apps" which have traditionally operated outside legal scrutiny.

4.2 Reemphasized Consumer Rights

The Regulations require full disclosure of loan terms (lending and interest rates, repayment terms and associated fees) to be communicated in clear, comprehensible language prior to and immediately upon accessing the lending services. Importantly, it prohibits pre-authorised or automatic lending, mandates ethical marketing, and bans abusive defamatory recovery tactics.[11] Meanwhile, Consumer Lending Services Agreements must specify the rights of the consumers/borrowers against the lending parties.

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[10] DEON Regulations, Regulation 7.

[11] D A Essien 'Shamed For Debt: Analysis Of Available Judicial Redress Against Loan App Harassment And Defamation In The Case Of Mr. Peter Odang Enyigwe V. Fastcredit Limited & 2 Ors <https://www.mondaq.com/nigeria/libel-defamation/1667000/shamed-for-debt-analysis-of-available-judicial-redress-against-loan-app-harassment-and-defamation-in-the-case-of-mr-peter-odang-enyigwe-v-fastcredit-limited-2-ors#:~:text=On%2031st%20October%202024%2C%20the,lawful%20justification%2C%20amounts%20to%20defamation.> accessed 30 September 2025.

These are crucial consumer safeguards, aimed at protecting vulnerable digital borrowers.

To enhance consumer rights, there are three major rights enforcement mechanisms provided under the DEON Regulations, to wit:

i. FCCPC Complaints & Reporting Portals

Digital lending consumers have the right (and indeed are encouraged) to report unfair interest rates, unregistered lenders, unethical recovery practices, or data privacy breaches to the FCCPC via specified complaint portals such as the FCCPC website or the email designated for complaints (lenderstaskforce@fccpc.gov.ng). This eliminates passive acceptance of lenders' unfair conduct and puts significant power in the hands of consumers.

However, while seemingly encouraging in theory, the recurring challenge with this remedy is the capacity to manage, track and ensure due resolution of consumer complaints as the issue of non-responsiveness is a reoccurring theme in regulator sin Nigeria.

ii. Direct Regulatory Route for Consumer Remedy

While the framework focuses on regulation of the digital lending sector, it has crucially created direct route for consumers to immediately seek redress rather than resorting to litigation. Subject to effective utilization and enforcement, this is potentially time-saving for the consumers.

iii. Regulatory Oversight & Monitoring

The FCCPC is empowered under the regulations (and under its parent statute) to monitor, audit and demand reporting from digital lenders (e.g., records of transaction, periodic returns, complaint logs).

The regulator can deny applications, revoke registrations or impose sanctions if standards are not met and aggrieved consumers can report non-compliance to the FCCPC.

4.3 Severe Sanctions for Non-Compliance

Under the DEON Regulations, non-compliant digital operators may face penalties of up to ₦50 million for natural persons or in the case of corporate entities, ₦100 million or 1% of turnover in the previous year – whichever is greater. Other penalties include disqualification of a defaulting director for up to five years.[12]

4.4 Inclusion of Data Privacy and Transparency

Ethical data collection is a major concern in digital lending and one of the primary reasons why the DEON Regulations became necessary. Under this head, the Regulations stipulate that digital borrowers must comply with Nigeria's data protection laws especially the Nigeria Data Protection Act, 2023. This is a very important and timely aspect of this legal regime.

4.5 Broad Applicability

The Regulations apply to a range of digital operators including Mobile Money Operators (MMOs), Digital Money Lenders (DMLs), secondary lenders, vendors, service providers, amongst others – while regulating partnerships and local ownership in certain services. These provisions help stretch the umbrella of the law to cover previously unregulated lending actors.

5. Weaknesses, Gaps and Potential Issues

While the DEON Regulations are robust in many respects, several potential weaknesses or challenges may hamper their effectiveness. These weaknesses are considered below:

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[12] DEON Regulations, Regulation 27 (1).

5.1 Enforcement Capacity and FCCPC Resourcing

At the core of regulatory compliance is enforcement and the ability of the relevant agency to enforce industry-wide alignment. The resources necessary for the FCCPC to monitor hundreds of digital actors stretch beyond staff strength. It needs technical systems, digital product monitoring infrastructure, judicial backup, amongst others. This is a gap which, if not addressed, would imply the brilliant rules under the Regulations risk being formalities.

5.2 Ambiguity in Penalty Triggers and Application

It is not enough to prohibit "unethical marketing", or "exploitative interest rates", it must be clear on what amounts to unethical and exploitative as it makes it easy for the consumer and the general public to play their role of co-enforcers of the Regulations. Imprecise definitions and lack of enforcement guidelines increase the risk of arbitrary application and ambiguity.[13]

5.3 Impact on Small and Entry-Level Lenders

Compliance costs under the Regulations may prove prohibitive for smaller digital lenders. The risk with this is market consolidation, where only bigger industry players can afford to comply. This may in turn undermine credit access for consumers, especially in underserved areas[14].

5.4 Interest Rate Caps Not Explicit

The Regulations provide for periodic monitoring of interest rates to avoid exploitation without providing an explicit cap on interest or

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[13] S Li 'A corpus-based study of vague language in legislative texts: Strategic use of vague terms' https://www.researchgate.net/publication/309562932_A_corpus-based_study_of_vague_language_in_legislative_texts_Strategic_use_of_vague_terms#:~:text=It%20is%20contended%20that%20while,Discover%20the%20world's%20research accessed 29 September 2025.

[14] A Larocca 'The Implications of an Overregulated Banking System' https://www.linkedin.com/pulse/implications-overregulated-banking-system-agustin-larocca-iyoke/ accessed 30 September 2025.

fees.[15] This leaves room for compliance manoeuvres by digital lenders. Explicit rate limits help to curb predatory pricing.[16]

5.5 Potential Regulatory Overlap & Jurisdictional Conflicts

Regulatory regimes already exist on federal and state levels (for instance, the Central Bank of Nigeria (CBN), State Money Lenders Laws, etc) [17]creating potential overlapping jurisdictions. The Regulations is silent on resolving conflict with these frameworks likely resulting in enforcement complexity.

6. Implementation Challenges and Risks

There are a myriad of issues and challenges regarding implementation of the DEON Regulations, which include:

6.1 Compliance Timelines and Transitional Arrangements

The DEON Regulations mandates affected undertakings to register within 90 days but existing digital lenders will likely need more time to adjust internal systems (data processes, marketing, loan agreements, marketing, and so on).

6.2 Litigation Risk

There is the risk of challenge by non-compliant digital lenders who may want to test FCCPC's authority to make the Regulations in view of coverage by related regulations and laws. This could

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[15] DEON Regulations, Regulation 23.

[16] A Ferrari 'Interest Rate Caps, The Theory and The Practice' https://openknowledge.worldbank.org/server/api/core/bitstreams/db52e3ae-519a-587d-94b8-a40fbd69d822/content#:~:text=Ceilings%20on%20lending%20rates%20remain,segment%20or%20the%20overall%20market accessed 29 September 2025.

[17] N Oboma 'Digital Lending In Nigeria: A Closer Look At Nigeria's Regulatory Landscape' https://thefirmaadvisory.com/new-blog/2024/7/25/digital-lending-in-nigeria-a-closer-look-at-nigerias-regulatory-landscape accessed 29 September 2025.

potentially delay enforcement and industry acceptance of orders made pursuant to the Regulations.

6.3 Balancing Financial Innovation with Consumer Protection

Digital lending is attractive because it provides access for many underserved Nigerians. Overregulation could slow innovation or drive lenders out of the market. The Regulations must strike balance: protecting consumers without overly stifling access to credit.

6.4 Data Privacy Infrastructure & Cybersecurity

Complying with data protection requires robust data security, consent management, and cybersecurity. Many digital lenders have weak infrastructure. Data breaches or failures in securing user data might still occur, undermining trust.

6.5 Regulatory Monitoring of Interest Rates

"Fair interest rate" monitoring is a tough task. What would constitute fair in a high-inflation economy with high costs of capital? If interest caps do not account for risk, lenders will under-lend or price for risk excessively.

7.0. Comparative Analysis of Other Jurisdictions

The DEON Regulations is an innovative inclusion to the financial regulatory framework in Nigeria and positions the country among global leaders in regulating digital lending. Similar to frameworks in Kenya, South Africa, India, the US, and the UK, DEON seeks to promote transparency, ethical conduct, and consumer protection in online credit markets.

Kenya: Like Kenya's Digital Credit Providers Regulations, DEON mandates registration of all digital lenders to curb unlicensed and predatory operators. However, Kenya's licensing regime provides

stronger prudential oversight with stiffer onsite inspection, an approach Nigeria could adopt for higher-risk lenders.[18]

India: From India, the DEON Regulations mirrors the Reserve Bank of India's Digital Lending Directions on loan disclosure, consent, and data protection, but could further clarify the distribution of accountability between loan app developers, banks, and credit platforms. India's system maintains increased focus on transparency of effective interest rate and on the responsibility of sponsors of online platforms for third-party app conduct.[19]

The UK: Meanwhile, the UK's Financial Conduct Authority (FCA) model offers lessons in regulatory assessment of borrower vulnerability, affordability assessment, and forbearance,[20] areas where DEON is less specific.

South Africa: South Africa's National Credit Act provides an integrated structure combining licensing, creditworthiness checks, and a dedicated consumer tribunal, illustrating how Nigeria could strengthen enforcement and redress mechanisms.

The US: DEON's focus on ethical debt-recovery, data privacy, and harassment prevention aligns with the U.S. Consumer Financial Protection Bureau (CFPB)[21] and EU's General Data Protection

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[18] Central Bank of Kenya (CBK) Digital Credit Providers Regulations, 2022 (Legal Notice No. 46 of 2022).
Nairobi: CBK, 2022. https://www.centralbank.go.ke/2022/03/21/central-bank-of-kenya-digital-credit-providers-regulations-2022/ accessed 4 November 2025

[19] Reserve Bank of India (RBI) (Digital Lending) Directions, 2025. https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12848&Mode=0#C1 accessed 4 November 2025

[20] FCA (2022) - Guidance for Firms on the Fair Treatment of Vulnerable Customers https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf accessed 4 November 2025.

[21] United States Consumer Financial Protection Bureau (CFPB) Debt Collection Rule (Regulation F).

Regulation (GDPR) standards, though Nigeria's framework could adopt GDPR-style obligations such as mandatory impact assessments and data minimization.[22]

Overall, DEON incorporates international best practices on registration, disclosure, data protection, and sanctions. To deepen alignment with global standards, Nigeria could transition to a tiered licensing model, introduce affordability and vulnerability safeguards, and establish a credit redress tribunal. Strengthened coordination among FCCPC, NDPC, and CBN would enhance oversight.

8. Recommendations

Based on the identified strengths and gaps of this framework, the following recommendations would help ensure that the policy intent of the Regulations is achieved:

1. **Public awareness and consumer empowerment**

   The FCCPC should launch consumer awareness campaigns to educate borrowers on their rights within the new Regulations alongside detailed process on how to seek redress.

2. **Regulatory harmonization**

   To ensure consistency across relevant federal and state agencies, the FCCPC alongside partner agencies should make efforts to harmonize regulatory processes to avoid overlapping jurisdictions, duplicative licensing and conflicting rules.

Washington, D.C.: CFPB, 2021. https://www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-regulation-f/ accessed 4 November 2025.

[22] European Parliament & Council (EU) - General Data Protection Regulation (GDPR) (EU) 2016/679 https://eur-lex.europa.eu/eli/reg/2016/679/oj accessed 4 November 2025.

3. **Consider interest rate ceiling or sliding scale**

   The FCCPC may consider setting maximum permissible rates or publicly accessible guidelines based on inflation, risk, and operational costs.

4. **Enhance regulatory capacity**

   The Federal Government should prioritize providing resources and funding to the FCCPC to help monitor compliance as well as respond to complaints and audit lending practices.

5. **Periodic review**

   The Regulations should contain provisions on periodic reviews. The FCCPC should consider an amendment in this regard as it would help the Commission assess industry impact and make regulatory adjustments where necessary.

9. Conclusion

The DEON Consumer Lending Regulations 2025 is a landmark shift in Nigeria's consumer protection framework for digital lending. It answers the questions posed by years of unethical digital lending practices while increasing transparency, elevating consumer rights and prescribing prohibitive sanctions in ways that were previously lacking. However, its success is hinged on sensitization, enforcement, clarity of terms and seamless harmonization with existing regulatory regimes. It needs to safeguard against unintended damaging consequences and protect small lenders and vulnerable borrowers alike. If implemented effectively, DEON Regulations can create era-defining standards for consumer protection in Nigeria and other African jurisdictions.

THE NATIONAL INDUSTRIAL COURT OF NIGERIA AND THE APPLICATION OF INTERNATIONAL LABOUR STANDARDS AND BEST PRACTICES IN EMPLOYMENT LITIGATION

By

Edafe Ugbeta*

Abstract

This paper examines the application of international labour standards (ILS), particularly those addressing unfair labour practices, in employment and labour-related litigation in Nigeria. In doing so, the paper focuses on the policy and practice of the National Industrial Court of Nigeria (NICN), Nigeria's specialised court for resolving employment disputes, highlighting the Court's expansive utilization of its constitutional mandate to apply or interpret international labour standards. It also analyses the NICN's procedural requirement for litigants to plead and prove international labour standards and (international) best practices, and critiques the inconsistent judicial approaches that have led to uncertainty. The paper concludes by advocating for a consistent, justice-driven approach that reinforces the NICN's role in promoting fair labour practices in line with global standards.

Keywords: International Labour Standards, Unfair Labour Practices, International Labour Organisation (ILO), Conventions, Employment.

1. Introduction

In recent years, the integration of international labour standards into domestic legal systems has become a matter of significant discourse

in labour circles around the world. Typically, international labour standards (ILS) are established by the International Labour Organisation (ILO), a specialised agency of the United Nations, to promote fair working conditions, protect workers' rights, and prevent unfair labour practices globally.[1] These standards are drawn from various conventions, recommendations, and protocols that address a broad range of employment-related issues, including freedom of association, prohibition of forced labour, equal pay for equal work, and occupational health and safety.

For many countries, adherence to international labour standards is both a matter of international commitment and domestic legal obligation. Yet, how such standards are incorporated into domestic law is another issue altogether. For Nigeria, which has ratified and incorporated several labour-related conventions and treaties into its domestic law, the standards embodied in these conventions should ordinarily have direct legal effect and influence on the country's industrial law and practices. However, what one finds in practice is that, beyond mere ratification and domestication, the application of these standards by Nigerian courts remains clogged by certain procedural requirements. As the primary forum for resolving industrial disputes in Nigeria, this article evaluates the policy and practice of the National Industrial Court of Nigeria (NICN) with regard to its application of international labour standards in adjudicating industrial disputes. In particular, drawing on its developing case law, the article highlights how the NICN has interpreted and applied international labour standards in addressing unfair labour practices and how the Court's decisions are shaping the landscape of workers' rights and industrial relations in Nigeria.

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*LLB Hons (Delsu), BL, LLM (Kent), LLM (South Wales); Partner and Head of Litigation & Disputes Practice, Aret & Bret LLP; Phone No. 08037743446; Email: dafe.ugbeta@aret-bret.com

[1] International Labour Organization, *International Labour Standards*, available here (accessed 10 August 2025)

2. Understanding International Labour Standards

As alluded to above, international labour standards are a set of legal instruments formulated under the auspices of the ILO, setting out the basic principles and rights at work.[2] These standards are designed to guide against unfair labour practices and ensure humane conditions for workers globally, regardless of the country they are in. Basically, international labour standards are derived from two main sources:

1. **ILO Conventions, Treaties** and **Protocols** – these are legally binding treaties and agreements that member states can choose to ratify. Once ratified, countries must apply them in national law and practice.

2. **ILO Recommendations** – these are non-binding guidelines that provide more detail or suggest best practices to complement Conventions.[3]

In many cases, a Convention (treaty or protocol) lays down the basic principles to be implemented by the ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied.

3. Defining Unfair Labour Practices

Perhaps it is convenient to begin by stating that the phrase 'unfair labour practice(s)' is not defined in any Nigerian statute, including the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010 which established the exclusive jurisdiction of

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[2] See, International Labour Organization, ILO 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, available here (accessed 11 August 2025)

[3] ----------, Conventions, Protocols and Recommendations, available here (accessed 11 August 2025)

the NICN over civil labour cases involving unfair labour practices.[4] However, from popular usage in labour circles, unfair labour practices generally refer to actions or practices by employers that are deemed unjust or discriminatory against employees.[5] It covers a wide range of actions that violate workers' rights, including unjust dismissals, exploitation, discrimination, and non-compliance with basic labour protection laws.

Whilst there is no statutory definition of the phrase 'unfair labour practice' in Nigeria, the NICN has offered some working definitions. For instance, in *Mix & Bake Flour Mill Industries Ltd v National Union of Food, Beverage, and Tobacco Employees (NUFBTE),*[6] while explaining what could constitute an unfair labour practice, it stated that *"...[t]o be unfair, it must be established that the practice does not conform to best practices in labour circles, as may be enjoined by local and international experience."*[7] The Court adopted a broader approach to the definition in *Omage John v Supreme Pharmaceuticals Company,*[8] where it had recourse to the meaning provided by the Black's Law Dictionary, 8th edition, and defined it in the following terms:

> *[a]ny conduct prohibited by the state or federal law governing the relations among employers, employees and labour organisations. Examples of an unfair labour practice by an employer include – interfering*

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[4] A Olatunbosun and K Onu, 'An Examination of Unfair Labour Practices against Workers in Nigeria and some selected Jurisdictions' (2020) vol.11:4 The Gravis Review of Business & Property Law, at 122-137

[5] See, Canada Industrial Relations Board, 'Labour Relations – Unfair Labour Practice' available here (accessed 12 August 2025)

[6] (2004) 1 NLLR (Pt. 2) 247 (Suit No. NICN/4/2000)

[7] See also *Tekena Obrabiel Lawson & Ors v AG and Commissioner for Justice, Rivers State & Anor* – Suit No NICN/PHC/79/2018- Unreported judgment delivered on 18 October 2018.

[8] Unreported judgment delivered on 15 May 2014 by Honourable Justice Oyewumi Oyebiola in Suit No. NICN/LA/53/2013.

> *with protected employees' rights such as the right to self-organisation, discriminating against employees for union-related activities, retaliating against employees who have invoked their rights, and refusing to engage in collective bargaining…"*

Beyond these NICN's definitions, the ILO has championed the adoption of several conventions that are directly relevant in identifying and explaining the acts, omissions, or practices in employment relationships that constitute unfair labour practices worldwide. Key among these conventions are: (i) Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948; (ii) Convention No. 98 on the Right to Organize and Collective Bargaining, 1949, and (iii) Convention No. 158 on Termination of Employment, 1982. These conventions emphasize the protection of workers' rights from arbitrary or discriminatory actions by employers, the promotion of fair dispute resolution mechanisms, and the establishment of systems that ensure fair treatment for workers.

4. The Convention on Termination of Employment (1982)

To illustrate how the standards embodied in these ILO conventions address/prohibit unfair labour practices, we will focus on some provisions of the Convention No. 158 on Termination of Employment.[9] Historically, an employer under the common law had the unfettered right to terminate an employee's contract of service without giving any reason. However, this right has been significantly curtailed by Convention No. 158 and several other international labour conventions that now require employers to justify termination with valid reasons related to the employee's performance, behaviour or the operational needs of the business.

[9] ILO, C158 – Termination of Employment Convention, 1982 (No. 158), available here (accessed 12 August 2025)

Notably, Article 4 of Convention No. 158 sets out the principle as follows:

> *"[t]he employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*

As can be seen, the above provision requires an employer to give valid reasons for terminating an employee's employment and sets out parameters for determining whether such reasons are valid or not. But, to provide further context, the Convention itself spells out certain scenarios, though not exhaustive, under which a termination would be considered an unfair practice and therefore invalid. Specifically, by Articles 5 and 6 of the Convention, any termination based on the following reasons is deemed invalid:

i. union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

ii. seeking office as, or acting or having acted in the capacity of, a workers' representative;

iii. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

iv. discriminatory reasons, including race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

v. absence from work during maternity leave;

vi. temporary absence from work because of illness or injury.

Additionally, Article 7 of the Convention emphasises the importance of fair hearing and procedural fairness in termination decisions, stating that:

> *[t]he employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.*

As will be seen from some of the cases that have been reviewed in the next paragraphs, the NICN has often embraced and applied the above international labour standards and others, rather than traditional common law principles, in its decisions.

5. The NICN's Policy on International Labour Standards and Unfair Labour Practices

To preface the discussion in this section, we should perhaps mention that, under Nigerian law, international treaties and conventions can only have direct legal effect in Nigeria if they are domesticated. This is because section 12 (1) of the 1999 Nigerian Constitution *(as amended)* provides that no treaty between Nigeria and any other country would have the force of law in Nigeria except such treaty has been enacted into law by the National Assembly. In the oft-cited case of *Abacha* v *Fawehinmi*,[10] the Supreme Court highlighted this rule, stating that no matter how beneficial to the country or the citizens an international treaty which Nigeria has ratified might be, it remains unenforceable if it has not been enacted into the law of the country by the National Assembly.

[10] (2000) 6 NWLR (Pt. 660) 228 at 346-347.

