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Nnamdi Azikiwe University Journal of Human Rights Law (UNIZIK-JHRL) 2024 Vol. 1 No. 2

APPRAISAL OF THE INNOVATIVE PROVISIONS OF THE BUSINESS FACILITATION ACT 2023 IN THE LIGHT OF NATIONAL POLICY ON EASE OF DOING BUSINESS IN NIGERIA.

Prof. M.N Umenweke, PhD*
Matthew Izuchukwu Anushiem, PhD**
Uchenna Maryjane Anushiem, PhD***
Chinaza Michael Egwuatu****

Abstract

Business activities in Nigeria, which has the largest economy in Africa, have been impeded by bureaucratic red tape, ambiguous legal requirements, and inefficient administrative procedures.[1] Such barriers have been a continuous problem. To address the various obstacles faced by businesses in Nigeria and to effectively implement regulatory and administrative reforms, the Federal Government of Nigeria has enacted the Business Facilitation (Miscellaneous Provisions) Act (BFA) 2023. The Business Facilitation Act 2023, a notable development in creating a favourable business climate, was officially signed into law by President Muhammadu Buhari on 14 February 2023.[2] The BFA 2023 is in line with the National Policy on Ease of Doing Business in Nigeria, which has been a key part of economic reforms to improve the regulatory environment, reduce bureaucracy, and create a more business-friendly climate.[3] It introduces various innovative provisions to simplify regulatory processes, increase transparency, and improve efficiency. This paper therefore aims at evaluating the provisions of the Business Facilitation Act 2023 and analyses their compatibility with the National Policy on Ease of Doing Business in Nigeria. It further analyzes the key amendments and regulatory changes introduced by the Act. The paper will also show the lessons and reflections on potential impacts on the business ecosystem in Nigeria, with a focus on reducing administrative hurdles, fostering economic development, and enhancing the overall ease of doing business. The researchers adopted the doctrinal methodology with analytical approach. The BFA 2023 is a major milestone in improving the business environment in Nigeria. The Act addresses critical challenges faced by businesses by introducing innovative provisions such as the one-stop shop policy and enhanced dispute resolution. Collaboration among stakeholders, including government agencies, businesses, and civil society, is crucial to ensure the Act effectively creates a favourable business environment in Nigeria.

Keywords: Innovative Provisions, Business Facilitation Act, National Policy, Ease of Doing Business, Nigeria

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[1] P Thandika Mkandawire and Charles Chukwuma Soludo, *Our Continent, Our Future* (International Development Research Centre, 2014); Oluwafemi Moses and Omoniyi V Ajulor, 'Effects of Bureaucratic Red Tape on Employees' Performance in an Organization (A Study of Lagos State Water Corporation) (MSC, University of Nigeria, McCarthy Study Centre Lagos, 2022).

[2] Olujimi Bucknor, Subuola O Lanlehin and Alicia Adefarasin, 'Revolutionizing Business in Nigeria: A Detailed Examination of the Business Facilitation Act, Its Benefits and Challenges ½' (*Denton ACAS-Law*, 16 March 2023) <https://www.dentonsacaslaw.com/en/insights/articles/2023/march/16/revolutionizing-business-in-nigeria> accessed 20 May 2024.

[3] Business Facilitation (Miscellaneous Provisions) Act No 5 2022, s 1 (1) (a) & (b)

1.0 Introduction

Business activities in Nigeria, which has the largest economy in Africa, have been impeded by bureaucratic red tape, ambiguous legal requirements, and inefficient administrative procedures.[4] Such barriers have been a continuous problem. The World Bank's Ease of Doing Business report has repeatedly ranked Nigeria 131 out of 190 which can be classified as having a low level of ease of doing business.[5] The reason for the low ranking is not far-fetched. Nigeria is regularly condemned for the complicated regulatory processes it employs, the ineffective administrative procedures it employs, and the overall lack of openness in the way the government conducts its business.[6] Both domestic and international investments in the country have also been hampered by these challenges, which have consequently impeded economic growth and development.[7] To address this issue, the Nigerian government established the Presidential Enabling Business Environment Council (PEBEC) in 2016, with the aim of enacting measures that would make it easier for businesses to operate freely.[8] A number of initiatives, including the National Policy on Ease of Doing Business, have been put into action with the profound assistance of the PEBEC.[9] This policy also aims to improve the business environment by implementing specific regulatory and administrative reforms.

The rationale for this research lies in the critical need to understand how these legislative changes can potentially transform the business environment in Nigeria. Considering the significance of MSMEs to the Nigerian economy, a comprehensive analysis of these provisions will shed light on the BFA's potential to stimulate economic growth, attract foreign investment, and enhance Nigeria's position in global ease of doing business rankings.[10]

This paper has significance for policymakers, business leaders, entrepreneurs, and investors who want to gain a comprehensive understanding of the changing regulatory landscape in Nigeria. The main aim is to provide a well-rounded and insightful analysis that highlights the strengths and possible limitations of the Act. Additionally, actionable recommendations will be offered for further policy improvements.

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[4] P Thandika Mkandawire and Charles Chukwuma Soludo, *Our Continent, Our Future* (International Development Research Centre, 2014); Oluwafemi Moses and Omoniyi VAjulor, 'Effects of Bureaucratic Red Tape on Employees' Performance in an Organization (A Study of Lagos State Water Corporation) (MSC, University of Nigeria, McCarthy Study Centre Lagos, 2022).

[5]World Bank, 'Economy Profile of Nigeria Doing Business 2020 Indicators' (2020) <https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf> accessed 21 May 2024; Aisha Salaudeen, 'Nigeria improves in World Bank ease of doing business ranking, but is it easier to do business there?' (*CNN*, 24 October 2019) <https://edition.cnn.com/2019/10/24/africa/nigeria-improves-in-world-bank-ranking/index.html> accessed 21 May 2024.

[6] Ibrahim Abubakar et al., 'The Lancet Nigeria Commission: Investing in Health and the Future of the Nation' (2022) 399 *The Lancet* 1155 <http://dx.doi.org/10.1016/s0140-6736(21)02488-0>.

[7] Yusuf Abdulkarim, 'A Systematic Review of Investment Indicators and Economic Growth in Nigeria' (2023) 10 *Humanities and Social Sciences Communications*<http://dx.doi.org/10.1057/s41599-023-02009-x>.

[8]United States Department of State, 'Nigeria - United States Department of State' (7 December 2023) <https://www.state.gov/reports/2023-investment-climate-statements/nigeria/#:~:text=The%20government%20established%20the%20Presidential,improving%20business%20transparency%20and%20efficiency.>.

[9] Financial Nigeria International Limited, 'PEBEC Launches Fourth National Action Plan on Ease of Doing Business Reform' (5 March 2024) <https://www.financialnigeria.com/pebec-launches-fourth-national-action-plan-on-ease-of-doing-business-reform-sustainable-photovideo-details-1095.html>. Accessed 20 May 2024.

[10] T Awosika and S Abu, 'Insights on The Business Facilitation Act 2023 | A Leading Commercial & Dispute Resolution Law Firm in Nigeria' (Duale Ovia & Alex-Adedipe, 3 March 2023) <https://www.doa-law.com/insights-on-the-business-facilitation-act-2023/> accessed 21 May 2024.

2.0 Analysis of the Business Facilitation Act 2023 and its Alignment to the National Policy on Ease of Doing Business

The BFA 2023 has emerged as a game-changer in Nigeria's business landscape. This recent legislation is poised to greatly simplify business operations in the country. This analysis therefore examines the main provisions of the Act and evaluates its compatibility with the National Policy on Ease of Doing Business.