Although Nigeria has ratified several employment and labour-related conventions and treaties over the years, the issue of whether these conventions have been domesticated or expressly incorporated into Nigerian law by the National Assembly to make them directly applicable in Nigeria has been subject to considerable debate. It is not the focus of this article to join that debate, but there is a surfeit of views on that elsewhere.[11] For present purposes, it suffices to mention that the prevailing policy of the NICN is that a community reading of sections 254C (1) (f) and (h) and 254C (2) of the 1999 Constitution (*as amended*) and section 7 (6) of the National Industrial Court Act 2006 satisfies the domestication requirement prescribed by section 12 of the Constitution or constitutes an exception to that requirement.[12] For instance, in ***Aero Contractors Co (Nig) Ltd v National Association of Aircrafts Pilots and Engineers (NAAPE)***,[13] the claimant argued that although the ILO conventions 87 and 98 (on the Freedom of Association & Protection of the Right to Organize and the Right to Organize & Collective Bargaining, respectively) have been ratified, the NICN cannot possibly apply them since they have not been domesticated. Rejecting this argument, the court held that section 254C (2) of the Constitution constitutes the domestication requirement prescribed by section 12 of the Constitution.[14] In the more recent case of ***Julius***

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[11] See, generally, L Ochulor and I Ozuo, *Civil Jurisdiction of Courts in Nigeria – Superior Courts of Record* (LexisNexis, 2024) pp 241 – 244; 256 – 259

[12] E.A. Bassey, 'The Concept of Unfair Labour Practices in Nigeria through the Cases' (Mondaq website, 15 January 2025) also available here (accessed 13 August 2025)

[13] Suit No: NICN/LA/120/2013 -unreported judgment delivered on 4 February 2014.

[14] See also *Mrs. Folarin Oreka Maiya v Incorporated Trustees of Clinton Health Access Initiative Nigeria & 2 Ors (2012) 17 NLLR (Pt. 76) 110*. Here, the NICN recognized and applied the ratified but non-domesticated Discrimination (Employment and Occupation) Convention, 1958 (No. 111). This Convention prohibits all forms of discrimination in the workplace by employers on grounds of sex, age, colour, race, religion, etc.

Ola-Peters v Nigeria LNG Limited,[15] the Court (per Hamman J.) re-echoed the current attitude of the court in the following words:

> *I must answer straightaway that there is no dispute on the jurisdiction of this court with respect to the interpretation and/or application of international best practices in labour and international labour standards. Section 254C (1) (f) and (h) and 254C (2) of the 1999 Constitution (as amended) clearly donated exclusive jurisdiction to this court on matters relating to or and relating to, connected with or pertaining to the application or interpretation of international labour standards. See also section 7(6) of the National Industrial Court Act, 2006*

The implication of the above is that the NICN, bolstered by the provisions of sections 254C (1) (f) and (h) and 254C (2) of the Constitution which imbued it with exclusive jurisdiction over civil disputes relating to the application or interpretation of international labour standards and international best practices in labour and employment matters, has exercised that jurisdiction uncontrolledly to establish a policy which allows it to apply international labour standards and best practices (whether embodied in international conventions ratified/domesticated by Nigeria or not), when they are relied upon by parties in litigation before it.[16]

6. How the NICN Determines which Labour Practices Constitute Unfair Labour Practices

In the next section, some landmark cases that provide insight into how the NICN applies international labour standards and best practices in disputes involving unfair labour practices will be

[15] Suit No. NICN/YEN/96/2015 – unreported judgment of the NICN delivered on 29 October 2021

[16] Bassey (n 12).

examined in some detail. However, before delving into that, it must be noted that the instances of unfair labour practices highlighted below are merely indicative and not exhaustive. This is because no statute contains a list of what constitutes an unfair labour practice in Nigeria, just as there is no statutory definition of the meaning of the phrase itself. Rather, the NICN, in the exercise of its exclusive jurisdiction over labour disputes has taken the liberty to continuously determine the particular workplace practices that constitute unfair labour practices in Nigeria upon evaluation of the facts and circumstances of each case.[17]

Unarguably, a common thread that runs through the existing decisions on the subject is that, to constitute an unfair labour practice, it must be established to the court's satisfaction that the alleged conduct constitutes a violation of the provisions of a written law (such as the human rights provisions of the Nigerian Constitution); offends the minimum standards prescribed by the labour legislation in Nigeria); or falls short of international best practices in labour and employment.[18] In deserving circumstances, the NICN also reviews the internal policies of employers and employees' unions to determine whether an alleged practice amounts to an unfair labour practice.[19] Having said that, it bears mentioning that what constitutes an unfair labour practice is entirely at the discretion of the NICN, looking at the facts and circumstances of each case.

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[17] See, Folabi Kuti SAN, 'Review of some Significant Decisions in Labour and Employment Matters' (National Industrial Court of Nigeria website, 17 January 2025), also available here (accessed 18 April 2025)

[18] Ochulor and Ozuo (n 11) 232- 234

[19] *See, Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors* – Suit No. NICN/ABK/02/2021 – unreported judgment delivered on 15 December 2021.

7. Workplace Practices that have been Declared Unfair Labour Practices by the NICN

Having established the parameters for determining what constitutes an unfair labour practice in Nigeria, we shall now examine specific actions that have been declared unfair labour practices by the NICN. From its existing case law, the following are some notable examples:

(i) Termination without observing fair hearing procedures

In *Petroleum and Natural Gas Senior Staff Association of Nigeria v. Schlumberger Anadrill Nigeria Ltd.*[20] the defendant terminated an employee's contract due to alleged gross negligence in his department. Before termination, the employee was served with a letter stating that an internal investigation had determined he was grossly negligent and, as a consequence, he was given three days to provide reasons why he should not be disciplined. The NICN overturned the termination, emphasising that while an employer has the right to terminate an employment relationship, once a reason is provided, the employee must be provided an opportunity to defend themselves before a determination of their guilt. The decision stresses that the absence of a fair hearing before dismissal/termination is contrary to modern labour practices.

(ii) Discriminatory Termination of Pregnant Employee

In *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative Nigeria*,[21] the employee alleged that her employment was terminated after she disclosed to her supervisor that she was pregnant. No reason was provided for the termination. The Court found that the termination was discriminatory, as it was based solely on her pregnancy, thus violating her constitutional rights and international conventions, including the ILO's Convention No. 111 on discrimination. The

[20] (2008) 11 NLLR (Pt. 29) 164
[21] (2012) 17 NLLR (Pt. 76) 110

NICN ruled that the termination was a violation of the employee's fundamental rights to non-discrimination, awarding her aggravated damages.

(iii) Sexual Harassment at the Workplace

In *Ejieke Maduka v. Microsoft Nigeria Ltd. & 3 Ors.*,[22] the claimant alleged sexual harassment by the Country Manager of Microsoft Nigeria, followed by retaliation in the form of termination after she rejected the advances. The NICN applied the principles outlined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and ILO Convention No. 111, ruling that sexual harassment is a form of gender-based discrimination. The Court found that Microsoft Nigeria and its parent company, Microsoft Corporation, were vicariously liable for the manager's actions and awarded general damages for the violation of the employee's rights. This case emphasizes the responsibility of employers to prevent sexual harassment and discriminatory conduct in the workplace.[23]

(iv) Unfair Termination of Employment

In *Godwin Okosi Omoudu v. Prof Aize Obayan & 4 Ors*,[24] the claimant claimed that his employment with Covenant University was wrongfully terminated because he was not allowed to defend himself in relation to the allegations levied against him before his appointment was terminated. The Court (per Adejumo J.) in entering judgment in the claimant's favour stated that it can never be just in modern labour practice for an employer, without just and established cause, to impugn the integrity of an employee and based on such

[22] Suit No. NICN/LA/492/2012 – unreported judgment delivered on 19 December 2013

[23] See also *Pastor (Mrs) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria* -Suit No. NICN/LA/673/2016 -Unreported judgment delivered on 24 November 2016.

[24] Suit No. NICN/AB/03/2012 – unreported judgment delivered on 8 October 2014

impugnation, proceed to terminate his employment peremptorily. The court went further to hold that the law has shifted from the narrow confines of the common law master/servant relationship to a more proactive approach that secures the rights of both parties to an employment contract.

(v) Employer's Failure to Apply Equal Pay for Equal Work

Finally, in *Uzo Ezekwumadu v Blue Arrow TSW Ltd*,[25] the claimant, a Nigerian, claimed that it was an unfair labour practice for the defendant, his employer, to have created a difference between his remuneration and that of expatriate employees who occupied the same management level position as himself. The NICN agreed with the claimant and held that the employer's failure to apply equal pay for equal work constituted an unfair labour practice.

Notwithstanding the NICN's extensive policy on unfair labour practices as seen in the cases reviewed above, the point must be made that the Court of Appeal maintains a somewhat different stance on the issue. In *Oak Pensions Ltd & Ors v. Olayinka*[26] the Court of Appeal held that the NICN cannot unilaterally apply or import international best practices, including those concerning unfair labour practices, into the contractual relationship between an employer and an employee. The Court ruled that rights, obligations and entitlements of the parties involved in an employment relationship are governed by the terms and conditions freely agreed to by such parties, not by abstract concepts of fairness or international conventions, provided those terms do not violate statutory or constitutional provisions. To use the exact words of the court:

> *[u]nfair labour practice or international best practices may arise in the course of employment or in a trade dispute or industrial relations, but cannot*

[25] Suit No. NICN/LA/242/2016 – unreported judgment delivered on 18 March 2021

[26] (2017) LPELR-43207 (CA)

> *rightly and properly be imported into the terms and conditions of a contract of service freely entered into for a servant-master relationship. The rights, entitlements and obligations of the parties in such a relationship, are in law and equity, to be and are governed by the terms and conditions voluntarily agreed to by the parties and not by sentimental conjunctures of what is fair or unfair conduct in the relationship in complete disregard of the terms and conditions.* ***The issue of unfair labour practice or international best practice would not arise in the exercise of a right vested in the parties by their own voluntary agreement on how to end or determine the relationship between them***.[27]

The implication of the above decision by the Court of Appeal, being the final court in employment and labour-related disputes in Nigeria, is that a party involved in employment dispute will not be able to rely on unfair labour practices and international labour standards if these were not expressly made a part of the particular employment contract leading to the dispute. Given that most international labour standards are not usually included in employment contracts in Nigeria, the position of the Court of Appeal throws up another issue altogether. But this article is not the place to address that issue. In any event, the NICN has continued to maintain its stance on the applicability of international labour standards in matters before it and it is only those matters which go on appeal to the Court of Appeal that are likely to be upturned in line with the decision in ***Oak Pensions Ltd & Ors.***

[27] Ibid, 41

7. The Requirement to Plead and Prove International Labour Standards & Best Practices

A crucial aspect of the NICN's policy that deserves exploring before a commentary on this issue may be considered exhaustive is the procedural requirement to plead and prove international labour conventions, protocols and treati es before they can be relied upon in disputes before the court. This practice, which traces its origin to section 7 (6) of the National Industrial Court Act 2006,[28] is well elaborated in the current Rules that govern the practice and procedure of the court, the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 ("the NIC Rules 2017"). Specifically, Order 14A Rule 1 (1) of the NIC Rules 2017 provides that:

> *Where an action involves a breach of or non-compliance with an international protocol, a convention or treaty on labour, employment and industrial relations, the Claimant shall, in the complaint and witness statement on oath, include:*
>
> *(a) the name, date and nomenclature of the protocol, convention or treaty; and*
>
> *(b) proof of ratification of such protocol, convention or treaty by Nigeria.*

This procedure, which ostensibly relates to international labour standards which are mostly codified and derived from protocols, conventions and treaties, applies with equal force in the context of international best practices (which are not necessarily codified or derived from conventions, treaties and protocols) because Order 14A Rule 2 of the same NIC Rules 2017 requires a party relying on international best practice to plead and prove the existence of same

[28] Hereafter referred to, for convenience, as the 'NIC Act 2006".

in line with the provisions relating to proof of custom in the extant Evidence Act.

The NICN's procedural requirement that international conventions and best practices must be pleaded and proved before they can be relied upon stems from section 7 (6) of the NIC Act 2006, which prescribes that '... *what amounts to good or international best practice in labour or industrial relations shall be a question of fact*'. In *Oak Pensions Ltd & Ors v Olayinka*,[29] the Court of Appeal emphasised this point in the following words:

> *.. as provided for in section 7(6) of the NICA, the issue of good or international best practice in labour and industrial relations is a question of fact to be pleaded and proved satisfactorily by a Claimant before the trial Court could judiciously have regard to it in the determination of the case presented by him.*

1. Divergent Pronouncements of the NICN on Pleading International Labour Standards.

Although, in principle, the NICN has in place a procedural requirement that international labour standards and best practices must be pleaded and proved, recent decisions coming from the court indicate that the judges of the court are not on the same page on this issue. For example, in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors*,[30] the court (*per* Arowosegbe J.) reasoned that that section 7(6) of the NIC Act from where the NIC derived the idea and practice of pleading and proving international best practices as questions of fact negates section 254C (1) (f) of the Nigerian Constitution which did not make international best practices (and by extension international labour standards) questions of fact. As a result, the court rejected the Defendants'

[29] *Oaks Pensions* (n 26)
[30] *Elizabeth v Alex Ekwueme* (n 19)

position that the Claimant needed to plead international best practices and unfair labour practices before relying on them to establish his case. In fact, the court went ahead to nullify section 7 (6) of the NIC Act, which makes international best practices a question of fact, for being inconsistent with section 254C (1) (f) of the Constitution, holding that international best practice and unfair labour practice are questions of law to be applied by the judges of the NIC who are 'presumed to know…what amounts to unfair labour practice and international best practice".

The decision in the above case followed the earlier case of *Olawunmi Oyebola v Sahara Energy Resources Ltd*,[31] where the claimant neither pleaded nor proved that an award of two years' salary is the international best practice on the award of damages in cases of wrongful dismissal. Despite this, the court (per Peters J.) relied on international best practice and awarded damages equivalent to two years' salary that the claimant would have earned if she had not been wrongfully dismissed from service.[32]

However, in *Julius Ola-Peters v Nigeria LNG Limited*,[33] the court took a different path, insisting that international labour standards are questions of fact which a party must plead and prove before they can rely on them. In this case, the claimant sought to rely on the Termination of Employment Convention 1982, which enshrines the international labour standard prohibiting the termination of employment without giving a reason. In accepting the defendant's argument that the claimant did not satisfy the procedural requirement of pleading and proving the Termination of Employment Convention to be able to rely on its provisions, the court (per Hamman J), held thus:

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[31] *Suit No. NICN/LA/191/2014* -unreported judgment delivered on 14 July 2016

[32] Interesting, the Court of Appeal affirmed the NIC decision in Sahara Energy Resources Ltd v Oyebola (2020) LPELR-51806 (CA)

[33] *Ola-Peters v Nigeria LNG Limited* (n 15)

I have pored over the Claimant's pleadings as contained in the Amended Statement of Facts filed on the 20th day of March 2019, and the only reference made to international best practice in labour is paragraph 24 which is hereunder reproduced for the purpose of lucidity.

"24. The Claimant avers that this act of the Defendant in determining his employment without cause and/or reason is tantamount to unfair labour practice against International Labour Standards and Practices."

The question is whether the averment above has satisfied the requirement of pleading International Labour Standard and Practice. I do not think so. The claimant is required to plead the particular International Labour Standard (ILS) he intends to rely on in the suit and give particulars of same with respect to the ratification of the ILS be it protocol, convention or treaty. To merely aver that the termination of employment is against international labour standard without stating the very ILS in question does not in any way meet the legal requirement. I so hold.

I must add that, while I appreciate the very enthralling arguments of the learned counsel to the Claimant [...] in urging the court to apply the provisions of the Termination of Employment Convention, 1982 (no. 158) to this case, it is however unfortunate that I am not persuaded to take that path for the simple reason that the address of learned counsel cannot take the place of pleadings and evidence. Having not pleaded the said

> *Termination of Employment Convention, 1982 (No. 158) and prove same, he cannot do that at the address stage…*

The above decisions bring to mind the vexed issue of inconsistent decisions by Nigerian courts. As the NICN prides itself as a court that stands firmly on its previous decisions,[34] one would have thought that this kind of inconsistency would not exist. That said, it is hoped that, going forward, the court will maintain the position in *Olawunmi Oyebola v Sahara Energy Resources Ltd.* For one, it was preferred in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors,* (which of course is a later decision to *Ola-Peters v Nigeria LNG Limited)* and has been confirmed by the Court of Appeal in *Sahara Energy Resources Ltd v Olawunmi Oyebola.*[35]

9. Conclusion

This article reflects on the policy and practice of the NICN relating to its application of international labour standards, particularly those related to unfair labour practices, in resolving employment and labour-related disputes in Nigeria. The article established that the NICN, leveraging its constitutional (exclusive) jurisdiction over employment disputes bordering on these issues, has developed an expansive policy and practice to consider and apply international labour standards and best practices when they are relied upon by parties involved in litigation. However, as illustrated by the Court of Appeal's decision in *Oak Pensions Ltd v. Olayinka*, the NICN cannot unilaterally invoke international labour standards and best practices where these are not expressly included in the terms and conditions

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[34] See Justice Arowosegbe's position in *Chukwedo Onyeka Stanley* v *Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors* – Suit No. NICN/ABK/07/2022- unreported judgment delivered on 24 March 2023

[35] (2020) LPELR-51806 (CA)

of the employment contract between the parties involved in the dispute, except these terms and conditions violate statutory or constitutional provisions.

Through an analysis of its recent decisions, the article also established that the NICN still has work to do in terms of how it deals with the procedural requirement of pleading and proving international conventions, protocols, and treaties (which mainly enshrine international labour standards) as well as international best practices before they can be relied upon by litigating parties. Specifically, the article showed that although the rules governing the NICN's practice and procedure on this issue are clear on paper, judicial attitude reveals that the court is fundamentally conflicted. Since justice is not just about following procedural rules, it is recommended that, in resolving future disputes, the NICN will adhere to the stance in *Olawunmi Oyebola v Sahara Energy Resources Ltd*, so parties will not need to plead and prove international labour standards and best practices before they can be relied on in court. After all, the provisions of section 7(6) of the NIC Act 2006, which form the basis of this procedural requirement, have been nullified in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors*. More importantly, its procedure in *Olawunmi Oyebola v Sahara Energy Resources Ltd* has been affirmed by the Court of Appeal, the final court for employment-related litigation in Nigeria, in *Sahara Energy Resources Ltd v Olawunmi Oyebola.*

PHOTOGRAPHIC COPYRIGHT IN THE DIGITAL AGE: BALANCING CREATORS' RIGHTS AND SUBJECTS' INTERESTS

By

Dr Baribefe-Koate, Maureen*
Nwagba Obioma Moses**

Abstract

This work explored the tension between photographers' copyright and the rights of individuals depicted in photographs, with particular focus on Nigeria law. It examined the legal basis for photographic copyright under the Copyright Act 2022 (No. 8 of 2022), which repealed that of 2004 and established that original photographs are protected as artistic works, with the photographers as the author. The study analyzed the exclusive rights granted to photographers- such as reproduction, distribution, and communication to the public- as well as moral rights under the Act. It further considered the legal protection available to subject of photographers, noting the absence of a standalone "image right" law in Nigeria. Instead, subject rights

***Dip (Law), LLB, BL, LLM, Ph D, PNMS, Lecturer and Head of Department, Public Law, Faculty of Law, Clifford University (Ihie Campus) Owerrinta, Abia State with area of interest on Environmental Law, Legal Research, Agricultural Law, Banking and Insurance Law and Intellectual Property Law. Tel: +23407032390517, Email: maureenb@cliffordduni.edu.ng, maureenbkoate@gmail.com.**

****500 Level Law Student, Clifford University (Ihie Campus) Owerrinta, Abia State with keen interest in Legal Research, Banking and Insurance Law, and Alternative Dispute Resolution. Tel:+234 7044426309, Email: omahnwagba@gmail.com, obiomanwagba@gmail.com**

were found to rely on constitutional provisions (sec. 34 and 37), the Data Protection Act 2023, and tort or contract principles. Using Doctrinal research, including case analysis such as Ubom v Globacom (2025), the article identified a legal gap where subject, lacking copyrights, must seek redress via alternative legal framework. Comparative insights were drawn from US, UK, south Africa, where varying doctrines like the right of publicity, privacy law and personally rights offer broader subject protection. This study addressed contemporary digital challenges, including social media dissemination, AI-generated imagery, and deep fakes. It concluded that the current legal regime insufficiently safeguards subject interest in the digital age and recommended that enacting image rights legislation or amending the Copyright Act to mandate consent for commercial use of personal likeness, to better harmonize creators right with individual dignity and autonomy amongst others.

Key Words: Copyright Law, Photographic Works, Image Rights, Privacy, Digital Age

1. Introduction

Photography has evolved from a tool of artistic expression to a dynamic medium of communication in the digital era. It exemplifies the creative-technology where photographers invest skill and efforts to capture images, yet these images often feature people who have their own privacy and personality interest. This has become a pressing contemporary issue in Nigeria's digital society. In Nigeria, as elsewhere, this gives rise to as tension between the copyright owner (the Photographer) and the subject of the photo. The newly enacted Copyrights Act 2022 explicitly identifies a "photographic work" and treats its authors as "the person who took the photograph"[1]. Copyrights vest in the photographers by default

[1] Copyright Act 2022, s. 2(2)(6), 108

(subject to commission agreement) and confers exclusive rights (reproduction, publication, etc) and moral rights (attribution, integrity, etc.)[2]. But the subject of a framework-for example, rights of privacy or publicity recognized by the constitution and also the National Data protection Act[3]. In the digital age, photos spread rapidly via social media, and advances in AI (deep takes) can replicate or distort images without consent. These developments intensify conflict between creators' intellectual property and subjects; personal rights. The recognition of photography as a commercial medium in recent times places on significant monetary footing and a sought-after skill. It became an integral part of individuals business. Photography is part of plethora of indigenous digital platform such as Facebook, Whatsapp, twitter (X), Instagram, Pinterest etc. hence, as a rising commercial area, it sought protection from the law and in doing so the ownership of right to the photography needs to be determined (imperative and urgent). These questions that seems unanswered is therefore paramount. Who is the owner of the photograph? Is it the photographer or the Data subject (the individual whose image is taken)? This paper interrogates the extent to which Nigeria Copyright law protects the photographers right over images they create, while juxtaposing this with the evolving claims of image subject especially in line of the data protection and privacy developments. In so doing, its analysis the sufficiency of existing laws in safeguarding either party's interest and considers how courts, statutes and comparative jurisdictions are responding to the legal vacuum.

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[2] Ibid (n[1]), s. 10(1)

[3] Constitution of the Federal Republic of Nigeria 1999, s. 37; National Data Protection Act 2023, s.26, 35-38

2. Conceptual Clarification

2.1 Copyright

Copyright literally means the "right to copy"[4] or "the right to make some copies"[5]. Copyright denotes the exclusive right, a monopolistic control and legal right that a creator automatically obtains once an eligible work is expressed in a tangible medium. This right prohibits others from using, reproducing, or exploiting the work without the creator's permission and it remains in force for a designated period[6]. Copyrights refers to the legally protected exclusive rights granted to author of original works. It is the power vested on an author to control the reproduction and adaption of an original work. In general terms, it is defined as the *"exclusive right to produce copies and to control an original literary, musical or artistic works"*[7]. Blacks's Law Dictionary similarly describes Copyrights as a right granted to the author of a literary or artistic works, giving the creators the sole privilege of multiplying copies of the work and publishing or selling it.[8] Under Nigeria law, the

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[4] O Toluwanimi and H Ayinde, Balancing Copyright Protection and Creative Freedom in the Digital Age: Pathway for Adaptation of Creative Works on Digital Platforms in Nigeria available @ <https://www.researchgate.net/publication/387303858_BALANCING_COPYRIGHT_PROTECTION_CREATIVE_FREEDOM_IN_THE_DIGITAL_AGE_PATHWAY_FOR_ADAPTATION_OF_CREATIVE_WORKS_ON_DIGITAL_PLATFORMS_IN_NIGERIA/citation/download?_tp=eyJjb250ZXh0Ijp7InBhZ2UiOiJwdWJsaWNhdGlvbiIsInByZXZpb3VzUGFnZSI6bnVsbH19&__cf_chl_tk=ldz6G2OAU._CrCH55z1SzP1dDr8qdiKpsbBGl5fbOwE-1751239162-1.0.1.1-QrSyuMh7JMNgmzX6ofrbJ2wt6uknQpebXKRWGeWq4oE > accessed @2nd June, 2025

[5] A O Oyewunmi, *Nigerian Law of Intellectual Property* (1st edn, Lagos: University of Lagos Press and Bookshop Limited, 2015)

[6] A O Akorede Yusuf, *Copyright in Image Capturing (Photography) and Right of Subsequent Use*," *World Trade Organization*, 2018, available at <https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018_african/chapter_14_2018_african_edition_e.pdf>, accessed 29 June 2025

[7] Dictionary.com, *Copyright*, available at: <https://www.dictionary.com/browse/copyright>, accessed 29 June 2025.

[8] B A. Garner (ed), *Black's Law Dictionary* (11th edn, USA: Thomson Reuters, 2019) 1805.

Copyright Act, 2022, enumerates the classes of protected works-including literary musical or artistic works and provides that copyright vests initially in the author of the work. The Universal Declaration of Human Rights also recognizes an author's rights to the protection of the *"material and moral interest"* arising from any literary or an artistic production of which they are the authors[9]. In line with Nigeria treaty[10] commitment administered by the World Intellectual property Organization (WIPO), Copyright subsists automatically upon creation of a qualifying work. Copyrights in Nigeria is regulated by the Nigeria Copyrights Commission, which is also the agency responsible for protection of intellectual property rights of Nigeria in general[11]. In practice this means that the first owner of the copyright is the creator (photographers, writer, composer, etc.) who may then license or assign those rights.

2.2 Photographic Works

A photograph or photographic works is an image produced by a camera or equivalent light-recording device[12]. Photography is the art of producing images, on the process of taking pictures with a camera under the Nigeria Copyrights Act, photographs are treated as artistic works and confer authorship on the photographers in the sense that he contributed significantly by determining, "as to what to photograph", "the positioning, arrangement of the scene, editing, cleaning of the photograph and other skills, judgement and labor in the creation of the photograph and its general output[13]. In practical terms, this means that the photographer automatically owns the

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[9] D.O. Olufowobi, 'Legal Regime of Copyright of Photographs in Nigeria' *NAU Law Review* (1)(1) (2020) 86.

[10] Paris Convention 1963; Berne Convention for the protection of literary and Artistic Works, 1993

[11] (n[1]), s.77-78

[12] A A Abubakar, *Photographers Copyright and Data Subjects' Rights: Balancing the Entangled Rights*, available at: <https://thenigerialawyer.com/photographers-copyright-and-data-subjects-right-balancing-the-entangle-rights/#_ftn1,>accessed 2 June, 2025.

[13] Ibid

Copyrights in a picture they take, unless there is a written agreement or employment contract to the contrary[14]. The Copyright Act's interpretation section clarifies that an *"author"* of a photographic works is *"the person who took the photograph"*[15]. In the case of *Benire v NTA-STAR TV Network Ltd*[16]

It was held that …

> it is the act of virtual media Network being the ones who took the photographs that makes it the author of the photograph. By taking the photographs, they automatically have rights except there is an agreement otherwise[17].

Thus, Nigeria law follows, the common practice of vesting photo copyright in the shooter[18]. Photographic work is simply the visual record of a scene or subjects, fixed in film or digitally. In other jurisdictions, the definition is similar. For example, the UK, Act define photograph as any recording of light on a medium[19]. In summary, a photographic work is any image produced by photographic means, and by statute in Nigeria it is treated as an artistic work around (at creation) by the photographers.[20]

2.3 Image Right

Image rights refer to the personal interest of an individual in controlling and exploiting their likeness or persona. An image is a physical likeness or representation of person, animal or thing that

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[14] (n[1]), s.108
[15] Ibid
[16] (2021) LPELR-52824(CA)
[17] *Creation Records Limited v New Group Newspaper* (1997) EMLR 444, [**1997**] EWHC Ch 370
[18] (n[1]), s.5(1)(a), 9(1), 13(1)
[19] United Kingdom Copyright, Designs and Patents Act 1988, s.4(2)
[20] (n[13]), (1)(e)

has been snapped, virtually available, painted or even sculpted[21]. Image right refers to the right to explore one's personality in the public space[22]. It has also been defined as the right to use a person's personality and to prevent others from using that person's image or likeness without permission. In Nigeria, image rights allow individuals, especially public figures to stop unauthorized commercial exploitation of their identity and affording individuals the authority to regulate the utilization of their likeness. It is also pertinent to note that there is no specific legislation or statute in Nigeria that directly provides for the protection of image rights. whether you are a public figure or not, you are entitled to protecting your image. Image right can be enforced through other legal avenue/ provision such as; copyright owners (if it was the photographer's work) or by involving related doctrines like, defamation, passing-off, breach of rights to privacy etc[23]. In South Africa, similar interest in a person image are protected by the *actio inivriarum* as part of *"dignitas"* a common law concept (one's dignity and identity)[24]. In the United States, there is the right of publicity- a state law property right to control commercial use of one's name or likeness. In the United Kingdom, image rights protection comes under passing -off or privacy law[25]. Thus, while Nigeria lacks a standalone image-

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[21] S Ngwu, *Friction of Rights: Copyrights in a Photograph, Image Rights and Data Protection Rights of the Photographed – Balancing the Rights,* available at: https://www.mondaq.com/nigeria/privacy-protection/1210880/friction-of-rights-copyrights-in-a-photograph-image-rights-and-data-protection-rights-of-the-photographed-balancing-the-rights, accessed 3 June, 2025.

[22] **O M Atoyebi,** *Image Rights in Nigeria: A Legal Perspective*, available at: https://lawpavilion.com/blog/image-rights-in-nigeria-a-legal-perspective/, accessed 29 May, 2025.

[23] *Ubom v. Globacom (Nig.) Ltd* [2025] 6 NWLR (Pt.1985) 157 (SC)

[24] L Swart, *Protection of image rights in South Africa* available at: Swart Attorney Law <https://www.swart.law/post.aspx?id=68#:~:text=Like%20in%20most%20other%20countries%2C,including%20privacy%2C%20dignity%20and%20identity,> accessed 3 June, 2025.

[25] C Bryan-Isaacs, *What Are Image Rights in the UK?* available at: <https://brandsmiths.co.uk/blog/view/what-are-image-rights-in-the-

rights law, the concept is recognized through its overlap with copyright, trademarks and constitutional provisions of the right to personal dignity and privacy.

2.4 Privacy

Privacy generally denotes the individual's rights to be free from unwanted intrusion or publicity. In common parlance, privacy is often described as the *"right to be let alone"* or *"the right to a private life"*[26] privacy is the act of exclusively entitling an individual to their private information. Under Nigeria Law, Privacy is also constitutionally protected. The 1999 Nigerian constitution guarantees *that "the privacy of citizens, their homes, correspondence, telephone communications is hereby granted and protected"*[26]. This broad provision has been interpreted to mean that the state (and by implication private actors) should not intrude upon a person's private homes, communications or personal data without lawful justification to wit, that an individual's information should not be a breach when an individual's picture is taken and exploited without his consent[27]. The court of Appeal in *Digital Right Lawyers Initiatives v National Identification Management Commission* held that the right to privacy extends to data protection which by definition of personal data includes image or photograph that give rise to image right". Again, in *Incorporated Trustees of Digital Rights lawyers Initiatives & ors v NIMC*[28] the courts held that "the right of privacy is not limited to his home but extends to anything

uk#:~:text=Eddie%20Irvine%20v%20TalkSport%20This,by%20the%20words%20%E2%80%9CTalk%20Radio%E2%80%9D,> accessed 3 June, 2025.

[26] *Olmstead v. United States*, (1928) 277 U.S. 438; Y Olomojobi, 'Right to Privacy in Nigeria' *Babcock University School Journal of Security Studies* (1) (2) (2017) SSRN Electronic Journal <https://ssrn.com/abstract=3062603> accessed 1 June, 2025.

[26] (n^3)

[27] N A Moreham, 'Privacy in Public Places' *Cambridge Law Journal* (3) (65) (2006) 167

[28] (2021) LPELR- 55623 (CA)

that is private and personal to him including communication and personal data" Internationally, privacy rights are enshrined in instrument like the Universal Declaration of Human Rights[29] and The International Covenant on Civil and Political Rights[30]. In practical terms, a violation of privacy could include unauthorized publication of personal correspondence or surveillance. Nigeria's emerging Data protection legislation also recognizes information privacy by regulating personal data. Relatively, the European convention on Human rights protects "private life"[31], while U.S. jurisprudence does acknowledge zones of privacy as seen in the case of *Griswold v Connectinut*[32]. Overall, privacy right in Nigeria mean that a person has a reasonable expectation that their personal life and communication will not be publicly disclosed or exploited without their consent.

2.5 Personal Rights

Personal rights refer to the use of legal protectors granted to individuals over the use of their identity, including their name, image, likeness and personal attributes, these rights are important because they help protect a person's dignity, reputation and control over how their identity is used, especially in public or commercial context. In Nigeria, personality right is not explicitly codified in a single statute, but they can be enforced through constitutional provisions (the right to dignity)[33], tort law (such as defamation or passing off), and the new Data protection Act[34]. Other jurisdictions like the U.S, UK and South Africa have more developed framework, recognizing the rights of publicity and privacy to protect individuals

[29] Universal Declaration of Human Rights 1948, Article 9,12;
[30] The International Covenant on Civil and Political Rights 1973, Article 12
[31] European Convention on Human Rights 2003, Article 8
[32] (1965) 381 U.S. 479
[33] CFRN 1999, s. 34
[34] National Data Protection Act 2023

from unauthorized use of their identity, especially for commercial purposes.

3. Legal Framework of Photographic Copyright in Nigeria

Under Nigeria legal jurisprudence, there is an absence of a specific legislation that addresses the protection of photographic copyright or image right. However, there are certain legal instrument that provides a legal ground for the protection, recognition and safeguarding of these rights[35]. These legal frameworks include

1. The Constitution of the FRN 1999 (as amended)
2. Copyright Act 2022
3. Nigeria Data Protection Act 2023
4. Cybercrimes (Prohibition and Prevention) Act 2015 (As Amended 2024)

3.1 Constitution of the Federal Republic of Nigeria 1999

The Constitution is the grundnorm and *fons et erigo* in Nigeria, it establishes and provides the legal basis for safeguarding privacy rights. It provides fundamental rights that shapes the scope of both creators and subject's interest. Most importantly, section 37 of the CFRN safeguards Nigerians' right to privacy concerning their homes, correspondence, telephone conversations, telegraphic communication. It has been interpreted to shield personal communication and the non-consensual capturing or dissemination of private images. While the photographers may have the right to expression and the press, it should understand and strike a balance between his rights to capture and publish images and information, and the right to privacy of human dignity of the subject. The constitution provision does not explicitly mention image but the "right to privacy of citizens is protected and guaranteed from interpretation of that section. It also provides a legal footage to argue

[35] (n[19])

that non-consensual, subreption or gratuitous photography or image of individuals counters constitutional provisions. The Constitution of the FRN indeed sets a plain foundation for balancing artistic and informational expression by photographers against the privacy right and dignity of those in question.

3.2 Copyright Act 2022

Under the Copyright Act, image/ photographic rights are protected. Copyrights is the right of authors or creators over their musical, literary, or artistic works which is an intellectual property that grants exclusive rights to the copyright owner[36]. The Act provides that a photographer is the *"author"* of a photographic work and vest in that author the exclusive rights of reproduction, publication, adaptation, distribution[37] etc. The Act defines *"photographic work"* as one created by the person taking the picture. Photographic works fall under artistic works and cinematographic films and eligible for copyright protection. These may include representation of an individual's personality or likeness through mediums like photographs, painting, sculptures, or motion pictures. Once these expressions are fixed in any of these forms, they automatically enjoy legal protection under copyright law in Nigeria, even if they have not been formally registered with the Nigeria Copyright Commission.[38]

3.3 Nigeria Data Protection Act, 2023 (ADPA)

The NDPA, 2023 contributes significantly to the protection of individuals image data. The NDPA 2019 has defined personal data to include an image of a person[39], hence, any photograph of an identifiable person is classified as personal data. Its collection and publication must comply with stored data-privacy rules. Images may

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[36] Copyright Act 2022, s.1(1)
[37] Ibid, s 108
[38] Ibid, (n[36]), s. 77
[39] Nigerian Data Protection Regulation 2019, Art.1.3, Xix

only be *"processed in a fair, transparent and lawful manner, for specific, and legitimate purposes[40]"*. The Act explicitly requires that data subjects provide consent to the processing of their personal data, or else the processing must satisfy narrow lawful bases (such as, contractual grounds, public interest, etc.)[41]. In application to this discourse, a photographer or publisher must first obtain the subject's consent before posting or selling their images (especially for commercial promotional use). The Act also empowers individuals with privacy controls over their images such as the right of access, correction, objection and even erasure as long as their personal information is concerned[42]. Thus, a person in a photograph can instinct a photo-owner or platform to cease processing or to delete the image. NDPA tilts the balance towards the subject (photographers) as data controllers and it grants individuals agency to restrict unauthorized dissemination.[43]

3.4 Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 as amended (2024)

Under this Act, a breach can only be established where the unauthorized use of an image involves material that qualifies for copyrights or trademark protection, particularly within the scope of online promotion and advertising activities. It creates criminal liabilities for certain digital abuses that affects photographic subjects. Notwithstanding, its online focus, it encompasses provision directly relevant to imagery and identity. It is pertinent to note that, sections on cyberstalking and harassment make it an offence to transmit threatening or harassing communications via computer systems[44],[45]. If a photograph is used to cyberbully or

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[40] (n[33]) s. 24
[41] Ibid, s. 25(1)(2), 26
[42] Ibid, s.34-38
[43] Ibid
[44] Cybercrimes Act 2015, s. 24
[45] A C A & A LGP Dentons, *Protection of Image Rights under the Nigerian Data Protection Act, Insights*, 31 May 2024, available at: https://www.dentonsacaslaw.com/en/insights/articles/2024/may/31/protection-

threaten a person (for example, by creating a menacing meme or implicating them falsely) the perpetrators may be prosecuted under this Act. In sum, the cybercrimes Act supplement civil copyright and privacy claims by imposing punitive sanctions or egregious online misuse of images, thereby reinforcing the protection of subjects in the digital realm[46].

3.5 A brief Comparative Analysis of Copyright Laws in the United States, the United Kingdom, and South Africa.

In the copyright law of must countries in Africa and in other parts of the World, Photographic belongs to the photographer who exercises the essential rights of a recognized author of the work. Beyond Nigeria, comparative framework offers instructive models for balancing creator and subject rights. In the United States, individuals have a well-established *"right of publicity"* it is a state law intellectual property right allowing a person to control commercial exploitation of their name and likeness. This right of publicity is not recognized by federal law but state law[47]. Typically, the U.S right of publicity bars anyone from using a person's image or identity in advertising or merchandise without consent.

Let's take a look at New York's Civil Rights law which provides that *"[a]ny person whose names, picture, or voice is used… for advertising purposes… without the written consent"*[48] may sue for relief. Impressively, U.S laws generally protect all persons (including non-celebrities; even a non-famous individual's photo cannot be used to sell product without permission. Hence, if a

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of-image-rights-under-the-nigerian-data-protection-act#:~:text=According%20to%20the%20definition%20of,which%20shall%20be%20discussed%20below, accessed 1 June, 2025.

[46] Ibid (n[43]) s.25

[47] R C Clarida, *Beware the Right of Publicity*, available at: https://graphicartistsguild.org/beware-the-right-of-publicity/#:~:text=Unlike%20copyrights%20and%20trademarks%2C%20the,some%2C%20like%20California%2C%20recognize%20both, accessed 30 June, 2025.

[48] Ibid

photographer uses a subject's picture for advertisement or commercial purposes without consent risks liability for infringement. Thus, this shows the efforts of the U.S to protect the subject when it has to do with commercialization of his images. While the copyrights protect the photographer's rights in the image, the publicity's right also protects part of the subject's personal interest[49].

In the United Kingdom, no single statute enshrines an *"image right"* but there is plethora of doctrines which intersect to protect subjects' privacy law in the UK has evolved through the Human Rights Act and the tort of misuse of private information. Courts can prohibit publication of photographs in which subjects have a reasonable expectation of privacy unless there is an overriding public interest[50]. Publishing initiate personal photos without consent could be restrained as a breach under the European Convention on Human Rights[51]. Similarly, Uk passing-off law offers a remedy when a person's image is sued to falsely imply endorsement. In the case of *Rihanna v Topshop*[52], the court of appeal held that unauthorized use of Rihanna's photo on T-shirt amounted to passing-off because it misled consumers into thinking she had endorsed the product. These UK principles protect subject against deceptive commercial image use.

In south Africa, image and personality rights are rooted in common law. The *actio iniuriarum,* recognizes a person's right to physical integrity, reputation, privacy and identity. The courts have treated an unauthorized use of someone's image for advertising as a falsification of personality, infringing dignity.[53]

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[49] *Itsaelen laboratories v Tropps Chewing Gum Inc*, (1943) Inc, 2020 F.2d 866

[50] S Ibbetson and P Jordan, *Right of Publicity in the United Kingdom*, *Lexology*, 26 March 2019, available at: https://www.lexology.com/library/detail.aspx?g=c40ff17e-a8d9-474a-871c-3473fe3ea54b, accessed 31 May, 2025.

[51] European Convention on Human Rights, Article 8

[52] [**2013**] EWHC 2310,

[53] *Kumalo v Cycle Lab (pty) Ltd* (2011) (31871/2008) ZAGPJHC 56

4.0 Balancing Creator's Right and Subject' Interest

The protection of creative works under copyright and related laws often creates a tension between the rights of the creator to control, profit from, and receive recognition for their work, and the interests of the subject whose identity, likeness, or personal attributes may be represented in such works. Striking a balance between these competing interests is essential to ensure that the law both encourages creativity and safeguards individual dignity and privacy. This balance becomes particularly delicate in cases involving photographs, portraits, or biographical works, where the boundary between artistic expression and personal rights must be carefully maintained.

4.1 Photographer's Legal Rights in Nigeria

Under the Nigeria Copyright Act 2022, the photographer who *"takes"* a photograph is the author and copyright owner of that image[54]. Copyright gives the author the *"exclusive right"* to the photograph especially all rights to control its reproduction and exploitation.[55] Section 10(1) of the Act specifically enumerates these acts as the sole province of the copyrights holders[56]. Practically, this means the photographer (or other right-holder) alone can copy or reproduce the image, publish or distribute it (including online or by broadcast), include it in film or multimedia works, adapt or create derivative works, and communicate it to the public (for example, by posting on the internet). These exclusive rights allow the photographer to license or sell images commercially and to decide if, when, and how the photograph is used.

By default, copyright vests initially in the author (the photographer) unless there is an agreement otherwise[57]. Notably, the Act provides

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[54] (n[1])
[55] Ibid, s.10
[56] (n[53])
[57] Ibid, s. 28

special rules for commissioned work. If a person privately commissions a photographer to take images (for personal or domestic use), the commission obtains a non-exclusive license to use the photographs for non-commercial purposes.