The BFA 2023 now operative in Nigeria, aims to simplify and streamline the business registration process by removing bureaucratic obstacles thereby reducing the time and cost associated with regulatory compliance. The Act requires the streamlining of procedures within government agencies, allowing for decreased time and expenses related to regulatory compliance.[11] It also promotes the use of electronic submission and handling of documents to improve efficiency and mitigate misconduct. The Corporate Affairs Commission (CAC) for instance is mandated to offer an online platform for business registration, making it convenient for entrepreneurs to complete all necessary paperwork.[12] Simplifying the registration process is expected to improve the ease of doing business in Nigeria, attract foreign investors, and stimulate economic activity and employment opportunities.[13] The provision also aligns with global best practices, making Nigeria a more attractive destination for foreign investors. Another important aspect of the Act is its emphasis on streamlining the process for granting licences and permits. Entrepreneurs frequently face obstacles and complications when seeking the required authorizations to initiate or grow their businesses.[14] The Act requires that government agencies provide clear guidelines and timelines for the issuance of licences and permits.[15] In addition, the Act includes a provision for "silent approval," meaning that applications will be considered approved if the relevant agency does not respond within a certain timeframe. Streamlining licencing and permits decreases administrative burden on businesses and fosters openness and responsibility within government agencies.[16] The implementation of silent approval is highly commendable, as it effectively eliminates any unnecessary delays and guarantees smooth business operations. This provision is expected to enhance investor confidence and promote additional business ventures.

The BFA presents a fascinating system for default approvals. The MDA must maintain two modes of communication for its official decisions, which will be published on the MDA's website. A timely response is necessary for an MDA to convey the decision on an application, as mentioned in the specified requirements.[17] When an application is denied, it is the responsibility of the MDA to inform the applicant of the rejection and provide a clear explanation for the decision.[18] It is crucial to note that according to the BFA, if an MDA does not provide a response to an application within the specified timeframe outlined in the published requirements, the application will be considered approved. To establish the application timeline, the applicant's physical acknowledgement or electronic copy of the application is sufficient as evidence of the submission date.

The BFA 2023 further illustrates the importance of using electronic systems for a wide range of business transactions. These processes encompass the digitalization of tax payments, customs procedures, and various regulatory compliance processes.[19] The Act also requires the use of

[11] BFA 2023 (n 9), ss 1 (1), 1 (3) & 3.

[12] *Ibid*, s 8.

[13] SOpuala-Charles and I V Oshilike, 'Impact of Ease of Doing Business on Foreign Direct Investment in Nigeria' (2023) 4 *J Econ Management* 1. <DOI:10.47363/JESMR/2023(4)174>

[14] B Hoogendoorn, P van der Zwan and RThurik, 'Sustainable Entrepreneurship: The Role of Perceived Barriers and Risk' (2019) 157 *Journal of Business Ethics* 1133 <http://dx.doi.org/10.1007/s10551-017-3646-8>.

[15] BFA 2023 (n 9), s 4

[16] *Ibid*, s 5

[17] *Ibid*, 4 (1) & (2)

[18] *Ibid,* s 4 (3) & (5)

[19] *Ibid*, s 3 (2), 4 (4)

electronic platforms to increase efficiency, combat corruption, and enhance service delivery.[20] The implementation of electronic systems for business transactions is a crucial advancement in updating Nigeria's business environment. Digitalization improves transparency, mitigates corruption risks, and streamlines processes, facilitating businesses' compliance with regulatory requirements. This provision reflects current global trends and positions Nigeria as a progressive economy.

The BFA enforces regulations against touting[21] in Nigerian ports. It requires port staff to wear their uniforms and identity cards for identification purposes.[22] In relation to secure areas of the ports, the Act prohibits unauthorized personnel from entering these areas in Nigerian ports. Additionally, it forbids staff from interacting with individuals who are not designated dignitaries in these areas. A pre-approved list of dignitaries is required to be made available to the Port Authorities prior to the arrival of a dignitary.[23] Soliciting or collecting bribes from passengers is strictly prohibited by the BFA.[24] If an official engages in such behaviour, they will be relieved of their duty, face disciplinary action, and may be subject to criminal charges. Every port is required to operate 24 hours a day, as determined by the relevant Port Authorities. In the end, the Act places a duty on the Port Authorities to ensure adherence to the provision. Port Authorities must combine departure and arrival interfaces into a single customer interface within thirty (30) days of the start of the Act.[25] All agencies operating within the ports must consolidate their operations into a single interface station located within the port within sixty (60) days of the Act's commencement.[26] This station would be in charge of collecting information on goods entering and leaving Nigeria.

The BFA 2023 made several changes to the provisions of the Companies and Allied Matters Act (CAMA) 2020.[27] Some of the key changes include:

a. The amendment allows a company to increase its issued share capital through a general meeting or a resolution of the Board of Directors, whereas previously it could only be done through a general meeting.
b. Private companies are now required to offer newly issued shares to their existing shareholders before they are allotted to the general public. A timeline of 21 days' notice is introduced for accepting or declining the offer.[28]
c. The authority to allot shares must be vested by the company in a general meeting or the Articles of the Company.[29]
d. Companies must now register allotments within 15 days to the Corporate Affairs Commission (CAC), changing the previous timeframe of within 1 month.[30]
e. Share certificates can now be in physical or electronic form.[31]
f. Documents submitted for the transfer of shares must include electronically issued share certificates.[32]

[20] *Ibid*, s 6 (8)
[21] This is a common phenomenon in the Nigerian business environment and impedes business activities.
[22] BFA 2023 (n 9), s 7 (1)
[23] *Ibid*, s 7 (6)
[24] *Ibid,* s 7 (7) & 7 (8)
[25] *Ibid,* s 7 (9)
[26] *Ibid,* s 7 (10)
[27] *Ibid*, s 9 (Part 1)
[28] *Ibid,* s 9 (2)
[29] *Ibid*, s 9 (3)
[30] *Ibid,* s 9 (4)
[31] *Ibid*, s 9 (5)
[32] *Ibid,* s 9 (6)

g. Holders of fixed charge now have priority over a company's debt, including preferential debt.[33]
h. Both private and public companies can now hold their general meetings electronically, in accordance with the articles of the company.[34]
i. Notices can be given personally, electronically, by post, or to an address supplied by the member.[35]
j. Electronic voting is introduced as another way to put a resolution to a vote.[36]
k. Public companies must have at least one-third of their directors as independent directors.[37]
l. Directors removed on grounds of fraud, dishonesty, or unethical conduct will be disqualified from being a director.[38]
m. Directors in more than 5 public companies can resign before the next annual general meeting, rather than being required to resign at the meeting.[39]
n. Financial statements must comply with the accounting standards prescribed by the Financial Reporting Council of Nigeria (FRCN).[40]

The BFA 2023 amended various laws in Nigeria that regulate business. Some of the amendments include:

a. Customs and Excise Management Act: Introduced the definition of 'single window' and amended timelines.[41]
b. Financial Reporting Council Act: Stated that financial statements must be in accordance with the standards set by the Financial Reporting Council.[42]
c. Foreign Exchange (Monitoring & Miscellaneous Provision) Act: Expanded instances where the Central Bank of Nigeria may revoke the appointment of an authorized dealer or buyer.[43]
d. Export (Prohibition) Act 2004: The Minister of Finance can now vary the goods prohibited from being exported.[44]
e. Immigration Act: Mandated timely acceptance or rejection of entry visas and use of electronic communication for correspondence.[45]
f. Industrial Inspectorate Act: Extended expenditure coverage.[46]
g. Industrial Training Fund Act: Mandated employers with 25 or more employees to contribute to the fund.[47]
h. Investment and Securities Act: Amended the method of offering securities to the public.[48]
i. Nigerian Export Promotion Council Act: Added more members to the Board of the NEPC.
j. National Housing Fund Act: Mandated contributions to the fund and changed the term 'basic salary' to 'minimum wage'.[49]

[33] *Ibid,* s 9 (8)
[34] *Ibid*, s 9 (9)
[35] *Ibid,* s 9 (10)
[36] *Ibid*, s 9 (11)
[37] *Ibid,* s 9 (12)
[38] *Ibid*, s 9 (13)
[39] *Ibid,* s 9 (14)
[40] *Ibid,* s 9 (15)
[41] *Ibid,* s 9 (25) amends section 18 (a) & (b) of Customs and Excise Management Act.
[42] *Ibid,* s 9 (32) amended section 32 of the Financial Reporting Council Act
[43] *Ibid,* s 9 (34) amended section 6 of Foreign Exchange (Monitoring & Miscellaneous Provision) Act.
[44] *Ibid*, s 9 (30) amended section 1 of Export (Prohibition) Act 2004.
[45] *Ibid,* s 9 (36) amended section 20 of Immigration Act.
[46] *Ibid*, s 9 (39) amended section 3 of Industrial Inspectorate Act.
[47] *Ibid*, s 9 (41) amended section 6 of the Industrial Training Fund Act.
[48] *Ibid,* s 9 (43) amended section 67 of Investment and Securities Act.