This means that even a private client cannot thereafter commercially exploit or further license the images without the photographer's agreement. However, the photographer retains ownership of copyright, and the commissioner is limited to the terms of the implicit license (and can even restrain under publication if desired)[58].

At common law, Nigerian courts have not yet recognized a standalone "right of publicity" or personality. Subjects may sometimes resort to defamation or passing-off or breach of contract to combat unauthorized image use. In *Ubom v. Globacom*[59], the plaintiff (subject) sued a telecom company for using her photo on billboards without consent. The Supreme Court held that because she was not the copyright owner or licensee, her claim was not a copyright case. The Court remitted the matter to state court as a contract/tort claim. The Court noted that simply using one's image without permission *"may not always amount to copyright infringement, but it can ground a claim in contract or tort"*. This implies that persons whose images are misused must rely on general principles (e.g. breach of confidence or agency) rather than statutory rights.

Limitations

The photographer's rights under the Act are subject to the Act's built- in exceptions and limitations. Part II of the Act contains *"fair dealing"* exceptions for certain non-commercial uses[60]. For

[58] (n[26])
[59] (n[4])
[60] Copyright Act 2022, s. 20

example, unlicensed copyright for private study, research or criticism is permitted, and incidental inclusion of an artistic work in a broadcast or film is allowed[61]. Practically, this means a photographer cannot prevent a person from making a single private copy of a picture or quitting it in a new report. (with attribution). These exceptions arise relatively narrow and carefully circumscribed in Nigeria law. More broadly, photographer may choose to license their works under contracts or creative common-style terms, but absent permission or a statutory exception, all other uses are reserved.

In all, Nigeria law treats photographs as protected artistic works, conferring on the photographer robust exclusive rights of reproduction, distribution and public communication[62]. These rights are fundamental to the photographer's ability to exploit images commercially, subject only to limited fair-use exceptions and only private contractual agreement.

4.2 Subject's Legal Interest in their Images

Contrary to the robust legal framework that grants photographers legal protections over their *"artistic work"* the Nigeria Legal Framework grants no direct, standalone *"Image Right"* to individuals in their likeness. A subject's interest in an image could be accessed through under laws like the CFRN and Data protection laws for their privacy and personality.

In the CFRN, the right of citizens privacy in their homes, correspondence, telephone conversations and other communications, implicitly covering one's likeness are protected[63]. Similarly, section 34(1) guarantees, every person's right to human dignity[64]. Courts have recognized that an individual's visual

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[61] Ibid
[62] (n[59]), s 10
[63] Constitution Federal Republic of Nigeria 1999, s. 37
[64] Ibid, s. 34

likeness is part of their private identity[65]. Thus, the unauthorized commercial exploitation of someone's image, such as using their photograph is advertising or endorsement can be seen as violating these constitutional rights. It is my own opinions that, a citizen/individual can invoke is right to dignity and privacy against a humiliating or photographic image without his consent.

To the advantage of the subject, the Data Protection Act[66] further busters an individual's control over their image when it qualifies as personal data. Photographs or videos in which a person is identifiable are considered personal data under the Act. As such, any processing of these images (e.g. storing, sharing or publishing them) generally requires the data subject's consent. The Act specifies that silence or inactively cannot be taken as consent[67]. Moreover, subject may withdraw consent at any time, and can object to any subsequent processing of their personal data. In effect, this means that using someone's photographic image without permission, especially for a new purpose or an extended campaign/would violate the Act unless a clear consent was obtained and not revoked.

Nigeria lacks an explicit statutory right of publicity or image, license. Individuals rely on a combination of constitutional privacy/dignity guarantees or data protection rights to assert control over their likeness. These are the legal provisions that back an individual wave his rights are infringed upon notwithstanding absence of a specific legislation

4.3 Challenges in the Digital Age

Balancing photographer's right and subject's images right are not without challenges in the digital age. The advent of digital

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[65] *Aubry v Editions vice-versa inc* (1998) 1SCR.591; *Benire v NTA-STAR TV Network Ltd*

[66] Data Protection Act 2003, s 26

[67] O M Atoyebi, "*Image Rights in Nigeria: A Legal Perspective"*, LawPavilion Blog, available at: https://lawpavilion.com/blog/image-rights-in-nigeria-a-legal-perspective/#google_vignette, accessed 29 May, 2025.

photography and interest has complicated the balance between photographer's and subjects. These challenges include

4.3.1 High Level of Illiteracy amongst Photographer

In the digital era, many photographers are not accustomed with digital devices and their mode of operation. Photographers often lack resources or know-how to protect their work. They are ignorant of the provision of the law has made and how to take advantage of it. When photographers are not adequately informed, it then becomes difficult to balance their rights in the digital age.

4.3.2 Absence of Standardized Model Releases

Many photographers in Nigeria, particularly freelances, do not use formal letter forms. These informal practices can create uncertainty without a written agreement, may be hard to prove that the subject actually gave his consent thereby making licensing and litigation more difficult

4.3.3 The Emerging Legal Issues: AI-generated Images/ Deepfakes

It is increasingly possible to synthetically generate or heavily manipulate photos of real people without their approval. In Nigeria, there is currently no specific provision for these issues. A deepfake video or an AI-generated portrait resembling a subject, would not be caught by copyright (no human author) but could infringe privacy or dignity.

4.3.4. Inadequate Funding/ Poor Enforcement

The Nigeria Copyright Commission (NCC) and other agencies face chronic underfunding and infrastructure shortfalls, making enforcement uneven[68]. Despite tougher penalties in the 2022 Act,

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[68] P Fasoyin, *"Challenges of Copyright in the 21st Century: A Nigerian Perspective,"* Harlem Solicitors Blog, 19 April 2024, available at: https://www.harlemsolicitors.com/2024/04/19/challenges-of-copyright-in-the-

online infringement (unauthorized reposting of images, piracy, etc.) is widespread, and photographers often lack resources or know-how to police their works. Studies note that the NCC suffers *"poor financing"* and *"poor enforcement mechanism,"* which frustrate legitimate rights holders[69]. As a result, digital images often circulate freely once released, blurring the line of legal control.

5. Conclusion and Recommendations

This article has explored the legal reasons and gaps that arise between the photographers and the subject. Particularly in relation to photography in Nigerian's digital age. It established that while the Nigerian Copyright Act 2022 provides strong protection for photographers as creators of original artistic works, there is a noticeable deficiency in the statutory recognition of the rights of individuals while images are captured and potentially exploited. The gap has become more pressing with the proliferation of digital platforms where photographs are easily shared, altered, and monetized, sometimes without the knowledge or consent of the subject. The *Ubom v Globacom* (supra), decision, among others, illustrate the difficulties that arose when subjects of photograph seek legal redress under existing legal regimes, which primarily include tort, constitutional rights, and data protection laws.

The absence of clear boundaries and procedural tools such as standardized model releases further compounds, the risk of rights violation and legal uncertainty for both creators and subjects. Hence, the need for the following recommendations

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21st-century-a-nigerian-perspective/#:~:text=faced%20with%20a%20plethora%20of,27, accessed 3 June 2025.

[69] J Nwokorie, "Challenges of Copyright Enforcement in Nigeria," *The Guardian newspaper* (Nigeria, Abuja: 16 June 2024), available at: https://guardian.ng/features/law/challenges-of-copyright-enforcement-in-nigeria/, accessed 3 June 2025.

1. **Enact a Standalone Image Right or Personality Right Law:** Nigeria should enact a comprehensive statute that formally recognizes the right of individuals to control the commercial use of their likeness, image and persona
2. **Amendment of the Copyright Act:** The copyright act should be amended to require subject's consent. It should provide for a balance between the photographer's copyright and the individual's right to privacy. It should explicitly state the consent of the subject particularly in instances where photographs are to be used for commercial, promotional or high-visibility public campaigns.
3. **Adoption of a Standard Model Release Framework:** A model that stipulates how and where photographs should be released should be an adopted and should by endorsed by the government and approved by the NCC. This would reduce legal uncertainty and ensure mutual clarity between photographers and subjects.
4. **Public Awareness and Professional Training:** There should be consistent public education efforts (via the Nigeria copyright commission and legal institutions) to inform photographers, media houses, content creator and the general public in the ethical and legal implications of using images without consent. Practically, they should be guarded in the creations of *"Memes"* to avoid encroaching into people's privacy. Conferences and seminars should be held in both rural and urban areas to help eradicate ignorance.
5. **Strengthening Enforcement Mechanisms:** While acknowledging the existence and provision of the laws (NDPA) and CFRN) stringent measures should be taken to enforce them. Also, judicial activism and legislative reforms should be pursued, the laws should be set in motion through litigation on matter revolving image right and culprit should be adequately published.

6. **Collaboration from Information Practices and Jurisprudence:** Nigeria should take a snippet from other jurisprudence who are progressive on image right to enhance their own laws.

STATE BASED HEALTH INSURANCE: IMPLEMENTING THE UNIVERSAL HEALTH COVERAGE UNDER THE NATIONAL HEALTH INSURANCE AUTHORITY ACT (NHIA) IN RIVERS STATE

By

Boma Geoffrey Toby*

Abstract

The recent enactment of the National Health Insurance Act No. 17, 2022 (NHIA), made health insurance mandatory as well as health insurance education important for all citizens. The major objective of the NHIA is to encourage access to quality health care to all legal residents through health insurance services and education in the 36 states, FCT Abuja and to every Nigerian, without the payment of out-of-pocket expenses. The 36 states of the Federal Republic of Nigeria (FRN) under its NHIA state coordinators are empowered by the Authority to implement, support and manage the scheme. River State, the focus of this paper signed into law her Health Insurance Law in 2021 but did not commence the health insurance packages until the coming into effect of the 2022 instant federal law. In 2024 Rivers State Government called for the implementation of the mandatory health insurance plan by creating the Rivers State Contributory Health Insurance Agency otherwise referred to as the Rivers State Contributory Health Protection Programme RIVCHPP; a Health4All initiative for the Rivers people. The Agency has about five health insurance plans that will be discussed in this paper since its establishment a year ago, its effort at managing enrollee data base using information and communication technology (ICT) and her sustained progress at sensitization of residents of the State to enroll in the health insurance programme at the formal and informal sectors. This paper adopted doctrinal methodology and made among its recommendations that Local Government

Areas should take more active parts at sensitization and enrolment, and, Insurance education and its laws in Nigeria should be made compulsory.

Keywords: NHIA, Health Insurance, Universal Health Coverage, Legal Residents, Rivers State RIVCHPP.

1. Introduction

Access to good health and well-being for all is the key focus of the mandatory health insurance promoted under the National Health Insurance Act[1] (NHIA); a 2022 voluntary federal law on health insurance for all legal residents.[2] In recognizing the importance of health not just a right[3] but also as the basis for any healthy economy, health has been categorized as Sustainable Development Goals (SDG) 3[4]; an all-encompassing goal of a broad range of health priorities under the SDG 2030 aimed at achieving universal health coverage (UHC),[5] access to safe and affordable medicines and vaccines for all and strengthening health systems among others.

The central position of health is also closely linked to a dozen other targets in other related goals under the SDG. Without doubt, the attention on health and well-being has gained global momentum with emphasis on policies and programme that promote access to quality health care and well being. The World Health Organization

*LLB(HONS); BL; LLM(Merit); PhD (Insurance Law); ACIARB(UK/NIG); NCMG; Dipl. (Comp); PGD (Educ). Reader (Insurance and Maritime Law), Official Email Link: bomag.toby@ust.edu.ng., tobybomag@yahoo.co.uk. phone: +234 905 749 2040.

[1] NHIA Act, No.17,2022, s.1(3)(b)
ibid, s.13 - 14

[2] ibid, s.14(2)(a)(b) & (c)

[3] Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), s.33(1)

[4] UN<Goal 3: Ensure healthy lives and promote wellbeing for all at all ages<un.org/sustainabledevelopmentgoalsreport2023>accessed 25 June 2025.

[5] (n3), s.3(c)

(WHO) has clarified that health will also include how an individual or group is able to realize aspirations and satisfy needs and to change or cope with the environment.[6]

Nigeria, in its efforts to meeting these global standards, has signed several international best practices and agreements on health,[7] repealed and enacted its health laws[8], and, recognized and emphasized the role of health insurance and insurance education to raise the standards of health services among its citizenry. Accessibility and affordability issues are broken down through the involvement of stakeholders, accredited and re-accredited members of the scheme[9] such as insurance companies, insurance brokers, banks, Health Maintenance Organizations (HMO), Third Party Administrators (TPA), insurance brokers, hospitals, healthcare facilities, including the formal, informal and private sectors accredited with the Authority to facilitate and encourage participation in the provision of basic minimum health insurance packages for all.[10]

A Lancet[11] survey reported that Nigeria is ranked 142 out of 195 countries on health systems performance using healthcare access and quality as its criteria. These statistics clearly agree with Eresia-Eke[12] on his legal paradox of Nigeria being sick and needing urgent

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[6] WHO, 'Definition of Health'< https://www.publichealth.gov.ng >accessed 1 May, 2025.

[7] International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination (CERD); Convention of the Rights of the Child (CRC).

[8] NHIA Act, No. 17, 2022.

[9] ibid, s.1(3)(1)(f) & (r)

[10] ibid, s.1(3)(b)

[11] Lancet Report, 'Analysing the Progress in Service Delivery Towards Achieving UHC'<bmchealthservices.biomedcentral.com/articles/10.1186/s/2913.-023-10090-w> accessed 1 May, 2025.

[12] Professor Agha Eresia-Eke, a Professor of Social and Political Philosophy of the Rivers State University on Wednesday 30th April, 2025 delivered his inaugural lecture titled 'Nigerian Democratic Practices: A contextual Paradox' at the 11th

attention politically, socially and economically. Discussing the state of the Nigerian economy at his 111th Inaugural lecture, it was glaring from his delivery that the health of the nation demands urgent attention.

It is therefore heartwarming that Nigeria is paying close attention to policies that will promote accessible healthcare not only for the economy but for Nigerians utilizing the voluntary participation of states to mandate health insurance on its estimated 237,000,000 million teeming population.[13] A commitment[14] made by the government with hopes of its successful outcomes in the hands of indigenous States. Improving access to quality health will improve the economy as well as wealth of the nations.

This paper thus focuses on Rivers state, as one of the 36 states of the Nigerian federation popularly known as the treasure base of the nation and seeks to examine its efforts so far in implementing the basic health insurance schemes as provided under the National Health Insurance Act[15]for purposes of achieving a universal health coverage for its legal residents. This article will proceed with a clarification of the concepts, the acronym RIVCHPP as an agency of the state, its successes and challenges for a proper digest of the contents of this paper.

1.1 Reasons for Concerns and Importance of Health Insurance

According to a recent World Bank post pandemic assessment report, Nigeria has over 40% extreme poverty and acute hunger affecting nearly one-fifth of her population, and is one of the 39 economies that would be vulnerable by the year 2030.[16] This is a huge concern

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Inaugural Lecture Series at the Senate Building of the Rivers State University Port Harcourt, Rivers State, Nigeria.

[13] Worldometer <https://www.worldometers.info> accessed 25 June, 2025.

[14] NHIA, s.3(f)

[15] NHIA, No. 17, 2022.

[16] Arise NewsTV<www.arise.tv> accessed 28 June, 2025.

for many. Across sectors, Nigerians face high financial out-of-pocket-expenses[17] for healthcare services making it difficult for access to basic health services especially at the informal sector. Similarly, the efforts of past governments under the repealed health insurance law to enroll Nigerians maximally under the scheme suffered setbacks and affected its estimated coverage and eventual result.

It is also a fact that there exists significant disparity in healthcare access and quality between dwellers at the urban and rural areas. Many rural communities are unable to attract and retain health care providers because of scarcity of basic amenities like electricity necessary for effective delivery. Above all, the financial burdens on individuals and households remarkably since the Covid 19 experience in 2020, on living and families has not negatively impacted living conditions. Death rate is therefore raised.

According to the WB Report[18], high intensity conflicts - those that kill more than 150 out of every 1 million people - are typically followed by a cumulative drop of about 20% in Gross Domestic Product (GDP) *per capita* after five years. By 2030, the report continues, these economies are projected to be home to nearly 60% of the global population living on less than three dollars a day, contrasting sharply with 6% rate in other developing economies'[19]. this is caused by poorly managed health conditions, lack of quality

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[17] Worldbank, 'Executive Summary <'https://thedocs.worldbank.org >accessed 30 June,2025.

[18] Ibid.

[19] World Bank. 2025 Global Economic Prospects, June 2025. Washington DC: World bank doi: 10.1596/978-1-4648-2193-6.license:Creative Commons Attribution CC BY 3.0IGO <parliamentarians@worldbank.org >. See also Dr. Tonye Clinton. Jaja, 'Pirates of the Caribbeans: How the Pirates of Nigeria (Used Bandits and Tactics of Herdsmen) To Plunder and Pilfer Public Funds of Nigeria Causing the World Bank to List Nigeria as one of the 39 Countries with 40% Extreme Poverty', and online writeup posted to a group WhatsApp of the 2004 NBA call set in June 2025.

access to health care in some rural areas, inability to pay for out-of-pocket expenses for quality healthcare services among others has necessitated the enactment of the instant provisions on health.

It is believed that when properly funded by contributors, the state and federal governments and implemented across the state rural areas, Nigerians will be relieved from fear of accessing and enjoying quality healthcare. The poor education of health insurance also affects access to the scheme no wonder the state coordinators under the National Health Insurance Authority are to ensure a sustained health insurance education to drive the scheme.

2. Legal Framework

The principal legal framework guiding this paper is the NHIA.

2.1 The NHIA

The NHIA created the National Health Insurance Scheme[20] to ensure an effective implementation of a national health insurance policy that ensures the attainment of universal health coverage in Nigeria. The NHIA makes it mandatory for all Nigerians to enroll under the health insurance scheme in each state of the federation including the FCT Abuja. The NHIA has a total of 60 sections.

2.1.1 Key Provisions of the NHIA

Primarily, among the many features of this Act is that health insurance schemes are now mandatory for every Nigerian and legal resident[21] and through its state coordinators, the government ensures that basic minimum package of health services are implemented and enforced across all States of Nigeria.

[20] NHIA Act, Cap. N42, 2002
[21] NHIA, No.17, 2022, s.3(b)

The Authority has a Governing Council made up of; the coordinating Minister of health and social welfare, Prof. Mohammed Ali Pate, the Director General and Chief Executive Officer of the National Health Insurance Authority Dr. Kelechi Ohiri, and, the State Coordinators of the NHIA across the 36 state of the federation and the FCT to oversee the implementation of the objectives of the Act using its operational guidelines to revolutionize health insurance. The various States also have their insurance agencies who act like HMOs to enroll people under the formal and informal sectors operating in the state.

In Rivers State, the State Coordinator, Chris Itodo[22] is tasked with assisting the state government, private institutions and stakeholders to accredit, re-accredit, [23] implement, register, engage with stakeholders Health Maintenance Organizations, Mutual Health Associations, Third party Administrators and health care facilities and licensed health insurance companies, brokers, and, health service providers to promote accessible and sustainable health outcomes. Similarly, the Authority is tasked on its own or in collaboration with other relevant bodies to carry out a sustained public education on health insurance.[24]

3. Conceptual Clarification

Health and health insurance are key concepts that clarification will be made in this paper.

3.1 Health

The term health has a legal meaning as the state of being hale, sound, or whole in body mind or soul, well being - freedom from pain or

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[22] State Coordinator, NHIA, Rivers State with office at No.4 David Nna Estate, Off 1st Artillery Junction, Port Harcourt, Rivers State.
[23] NHIA, s.1(i)
[24] ibid, s.1(3)(m); See also ss. 1-13.

sickness.[25] According to this view, to be healthy therefore means to be free from disease, injury, bodily ailment or any state of the system peculiarly susceptible to disease or bodily ailment. The view without prejudice may not represent the dynamic concept as it is being used now. The reason is that 'health' is a dynamic topic that has caught the attention of many for decades; governments, institutions, community, families, professional and law around the globe, on what health connotes and the many systems needed to bring about quality health. It is believed that the concept health is an enduring and an emerging conceptual shift and that new meanings and details are being attached to its meaning. Concepts such as quality health, primary healthcare and so on enjoy different models and concept application to different actors in the health care field (consumers and providers).

However, the World Health Organization (WHO) in its famous founding constitution adopted in 1948, defined health as a state of complete physical, mental and social well being and not merely the absence of infirmity.[26] It is also the view of this paper that this definition no longer fits the current societal viewpoint anymore due to the word '*complete'* which for certain reasons means that those with chronic diseases or disabilities may not be considered healthy. Looking forward, the perception of the physically challenged persons are changing, as they are no longer viewed as 'unhealthy' because of their status but focus is in helping people in that state to adapt to their new situation and be able to do this as part of the recent paradigm shift.

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[25] H Campbell and others, *Black's Law Dictionary with Pronunciations* (West Publishing Co, 6th Edn, USA,1990) 721.

[26] VP VanDruten and others, 'Concept of Health in Different Contexts: A Scoping Review'*BMC Health Services Research* [2022] <https://bmchealthservies.biomedcentral.com/articles/10.1186/512913-022-07702-2> accessed 1 May 2025.

A further clarification on the concept Health was made in 1986, by the WHO of health 'not as a state but in dynamic terms of resilience; as the extent to which an individual or group is able to realize aspirations and satisfy needs and to change or cope with the environment', [27] a resource for every day life and not the objective of living. According to research, health is viewed as the ability of the body to adapt to new threats and infirmities.[28] Due to the above realization of what health can mean, therefore emphasizes the need to promote health by enabling people increase control over it and improve their health outcomes on a global scale assumes the conversations in recent times. This way of looking at health resonates with the purpose for the recent effort of the federal government of Nigeria in re-enacting the voluntary and mandatory health insurance scheme to close the gaps in access to quality healthcare.

3.2 Health Insurance

Under the instant law on insurance, [29]health insurance is one of the three categories of life insurance. The law classifies individual life, group life and pensions and health insurance as a group under one of the two broad classes of insurance. According to Toby[30], health insurance is a social plan that guarantees the provisions needed for health services to persons who come under the plan on the payment of token contributions at regular intervals.[31] This insurance can be obtained privately or by the government or on a contributory basis

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[27] WHO, 'Definition of Health'< https://www.publichealth.gov.ng >accessed 1 May, 2025.

[28] <https;//www.lancet.com/journal/lance/article/p1150140-6736(09)60456-67> accessed 2 May, 2025.

[29] Insurance Act, 2003, (IA) now LFN, 2004, s.2

[30] B G Toby, 'National Health Insurance in Nigeria: A Legal Analysis and Inclusivity of the Vulnerable Group' *Journal of Jurisprudence, International Law and Contemporary Legal Issues*, River State University [2023] Vol.17, Issue 1, 37.

[31] BG Toby, (2022), *The Essentials of Insurance Law, (*SABSCO Printer & Publishers, 2n edn, 2023), 104.

to provide access to quality health care services when needed. Health insurance is a voluntary but mandatory cover for all Nigerians at all levels including the vulnerable; children below 5 years, pregnant women, sick ones who are unable to pay for a cover, private, formal and informal sectors.

3.3 Universal Health Coverage

This concept is often referred to as universal cover or universal care. It is a system of health care in which all residents of a particular country or region are assured of access to healthcare and is generally organized and provided for all residents or to mostly those who cannot afford health care or services on their own and neither has the means to do so with the ends of improving health outcomes.[32]Universal Health Coverage (UHC) is also described as the single most powerful concept that public health has to offer, since it unifies services and delivers them in a competitive and interrelated way.[33]

While some health care are government funded, others are structured usually by law for all citizens to purchase a private health insurance for supplementary benefits.[34] This kind of arrangement is described by the WHO as a situation where citizens of a country or region can access health services without incurring financial hardships.

3.4 Legal Residents

Legal residents are defined under the Act as all citizens of Nigeria and those who legally reside in Nigeria. They include employers,

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[32] Then Director General of WHO, Margaret Chan (served from 2006-2017). Ranked by Forbes as the 30th Most Powerful Woman in the World <https://en.wikipedia.org/wiki/margaret_chan> assessed 3 May, 2025.

[33] Free Encyclopedia, Wikipedia, 'Universal Health Care' <https://en.wikipedia.org/wiki/universal_healthcare> accessed 1 May, 2025.

[34] NHIA, s.15(2)

employees in the public, private sectors, all other in the informal sectors not gainfully employed and the rest of Nigerians at the 36 states and local government areas including the FCT, Abuja.[35]

4. Implementing The Universal Health Coverage in River State

4.1 Implementation of Health Insurance in Rivers State Pre-NHIA

Briefly, River state is a creation of law whose historical agitations and emergence as one of the 36 states of the Federal Republic of Nigeria (FRN) predates 1967. However, this year is widely acknowledged as the legal birth year of Rivers state; May 27, 1967 under the administration of the then military government of General Yakubu Gowon,[36] Rivers was created and named after the many rivers that border its territory. The State was carved out of the former eastern region as one of the twelve states created at the time to replace the existing regional structure to promote development and support the proper identification of the riverine people as a distinct group[37]. It is one of the 6 states that make up the south-south geopolitical zones is Rivers and has its borders with Imo and Abia states to the north, Akwa Ibom state to the east, and Bayelsa and Delta states to the west. With fewer local government areas (LGA) at its early years of its creation, expansion, growth and industrialization has raised it currently to 23 Local Government Areas with its state capital in Port Harcourt. Rivers State capital city is considered to be the commercial center of the Nigeria oil industry; The treasure base of the nation.

According to the last census conducted in 2006, Rivers State had a population of approximately 5,198,716 people. By a 2024 estimate,

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[35] NHIA, s.14(2)(a)(b) & (c)

[36] Wikipedia,< https://en.wkipedia.org> accessed 25 June, 2025.

[37] Brief History on Rivers State <fondcup.ng/brief-history-of-rivers-state/> accessed 25 June, 2025.

the state has grown to about 7,473,800.[38] The people of rivers enjoy a rich and divers cultural heritage, lifestyle, beliefs, cultural sites, ethnicity and language over a landmass area of about 9,669km^2, 773.3km.[39]. The state enjoys a measure of peaceful coexistence and steady development of its social infrastructure. Its rich mineral resources have shot the state to prominence among its counterparts. One of the areas of attention has been the provision of health services and facilities across the 23 local government areas (LGA) of the state. In each of the 23 Local government headquarters, there is at least one state hospital, a health Centre, while Port Harcourt and Ahoada have 6 and 2 hospitals respectively.[40] There are also numerous private health centers and state governments primary health centers where curative medicines are offered across the state on preventive medicine with the latest emphasis on accessibility to health care delivery systems.[41]

Based on the latest United Nations (UN) data this 2025,[42] Nigeria is estimated to be over 237,000 million people. This number represents a significant increase compared to 2024, with the population growing by 4.8 million, a 21% between early 2024 and the start of 2025 according to Datareportal.[43] Rivers state stands at 4% of the total population, aged 58 years now, the state is largely adjudged as the fifth most populous state in Nigeria and enjoys several healthcare schemes over successive governments.[44]However, a significant portion of this population; 62.4% of the 7 million plus people in River state, approximately 4.4 million[45] people experience

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[38] <www.citipopulation.de/en >accessed on 30 June, 2025.
[39] <www.citipopulation.de/en >accessed on 30 June, 2025.
[40] River State Contributory Health Protection Programme <https://rivchpp.rv.gov.ng > accessed 29 June,2025.
[41] Overview of Rivers State < https://www.nigerdeltabudget.org/ > assessed 30 June 2025.
[42] Worldometer< https://worldometers.info >accessed 29 June, 2025.
[43] 'Digital 2025: Nigeria' <htpps://datareportal.com > accessed 29 june,2025.
[44] ibid
[45] ibid

multidimensional poverty. This complex situation is a significant barrier for many residents. With substantial number having to borrow money or sell assets to afford treatment makes affordability and access to health care particularly in rural and riverine communities' complex. This paper now examines the recent efforts of the state government at establishing a state-based health insurance following the re-enacted federal law on health insurance in 2022, which is the focus of this paper.

4.2 The Implementation of the RIVCHPP Health Insurance Agency: Health-For-All Initiative

The River State Contributory Health Protection Programme (RIVCHPP) is states agency for the provision of basic health insurance on a contributory basis to its residents. RIVCHPP acts as a HMO for Rivers State to implement the initiative of the federal law now under the administration of His Excellency Bola Ahmed Tinubu, for a mandatory health insurance with successful outcomes. In January 2024, the Governor of Rivers State, Sir Siminialayi Fubara, about a year into office took a crucial step like her counterparts from other states to approve the implementation of this law. Though coming on board as the last state to implement its health law, Rivers had its Health Insurance Law signed since 2021 before the assumption of office of the Governor but it remained inactive. Notwithstanding, the programme was launched and has taken off a year ago to strategically guide Rivers State towards achieving Universal Health Coverage (UHC) and ensuring that all residents have access to affordable and quality health care services; an important step to implementing the federal law on mandatory health insurance.

4.2.1 Successes so Far

Under the Rivers State Ministry of Health, the Agency within its first 3 months of takeoff, enrolled 1420 persons at the model primary

health care centre at Ozuboko, Port Harcourt[46] and by December, 2024, about 100,000 participants had been enrolled.[47] In the same year, the UHC year was marked by the State Commissioner for Health, Dr. Adaeze Oreh and the RIVCHPP team highlighting the state government's commitment to delivering equitable, affordable, free and quality healthcare to all.

The health Agency has also adopted the IT system platform to connect healthcare facilities directly to a central dashboard for integration of data for the enrollee in line with the law. This according to the Agency is still a work in progress and once fully operational is expected to enhance transparency and efficiency in the areas of enrolment, monitoring and service delivery.

The successes of this new plan in less than two years are applauded while still being closely monitored. It is reported that WhatsApp group of 400 women has been created for enrolled pregnant women to monitor their experiences, enroll newborns and, address challenges in real life. RIVCHPP babies born to these mothers are automatically enrolled for care until 5years. Another WhatsApp platform caters for Ward Development Committees (WDC) to monitor and ensure community ownership and accountability, with regular follow-ups with patients. If within 6 months of enrolment, beneficiaries have not accessed healthcare, reminders are sent to encourage utilization by highlighting available services and preventive medications.

The programme has accredited a total of 205 primary health centres in the state, though some at the moment are underutilized as a result of security issues in those areas. The plan operates with Health Maintenance Organisations (HMOs) as fund holders and it is

[46] <www.citipopulation.de/en >accessed on 30 June, 2025.
[47] The authors oral interview via phone call on the 29 June 2025 with Dr Vetty Agala, the Ag. Executive Secretary of RIVCHPP Agency in Port Harcourt, Rivers State who confirmed that over 100,000 enrollees are on record so far.

anticipated that as enrollee grow, the HMOs will be engaged selectively for specific capacity building.

4.2.2 RIVCHPP Insurance Plans

Currently, the Agency has five health insurance plans for;

1. **The Informal Sector Plan:**[48] This plan launched in December 2024 nicknamed the 'Sim-Jara plan', covers different RIVCare plans for small business owners, petty traders, others individuals, groups, families, market women and so on. This plan is premium based. Enrollee pay a little above a 1,000 naira monthly and 15,000 naira yearly to be enrolled.

2. **The Basic Health Care Provision Fund (BHCPF):** This is an equity plan that is subsidized by the state government for the vulnerable state population and is free. The vulnerable persons include people living with HIV, disability, the elderly over the age of 60, children below 5years, pregnant mothers, poor and sick ones. It is also open to stakeholders like philanthropists, charity foundations, entrepreneurs and well-meaning individuals to assist or sponsor the enrollment of people under this plan since the state government may not be able carry the entire plan. To enroll under the equity plan, the National Identification Number (NIN) of enrollee is mandatory.

3. **The Formal sector plan[49]:** This is designed for employers with minimum of five staff and above and for employees in the state.

4. **The Informal Plan for Self-Employed Workers:** community-based organization, residents and tertiary

[48] NHIA, s. 31(b)
[49] ibid, s.31(a)

institution students Plan for students payable from their fees and subsidized by the state government also; and

5. **Private health plans:** This is for people that work in companies, firms with at least 5 staff or more, who wish to obtain it for personal or supplementary benefits.

Some of the above plans tend to overlap in their objectives, most are subsidized by government and others requiring contributions of only N15,000.00 annual payments as premium payable by enrollee to enjoy the health insurance plan.

4.3 Collaborative Efforts at Implementing the Act by Institutions and Organizations in Rivers State

To support the State government's initiative, some institutions and organizations in the State have taken admirable steps to promote healthy living, insurance education and health insurance plans to achieve the UHC using the Health Insurance law. This merits our discussion in this paper. Notable among them are a few like the Rivers State University (RSU), the Insurance Law Club, (INLC) and the Nigerian Bar Association (NBA) Port Harcourt Branch. They are briefly discussed below.

4.3.1 Rivers State University (RSU) Walk for Life Program and Fitness Program and The TISHIP

The Rivers State University of Science and Technology (RSUST) was established in 1972 as the College of Science and Technology. As the premier state science and technology university in Nigeria, it gained independent university status during the administration of Melford Obiene Okilo, the first democratically elected Governor of the Old Rivers State in 1980. RSUST was renamed Rivers State University under the administration of His Excellency, Ezenwo Wike in 2017. The University is located in Southern Nigeria in Port Harcourt, River State. The current administration by the 12th Vice Chancellor, Prof. Isaac Zeb-Opibi appointed on the 7th day of

March, 2025 under the administration of His Excellency, Sir Siminalayi Fubara, Governor of Rivers State has commenced an innovative and creative 'Walk for Life Health and Fitness Program' to encourage and promote healthy lifestyles among its approximately 3,000 staff members. This monthly program has the slogan 'your health, your responsibility' with its maiden edition in 29 March, 2025. So far, the program has consistently run; encouraging a 3.5km walk, 30 minutes aerobics and offers free blood pressure (Bp) checks, free blood sugar test and body mass index (BMI). These are aimed at encouraging healthy lifestyle. Staff members are to followed up with reminders from the RSU Health centre to register and have their annual physical health checks on their birthdays as part of the health awareness program. The sports unit of the university and the health services department are teaming up for more success. On the 29th of June at its 3rd edition, the RSU alumni were sensitized to encourage the walk for life as they lead the staff members. These commendable strides aim at sustaining life and increasing productivity at work, and the University is deeply concerned about the mandatory health insurance for her staff with serious efforts at sensitizing staff and students on the need for this.

Similarly, the over 28,000 student population are not left out. A health insurance package known as Tertiary Institution Social Health Insurance Programme (TISHIP), an assured medical care for students subsidized by the state government and contributory by the students through their school fees has been in place. Unfortunately, a majority of the students do not fully understand what this plan is, and how to fully utilize it.[50] But through the

[50] From the over 20 years of teaching and research of the author of this paper, and having taught Insurance Law for almost all of this period, 90% of the LLB 3 insurance law class every year do not fully grasp that insurance can be used beyond 'police passes', erroneously so. 90% of these students have the TSHIP and can recognize the name but do not fully understand what it represents and how they can fully utilize it. During my last lecture with the class on the 25th day

Directorate of student's affairs, the VC presented a TSHIP sensitization[51] with Regenix HMO across its RSU campuses to educate and sensitize students. This plan provides free medical consultation, free physical examination, free routing laboratory investigations, free drugs and other necessary medical consumables and free emergency services (stabilization) and if need be, referrals are made to the River State Teaching Hospital (RSUTH) on guarantee. The RSU health insurance programme is managed by Regenix HMO and through this scheme, staff and students can access quality medical care and attention in the university community. This will align with the objective and directive of the NHIA.

4.3.2 Insurance Law Club (INLC)

The INLC was founded in 2021 under the platform of Annual Insurance Law Symposium and Events Series (AILSES) by Toby[52] as an educational platform for annual insurance law events. It was registered in Rivers State University and inaugurated in 2025 to sensitize and educate on insurance law through webinars, annual symposiums, awards, talks and lectures to help deepen insurance

of June, 2025, it was shocking to hear that they did not even know that the TSHIP was their subsidized student health insurance plan. Thus, the need for my annual insurance law Symposiums to educate and sensitize.

[51] The TISHIP Sensitization by the RSU took place on the 30th day of June, 2025 at the love garden, RSU Main campus; 1st day of July, 2025 at Ahoada Campus, RSU and Etche, RSU Campus on the 2nd day of July, 2025 respectively.

[52] Dr. Boma Geoffrey Toby, (Reader, Insurance and Maritime Law), a female Lecturer-At- law with over 21years of law teaching and research. She has over 50 peer reviewed articles published in local and international journals. An Insurance Law Consultant, Mentor, Convener of AILSES, Founder of the INLC, who drew her inspiration from her over 7 years of working with the then Oasis Insurance Company Limited before joining the academic board of the Faculty of Law, RSU in 2005.

law education and insurance penetration in Nigeria[53] and is open to international collaborations on insurance law. This is in tandem with the provisions of its objectives to cultivate a vibrant community of legal professionals committed to advancing knowledge, sharing expertise and promoting excellence in insurance law[54] through annual symposiums. The club brings together every year community, professionals, students, insurance industry practitioners, insurance regulatory authorities, insurance brokers, banks, business communities and the government to create awareness on insurance law through AILSES. It has over the years successful dislodged skepticism, apathy and distrust on insurance using AILSES to build trust.

Through the initiative and vision of its founder,[55] the INLC is a sustained insurance law education platform on all aspects of insurance law in Nigeria. The upcoming 2025 Annual Symposium is in collaboration with the Department of Commercial and Industrial Law (CIL), Faculty of Law of the Rivers State University (RSU) to successfully host the theme 'Navigating the Future of Health Insurance Law in Nigeria; The Law, Trends, Challenges and Innovations' and drawing notable speakers from the Academia[56], NHIA, the Rivers State government Agency on health insurance, Insurance companies, Health Maintenance Organizations (HMO), Hospital Managements, Banks and Insurance companies, Student community, the University community, the medical sector, Foundations, guests and partners to educate on health insurance.

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[53] B G Toby, (2020), *Legal Regime of Insurance Middlemen in Nigeria: Minimise apathy, Grow insurance*, (Lambert Academic Publishing, Mauritius, 1st edn, 2020) 228-229. 172.

[54] Constitution of the Insurance Law Club (CINLC) 2025, s.5

[55] iIbid, (n 54).

[56] 2025 keynote Address was delivered by Prof Collins Obioma Chijioke, Dean, Faculty of Law, Abia State University,
Umuahia, Abia State, Nigeria.

The Insurance Club thus helps to implement the NHIA[57] through its sustained education and acts like a third-party administrator under the instant law.

4.3.3 Nigerian Bar Association (NBA) Port Harcourt Branch Health Insurance Plan

Under the leadership of the current Chairman of the Port Harcourt branch of the NBA, Cordelia Uwuma Eke and her executives, the welfare of the members of the association has received a boost with the enrolling her members of Bastion Health Manintenance Organiztation (HMO) to provide primary health care services, health care needs of its member using health insurance. This welfare package is insured by Skydd Insurance to cover her financial members on a minimal yearly premium of 12,000 naira only drawn from members welfare dues, for a total of 1628 persons.[58] The Bar's insurance package took off in three batches. The first batch was approved in October 2024. Another batch enrollment is on the way currently while the third plan is for members who are 60 years and above on a geriatric plan. The Health insurance plans has so far proved successful as testimonies of its success rate by members abound on cases of emergencies, surgeries and childbirths among others.[59] According to the branch Chairman, 'It is hoped that members who are yet to take advantage of this health packages will do so for the sake of their health'. Despite these successes, there are still many branch members yet

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[57] NHIA, No 17, 2022, s.1(3)(m)

[58] This information was culled from the soft copy of the '2025 Annual General Meeting (AGM) of the NBA- PH Branch Brochure', following her AGM held on the 26th day of June 2025 at the NBA House, 1 Bank Road, Port Harcourt, Rivers State. See also <www.nbaportharcourt.ng>

[59] The author of this paper is a beneficiary of the NBA-PH mandatory health insurance plan with Bastion health maintenance organization. She took advantage of the enrollment and has enjoyed the plan since January 2025. She registered with Patricare hospital, Mgboushimini, PHC which is the most convenient and well located to her. She no longer borders about out-of-pocket or initial hospital deposits as was the case before the implementation of this law.

to take advantage of this insurance plan. This may not be unconnected to ignorance on the principles and benefits of health insurance in the State.

The NBA health insurance plan is a seamless process and a worthy initiative. Once registered under the HMO, members are identified with an enrollment number and issued a health insurance card that is simply presented at the hospital or healthcare facility of choice. Enrollee can actually change facilities when desired to receive attentive medical care already paid for. No out-of-pocket expenses is requested or made at that point. However, the scope of cover is the basic minimum, members can buy into more sophisticated supplementary plans for themselves and their families if they choose to.

5. Conclusion and Recommendations

The RIVCHPP remains a work in progress but a worthy initiative targeted at all and sundry in the State. It is believed that RIVCHPP will boldly aspire to become the leading social health insurance provider in Nigeria and Africa. The plan envisions an out-of-pocket and subsidized payments. The team envisions a one- million member enrollee to receive quality health care services without needing to make payment at the point of care. However much remains to be seen at the 317 political wards and 23 local government areas which make up Rivers State.

The efforts of the Rivers State government to establish the RIVCHPP Agency through the Ministry of Health to implement the NHIA will achieve more measurable success as time passes. Though, a young sector, more remains to be seen as it is anticipated that the government, the agency, institutions at the private, formal and informal sectors will continue to do their part to implement the Act. This paper commends the efforts of the Rivers State Agency

other institutions and organizations at educating and sensitizing the public on Health Insurance.

The recommendations of this paper are that:

1. The efforts of RVCHPP at weekly sensitization across the state be sustained and encouraged by government to get more persons enrolled with particular attention to the rural areas.
2. Local Government Areas should take more active parts at sensitization and enrolment also.
3. Insurance education and the laws guiding it in Nigeria should be made a compulsory subject across Nigerian learning institutions and not merely an elective in the university curriculum.
4. Government participation and funding of advocacy institutions, clubs and groups will support insurance law education, research and sensitization as envisaged under the Act and encourage interests in insurance and awareness.
5. The basic minimum health coverage is minimal, coverage should address more areas of health coverage reviewed from time to time to focus on important areas of health.
6. The federal and state governments should continue to put up programs that will reduce poverty and intellectual illiteracy of insurance among Nigerian.