[49] *Ibid,* s 9 (45) amended section 4 (1) of the National Housing Fund Act.

k. Nigerian Oil and Gas Industry Content Development Act: Added the definition of "Nigerian Independent Operators".[50]
l. Pension Reform Act: Allowed pension assets to be used for securities lending.[51]
m. Standard Organisation of Nigeria Act: Conduct investigations into the quality of imported products and establish a quality assurance system.[52]
n. Trade Marks Act: Expanded the definition of goods and introduced a new definition of trademark.[53]

The BFA 2023 is seen as a positive development in Nigeria's efforts to improve the ease of doing business. It addresses key barriers to business operations and aims to create a more conducive environment for economic growth. The Act's provisions, such as streamlining business registration processes, simplifying licensing and permits, introducing electronic systems, and protecting minority shareholders' rights, are all steps in the right direction. However, the success of the Act will depend on its effective implementation and enforcement. The government needs to ensure that relevant agencies are adequately equipped and motivated to carry out the provisions of the Act. Continuous monitoring and evaluation are also necessary to assess the impact of the Act and make any necessary adjustments. If implemented effectively, the BFA 2023 has the potential to transform Nigeria's business landscape and make the country a competitive and attractive destination for investment.

3.0 **Alignment with the National Policy on Ease of Doing Business**

The PEBEC on 17 February 2017 approved a 60-Day National Action Plan on Ease of Doing Business in Nigeria.[54] The plan involves collaboration between various government agencies, the National Assembly, the Governments of Lagos and Kano States, and the private sector.[55] This policy focuses on reducing the time, cost, and procedures involved in business operations, thereby making Nigeria a more attractive destination for investment.[56] The BFA 2023 however serves as a legislative instrument to operationalize these policy objectives. The National Policy on Ease of Doing Business aims to streamline regulatory processes, improve transparency, and foster a business-friendly environment.[57] Key provisions of the Policy include:

The policy on Ease of Doing Business provision on Transparency of the MDAs requires every Ministry, Department, and Agency (MDA) of the Federal Government of Nigeria to publish a complete list of all requirements or conditions for obtaining products and services within their scope of responsibility.[58] This includes permits, licenses, waivers, tax-related processes, filings, and approvals. The list should include all fees and timelines required for processing applications and should be prominently displayed on the premises of the MDA and published on its website within

[50] *Ibid,* s 9 (57) amended section 106 of the Nigerian Oil and Gas Industry Content Development Act.
[51] *Ibid*, s 9 (64) amended section 89 of Pension Reform Act.
[52] *Ibid,* s 9 (66) amended section 5 of the Standard Organisation of Nigeria Act.
[53] *Ibid*, s 9 (69) amended section 69 of Trade Marks Act.
[54] Executive Order On the Promotion of Transparency and Efficiency in the Business Environment (to facilitate EDB), Executive Order On Support for Local Contents in Public Procurement by the Federal Government and Executive Order On Budgets(to facilitate timely submission of annual budgetary estimates by all statutory and non-statutory agencies, including Federal Government owned companies.) Nigerian Investment Promotion Commission, 'The National Action Plan 2.0" (17 October 2017) <https://www.nipc.gov.ng/2017/10/17/national-action-plan-2-0/>. Accessed 19 May 2024.
[55] O OOlagunju and J O Ikeolumba, 'The Evaluation of the National Policy on Ease of Doing Business in Nigeria' (2019) 15 *European Scientific Journal ESJ* <http://dx.doi.org/10.19044/esj.2019.v15n8p203>.
[56] *Ibid*, 205.
[57] Executive Order On the Promotion of Transparency and Efficiency in the Business Environment (to facilitate EDB),

[58] *Ibid*, Order 1

21 days of the issuance of this order.[59] The head of the MDA is responsible for verifying and keeping the list up-to-date.[60] In case of any conflict between a published and unpublished list of requirements, the published list will prevail.[61]

The policy also states that if a relevant agency or official fails to communicate approval or rejection of an application within the specified time, all applications for business registrations, certifications, waivers, licenses, or permits that are not concluded within the stipulated timeline will be deemed approved and granted.[62] The mode of communication of official decisions to applicants should be stated in the published requirements.[63] Rejections of applications must be given with reasons and accurate records of rejections should be kept and submitted to the head of the agency on a weekly basis.[64] There should be at least two modes of communication for acceptance or rejection of applications, such as letters, emails, or publications on agency websites.[65] The applicant's acknowledgement copy of the application will serve as proof of the submission date for determining the commencement of the application timeline.[66] If an application is deemed granted, the applicant can apply to the relevant Minister for the issuance of any necessary documents or certificates within 14 days of the agency's stipulated timeline.[67] Failure of an officer to act on an application within the specified timeline, without a lawful excuse, will be considered misconduct and subject to disciplinary proceedings.[68]

The Policy further provides that when an MDA requires input documentation or requirements from another MDA to deliver products and services, they can only request a photocopy or prima facie proof from the applicant. It is the responsibility of the originating MDA to verify or certify the information directly from the issuing MDA.[69] Also, Service Level Agreements (SLAs) between MDAs are binding and should be relied upon for setting timelines for processing applications.[70] The head of the relevant MDA is responsible for ensuring adherence to the agreed terms of the SLAs.[71] If an officer fails to act within the stipulated timeline in the SLA without a lawful excuse, it will be considered misconduct and may result in disciplinary proceedings according to applicable laws and regulations in the civil or public service.[72]

The policy on ease of doing business provision on port operations includes several measures. These measures include prohibiting touting at ports, proper identification of on-duty staff, restricting off-duty staff from entering ports without approval, removing non-official staff from secured areas of airports, prohibiting officials from meeting non-designated dignitaries in secure areas, and taking disciplinary and criminal action against officials soliciting or receiving bribes.[73] Additionally, the policy requires relevant agencies to merge their departure and arrival interfaces into a single customer interface, harmonize operations into a single interface station at ports, capture and record information on goods arriving and departing from Nigeria, assign an export terminal for agriculture produce, and resume 24-hour operations at the Apapa Port.[74]

[59] *Ibid,* Order 1 (1) (a) & (b)
[60] *Ibid*, Order 2.
[61] *Ibid*, Oder 2.
[62] *Ibid*, Order 3
[63] *Ibid*, Order 4
[64] *Ibid*, Order 5
[65] *Ibid,* Order 6
[66] *Ibid*, Order 7
[67] Ibid, Order 8
[68] *Ibid*, Order 9
[69] *Ibid,* Order 10
[70] *Ibid,* Order 11
[71] *Ibid*, Order 12
[72] *Ibid,* Order 13
[73] *Ibid*, Orders 17, 18, and 19.
[74] *Ibid,* Orders 22, 23, and 24.

The policy further requires the Registrar-General of the CAC to automate all registration processes within 14 days.[75] This includes making the application process and payment platform available online.