FROM KALIO TO SCOA: RECONCILING SUPREME COURT JURISPRUDENCE ON UNREGISTERED LAND INSTRUMENT IN NIGERIA

By

Grace Abraham Ahiakwo*
Uwemedimo Otung**

Abstract

This paper critically examines the evolving jurisprudence of the Nigerian Supreme Court on the admissibility of unregistered land instruments, focusing on three landmark decisions: Benjamin v Kalio (2018), Abdullahi v Adetutu (2020), and Taan v SCOA (2025). These cases illuminate the tension between statutory formalism and equitable justice within Nigeria's dual land law system, where statutory requirements for registration often conflict with customary practices and informal transactions. The analysis traces a judicial shift from rigid exclusion of unregistered documents towards a more pragmatic and context-sensitive approach that accommodates possession, part performance, and contractual intent. In Benjamin v Kalio, the Court adopted a strict interpretation of the Land Instruments Registration Law, holding that unregistered instruments affecting land in Rivers State were inadmissible in evidence. This decision reinforced the primacy of statutory compliance and underscored the risks associated with informal land dealings. However, in Abdullahi v Adetutu, the Court recognised the admissibility of unregistered documents for limited purposes, such as proving equitable interest and acts of possession, particularly where customary law governed the transaction. This marked a departure from rigid formalism and reflected a growing judicial sensitivity to the socio-legal realities of land ownership in Nigeria. Taan v SCOA further expanded this reasoning by admitting an unregistered deed to establish contractual intention and prevent unjust enrichment, signalling a

more balanced jurisprudence that prioritises substantive justice. The paper argues that while registration remains essential for legal title, the Supreme Court has increasingly embraced equitable doctrines to protect parties acting in good faith. By reconciling these decisions, the study offers a coherent framework for understanding the admissibility of unregistered land instruments in Nigeria. It concludes with practical recommendations for legal practitioners, landowners, and policymakers, emphasising the need for doctrinal clarity, procedural reform, and equitable safeguards in land documentation.

Keywords: Land Instrument Registration, Equitable Interest, Judicial Interpretation, Customary Land Transactions, Admissibility of Evidence

1.1 Introduction

Land remains one of the most contested and culturally significant assets in Nigeria, not only for its economic value but also for its deep-rooted connection to identity, heritage, and power.[1] The legal framework governing land ownership and transfer in Nigeria is a complex interplay of statutory law, customary practices, and judicial interpretation. Central to this framework is the requirement for registration of land instruments under the Land Instruments

*PhD (RSU,) LLM (RSU), LL.B (Uyo) BL, (Abuja) PDE, (FCET). Lecturer, Faculty of Law, Department of Private and Property Law, University of Port Harcourt; Notary Public and Principal Partner at Gracey's Legal Consult and Resolution Firm, No 1 Erema Street, Omoku, Rivers State, Nigeria. Email-graceahiakwo@gmail.com 08034054911.

** Doctor, LLB, BL, LLM, PhD, otunguwemedimo@yahoo.com, Senior Lecturer, Department of International Law and Jurisprudence, University of Uyo.

[1] B. O Nwabueze, The Law of Real Property in Nigeria (Gold Press Ltd, 2002) 3.

Registration Law (LIRL),[2] which mandates that certain documents affecting land must be registered to be admissible in evidence and to confer legal validity. Yet, despite this statutory imperative, the Nigerian judiciary has, over time, grappled with the tension between strict statutory compliance and the equitable realities of land transactions, especially in regions where informal documentation and customary conveyancing dominate.

The Supreme Court of Nigeria, as the apex judicial authority, has played a pivotal role in shaping the admissibility and evidentiary value of unregistered land documents. In particular, the decisions in *Benjamin v Kalio*[3]*; Abdullahi v Adetutu*[4] and *Taan v SCOA*[5] reflect an evolving judicial stance that attempts to reconcile statutory rigidity with the practical realities of land ownership and transfer. These cases, though decided within a span of seven years, highlight evolving judicial reasoning, sometimes affirming the necessity of registration, other times prioritising equitable considerations and the intention of the parties.

In *Benjamin v Kalio*, the Supreme Court emphasised the statutory requirement for registration, holding that unregistered land instruments affecting land in Rivers State were inadmissible in evidence, thereby reinforcing the primacy of the LIRL in land transactions within the state.[6] This decision sent a strong signal to legal practitioners and landowners about the consequences of non-compliance with registration laws. However, in *Abdullahi v Adetutu*, the Court appeared to soften its stance, recognising that in certain circumstances, particularly where customary law governs the

[2] Each Nigerian state has its own version of the LIRL, codified under its laws for the state. In Rivers-Land Instruments Registration Law, Cap 74, Laws of Rivers State 1999, s. 15. (LIRL).
[3] (2018) 15 NWLR (Pt 1642) 345 at 370.
[4] (2020) 4 NWLR (Pt 1715) 1 at 22.
[5] (2025) 6 NWLR (Pt 1985) 1.
[6] (2018) 15 NWLR (Pt 1642) 345 at 370: M. I, Nwogugu, Nigerian Land Law (Heks Publishers, 2019) 287.

transaction, unregistered documents may still be admissible to prove equitable interests or acts of possession.[7] This shift introduced a layer of judicial discretion, allowing courts to consider the substance of transactions over their formal defects.

The most recent decision in *Taan v SCOA* further complicates the jurisprudential landscape. Here, the Supreme Court confronted the question of whether an unregistered deed of assignment could be relied upon to establish title in a commercial dispute. The Court's reasoning, while reaffirming the importance of registration, also acknowledged the need to prevent unjust enrichment and uphold the sanctity of contractual obligations.[8] This decision suggests a more pragmatic approach, one that seeks to balance legal formalism with equitable justice.

This paper undertakes a doctrinal analysis of these three landmark decisions, with the aim of reconciling their holdings and extracting a coherent judicial philosophy on the admissibility of unregistered land instruments in Nigeria. It argues that while statutory compliance remains essential, the Supreme Court has increasingly recognised the limitations of a rigid approach, especially in a legal system where customary law and informal practices continue to shape land relations. By examining the facts, legal issues, and reasoning in each case, this study seeks to illuminate the trajectory of Nigerian land law and offer insights for legal practitioners, scholars, and policymakers.

1.2 Legal Framework for Land Documentation in Nigeria

The legal architecture governing land documentation in Nigeria is rooted in a dual system that accommodates both statutory and customary law.[9] This duality reflects the country's colonial legacy

[7] (2020) 4 NWLR (Pt 1715) 1 at 22.
[8] (2025) 6 NWLR (Pt 1985) 1.
[9] A.A. Adeyemi, "Customary Land Tenure and Legal Pluralism in Nigeria" (2010) 14(2) *Nigerian Journal of Property Law* 33.

and its pluralistic legal culture, where formal legislation coexists with indigenous norms.[10] At the heart of statutory land documentation is the Land Instruments Registration Law, which mandates the registration of instruments affecting land to ensure their admissibility in evidence and to protect third-party interests.[11] The LIRL, applicable in various states including Rivers State, provides that any instrument affecting land must be registered to be valid against third parties and admissible in court proceedings.[12]

The rationale behind registration is to create certainty, prevent fraud, and establish a public record of land transactions. As Nwabueze notes, registration serves as a safeguard against secret conveyances and a mechanism for protecting purchasers and creditors.[13] Similarly, the Land Use Act 1978, which nationalised land ownership and vested it in the Governor of each state, reinforces the importance of formal documentation by requiring that any transfer of interest in land be subject to the Governor's consent.[14] This statutory framework underscores the centrality of registration in land governance.

However, the rigidity of statutory requirements often clashes with the realities of land transactions in Nigeria, especially in rural and peri-urban areas where customary law predominates. Under customary law, land is typically transferred through oral agreements, symbolic acts, or informal documentation, without recourse to formal registration. Courts have historically recognised such transactions, provided they are accompanied by acts of

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[10]`G. A. Ahiakwo, 'Navigating Legal Pluralism: Integration Challenges in Land Administration and Formal Registration in Nigeria' (2025) (6) *Uniport Journal of International and Comparative Law*, 84.

[11] Land Instruments Registration Law, Cap 74, Laws of Rivers State 1999, s. 15. (LIRL)

[12] *Ibid.*

[13] B.O. Nwabueze, *The Law of Real Property in Nigeria* (Gold Press Ltd, 2002) 213.

[14] Land Use Act 1978, Cap L5, Laws of the Federation of Nigeria 2004, s. 22.

possession or community acknowledgment.[15] This recognition stems from the equitable principle that substance should prevail over form, particularly where one party has acted to their detriment based on the agreement.

The tension between statutory formalism and customary informality has led to divergent judicial interpretations. In *Benjamin v Kalio*, the Supreme Court held that an unregistered instrument affecting land in Rivers State was inadmissible, emphasising that the LIRL must be strictly complied with.[16] This decision reaffirmed the statutory imperative and cautioned against reliance on unregistered documents. Yet, in *Abdullahi v Adetutu*, the Court adopted a more flexible approach, allowing the use of an unregistered document to prove equitable interest and acts of possession, especially where customary law was involved.[17] This shift reflects a judicial willingness to accommodate the socio-legal context of land transactions.

The most recent decision in *Taan v. SCOA* further illustrates the evolving judicial stance. While the Court acknowledged the statutory requirement for registration, it also emphasised the need to prevent unjust enrichment and uphold contractual obligations, thereby admitting the unregistered deed for limited evidentiary purposes.[18] This nuanced approach suggests that the Court is moving towards a more balanced jurisprudence, one that respects statutory mandates while recognising the equitable dimensions of land dealings.

In summary, the legal framework for land documentation in Nigeria is marked by a dynamic interplay between statutory law and customary practices. The Supreme Court's decisions reflect an

[15] A.O. Obilade, *The Nigerian Legal System* (Sweet & Maxwell, 1979) 145.
[16] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[17] *Abdullahi v Adetutu* (2020) 4 NWLR (Pt. 1715) 1 at 22.
[18] *Taan v SCOA* (2025) 6 NWLR (Pt 1985) 14-17.

ongoing effort to reconcile these competing norms, ensuring that legal formalism does not undermine substantive justice.

1.3 Case Analysis

The jurisprudential trajectory of the Nigerian Supreme Court on the admissibility of unregistered land instruments is best understood through a close examination of three pivotal decisions: *Benjamin v Kalio*, *Abdullahi v Adetutu*, and *Taan v SCOA*. These cases, though decided within a relatively short span, reveal a nuanced evolution in judicial reasoning, from strict statutory interpretation to a more equitable and context-sensitive approach. Each decision reflects the Court's attempt to balance the imperatives of legal formalism with the socio-economic realities of land transactions in Nigeria.

A. Benjamin v Kalio (2018)

The dispute in *Benjamin v Kalio* arose over the ownership of land situated in Rivers State, Nigeria. The appellant, Benjamin, claimed title to the land based on a deed of conveyance that had not been registered under the Land Instruments Registration Law of Rivers State.[19] He argued that the document, although unregistered, evidenced a valid transaction and should be admitted in court to prove his ownership. The respondent, Kalio, challenged the admissibility of the deed, contending that the failure to register the instrument rendered it legally ineffective and inadmissible in evidence. The case hinged on the interpretation and application of Section 15 of the LIRL, which mandates the registration of any instrument affecting land in Rivers State before it can be pleaded or tendered in evidence. The Supreme Court was called upon to determine whether an unregistered deed of conveyance could be admitted in evidence to prove title to land in Rivers State. The appellant had relied on an unregistered instrument to assert ownership, arguing that the document, though unregistered, reflected a valid transaction.

[19] Land Instruments Registration Law, Cap 74, Laws of Rivers State 1999, s. 15.

The Supreme Court, in a unanimous decision delivered by Akaahs JSC, upheld the respondent's objection. The Court held that the unregistered deed was inadmissible, emphasising that compliance with the LIRL is a statutory requirement that cannot be waived or circumvented. The judgement reinforced the principle that registration is a condition precedent to the legal validity and evidentiary use of land instruments in Rivers State. This decision serves as a cautionary precedent, underscoring the importance of formal registration in land transactions and the risks associated with informal or unregistered conveyances.

The Court stated unequivocally that an instrument affecting land in Rivers State must be registered before it can be pleaded or tendered in evidence.[20] This decision reinforced the statutory requirement and underscored the importance of registration as a condition precedent to admissibility. The Court's reasoning was rooted in the need to uphold the integrity of land transactions and prevent fraudulent claims.

Scholars have interpreted *Benjamin v Kalio* as a reaffirmation of legal formalism in land law. Nwogugu observes that the decision restores confidence in the statutory framework and discourages informal dealings that undermine public records.[21] However, critics argue that the ruling fails to account for the socio-legal context in which many land transactions occur, particularly in regions where customary practices dominate.[22]

B. Abdullahi v Adetutu (2020)

Two years later, in *Abdullahi v Adetutu*, the Supreme Court appeared to adopt a more flexible approach. The case involved a dispute over land in Lagos State, where the appellant relied on an

[20] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[21] M.I. Nwogugu, *Nigerian Land Law* (Heks Publishers, 2019) 287.
[22] T. Oyebanji, "Customary Land Transactions and the Challenge of Formalization in Nigeria" (2019) 45 *Journal of African Law* 112, 118.

unregistered memorandum of understanding (MoU) to establish equitable interest. The respondent contended that the document was inadmissible under the applicable registration laws. The brief facts were as follows:

The appellant, Abdullahi, claimed to have acquired the land through a transaction evidenced by a Memorandum of Understanding (MoU) executed between him and the original owner. Although the MoU documented the terms of the sale and transfer, it was not registered under the Land Instruments Registration Law of Lagos State.[23] Following the transaction, Abdullahi took possession of the land, made substantial improvements, and maintained control over the property. However, the respondent, Adetutu, later challenged Abdullahi's claim, asserting that the MoU was inadmissible in evidence because it was a registrable instrument that had not been registered as required by law. Adetutu argued that without registration, Abdullahi could not rely on the document to prove legal title or interest in the land. The dispute escalated to litigation, with the central issue being whether the unregistered MoU could be admitted in evidence to establish equitable interest in the land. The trial court and Court of Appeal had differing views, prompting the appeal to the Supreme Court.

At the Supreme Court, the appellant maintained that although the MoU was unregistered, it should be admissible to prove the existence of a transaction and to support his claim of equitable ownership, especially since he had paid consideration and taken possession and even developed the property. The respondent insisted that the MoU was inadmissible under the applicable registration laws, and that only registered instruments could be relied upon to establish title or interest in land.[24] In a departure from *Benjamin v Kalio*, the Court held that while the MoU could not be

[23] LIRL, Cap L58 Laws of Lagos State 2003, s2, (now repealed and consolidated under the Land Registration Law of Lagos State 2015).
[24] *Ibid.*

used to prove legal title, it was admissible to establish acts of possession and equitable interest.[25] The Court emphasised that registration laws do not preclude the use of unregistered documents for limited evidentiary purposes, particularly where they corroborate possession or improvements made to the land. This reasoning aligns with the equitable principle that courts should not allow a party to benefit from their own wrongdoing or deny the existence of a transaction that has been partly executed.

The decision in *Abdullahi v Adetutu* reflects a judicial recognition of the limitations of statutory formalism. As Ezeani notes, the Court's approach signals a shift towards contextual justice, where the substance of a transaction may override its procedural defects.[26] This shift is particularly significant in a legal system where informal documentation is prevalent and access to formal registration is often constrained by bureaucracy and cost.

C. Taan v SCOA (2025)

The most recent decision in *Taan v SCOA* marks a further development in the Court's jurisprudence. The case arose from a commercial dispute involving the sale of land in Abuja, where the appellant relied on an unregistered deed of assignment to assert title. The respondent challenged the document's admissibility, citing the Land Registration Act applicable in the Federal Capital Territory.[27] The brief facts of the case are hereby summarised as follows:

The case centred on a dispute over ownership of a parcel of land located at No. 157 Apapa-Oshodi Expressway, Iyana Isolo, Lagos State. The appellant, Chief Ali Maged Taan, claimed joint ownership of the property with the second respondent, based on a

[25] *Abdullahi v Adetutu* (2020) 4 NWLR (Pt. 1715) 1 at 22.
[26] C.C. Ezeani, "Equity and Land Law in Nigeria: A Reappraisal of Judicial Trends" (2021) 33 *Nigerian Bar Journal* 56, 63.
[27] Land Registration Act, Cap 515 Laws of the Federation of Nigeria 1990, ss 2 and 15.

Deed of Agreement dated 25th May 1983. This document, however, was unregistered under the Land Instruments Registration Law of Lagos State. The second respondent had originally obtained a 99-year lease over the property from the original owners in January 1981. Subsequently, on 1st January 1982, the second respondent executed a 25-year sublease in favour of the first respondent, SCOA Nigeria Plc, which expired on 31st December 2006. After the expiration, the second respondent executed a trust deed and deed of assignment in favour of the third respondent, transferring ownership.

Chief Taan, who had acted as an intermediary in the earlier transactions, later claimed joint ownership based on the 1983 agreement. The second respondent denied executing the document, and the trial court dismissed the appellant's claim, granting partial relief to the respondents. The Court of Appeal affirmed the trial court's decision, prompting an appeal to the Supreme Court. The issue for determination before the Court was whether Exhibit C (the unregistered Deed of Agreement) was admissible in evidence, considering Section 15 of the Land Instruments Registration Law of Lagos State, which mandates registration of instruments affecting land; whether the second respondent discharged the burden of proving due execution of Exhibit C, and whether the appellant was entitled to raise that issue without leave of Court; whether the lower courts erred in granting reliefs to the second respondent in the counterclaim, despite the appellant's assertion of joint ownership.

The Supreme Court dismissed the appeal and upheld the decisions of the lower courts. On the first issue, the Court held that Exhibit C was inadmissible because it was a registrable instrument under the Land Instruments Registration Law and had not been registered. The fact that it was initially admitted without objection did not cure its inadmissibility. On the second issue, the Court ruled that the appellant's argument regarding the execution of Exhibit C was a fresh issue raised on appeal without prior leave, and thus could not

be entertained. Finally, the Court affirmed the reliefs granted to the second respondent in the counterclaim, holding that the appellant failed to establish any legal or equitable interest in the property.

The Supreme Court, while acknowledging the statutory requirement for registration, admitted the unregistered deed for the limited purpose of proving the existence of a contractual relationship and the intention to transfer interest.[28] The Court reasoned that excluding the document entirely would result in injustice, especially where one party had acted in reliance on the agreement and made substantial improvements to the land. The Court further held that registration, while mandatory for legal title, does not extinguish equitable claims arising from possession, payment, or part performance.

This decision reflects a pragmatic approach to land documentation, one that seeks to balance statutory compliance with equitable justice. As Adebayo argues, the Court's reasoning in *Taan v SCOA* demonstrates a mature jurisprudence that recognizes the complexity of land transactions and the need to protect vulnerable parties.[29] The case also underscores the importance of judicial discretion in interpreting registration laws, particularly in contexts where rigid application may lead to unjust outcomes.

Taken together, these three decisions illustrate the Supreme Court's evolving stance on the admissibility of unregistered land instruments. While *Benjamin v Kalio* reaffirmed the primacy of statutory registration, *Abdullahi v Adetutu* and *Taan v SCOA* introduced a more nuanced approach that accommodates equitable considerations. The trajectory suggests a shift from rigid formalism to a more balanced jurisprudence, one that respects statutory mandates while recognising the realities of land transactions in Nigeria.

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[28] *Taan v SCOA* (2025) 6 NWLR (Pt 1985) 1.

[29] A. Adebayo, "Unregistered Land Instruments and the Nigerian Supreme Court: Towards a Contextual Jurisprudence" (2025) 51 *Nigerian Law Review* 89, 94.

1.4 Comparative Evaluation of Kalio, Adetutu and SCOA Cases

The decisions in *Benjamin v Kalio*, *Abdullahi v Adetutu*, and *Taan v SCOA* present a layered and evolving judicial approach to the admissibility of unregistered land instruments in Nigeria. While each case is grounded in its unique factual matrix and jurisdictional context, a comparative evaluation reveals both doctrinal tensions and emerging harmonies in the Supreme Court's jurisprudence. This section explores the points of convergence and divergence among the cases, the underlying judicial philosophies, and the broader implications for Nigerian land law.

A. Points of Convergence

One consistent theme across all three decisions is the recognition of the statutory requirement for registration. In *Benjamin v Kalio*, the Court unequivocally held that unregistered instruments affecting land in Rivers State are inadmissible, citing the Land Instruments Registration Law as the governing statute.[30] Similarly, in *Taan v SCOA*, the Court acknowledged that registration is a legal prerequisite for establishing title, especially in jurisdictions governed by formal land laws.[31] Even in *Abdullahi v Adetutu*, where the Court adopted a more flexible stance, it did not dispute the necessity of registration for conferring legal title.[32]

Another point of convergence is the Court's willingness to admit unregistered documents for limited purposes. In both *Abdullahi v Adetutu* and *Taan v SCOA*, the Supreme Court allowed unregistered instruments to be used as evidence of equitable interest, to show acts of possession, or to uphold contractual intention.[33] This reflects a judicial recognition that excluding such documents entirely may

[30] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[31] *Taan v SCOA* (2025) 6 NWLR (Pt 1985) 1.
[32] *Abdullahi v Adetutu* (2020) 4 NWLR (Pt. 1715) 1 at 22.
[33] *Ibid*.; *Taan v SCOA* (2025), pp. 15–16.

lead to injustice, particularly where one party has acted to their detriment based on the agreement.

B. Points of Divergence

The most significant divergence lies in the Court's treatment of equitable interests and the extent to which unregistered documents can be relied upon. In *Benjamin v Kalio*, the Court adopted a strict formalist approach, excluding the unregistered instrument entirely and refusing to consider any equitable claims arising from it.[34] This decision prioritises statutory compliance over equitable considerations, potentially disadvantaging parties who rely on informal documentation.