The BFA 2023 closely aligns with Nigeria's national policy on ease of doing business, as spearheaded by the PEBEC. The PEBEC strives to elevate Nigeria's position in the World Bank's Ease of Doing Business ranking by implementing streamlined reforms that enhance business operations.[76] The BFA and Policy on Ease of Business aligns in so many respects, including:

a. Both the Act and the national policy focus on eliminating bureaucratic obstacles that hinder business operations. The one-stop shop policy and simplified licensing procedures are direct responses to this objective.
b. The electronic filing and payment systems mandated by the Act promote transparency, a core principle of the national policy.
c. The regulatory review and feedback mechanisms introduced by the Act ensure continuous stakeholder engagement, which is crucial for the dynamic adaptation of policies and regulations.
d. Both the Act and the national policy prioritize the growth and development of MSMEs, recognizing their critical role in economic development and job creation.

The BFA 2023 however, addresses the specific challenges outlined in the National Policy by reducing bureaucratic red tape through digitalization, enhancing transparency in government dealings, facilitating public-private partnerships for infrastructure development, and simplifying procedures for accessing financing.[77] These measures aim to minimize corruption, speed up processes, ensure accountability, encourage private investment, and make it easier for businesses, especially MSMEs, to secure loans. Further, the BFA has the potential to improve the country's ranking in global ease of doing business indices because it streamlines and digitizes the business registration process, making it easier and faster to start a business.[78] It also enhances access to credit through provisions on collateral registration and financial inclusion. The digitalization of tax filing processes simplifies compliance and reduces administrative burden, improving Nigeria's ranking in the "Paying Taxes" category.[79] The Act also introduces clearer legal frameworks and enhances corporate governance, improving contract enforcement and insolvency resolution. Overall, the Act's emphasis on transparency, accountability, and efficiency contributes to an improved business environment and higher scores in multiple categories of ease of doing business indices.

Additionally, the BFA 2023 has the potential to attract foreign direct investment (FDI) and stimulate domestic entrepreneurship through several mechanisms.[80] The Act addresses bureaucratic inefficiencies, making Nigeria a more attractive destination for foreign investors. It also boosts investor confidence by enhancing transparency and regulatory predictability. The Act also supports

[75] *Ibid*, Order 26.

[76] PEBEC, "Enabling Business Environment Secretariat' (*PEBEC*, 25 November 2023) <https://pebec.gov.ng/> accessed 21 May 2024.

[77] N C Uzoka and O C Aduma, 'Ease of Doing Business: A Critical Examination of the Business (Miscellaneous Provisions) Facilitation Act 2023' (2023) 14 *NAUJILJ* 13.

[78] UK Department of Business and Trade & Foreign, Commonwealth & Development Office, '"Overseas Business Risk: Nigeria" (*GOV.UK*, 3 July 2023) <https://www.gov.uk/government/publications/overseas-business-risk-nigeria/overseas-business-risk-nigeria--2> accessed 20 May 2024.

[79] International Centre for Tax & Development, 'Digitising Taxation in Nigeria: Challenges and Recommendations' (*ICTD*, 27 July 2021) <https://www.ictd.ac/blog/digitising-taxation-nigeria-challenges-recommendations/> accessed 22 May 2024.

[80] S Akinwalere and K Chang, 'The Determinants of Foreign-Direct-Investment (FDI) Inflows in Nigeria' (2023) 57 *Journal of Developing Areas* 91

MSMEs. which are often the backbone of the economy and contribute to job creation, economic diversification, and poverty alleviation.[81] The growth of MSMEs and FDI can lead to job creation, reducing unemployment and improving living standards. A more vibrant business environment can stimulate economic growth by increasing the private sector's contribution to the GDP and reducing reliance on oil revenues.[82] Furthermore, the Act can contribute to poverty alleviation by providing increased economic opportunities and improving overall social welfare.

In summary, the Business Facilitation Act 2023 is a commendable legislative initiative that holds the promise of transforming Nigeria's business landscape. Its successful implementation will be crucial in achieving the desired outcomes and ensuring that Nigeria becomes a more attractive destination for business and investment.

4.0 **Challenges and Implementation Considerations**

While the BFA holds significant promise, its effective implementation faces several challenges that need to be addressed:

a. The Act's implementation may be hindered by bureaucratic inertia and resistance to change within MDAs, necessitating government officials' commitment to reforms.
b. In order for the Act to be effectively implemented, it is necessary for MDAs to have the required capacity, including the appropriate skills, resources, and infrastructure for automation and digitalization.
c. Corruption continues to pose a major obstacle in Nigeria. The government must establish measures to safeguard the integrity of the Act and prevent any compromise due to unethical conduct.

In Summary, to effectively implement the innovative provisions of the BFA 2023 requires capacity building and stakeholder engagement. This also includes continuous training and development programs for government officials that can help build the necessary skills for effective implementation. Stakeholder engagement, including businesses, investors, and civil society, is crucial for identifying potential issues and ensuring the reforms meet the needs of the business community.[83] Public awareness campaigns can help disseminate information and build support for the reforms.[84] Ensuring proper enforcement and compliance is essential for the Act's success. Monitoring and evaluation mechanisms can identify issues and measure progress, while incentives and penalties can encourage compliance.[85] For instance, tax breaks or expedited services can be incentives for compliance, while penalties for non-compliance can deter businesses from violating the rules. Collaboration with the private sector can enhance enforcement and compliance by involving businesses in monitoring and reporting non-compliance, and public-private partnerships can help address capacity constraints.[86]

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[81] Federal Republic of Nigeria, 'Economic Diversification of Job Creation: MSME Partners Set to Deliver MSME-Focused Interventions for 1.3M Beneficiaries in 17 States, FCT' (12 September 2023) <https://statehouse.gov.ng/news/economic-diversification-of-job-creation-msme-partners-set-to-deliver-msme-focused-interventions-for-1-3m-beneficiaries-in-17-states-fct/> accessed 21 May 2024.

[82] Akinwalere and Chang (n 90) 92.

[83] OECD, *Better Regulation Practices Across the European Union 2022* (OECD Publishing, 2022).

[84] J Yang and T Moerenhout, 'Information Campaigns and Public Perceptions of Structural Reforms: Evidence from a Survey Experiment on Gasoline Subsidy Reform in Nigeria' (2024) 43 *Journal of Policy Analysis and Management* 509 <http://dx.doi.org/10.1002/pam.22561>.

[85] RBalwin and Julia Black, 'Really Responsive Regulation' (2007) 15 *LSE Law, Society and Economy Working Papers*. <https://www.lse.ac.uk/law/working-paper-series/2007-08/WPS15-2007BlackandBaldwin.pdf> accessed 22 May 2024.

[86] I Hernandez-Aguado and GA Zaragoza, 'Support of Public–Private Partnerships in Health Promotion and Conflicts of Interest' (2016) 6 *BMJ Open* e009342 <http://dx.doi.org/10.1136/bmjopen-2015-009342>.

5.0. **Comparison with International Best Practices**

The Business Facilitation Act 2023's innovative provisions require comparison with other countries' legislative frameworks and successful models for business facilitation and ease of doing business.

5.1 Estonia's Digital Transformation Model

Estonia is globally recognized as a pioneer in digital governance and transformation. Estonia's digital transformation is centered on the concept of a digital citizen who uses a digital platform to access both public and private services. This platform ensures that different information systems can work together effectively.[87] Estonia's digital journey began in the early 2000s with the establishment of key infrastructures like the X-Road and compulsory national digital ID.[88] These initiatives have created a seamless and secure digital society that has significantly enhanced governmental efficiency and public service delivery.[89] Key Features of the Estonian digital transformation includes:

5.1 X-Road Platform

The X-road platform is an interoperability platform that connects decentralized databases, enabling secure data exchange between different systems.[90] It improves data access and sharing for both public and private sector entities, reducing redundancy and enhancing service delivery.[91] X-Road technology was initially created in Estonia by the RIA and private partners, but it is now managed by the Nordic Institute of Interoperability Solutions (NIIS).[92] From the foregoing, the X-road is governed by the RIA. Key principles of the X-road, using Open Digital Ecosystem (ODE) approach to identify best practices.