In contrast, *Abdullahi v Adetutu* represents a departure from this rigidity. The Court emphasised that equity will not allow a statute to be used as an instrument of fraud, especially where the parties have partly performed the agreement.[35] This reasoning aligns with the equitable doctrine of part performance, which allows courts to enforce oral or informal agreements where one party has taken substantial steps in reliance on the contract.[36]

Taan v SCOA further expands the scope of admissibility by allowing the unregistered deed to be used not only to prove equitable interest but also to establish the existence of a contractual relationship. This pragmatic approach suggests that the Court is increasingly concerned with substantive justice and the prevention of unjust enrichment, even at the expense of strict statutory compliance.

C. Doctrinal Consistency vis a vis Judicial Pragmatism

The tension between doctrinal consistency and judicial pragmatism is evident in the trajectory of these cases. *Benjamin v Kalio*

[34] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[35] *Abdullahi v Adetutu* (2020) 4 NWLR (Pt. 1715) 1 at 23.
[36] J.O. Fabunmi, *Equity and Trusts in Nigeria* (Obafemi Awolowo University Press, 2005) 198.

represents a doctrinally consistent application of the law, reinforcing the importance of registration and the sanctity of public records. However, this consistency comes at the cost of flexibility and may not reflect the realities of land transactions in Nigeria.

On the other hand, *Abdullahi v Adetutu* and *Taan v SCOA* embody a more pragmatic judicial philosophy, one that seeks to balance legal formalism with equitable justice. As Ugochukwu argues, the Supreme Court's evolving stance reflects a shift from rigid positivism to a more contextual jurisprudence that prioritises fairness and social realities.[37] This shift is particularly important in a country where access to formal registration is limited and customary practices continue to shape land relations.

D. Role of Equity and Justice

Equity plays a central role in the Court's reasoning in *Abdullahi v Adetutu* and *Taan v SCOA*. In both cases, the Court invoked equitable principles to prevent injustice and uphold the intentions of the parties. This reflects a broader trend in Nigerian jurisprudence, where courts increasingly rely on equity to fill the gaps left by statutory law and to address the complexities of informal land transactions.[38] The use of equity also underscores the Court's commitment to substantive justice. By admitting unregistered documents for limited purposes, the Court ensures that parties are not unfairly penalised for procedural defects, especially where they have acted in good faith. This approach aligns with the equitable maxim that "equity looks to the intent rather than the form".

The comparative analysis of *Benjamin v Kalio*, *Abdullahi v Adetutu*, and *Taan v SCOA* reveals an evolving judicial philosophy that seeks to reconcile statutory formalism with equitable justice. While the

[37] I.C. Ugochukwu, "Judicial Pragmatism and the Admissibility of Unregistered Land Instruments in Nigeria" (2025) 29 *African Journal of Legal Studies* 77, 81.
[38] A.O. Adeyemi, "Equity as a Tool for Land Justice in Nigeria" (2022) 40 *Nigerian Law and Policy Review* 102, 108

Court continues to affirm the importance of registration, it has increasingly recognised the need to accommodate the realities of land transactions and to prevent unjust outcomes. This shift from rigid positivism to contextual pragmatism marks a significant development in Nigerian land law and offers a more balanced framework for adjudicating disputes involving unregistered land instruments.

1.5 Implications for Legal Practice and Landowners

The evolving jurisprudence on the admissibility of unregistered land instruments in Nigeria carries profound implications for legal practitioners, landowners, and the broader real estate market. As the Supreme Court continues to refine its stance, from the rigid statutory interpretation in *Benjamin v Kalio* to the more equitable and pragmatic reasoning in *Abdullahi v Adetutu* and *Taan v SCOA*, stakeholders must adapt to a legal landscape that is both technically demanding and contextually sensitive.

A. For Legal Practitioners

Lawyers involved in land transactions must now navigate a more nuanced terrain. The decision in *Benjamin v Kalio* serves as a cautionary tale, reminding practitioners of the dangers of relying on unregistered instruments to establish title.[39] It underscores the necessity of ensuring that all instruments affecting land are duly registered in accordance with the applicable laws of the state. Failure to do so may result in the exclusion of critical evidence and the collapse of a client's case.

However, the flexibility introduced in *Abdullahi v Adetutu* and *Taan v SCOA* also opens strategic avenues for legal argument. Practitioners can now rely on unregistered documents to establish equitable interests, acts of possession, or the existence of contractual relationships.[40] This requires a deeper understanding of equitable

[39] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[40] *Taan v SCOA* (2025) 6 NWLR (Pt 1985) 1.

doctrines such as part performance, constructive trust, and estoppel. As Akinola notes, the modern land lawyer must be both a technician of statute and a steward of equity.[41]

Moreover, the decisions call for increased diligence in advising clients. Lawyers must educate landowners and purchasers on the importance of registration,[42] while also preparing to defend informal transactions where registration is impractical or delayed. This dual responsibility demands a proactive approach to documentation, client counselling, and litigation strategy.

B. For Landowners and Purchasers

For landowners and prospective buyers, the implications are equally significant. The strict stance in *Benjamin v Kalio* highlights the risks of informal transactions, particularly in states with active registration regimes like Rivers State. Landowners who rely on unregistered deeds or oral agreements may find themselves unable to assert their rights in court, even if they have occupied or developed the land. In that case, the Supreme Court emphasised that unregistered land instruments may be inadmissible in court proceedings, notwithstanding long-term possession or development by the claimant. This decision reflects the supremacy of the Evidence Act over conflicting state land laws. The provisions of Section 4(3) and (5) of the 1999 Constitution, invalidates state land legislation that contradicts federal law.

Landowners who rely on unregistered deeds, oral agreements, or customary arrangements may find themselves unable to assert legal title or enforce proprietary rights, even after years of occupation.

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[41] O.A. Akinola, "Equity and the Modern Land Lawyer in Nigeria" (2023) 47 *Journal of Property Law and Practice* 59, 65.

[42] G. A. Ahiakwo, *Real Property Registration in Nigeria: Examining the Legal Issues and Challenges* (LAP Lambert Academic Publishing 2024) ISBN 6208224810, 94.

The court's reasoning aligns with earlier decisions such as *Akintola and Etajata* cases,[43] which reinforce the principle that registration confers prima facie validity and priority in title disputes. Thus, in states like Rivers where land registration laws are actively enforced, failure to register land instruments can result in significant legal setbacks, including the inability to obtain remedies such as specific performance or injunctive relief.

Yet, the more accommodating posture in *Abdullahi v Adetutu* and *Taan v SCOA* offers a measure of protection to parties who have acted in good faith. The recognition of equitable interests means that possession, payment, and improvements may still be considered by the courts, even in the absence of formal registration.[44] This is especially relevant in rural areas and informal settlements, where access to registration facilities is limited and customary practices prevail. Nonetheless, the uncertainty surrounding admissibility creates a precarious environment for land transactions. As Okonkwo warns, the lack of uniformity in judicial interpretation may discourage investment and erode confidence in the land market.[45] To mitigate this risk, landowners must prioritise registration and seek legal advice before entering into any transaction. They must also retain evidence of payment, possession, and improvements, which may prove critical in litigation.

C. For the Real Estate Sector and Policy Makers

The implications extend beyond individual actors to the broader real estate sector and regulatory bodies. The inconsistency in judicial decisions may hinder the development of a transparent and efficient land market. Investors and developers require certainty in land title and documentation, which is undermined by conflicting

[43] *Akintola v Solano* (1986) 2 NWLR (Pt. 24) 598 and *Etajata v. Ologbo* (2007) 16 NWLR (Pt. 1061) 554.
[44] *Benjamin v Kalio* (2018) 15 NWLR (Pt. 1642) 345 at 370.
[45] C.O. Okonkwo, "Judicial Uncertainty and the Nigerian Land Market" (2024) 38 *Nigerian Journal of Real Estate Law* 101, 106)

interpretations of registration laws. Policymakers must therefore consider reforms that harmonise registration requirements across states and streamline the process. The introduction of digital land registries, reduction of bureaucratic hurdles and public awareness campaigns could enhance compliance and reduce reliance on informal documentation. As Udo argues, a modern land economy requires a registration system that is accessible, affordable, and legally robust.[46]

The Supreme Court's evolving jurisprudence on unregistered land instruments presents both challenges and opportunities. Legal practitioners must adapt to a more complex evidentiary regime, landowners must prioritise formal documentation, and policymakers must address systemic barriers to registration. Ultimately, the goal should be a land law system that balances legal certainty with equitable justice, one that protects rights, promotes investment, and reflects the realities of Nigerian society.

1.6 Conclusion and Policy Recommendations

The jurisprudence of the Nigerian Supreme Court on the admissibility of unregistered land instruments has undergone a significant transformation over the past decade. Beginning with the rigid statutory interpretation in *Benjamin v Kalio*, the Court emphasised the primacy of registration under the Land Instruments Registration Law, effectively excluding unregistered documents from evidentiary consideration. This decision reinforced the formalist tradition in Nigerian land law, prioritising legal certainty and the sanctity of public records.

However, the Court's subsequent decisions in *Abdullahi v Adetutu* and *Taan v SCOA* reflect a more nuanced and equitable approach.

[46] E.E. Udo, "Land Registration Reform and Economic Development in Nigeria" (2022) 44 *African Law and Policy Review* 88, 92

In *Abdullahi*, the Court recognised the admissibility of unregistered documents for limited purposes, such as proving acts of possession and equitable interest. This marked a departure from rigid formalism and acknowledged the socio-legal realities of land transactions in Nigeria, where informal documentation and customary practices remain prevalent. *Taan v SCOA* further expanded this reasoning by admitting an unregistered deed to establish contractual intention and prevent unjust enrichment. The Court's pragmatic stance in this case signals a growing judicial awareness of the need to balance statutory compliance with substantive justice.

The comparative evaluation of these cases reveals a judicial trajectory that is increasingly responsive to context, equity and fairness. While the requirement for registration remains a cornerstone of Nigerian land law, the Supreme Court has demonstrated a willingness to accommodate equitable claims and protect parties who act in good faith. This evolution reflects a broader shift in Nigerian jurisprudence, from rigid positivism to contextual pragmatism, where the courts seek to uphold justice without undermining the legal framework.

For legal practitioners, this shift demands a more sophisticated understanding of both statutory and equitable doctrines. For landowners and purchasers, it underscores the importance of formal registration while offering a measure of protection for informal transactions. For Policymakers, it highlights the need for reform in land registration systems to ensure accessibility, efficiency and legal clarity.

Ultimately, the reconciliation of *Benjamin v Kalio*, *Abdullahi v Adetutu*, and *Taan v SCOA* offers a compelling narrative of judicial adaptation. It illustrates how the Supreme Court, while upholding the law, remains attuned to the lived realities of land ownership in Nigeria. As the country continues to urbanise and modernise its land economy, this evolving jurisprudence will play a critical role in shaping a more inclusive and just legal landscape.

1.7 Policy Recommendations

a. Develop a Unified Judicial Guideline on Admissibility of Land Instruments

The Nigerian judiciary should consider issuing a Practice Direction or guideline, through the National Judicial Council, that outlines the admissibility thresholds for land instruments, distinguishing between legal title and equitable interest. Such a framework would guide trial courts, reduce appellate reversals, and promote doctrinal consistency across jurisdictions. It would also help practitioners advise clients more effectively on the risks of informal transactions.

b. Strengthen Public Awareness and Legal Literacy on Land Documentation

Many landowners and buyers remain unaware of the legal consequences of failing to register land instruments. Legal scholars and institutions should advocate for public education campaigns, integrating land documentation into civic education curricula and community outreach. This would empower citizens to demand proper documentation and reduce reliance on oral agreements, informal contracts or Memorandum of Understanding which often lead to litigation.

c. Encourage Empirical Research on Land Disputes and Registration Compliance

Future scholarship should move beyond doctrinal analysis to include empirical studies on land dispute trends, registration compliance rates, and the socio-economic impact of judicial decisions like *Kalio, Adetutu,* and *SCOA*. Such research would provide data-driven insights into how jurisprudence affects land markets, investment behaviour, and access to justice. It would also inform policy reform and judicial training.

d. Codify Judicial Exceptions for Equitable Interests

The Supreme Court's recognition of equitable interests in *Abdullahi v Adetutu* signals a pragmatic shift from rigid statutory interpretation. To reconcile this with the strict stance in *Benjamin v Kalio*, it is recommended that Nigerian land law be amended to codify judicial exceptions where unregistered instruments may be admissible to prove equitable interests. This would provide clarity for litigants and courts, reduce unpredictability, and align statutory law with equitable doctrines long recognised in Nigerian jurisprudence.

e. Harmonize State-Land Registration Laws with the Evidence Act

The tension between state land registration laws and the Evidence Act has created interpretative inconsistencies. A harmonisation effort, either through constitutional amendment or judicial clarification, should be undertaken to ensure that state laws do not override federal evidentiary standards. This would prevent conflicting outcomes, as seen in *Kalio* and *SCOA*, and reinforce the supremacy of federal law under Section 4(5) of the 1999 Constitution.

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EU ANTITRUST LAW AND THE LIMITS OF SELF-REGULATION IN SPORT: IMPLICATIONS FOR NIGERIA

By

Promise Billion Agunia*

Abstract

The aim of this paper was to examine the limits of self-regulation in sport under European Union (EU) antitrust law and to consider the implications for Nigeria. It analyzes four Grand Chamber rulings, European Superleague, ISU, Royal Antwerp and Diarra, which together mark a decisive shift in the application of Articles 101 and 102 TFEU to sport. The Court held that rules on prior approval, participation and sanctions that lack transparent, objective, non-discriminatory and proportionate safeguards are restrictive by object and amount to abuse of dominance. The paper identified the four-limb checklist that now frames lawful sporting regulation: legitimate aim, objective criteria, proportionality and independent review. It assessed Nigerian competition law under the Federal Competition and Consumer Protection Act 2018, which mirrors the EU model but remains underdeveloped in jurisprudence and under-enforced in practice. Although the FCCPC has acted against large firms such as Meta and MultiChoice, no comparable scrutiny has been applied to sports bodies. The paper therefore argued that Nigerian federations should exercise the same gatekeeper powers condemned in Europe. It recommended embedding the four-limb checklist into Nigerian practice to curb excessive autonomy and align sport with competition law.

Key words: Antitrust law, Sporting self-regulation, Restriction by object Federal Competition and Consumer Protection Act (FCCPA)

1. Introduction

Sports is an economic activity subject to full antitrust scrutiny.[1] In *European Superleague*,[2] *ISU*,[3] *Royal Antwerp*,[4] and later in *Diarra*[5] the Court addressed issues where private bodies that both regulate and trade in the same market exercise unfettered power to license rivals, sanction dissenters and exploit exclusive rights. The judgments held that such power, devoid of transparent *ex-ante* limits, violates *Articles 101 and 102* TFEU by its very "object."[6] This raises the question whether EU competition law now imposes a public-law model of transparency and independent review on every sports-gatekeeper, and, if so, how Nigeria should align that model with its antitrust law? In responding to this question, this paper combines doctrinal comparison of the four Grand Chamber rulings with an appraisal of Nigerian antitrust law, reflecting on the need for Nigeria to reform its jurisprudence to curb the autonomy exercised by sports associations.

For the purpose of this paper, antitrust law is used interchangeably with anticompetition law. It refers to the body of laws, rules, regulations or decisions that prohibit agreements or practices which restrict competition, prevent abuse of dominant positions and ensure fair and open markets. Self-regulation is equally defined as the authority exercised by sporting federations or similar bodies to

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[1]* LLB (Rivers State University, Port Harcourt); BL (Abuja); LLM (Rivers State University, Port Harcourt) billionisco@gmail.com

ISU v Commission (Case C-124/21 P), para 189; *Royal Antwerp* (C-680/21), para 118.

[2] C-333/21

[3] C-124/21 P

[4] C-680/21

[5] C-650/22.

[6] V Bael and Bellis, 'The Court of Justice Issues Important Judgments on the Application of EU Competition Law to Sports Federations in the ISU and ESL Cases' (VBB Client Alert 2024) 1.

create and enforce rules governing their activities without direct external oversight, subject to compliance with competition law.

2. Overview of the Grand Chamber Rulings

2.1 *European Superleague Company v FIFA and UEFA*[7]

Twelve elite clubs announced a closed mid-week league.[8] FIFA and UEFA threatened lifetime bans for clubs and players and exclusion from existing competitions.[9] The European Superleague Company (ESLC) contended that FIFA and UEFA exercise monopoly control over international club football and exploit that power to block market entry, reserve media rights and punish dissenting clubs, all without objective criteria or due process.[10] In defense, FIFA and UEFA contended that the pyramid structure of football, the need for sporting integrity, solidarity funding and coordinated calendars justify a single regulatory and prior-authorization system.[11] The Court found the approval and sanction rules restrictive by object and abusive because they lacked "transparent, objective, non-discriminatory and proportionate" safeguards.[12] As reasoned by the Court, dual-role regulators, like FIFA and UEFA, must limit their powers with procedural safeguards, and absence of those safeguards reveals sufficient grounds to strike down the rules without evidence of its actual market "effects".[13]

2.2 International Skating Union (ISU) v Commission[14]

The ISU's eligibility rules required organizers to secure authorization up to six months in advance and barred skaters from

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[7] C-333/21.
[8] Ibid, paras 23-25.
[9] Ibid., paras 30-31.
[10] Ibid, paras 34-40.
[11] Ibid, para 253.
[12] Ibid, paras 245, 147-152.
[13] Ibid, p 178-179.
[14] C-124/21 P.

unauthorized events.[15] ISU argued that a niche sport needs a single regulator to maintain uniform rules, protect athletes and fund grassroots development and that any restriction was incidental and proportionate.[16] Commission and athlete appellants however replied that the ISU combined regulatory power with a commercial interest, enjoyed *de facto* monopoly control and could exclude rival organizers at will.[17] With this reasoning, they submitted that the eligibility rules lacked objective criteria, procedural safeguards and effective judicial review.[18] The Court held that the authorization and eligibility rules restrict competition by their very nature and thus infringe *Article 101(1)* of the TFEU.[19]

2.3 Royal Antwerp Football Club v RBFA and UEFA[20]

UEFA and the Belgian Federation obliged clubs to register locally trained players. Royal Antwerp argued that the quotas lock up places for locally trained players, limit recruitment of outsiders and partition the EU talent market.[21] In their response, Union Royale Belge des Sociétés de Football Association ASBL (URBSFA) and UEFA argued that the quotas encourage clubs to invest in youth development, promote competitive balance and preserve the identity of national competitions.[22] The Court did not automatically declare the quotas void. Instead, it laid down strict tests that must be satisfied by convincing evidence.[23] It stated that quotas for locally trained players are lawful only when federations can show, with

[15] Ibid, paras 9-12.
[16] Ibid, paras 160-165.
[17] Ibid, paras 27-28.
[18] Ibid, paras 131-134.
[19] Ibid, paras 140-146.
[20] C-680/21.
[21] Ibid, paras 107-110.
[22] Ibid, paras 144-147.
[23] Ibid, paras 118-128.

solid proof, that the quotas really promote youth development and do not unnecessarily bar access to outside talent.[24]

2.4 FIFA v Diarra[25]

FIFA rules saddled new clubs with joint liability for compensation, presumed inducement of breach and imposed automatic transfer bans until end of disputes.[26] The Court ruled that the said FIFA rules restrict free movement and competition by their very object.[27] They can stand only if it is shown to be strictly necessary and proportionate, which FIFA had not proved.[28] The rules therefore infringe *Article 45* and constitute a prohibited decision of an association of undertakings under *Article 101(1).*[29] Further, the Court noted that they cannot qualify for exemption unless FIFA demonstrates that every condition under *Article 101(3)* is met, which the record fails to do so.[30] The court reasoned that even in the name of sporting integrity, such rules or conduct show a sufficient degree of harm to freedom of movement and to competition, and as a result, violates EU antitrust rules.[31]

2.5 The Four-Limb Checklist Across the Rulings

In order to promote transparency, proportionality and accountability, the Court demanded the same four procedural safeguards which include legitimate aim, objective criteria, proportionality and independent review.

1. **Legitimate Aim:** A legitimate aim refers to a goal that is recognized as valid and lawful under EU law, serving the

[24] Ibid, para 150.
[25] C-650/22.
[26] FIFA Regulations on the Status and Transfer of Players, art 17.
[27] *FIFA v Diarra* (C-650/22), paras 134-148.
[28] Ibid
[29] Ibid, paras 86-94.
[30] Ibid
[31] Ibid, paras 94.

public interest rather than purely economic interests. In relation to sports, legitimate aims may include promoting competitive balance, encouraging the training of young players or ensuring the integrity of competitions. The Court in *Royal Antwerp* emphasized that rules restricting competition or freedom of movement must pursue legitimate objectives, such as fostering local player development or maintaining fairness in competitions.[32] However, the Court clarified that such aims must be genuine and not a pretext for anticompetitive behavior. For example, the rules on home-grown players were scrutinized to determine whether they genuinely encouraged local player development or merely partitioned markets along national lines.[33] In antitrust law, the absence of a legitimate aim undermines the justification for self-regulatory measures, exposing sports associations to liability under *Article 101* TFEU for anticompetitive practices.

2. **Objective Criteria:** Objective criteria are transparent, clear and non-discriminatory standards that govern the application of rules in order to ensure that they are not arbitrary or biased. In *European Superleague*, the Court criticized the lack of objective criteria in UEFA and FIFA's rules for prior approval of competitions, which granted them excessive discretionary power to block rival competitions.[34] The absence of clear criteria allowed these associations to favour their own economic interests, thereby creating barriers to market entry and stifling competition.

3. **Proportionality:** Even when there is a legitimate aim, proportionality requires that rules do not go beyond what is necessary to achieve that aim. Thus, rules restricting

[32] *Royal Antwerp*, para 253.