5.2 Digital Platform

The X-Road digital platform is based on several key principles. Firstly, it enables interoperability across IT systems, allowing organizations to exchange data.[93] It uses common APIs and open standards for data exchange, improving efficiency and enabling functionalities such as document exchange and database searching.[94] Secondly, it is built on reusable and shareable components, providing flexibility and allowing for customization and easy upgrades.[95] Thirdly, it ensures privacy

[87] R Kattel and Ines Mergel, 'Estonia's Digital Transformation' (2019) *Great Policy Successes* 143 <http://dx.doi.org/10.1093/oso/9780198843719.003.0008>.

[88] STrendall, 'Estonia: How the X-Road Paved the Way to a Digital Society' (*PublicTechnology*, 19 December 2023) <https://www.publictechnology.net/2023/12/20/society-and-welfare/estonia-how-the-x-road-paved-the-way-to-a-digital-society/> accessed 21 May 2024.

[89] K Vassil, 'Estonian e-Government Ecosystem: Foundation, Applications, Outcomes' (World Development Report, 2015) <https://thedocs.worldbank.org/en/doc/165711456838073531-0050022016/original/WDR16BPEstonianeGovecosystemVassil.pdf> accessed 21 May 2024.

[90] YHirdaramani, 'Estonia's X-Road: Data Exchange in the World's Most Digital Society' (21 March 2024) <https://govinsider.asia/intl-en/article/estonias-x-road-data-exchange-in-the-worlds-most-digital-society>. Accessed 20 May 2024.

[91] *Ibid.*

[92] Omidya Network India & Boston Consulting Group, 'Estonia X-Road Open Digital Ecosystem (ODE) Case Study' (no date) <https://opendigitalecosystems.net/pdf/01-Estonia-Case-Study_vF.pdf> accessed 21 May 2024.

[93] X-road, 'Case Study: Tax Boards — X-Road® Data Exchange Layer" (*X-Road® Data Exchange Layer*) (no date) <https://x-road.global/case-study-tax-boards> accessed 22 May 2024.

[94] *Ibid.*

[95] Github, 'X-Road-Code-Samples/COMPONENTS.Md at Master · Nordic-Institute/X-Road-Code-Samples' (no date) <https://github.com/nordic-institute/X-Road-code-samples/blob/master/COMPONENTS.md#x-road-end-to-end-monitoring-tool-xrde2e> accessed 21 May 2024.

and security for data exchange through the adoption of privacy by design principles, minimal data collection, access control, encryption, and transaction logging.[96]

5.3 National Digital ID

The Estonian National Digital ID scheme is governed by the Identity Documents Act, which requires all residents and permanent aliens in Estonia to possess a digital ID.[97] The Act is clear, foreseeable, and easily accessible.[98] However, it allows excessive delegation of regulations to the "minister responsible for the area," which raises concerns about the lack of adequate delineation of crucial aspects of the program.[99] The Estonian legal system lacks overarching legislation governing all aspects of the ID's use, leaving critical matters such as data sharing to be determined by other laws or regulations.[100] This creates a system where the Digital ID is not restricted by a purpose limitation and can be used for any sector and any purpose.

In summary, this paper contends that the digital transformation in Estonia has greatly improved the ease of doing business, as evidenced by its ranking as the top country in the EU for digital public services.[101] Also, the use of e-government has steadily increased, with 89% of internet users in Estonia utilizing these services.[102] The COVID-19 pandemic further highlighted the importance of Estonia's digital infrastructure, as it allowed for uninterrupted governmental and business operations.[103]

Lessons for Nigeria:

Nigeria can learn a couple of lessons from the Estonian model, including:

a. The input suggests that Nigeria should consider developing an interoperability platform similar to X-Road. This platform would facilitate the exchange of data between government agencies and private entities
b. Nigeria can also benefit from implementing a strong digital ID system. This system would provide secure and efficient access to government services, reducing the reliance on physical documentation.

3.2 United Arab Emirate (UAE)'s Public-Private Partnerships Model

The UAE's approach to public-private partnerships (PPPs) serves as a useful benchmark for assessing Nigeria's Business Facilitation Act 2023. The UAE has developed a strong legal framework for PPPs, which has played a crucial role in promoting economic growth and enticing foreign investment.[104]

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[96] World Bank Group, 'Privacy by Design: Current Practices in Estonia, India, and Austria' (2018) <https://id4d.worldbank.org/sites/id4d.worldbank.org/files/PrivacyByDesign_112918web.pdf> accessed 21 May 2024.

[97] Identity Documents Act 2000, s 1

[98] *Ibid*, s 3 and 4

[99] *Ibid*, s 15 (2)

[100] CIS, 'Estonia's E-Identity Programme' (2020) <https://digitalid.design/docs/CIS_DigitalID_EstoniaCaseStudy_2020.04.pdf> accessed 21 May 2024.

[101] D Paraskevopoulos, 'Estonia - a European and Global Leader in the Digitalisation of Public Services - e-Estonia' (*e-Estonia*, December 21, 2021) <https://e-estonia.com/estonia-a-european-and-global-leader-in-the-digitalisation-of-public-services/#:~:text=Estonia%20ranks%201st%20place%20in,internet%20users%20in%20the%20country.> accessed 20 May 2024.

[102] *Ibid*.

[103] J Silaškova and M Takahashi, 'Estonia built one of the world's most advanced digital societies. During COVID-19, that became a lifeline.' (World Economic Forum, 1 July 2020) <https://www.weforum.org/agenda/2020/07/estonia-advanced-digital-society-here-s-how-that-helped-it-during-covid-19/> accessed 21 May 2024.

[104] PWC, 'Adopting the Public Private Partnerships Model and its role in attracting Foreign Direct Investment' (*White paper PwC and Dubai Investment Development Agency (DUBAI FDI)*, January 2016)

Public-private partnerships in the UAE cover a wide range of sectors, such as healthcare, education, transportation, and digital transformation.[105] The UAE has established a robust regulatory framework and clear guidelines for PPPs, ensuring mutual benefits for both public and private entities.[106]

The UAE's PPP model is governed by the Federal Decree-Law No. 12 of 2023 on Public-Private Partnerships which sets out the general framework for partnerships between federal government entities and the private sector.[107] The law emphasizes transparency and accountability in the procurement and implementation of PPP projects. This ensures that the decision-making process is fair and that public funds are used efficiently. [108]The law also allows for flexibility in structuring PPP projects, taking into account the specific needs and characteristics of each project.[109] This enables the government to tailor the partnership to best meet the objectives and requirements of the project.[110] Innovatively, the law provides for effective dispute resolution mechanisms, including arbitration, to resolve any conflicts that may arise during the implementation of PPP projects.[111] This helps to ensure timely resolution and minimize disruptions to project progress. Also, the law focuses on promoting the use of advanced technologies and innovative solutions in order to enhance efficiency and improve service delivery.[112] The law also establishes a Partnership Projects Information Centre.[113] The Ministry will create a data register for partnership projects and an evaluation system for projects that have already been implemented. The Ministry also has the authority to publish relevant information.

The UAE model and Nigerian BFA have some similarities in terms of focusing on efficiency and promoting transparency and accountability. However, there are also differences in scope and application, risk management, and incentives for innovation. The UAE model specifically focuses on public-private partnerships for infrastructure and service delivery projects, while the Nigerian BFA has a broader scope covering various aspects of business operations. The UAE model also places more emphasis on risk allocation and incentivizing innovation compared to the Nigerian BFA.

Nigeria can benefit from adopting best practices from the UAE's PPP model:

a. Nigeria could establish a legal framework similar to UAE's Federal Decree-Law No. 12 of 2023, providing clear guidelines and procedures for PPP projects, promoting investor confidence and facilitating efficient project execution.
b. Nigeria should integrate risk management strategies into its legal framework, ensuring risk allocation between public and private partners, to improve the sustainability and success of PPP projects.
c. Nigeria can promote the adoption of advanced technologies and innovative solutions by offering targeted incentives and fostering partnerships between the public and private sectors.

<https://www.pwc.com/m1/en/publications/documents/adopting-ppp-and-its-role-in-attracting-fdi-dubai.pdf> accessed 21 May 2024.

[105] Mohammed F Dulaimi, Mohammed Alhashemi, Florence YY Ling, and Mohan Kumaraswamy, 'The Execution of Public–Private Partnership Projects in the UAE' (2010) 28 *Construction Management and Economics* 393 <http://dx.doi.org/10.1080/01446191003702492>.

[106] Rauda Al-Saadi and AlaaAbdou, 'Factors Critical for the Success of Public–private Partnerships in UAE Infrastructure Projects: Experts' Perception' (2016) 16 *International Journal of Construction Management* 234 <http://dx.doi.org/10.1080/15623599.2016.1146110>.

[107] Federal Law No. (12) of 2023, art 2

[108] *Ibid*, art 4

[109] *Ibid,* art 5

[110] *Ibid,* art 6

[111] *Ibid,* art 31

[112] *Ibid,* art 14

[113] *Ibid,* art 29

The comparative analysis of Estonia's digital model, UAE's PPP model, and Nigeria's Business Facilitation Act 2023 reveals the potential for cross-learning and improvement. Estonia has a well-defined legal framework for digital governance, ensuring data security and privacy, while UAE has a comprehensive regulatory framework for PPPs, promoting transparency and accountability. Additionally, Estonia's implementation is driven by government-led initiatives with strong public participation, while UAE relies on collaborative efforts between public and private sectors. The outcomes of Estonia and UAE are enhanced efficiency, reduced bureaucracy, improved public service delivery, and accelerated development, improved infrastructure, and enhanced public services through private sector expertise and investment. Nigeria can adopt a hybrid approach, combining best practices from Estonia and the UAE, focusing on digital transformation for efficiency and PPPs for development and innovation. Policy reforms should emphasize digital governance and PPPs, creating a conducive environment for digital initiatives and private sector participation.[114] Also, investing in capacity building for public sector employees and partners is crucial, and raising public awareness about the benefits of digital governance and PPPs can foster greater acceptance and participation.[115]

6.0 Conclusion and Recommendations

The BFA 2023 is a major milestone in improving the business environment in Nigeria. The Act addresses critical challenges faced by businesses by introducing innovative provisions such as the one-stop shop policy, electronic filing and payments, simplified licensing procedures, regulatory review mechanisms, and enhanced dispute resolution. These measures align with the national policy on ease of doing business. When examining the Act in relation to international standards, it becomes clear that Nigeria is heading in the right direction. However, to fully unlock the Act's potential, it is crucial to prioritize consistent implementation, ongoing improvement, and the development of necessary skills and knowledge. Examining the experiences of countries such as Estonia and the UAE can provide valuable lessons to enhance Nigeria's regulatory framework. Ultimately, the BFA 2023 has the power to revolutionize Nigeria's business landscape, promoting economic growth and establishing the nation as a formidable investment hub. Efficient execution and ongoing enhancement are vital for attaining these objectives. Collaboration among stakeholders, including government agencies, businesses, and civil society, is crucial to ensure the Act effectively creates a favourable business environment in Nigeria.[116]

[114] Lucia Xiaoyan Liu, Stewart Clegg and Julien Pollack, 'The Effect of Public–Private Partnerships on Innovation in Infrastructure Delivery' (2023) 55 *Project Management Journal* 31 <http://dx.doi.org/10.1177/87569728231189989>.

[115] ICLEI, 'Digitalization: A Game Changer for Local Governments & Communities Enhancing Capacities to Deploy Transformative Solutions' (*Policy Brief*, November 2023) <https://iclei.org/wp-content/uploads/2023/12/2022-Academy-Digitalization-Policy-Brief-ICLEI.pdf> accessed 21 May 2024.

[116] House of Commons Committee Foreign Affairs Committee, 'Lagos calling: Nigeria and the Integrated Review: Government Response to the Committee's Seventh Report of Session 2021-22' (First Special Report of Session 2022–23, 5 July 2022) <https://committees.parliament.uk/publications/23036/documents/168809/default/> accessed 231 May 2023.

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A LEGAL SURVEY ON SECTION 221 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

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Abstract
Section 221 of the Constitution of the Federal Republic of Nigeria 1999 provides that no association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election. The assertive question of whether votes cast in an election in Nigeria belong to the candidates or to their political parties has come up for judicial determination in several cases in Nigeria. The latest case in which the said question came up for determination was Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor. which case later went on appeal vide Appeal No.: CA/ABJ/CV/275/2022 between Engineer David Nweze Umahi & Anor. v. Peoples Democratic Party (PDP) & 2 Ors. This Paper interrogates the legal purport of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999. The researchers found, inter alia, that it is high time that the position of the law relating to the said constitutional provisions became trite and settled so much so that lawyers and the Courts in Nigeria shall no longer be 'tossed to and fro' as long as the said constitutional provisions remain unaltered. It is the researchers' conclusion that sponsorship of candidates and canvassing for votes for the candidates by political parties in any election does not and should not be stretched to translate into ownership by the respective political parties of the votes cast in that election. It is recommended, in the main, that the Court in Nigeria should once and for all categorically settle the aforesaid assertive question and resist any further attempt by any politician or political party to unsettle the issue again as far as the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 remain unaltered.

Keywords: Election, Votes, Political Party, Canvass, Candidate, Constitution, Election.

1.0 Introduction

A political party is an association or group of people bound together by the same political ideals. It's usually a cooperation of like-minded people who work together to achieve their political goals.

Ideally, political parties are fundamentally expected to serve as a formidable democratization force by articulating and aggregating public opinion and interests, engendering popular participation, and promoting political education and national integration.[1] By promoting these virtues, political parties can contribute overtly to the political stability of a democratic system.[2]

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[1] JS Omotola, 'Political parties and the Quest for Political Stability in Nigeria'. *Taiwan Journal of Democracy*, (2010) 6 (2), p. 125 <https://www.airitilibrary.com/Article/Detail/18157238-201012-201102230081-201102230081-125-145> accessed on 26 July 2024.

[2] *Ibid.*

Every nation in the world has to evolve its own unique political party culture.[3] In Europe and America, historical factors compelled the emergence of various types of party systems.[4] They range from the multiparty, two party to single party types.[5] In Africa and most developing societies, the party system was informed by the colonial state structures and the response of the indigenous social forces.[6]

In some countries the idea of the existence of political parties are yet to find practical expression in their political processes. In these countries organized parties and legally sanctioned opposition parties do not exist. Political leaders in such countries do not encourage the notion of popular participation as part of the process of governance[7].

According to Neumann[8], "political parties are the life line of modern politics", yet parties are highly misconceived for most of the time. Indeed, people take a cynical view of the political party. The party is viewed as an organization for the professional politician. On the contrary parties are of critical importance to any democratic process. For it is through the activities of political parties that the dynamic features of any political system can be understood. Regardless of the type of party that exists or dominates, parties share similar features in respect of inducing participation in the decision-making process and in mobilizing the people for political Action. Parties do control and consciously influence social and political forces. Neumann defines political party as the articulate organization of society's active political agents, those who are concerned with the control of government power and who compete for popular support with another group or groups holding divergent views.

This introduction simply sets the stage for an inquiry into the place of political parties vis-à-vis the ownership of votes cast in an election especially in the light of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999.

2.0 Examining the Role and Functions of Political Parties

The basic function of political parties is to galvanize public opinion. Political parties are "brokers of ideas, constantly clarifying, systematizing and expounding the party's doctrine". They represent social groups, narrowing the gulf between individuals and the community. By educating the voter, parties help to create opportunity ties for free choice, especially in a competitive party system.

Political parties also play integrative roles. They integrate the individual into the community. Parties ensure that the individual remains within the bounds of group or community interest. For most of the times, they extract loyalties from the individual bearing in mind the survival of the whole democratic system. Parties also "represent the connecting link between government and public opinion". It is a vital element of the party's responsibility to keep open the channel of communication between the leaders and followers.