[33] Ibid, para 60.

[34] *European Superleague*, para 203.

competition or freedom of movement must be proportionate. This implies that they must strike a balance between achieving their objective and minimizing harm to competition or individual rights.[35]

4. **Independent Review:** Independent review entails the availability of impartial mechanisms to challenge decisions made under self-regulatory rules. In *ISU*, the Court criticized the arbitration rules imposed by the ISU, which subjected disputes to mandatory arbitration by the Court of Arbitration for Sport (CAS) without effective judicial oversight. The Court held that the lack of independent review undermined the ability of affected parties to challenge anticompetitive decisions, reinforcing the discretionary power of ISU and shielding it from accountability under EU law.[36]

Accordingly, rules on prior approval, participation and sanctions that operate outside a framework of substantive criteria and procedural safeguards reveal, by their very nature, sufficient harm to competition to qualify as restrictions by object. In such cases, no analysis of actual or potential effects is required.[37] The Court has not, however, treated every omission of a safeguard as automatically unlawful. The focus is on whether the lack of safeguards results in unfettered discretion that harms competition. Although legitimate objectives such as integrity, solidarity and player development may justify certain restrictions,[38] such restrictive rules must be proportionate, necessary, and subject to transparent and non-discriminatory criteria.[39] In showing that FIFA and UEFA did not

[35]*Royal Antwerp*,
[36]*ISU*, para 184.
[37]*European Superleague*, para 178.
[38]Ibid, para 144.
[39] Ibid, para 39.

satisfy these safeguards, the Court, in *European Superleague*, stated as follows:

> …those rules and powers are not placed within a framework of substantive criteria and detailed procedural rules which are suitable for ensuring that they are transparent, objective, nondiscriminatory and proportionate, so as to limit the discretionary powers of FIFA and UEFA.[40]

The foregoing *dictum* echoes the intersection between self-regulation in sport and EU antitrust law. Generally, it recognizes the autonomy that FIFA and UEFA have to regulate competitions.[41] However, such rules and powers must comply with the principles of EU antitrust such as transparency, objectivity, non-discrimination and proportionality.[42] The Court's critique of the FIFA and UEFA's lack of substantive criteria and procedural safeguards implies that unchecked discretionary powers can lead to anticompetitive practices which distort market access for rival entities.[43]Also, in *ISU,* the court found that the ISU's eligibility rules, which imposed severe sanctions on athletes participating in unauthorized competitions, operated outside a framework of substantive criteria and procedural safeguards.[44] These rules were deemed to have an anticompetitive object, as they restricted athletes' freedom to participate in alternative events and prevented competition from rival organizers.

This judicial reasoning limits self-regulation in sport, and as a result of such limitation, sporting bodies cannot shield their decisions from the scrutiny of antitrust law under the guise of promoting sporting

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[40] Ibid.

[41] Ibid, para 142.

[42] Ibid, para 134-138.

[43] Ibid, para 147-148.

[44] *ISU,* para 78.

integrity. This sets a precedent for stricter oversight of governance and regulatory practices in sports.

3. How the Judgments Re-shape EU Sports-Competition Rules

The four Grand Chamber rulings mark a structural shift in how EU law views the balance between sporting autonomy and competition control. Before these decisions, sporting federations often relied on deference to their self-regulatory powers, claiming that sport's "specific nature" justified exclusive authority over participation and market access. The Court has now dismantled that presumption.

3.1 Market Governance as Gatekeeper Conduct

Advocate General Rantos urged "maximum deference" to the European Sport Model: UEFA could lawfully reserve a prior-authorization monopoly provided its rules passed an effects-based proportionality test.[45] The Grand Chamber rejected that sequencing. It held that unfettered veto power reveals by its very existence a conflict of interests and therefore infringes *Articles 101 and 102* by object, regardless of measured impact.[46] This move shifts the burden from *ex-post* balancing to *ex-ante* institutional design and anchors the new four-limb checklist.

3.2 *Article 165* TFEU Demystified

Article 165 TFEU instructs the EU to promote sport but adds no antitrust exemption.[47] This provision entered the TFEU amid hopes that the "specific nature of sport" would soften the scrutiny of competition-law.[48] However, the Grand Chamber has now closed that door. It held in *European Superleague* that *Article 165* does not contain a horizontal clause capable of trumping Articles 101 and

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[45] *Rantos Opinion in ESL* [2022] EU:C:2022:1039 [90]-[92]

[46] *European Superleague*, paras 178.

[47] Ibid, paras 94-101.

[48] Ibid, paras 84; Richard Parrish and others, The Lisbon Treaty and EU Sports Policy (European Parliament Study, 2010) 4.

102.[49] It merely allows the EU to "take account" of sport when exercising other competences.[50] The Court repeated the point in *Royal Antwerp*, wherein it declined every invitation to read *Article 165* as a substantive exemption and insisted that sporting rules remain subject to antitrust rules unless they satisfy the four safeguards.[51]

Parrish is of the opinion that this approach of the court adds "little further protection" beyond the safety valves already echoed in *Wouters* and *Meca-Medina*.[52] This paper agrees that *Article 165* offers symbolism and not shelter. This is supported by the statement of the court in *European Superleague* wherein it stated thus,

> More broadly, nor must *Article 165* TFEU be regarded as being a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application…Those rules therefore apply to disputes concerning the exercise of a sport as an economic activity and, on that basis, come under EU competition law.[53]

It follows that *Article 165* provides symbolic recognition of the importance of sport and its unique characteristics but does not offer legal shelter from the application of EU law. As a result, sports associations cannot rely on *Article 165* to justify rules that infringe EU competition law or freedom of movement unless those rules

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[49]*European Superleague*, para 101; Parrish (n 43) 4.

[50]*European Superleague*, para 101

[51]*Royal Antwerp*, paras 63-70.

[52] R Parrish and others, The Lisbon Treaty and EU Sports Policy (European Parliament Study, 2010) 6.

[53]*European Superleague*, paras 101 and 189; *Royal Antwerp*, para 69.

meet the strict criteria of legitimacy, necessity, proportionality, and transparency.[54]

Authors like Weatherill believes that *Article 165* should be read in an autonomy-sensitive way because sport differs from "ordinary" trade based on its social function.[55] Similarly, Colomo has worryingly said that calling too many rules "restrictions by object" (i.e. automatic illegality) pushes anti-trust law too far beyond cartel-like conduct.[56] However, where a rule reserves an unconditional veto to a self-interested regulator, no amount of social justification can cure the structural conflict. Therefore, real autonomy must be balanced with accountability and equality, and that is possible only when the self-interested regulator first builds in the Court's four safeguards. Otherwise, the rule is bound to fail.

3.3 Re-drawing the Object–Effect Boundary

The case of *Meca-Medina* left sports rules to a case-by-case proportionality test, asking whether their effects on competition were justified by legitimate aims.[57] Under the new rulings, any approval, sanction or quota that gives a regulator unchecked power is considered a restriction by object because it allows or excludes from the market any competing undertaking.[58] Once that label exists, the door to *Article 101(3)* closes and the fourth exemption limb (that is, no elimination of competition) cannot be satisfied when a single body can block rivals at will, so there is nothing left to balance against putative benefits.[59]This marks a decisive

[54] Ibid.

[55] Stephen Weatherill, *Principles and Practice in EU Sports Law* (Oxford University Press 2017).

[56] Pablo Ibanez Colomo, 'Restrictions by object under Article 101(1) TFEU: From Dark Art to Administrable Framework' (2024) *Yearbook of European Law*;1-37, 36.

[57]*Meca-Medina* (Case C-519/04 P), paras 42-48.

[58]*European Superleague*, paras 133-134.

[59]Ibid.

narrowing of the effects analysis, such that certain rules are 'presumptively' unlawful by object when safeguards are absent.[60] If the four procedural safeguards are absent, the inquiry ends and the rule becomes void regardless of any solidarity or sporting merit the federation may later invoke.

3.4 Abuse of Dominance Re-conceptualized

The Grand Chamber reconceives dominance and abuse in structural terms. Where a sporting federation both regulates market entry and markets its own competitions, it holds the power of monopoly "by design." Its special responsibility therefore arises before it exercises that power.[61] In *European Superleague,* the Court found UEFA and FIFA dominant simply because their statutes gave them the exclusive right to approve rival tournaments and to sanction dissenting clubs. In *ISU,* it reached the same conclusion for a private Swiss Federation. Abuse then flows from the possession of an unfettered veto; a rule that allows the gatekeeper to block competitors at will is inherently exclusionary, even if no veto has yet been exercised. This approach aligns EU antitrust law with good-governance principles drawn from public law which seeks to limit power through transparent criteria, proportionality and review. The Court thus shifts the abuse inquiry from *ex-post* effects to *ex-ante* institutional design, which mandates federations to separate regulatory judgment from commercial self-interest or face *per se* liability.

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[60] H Vedder, 'On Thin Ice: The Court's Judgment in Case C-124/21 P, International Skating Union v Commission' (2024) 9 European Papers 87-103, 95, 100; R Gastal and T Klein, 'Exclusivity and Exclusion in Sports' [2024](23)(1) *Competition Law Journal*;6.

[61] G Íñiguez, 'European Super League Company and the (New) Law of European Football' [2024](9)*European Papers* 6.

3.5 Exclusive Rights and *Article 106*

The Grand Chamber's reasoning also destabilizes long-standing exclusivities that many federations enjoy under national law. *Article 106(1)* prevents Member States from granting exclusive or special rights that, "in combination with *Article 102*," lead the beneficiary to abuse a dominant position. Although the four rulings did not turn on *Article 106*, the Court's analysis of joint marketing and downstream exploitation leaves little doubt that a state-backed exclusivity granted without a transparent process now faces heightened risk. In *European Superleague*, the Court noted that UEFA's collective sale of media rights is *prima facie* restrictive but may be justified only if it demonstrably lowers transaction costs and redistributes revenue on a solidarity basis.[62] This point is particularly relevant where the rights stem from a legal monopoly that forecloses rival organizers or broadcasters.[63] The judgment in *European Superleague* therefore signals a renewed vigilance and oversight towards exclusive arrangements that foster gatekeeper dominance.[64] This implies that any renewal of UEFA's centralized Champions League rights or FIFA's World Cup broadcast contracts must occur through an open, non-discriminatory process and include auditable solidarity schemes. Otherwise, both the granting state and the rights-holder could face joint liability under *Articles 106(1) and 102*.

3.6 Curtailing *Wouters* and Ancillary-Restraints

Wouters allowed certain proportionate restraints.[65] In *Wouters*, the Court held that a prohibition on multidisciplinary law–audit partnerships, though restrictive, could escape *Article 101(1)* where

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[62] *European Superleague*, paras 219-222. 232-235.

[63] G Íñiguez, 'European Super League Company and the (New) Law of European Football' [2024](9)*European Papers*;14.

[64] Ibid.

[65] Case C-309/99 *Wouters* EU:C:2002:98.

it pursued a legitimate objective and went no further than necessary.[66] The case of *Meca-Medina* applied that reasoning to sports, thereby allowing anti-doping rules that were proportionate to protecting fair competition.[67] However, the new rulings require safeguards first.[68] If the rule lacks those *ex-ante* safeguards, it is considered a restriction by object and cannot be regarded as ancillary. Thus, the *Wouters* justification fails.

4. Implications of the Rulings for Nigeria

The antitrust law in Nigeria mirrors that of the EU but is jurisprudentially underdeveloped and inadequately enforced.[69]Under the Federal Competition and Consumer Protection Act 2018 (FCCPA), self-regulation in sports or any industry is permissible but must comply with the provisions of the FCCPA 2018 that prohibit anti-competitive agreements, abuse of dominant positions and restrictive practices.[70]*Section 59* of the FCCPA prohibits agreements among undertakings or decisions by associations of undertakings that have the purpose or effect of preventing, restricting, or distorting competition in 'any market.'[71] The use of the phrase 'any market' under *Section 59(1)* of the FCCPA implicitly covers the sports industry in Nigeria. Applicably, such agreements in the industry are deemed unlawful, void, and of no legal effect.[72] *Section 72* of the FCCPA further proscribes the abuse of a dominant position in a market.[73] Examples of such abusive practices include:

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[66] Ibid

[67] Case C-519/04 P *Meca-Medina* EU:C:2006:492

[68]*European Superleague*, para 254.

[69] Sections 59–69 of the FCCPA 2018 mirror Articles 101 and 102 TFEU.

[70] FCCPA, ss 59–69.

[71]Ibid, s 59(1).

[72]Ibid.

[73] Ibid, s 72(1).

a. Directly or indirectly imposing unfair prices to the detriment of consumers[74]

b. Refusing to give a competitor access to an essential facility when it is economically feasible to do so[75]

c. Engaging in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological efficiency and other pro-competitive gains[76]

d. Engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency and other pro-competitive gains which outweigh the anti-competitive effect of its act:

   i. requiring or inducing a supplier or customer not to deal with a competitor;

   ii. Refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;

   iii. Selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract;

   iv. Selling goods or services below their marginal or average cost; or

   v. Buying up a scarce supply of intermediate goods or resources required by a competitor.

[74] Ibid, s 72(2)(a).
[75] Ibid, s 72(2)(b)
[76] Ibid,

e. Limiting production, markets or technical development.[77]

f. Applying dissimilar conditions to equivalent transactions, thereby placing certain parties at a competitive disadvantage.[78]

Under the FCCPA, abusing a dominant position attracts a fine of up to 10% of turnover and criminal liability.[79] *Article 5* of the ECOWAS Supplementary Act extends similar rules at the West African level.[80] However, the FCCPA also recognizes that not every restrictive agreement is automatically unlawful.[81] *Section 60* of the FCCPA provides a limited exemption for agreements or decisions by associations of undertakings where the FCCPC expressly authorizes them. For such authorization to stand, three cumulative conditions must be met. First, the agreement must contribute to improving production or distribution of goods or services or promote technical or economic progress, while ensuring that consumers receive a fair share of the resulting benefit.[82] Second, the restrictions imposed must be indispensable to achieving those objectives.[83] Third, the agreement must not afford the undertakings the possibility of eliminating competition in a substantial part of the relevant market.[84]

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[77] FCCPA, s 59(2)(c).

[78] Ibid, s 66(1)(c).

[79] *Ibid.*, s 74(1)(2); B Olumide and others, 'Nigeria Competition Law Considerations in Negotiating Restrictive Agreements ' <https://ao2law.com/wp-content/uploads/2024/07/Nigeria-Competition-Law-Considerations-in-Negotiating-Restrictive-Agreements-July-2024.pdf> accessed 12 June 2025.

[80] ECOWAS Supplementary Act A/SA.1/12/08, art 5.

[81] FCCPA, s 60.

[82] Ibid, s 60(a).

[83] Ibid, s 60(b).

[84] Ibid, s 60(c).

This exemption framework under *Section 60* of the FCCPA is similar to *Article 101(3)* TFEU, which the Grand Chamber applied in *Diarra* and rejected for lack of proof that FIFA's rules generated compensating efficiencies.[85] The lesson for Nigeria is that self-regulatory rules in sport (such as eligibility criteria, transfer restrictions or exclusive broadcasting rights) may only survive scrutiny if they demonstrably create efficiency gains and pass all three conditions under *Section 60* of the FCCPA. In practice, however, regulators are yet to apply this rigorous test. The FCCPC has not demanded evidence from sporting bodies to show that exclusionary rules actually enhance efficiency or distribute benefits fairly to consumers and athletes. As a result, the current enforcement gap could allow self-interested sporting associations to invoke 'integrity' or 'development' without satisfying the statutory benchmarks.

In 2023, Nigeria Premier Football League (NPFL) sold exclusive domestic broadcast rights to StarTimes for ₦1 billion over five seasons roughly €0.9m per season.[86] Only 2 matches per round were broadcast live until February 2024, rising to 8 by 2025/2026 season.[87] However, the limited coverage and modest annual revenue reveal the same structural problem that the Grand Chamber condemned: an exclusive and non-transparent rights grant that establishes the league's gatekeeper role and stifles both market growth and fan access.[88]

Despite the absence of sports-specific decisions, the FCCPC has demonstrated enforcement capacity in other sectors. In July 2024,

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[85] *Diarra*, para 203.

[86] Lagos Metropolitan, 'NPFL and StarTimes sign five-year ₦1 Billion broadcast rights deal to bring Nigerian football to TV screens' <https://lagosmetropolitan.com/2023/11/03/npfl-and-startimes-sign-five-year-₦1-billion-broadcast-rights-deal-to-bring-nigerian-football-to-tv-screens/> accessed 14 June 2025.

[87] *Ibid.*

[88] *European Superleague*, para 176 and 232; *ISU*, para 146.

the Commission imposed a fine of USD 220 million on Meta/WhatsApp for exploitative and discriminatory practices, and in April 2025 the Federal Competition and Consumer Protection Tribunal (FCCPT) upheld that penalty.[89] In March 2025, the FCCPC also filed charges against MultiChoice Nigeria and its chief executive for defying regulatory directives by raising pay-TV subscription fees despite an order to maintain existing prices.[90] These interventions, though outside the sporting domain, show that the FCCPC is positioning itself as an assertive regulator. These examples provide important precedents for the scrutiny of large digital and media firms. However, none of them directly confront the structural conflicts, prior-approval regimes or sanctioning powers that dominate Nigerian sport. The absence of a sports precedent shows that antitrust law is under-applied in stadiums, federations and broadcast markets in Nigeria.

Thus, the Grand Chambers rulings therefore have the following implications for Nigeria:

2. With respect to event-approval monopolies, the Nigerian Football Federation (NFF) requires prior consent for interstate tournaments under unpublished criteria.[91] This mirrors the UEFA scheme which the Court has condemned.

3. The NPFL Board regulates fixtures, discipline and licensing and sells the league's media inventory. That dual role aligns

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[89] FCCPC, 'Violations: Tribunal Upholds FCCPC's $220 Million Fine Against Meta/WhatsApp' <https://fccpc.gov.ng/violations-tribunal-upholds-fccpcs-220-million-fine-against-meta-whatsapp/> accessed 4 October 2025.

[90] FCCPC, Violations: FCCPC Files Charges Against Multichoice' <https://fccpc.gov.ng/violations-fccpc-files-charges-against-multichoice/> accessed 4 October 2025.

[91] K Abel, 'State Preliminaries for the 2025 President Federation Cup Begin' <https://www.footballinnigeria.com.ng/football-events-and-tournaments/state-preliminaries-for-the-2025-president-federation-cup-begin/> accessed 13 June 2025.

with UEFA/FIFA and ISU structures which has now been dismantled by the Court.

4. The 2023 deal between NPFL and Star Times is barely €30,000 per club, which is far below even second-tier African benchmarks. This signals a likely under-valued and non-competitive sale which echoes *European Superleague* that when a dominant organizer sells rights without competition, price is usually suppressed, thereby starving the sport of resources.[92]

5. The rulings demonstrate that even though sports associations have autonomy to regulate competitions, their rules must comply with EU competition law.[93] This legal principle is relevant to Nigeria and Africa, where sports associations such as Confederation of African Football (CAF) and national football federations often exercise significant regulatory and commercial powers. The reasoning of the Grand Chamber uncovers the need for African sports bodies to ensure that their self-regulatory frameworks do not violate competition laws, particularly in areas such as player eligibility, broadcasting rights and market access.

6. The $300,000 fine on CAF and BEIN Media Group for anticompetitive practices demonstrates the growing enforcement of competition law in Africa.[94] The FCCPC and other regional bodies like ECOWAS must adopt approaches similar to the Grand Chamber rulings in order to scrutinize agreements that prevent, restrict or distort competition in sports markets.

7. The limits of self-regulation in sport, especially when it conflicts with competition law, serves as a lesson for the

[92] *European Superleague*, paras 206-207, 232.
[93] *ISU*, para 196.
[94] Olumide (n 79).

Nigerian Football Federation (NFF), which often operate with minimal oversight. The rulings call for robust regulatory frameworks to ensure that self-regulatory practices in sports do not lead to anticompetitive rules or practices.

8. Regulators, businesses and sports associations must therefore work together to implement the lessons from these rulings so as to ensure that the sports sector contributes meaningfully to economic progress and youth development in Nigeria.

5. Conclusion and Recommendations

As shown in this paper, the Grand Chamber has rejected the notion that sporting autonomy overrides competition law. Rules that rely on discretionary approval, blanket sanctions or non-transparent exclusivities are now regarded as restrictive by object and presumptively unlawful under EU law. This shift matters not only for European sport but also for jurisdictions such as Nigeria, where federations exercise similar gatekeeping powers. The Nigerian FCCPA already mirrors the EU model in text, but its jurisprudence is still underdeveloped and its application to sport is indirect and implied. To secure a level playing field, Nigeria should incorporate into practice the four-limb checklist of legitimate aim, objective criteria, proportionality and independent review.

In light of this submission, the paper recommends as follows;

1. The Nigeria Football Federation (NFF) and Nigeria Premier Football League (NPFL) should be required to set out in writing the substantive criteria and procedures for granting approvals, imposing sanctions, or excluding clubs. These rules should be made publicly available and subject to consultation with clubs and players' unions.

2. The FCCPC should issue guidelines explaining how *Sections 59, 60 and 72* of the FCCPA apply to sports. These should clarify what constitutes an agreement "by object," what efficiencies could justify restrictions under *Section 60*, and what behavior amounts to abuse of dominance. This would educate federations and signal that antitrust obligations apply directly to sport.
3. The government should introduce a standing committee within the FCCPC or Ministry of Sports to hear appeals against federation decisions that affect market participation, such as licensing, transfers or broadcasting.