Another important function of a political party is the selection of leaders. The process of choosing a leader is informed by the need to choose between alternatives. Thus, democracy implies the presence of or the existence of an informed electorate and an enabling environment for these democratic principles to thrive.

A political party represents a particular social group. However, in a given situation more than one party can represent a single social group as long as they are able to mediate between the interest of their group and other groups and at the same time ensure the advancement of their group.

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[3] B Chizea, 'Parties and Party System in Nigeria', *The Constitution*, Vol. 4, No. 2 (2004) p. 40 <https://journals.co.za/doi/pdf/10.10520/AJA15955753_33> accessed on 19 August 2024.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] This is usually described as a No-or- zero Party System.

[8] Neumann, Sigmund, (ed.) *Modem Political Parties Approaches to comparative politics*. University of Chicago Press. Chicago 1977. 16.

As representatives of their group, they enlist the support and consent of allied groups in the process of developing their interests. Therefore, the history of a party is synonymous with the history of a given social group. But this group does not exist in isolation in society, it exists alongside friendly and hostile social forces. In other words, the history of the party can be understood in the context of the study of state and society.

All political parties play the role of guaranteeing and protecting a given political and legal order**.** How this policing function is executed depends on the means and procedures it employs in carrying it out. The means and procedure can be intended for reactionary or progressive ends. It could be for the purpose of subjugating social forces or advancing the interests of the masses of the people. According to Gramsci[9], the policing function of a party can be progressive, when it tends to keep the dispossessed reactionary forces within the bounds of legality and to raise the backward masses to the level of the new legality. It is regressive when it tends to hold back the vital forces of history and to maintain a legality which has been superseded, which is anti-historical which has become extrinsic. Gramsci further argues that a party which is progressive in function is democratic in nature and operates on the basis of democratic centralism. While the regressive party functions bureaucratically and operates on the principles of bureaucratic centralism. The regressive party is "a simple unthinking executor. It is technically a policing organism. And its name of political party is simply a metaphor of mythological characters".

At times social groups employ the political party as a vehicle for the expression of their ideological dominance over society. Parties are also the tools for performing similar functions with the state and over a wider political terrain. It brings together various tendencies within the party into a united front.

3.0 Interrogating the History of Political Parties in Nigeria

Tribal, religious, and regional differences have hindered the formation of a truly national political party in Nigeria. Before 1966, the major parties were the Northern People's Congress (NPC), overwhelmingly dominant in the Northern Region and possessing a plurality in the federal House of Representatives; the National Council of Nigerian Citizens (NCNC), dominant in the Eastern Region and junior partner in a coalition with the NPC in the federal House of Representatives; and the Action Group, the majority party in the Western Region and the leading opposition group in the federal legislature. The policies and platforms of the major parties were similar, generally supporting welfare and development programs. Following the 1959 elections, the NCNC joined in a coalition with the NPC in the federal government.[10]

The first national elections in independent Nigeria, held on 30 December 1964, were contested by two political alliances: the Nigerian National Alliance (NNA), led by Sir Ahmadu Bello, premier of the Northern Region, and the United Progressive Grand Alliance (UPGA), led by Michael Okpara, premier of the Eastern Region. The NNA comprised the NPC, the Western-based Nigerian National Democratic Party, and opposition parties representing ethnic minorities in the Eastern and Mid-Western regions. The UPGA included the NCNC, the Action Group, the Northern Elements Progressive Union (the main opposition party in the Northern Region), and the United Middle Belt Congress (a non-Muslim party strongly opposed to the NPC). Northerners feared Ibo domination of the federal government and sought support from the Yoruba, while the UPGA accused the Muslim Northerners of anti-Southern, antidemocratic, and anti-Christian attitudes.[11]

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[9] A. Gramsci, *Selections from the Prinson Notebooks* (New York, International Publishers: 1977) <https://ia800506.us.archive.org/19/items/AntonioGramsciSelectionsFromThePrisonNotebooks/Antonio-Gramsci-Selections-from-the-Prison-Notebooks.pdf> accessed on 19 August 2024.

[10] Nations Encyclopedia, 'Nigeria - Political parties' <https://www.nationsencyclopedia.com/Africa/Nigeria-POLITICAL-PARTIES.html> accessed on 27 July 2024.

[11] *Ibid.*

The election results, announced on 6 January 1965, gave a large majority to the NNA (198 of 267 constituencies). Before the balloting began, the UPGA charged that unconstitutional practices were taking place and announced that it would boycott the elections, in which only 4 million of the 15 million eligible voters cast ballots. On 4 January 1965, President Azikiwe called on Prime Minister Balewa to form a new government. In the supplementary elections held on 18 March 1965, the UPGA won all 51 seats in the Eastern Region and 3 seats in Lagos. This was followed by the announcement of an enlarged and reorganized cabinet on 31 March. Ten months later the Balewa government was overthrown, the military assumed power, and on 24 May 1966, all political parties were banned.[12]

When legal political activity resumed in 1978, five parties emerged: the National Party of Nigeria (NPN), representing chiefly the North and an educated, wealthy elite; the Nigerian People's Party (NPP), strong among the Ibos and slightly to the left of the NPN; the Unity Party of Nigeria (UPN), Yoruba-led and Socialist-oriented; the People's Redemption Party, advocating radical social change; and the Great Nigeria People's Party, espousing welfare capitalism. Shagari, the NPN presidential candidate, received the most votes (33.9%) in the 11 August 1979 presidential election, with Obafemi Awolowo of the UPN a close second (29.2%). In National Assembly elections held on 7 and 14 July 1979, the NPN won 36 of the 95 Senate seats and 168 of 440 House of Representatives seats. The UPN was second with 28 and 111, respectively; the NPP was third with 16 and 78. Each of the five parties won control of at least two state governments in elections held on 21 and 28 July 1979. In the presidential election of August 1983, incumbent President Shagari of the NPN won reelection to a second 4-year term, polling 12,047,638 votes (47%). Obafemi Awolowo of the UPN placed second with 7,885,434 votes (31%). That same month, Shagari's NPN posted victories in Senate and House elections. However, there were widespread charges of irregularities in the balloting. All existing political parties were dissolved after the December 1983 coup.[13]

Two parties, the right-of-center National Republican Convention (NRC) and a left-of-center Social Democratic Party (SDP) were permitted limited activity during the transition from military rule. The two-chamber National Assembly to which they were elected never was granted genuine power. On June 12, 1993, Nigerians elected Moshood Abiola, a wealthy businessman, and president, but General Ibrahim Babangida annulled the vote over alleged corruption. Ernest Shonekan replaced him for the interim, and on November 17 General Sani Abacha took power, suspending all partisan and political activity. The May 1994 legislative elections were widely boycotted by foes of Abacha's military regime. On 1 October 1995, Abacha announced a three-year program for return to civilian rule.[14]

Political parties, suppressed by the military government, were allowed to form in July 1998. Three parties were registered by the Provisional Ruling Council for participation in local, state, and national elections: the All People's Party or APP led by Mahmud Waziri; the People's Democratic Party or PDP led by Soloman Lar; and the Alliance for Democracy or AD, led by Ayo Adebanjo.[15]

In the February 1999 election Obasanjo (PDP) won 62.8% of the vote; Olu Falae (AD/APP), received 37.2%. In the Senate, the PDP claimed 66 seats, the APP 23, and the AD 19, with 1 other seat. In the House of Representatives, the PDP took 215 seats, the APP 70, the AD 66, and 9 others. International observers reported some flaws but generally approved the results.[16]

Since these elections, the three registered parties have suffered from leadership squabbles. Two factions have claimed leadership of the AD, which is dominant only in the Yoruba southwest. The APP elected a new chairman in December 1999, after its former chairman, Mahmud Waziri

[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*

defected to the PDP. The next presidential and legislative elections were due in April 2003. In December 2002, 24 new political parties registered for the elections.[17]

4.0 Appeal No.: CA/ABJ/CV/275/2022 between Umahi & Anor. v. PDP & 2 Ors.

The facts of this case, in the main, border on the defection of the Appellants from the 1st Respondent to the 3rd Respondent. However, the interpretation of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 was called into question. The researchers' focus is on the aspects of the case that touches on the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999.

In this case, the 1st and 2nd Appellants were elected on the 9th day of March, 2019 as the Governor and Deputy-Governor of Ebonyi State respectively. They (the 1st and 2nd Appellants) were accordingly sworn in on the 29th day of May, 2019. They contested election into those offices on the platform of the 1st Respondent (Peoples Democratic Party). Following some disagreements between the Appellants and the leadership of the 1st Respondent, they (Appellants) switched their membership (defected) to the 3rd Respondent (All Progressives Congress). The 1st Respondent was greatly embittered by that decision (defection) and therefore approached the Abuja Judicial Division of the Federal High Court of Nigeria vide an Originating Summons per *Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor.*[18] whereby the 1st Respondent (who was the 1st Plaintiff at the Federal High Court) vehemently contended *inter alia* that based on the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 *et al* and the decisions of the Supreme Court in *Amaechi v. INEC*[19] and *Faleke v. INEC*[20], votes at the election and elections are won by political parties and not their candidate or the candidates sponsored at the election by the political parties, and accordingly prayed the Court (Federal High Court of Nigeria) in the main that the Appellants be ordered to vacate office in order to give room to persons nominated by the 1st Respondent.

The learned trial Judge per Inyang Ekwo J. considered the respective Affidavits of the parties and the submissions of counsel in that regard, and found in favour of the 1st Respondent (PDP – who s the 1st Plaintiff at that trial Court). The learned trial Judge relied on the cases of *Amaechi v. INEC*[21] and *Faleke v. INEC*[22] to conclude that, the votes cast at an election are votes for the political platform or party which sponsored a candidate at an election. Therefore, that, where the candidate defects to another political party, he cannot carry with him, the votes of that party to his new party. That in such circumstance, he will be deemed to have vacated or abandoned not only the political party on whose ticket he contested the election but also the votes. That, the only remedy is for the Court to declare that he has vacated the office which he occupies by virtue of the votes secured by the political party on whose platform he contested the election. According to the trial Judge:

> ...the 3rd and 4th Defendants did not on their own win the election of 9th March, 2019 to become Governor and Deputy Governor of Ebonyi State respectively. They were sponsored by the Plaintiff in compliance with the provision of Section 221 of the 1999 Constitution (as amended). Therefore, it was the Plaintiff (PDP) that the electorate voted for. They cannot remain in the office of Governor and Deputy Governor respectively of Ebonyi State after their defection without the Plaintiff (PDP) that the

[17] *Ibid.*

[18] Judgment in Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor is available at <https://sabilaw.org/wp-content/uploads/2022/03/JUDGEMENT-IN-PDP-V.-INEC-2-ORS0001-1-1.pdf> accessed on 19 August 2024.

[19] (2008) 5 NWLR (Pt. 1080) 227

[20] (2016) 18 NWLR (Pt. 1543) 61

[21] *supra*

[22] *supra*

> electorate voted for. On the other hand, the 2nd Defendant (APC) was not the party elected by the electorate in the election of 9th March, 2019 to govern Ebonyi State.

Obviously displeased by the decision of the Federal High Court, the Appellants (Engineer David Nweze Umahi and Dr. Eric Kelechi Igwe) appealed to the Court of Appeal per Appeal No.: *CA/ABJ/CV/275/2022 between Umahi & Anor. v. PDP & 2 Ors*.[23] The Respondents in that appeal were the Peoples Democratic Party (PDP – who was the 1st Plaintiff at the Federal High Court), the Independent National Electoral Commission (INEC – who was the 1st Defendant at the Federal High Court), and the All Progressives Congress (APC – who was the 2nd Defendant at the Federal High Court). The Court of Appeal of Nigeria found and held *inter alia* that the appeal had merit and it (the appeal) was thereby allowed. Consequently, the judgment of the Federal High Court of Nigeria coram Inyang Ekwo, J in Suit No: FHC/ABJ/CS/920/2021 was thereby set aside.

The Honourable Court of Appeal held *inter alia* that learned trial Judge erred grievously when he held that the votes cast at an election are votes for the political party and not the candidate who merely used the platform of the political party to contest the election. The Court of stated *inter alia* that:

> ...by Section 179 (1), (2) , (3) (4) and (5) of the 1999 Constitution , it is a candidate for an election to the office of Governor and/or Deputy-Governor that is declared as duly elected to such office, and not the political party. See also Sections 69, 70 and 71 of the Electoral Act, 2010 (as amended). Similarly, by Section 75(1) of the Electoral Act (supra), it's the candidate who is returned elected and issued a Certificate of Return, not the political party. The learned trial Judge, therefore, erred grievously when he held that the votes cast at an election are votes for the political party and not the candidate who merely used the platform of the political party to contest the election.[24]

5.0 The Clarity of Section 221 of the Constitution of the Federal Republic of Nigeria 1999

It is the researchers' view that the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 are plain and the phraseology presents no ambiguity. For the avoidance of doubt, the said Section 221 of the Constitution of the Federal Republic of Nigeria 1999 provides that "No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election". In this section, we can glean both a benefactor or sponsor and a beneficiary. While the political party is glaringly the benefactor or sponsor, the candidate is the beneficiary.

Significantly, provisions of the Constitution which bother on the qualifications of a person for election to the National Assembly, State Houses of Assembly and certain offices including the offices of the President, Governors clearly stipulate that a candidate for any such election must be a member of a political party and must be sponsored by that political party.[25] Thus, as against the concept of independent candidature, the relevant Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act simply provide that a candidate in any election must be a member of a political party and must be sponsored by that political party. Indeed, it is the candidate that runs for the office in question and is voted for in the election however, part of his qualifications is that he must be a member of a political party and must be sponsored by that political party. The Constitution of the Federal Republic of Nigeria 1999 only abhors independent candidature.

The tone and tenor of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 make it abundantly clear that the votes are for the candidate though the

[23] (2022) LPELR-58994(CA) pp. 1 – 87.

[24] (2022) LPELR-58994(CA) pp. 74 – 75 paras. F – C.

[25] See for example Constitution of the Federal Republic of Nigeria 1999, *ss. 65(2)(b), 106(d), 130(c), 177(c), 179(2).*

votes are to be canvassed by a political party. The employment of the preposition "for" abundantly supports the position and literal interpretation that the votes cast in the election are to the credit or for the benefit of the candidate. It is thus posited by the researchers that just as one does not and in fact cannot claim ownership and/or utility of a degree certificate merely because he sponsored the student through school or claim the ownership and/or utility of a visa merely because he sponsored the person to whom the visa was issued; likewise, a political party cannot claim ownership of votes cast in an election because it sponsored the candidate.

6.0 Conclusion and Recommendations

It is settled law that in the interpretation or construction of the constitution, where the words used therein are plain and clear, the Court is enjoined to give it that plain or literal meaning. No Court is allowed to stress or strain the plain words used in the Constitution in order to give the provision subject of interpretation, a meaning not intended by the lawmaker. In other words, the Court should not roam around in search of a meaning not intended or assigned to that provision by the makers of the Constitution. Thus, constitutional provisions are to be interpreted strictly in accordance with the ordinary meaning of the words used without attaching meanings to the words used so as to give it a meaning attractive to the Judge.

It is high time that the position of the law relating to Section 221 of the Constitution of the Federal Republic of Nigeria 1999 became trite and settled so much so that both the trial and appellate Courts in Nigeria shall no longer be 'tossed to and fro' as long as the said constitutional provisions remain unaltered.

It is the researchers' conclusion that sponsorship of candidates and canvassing for votes for the candidates by political parties in any election does not and should not be strained or stressed to translate into ownership by the respective political parties of the votes cast in that election. It is recommended that the Courts in Nigeria should once and for all categorically settle the aforesaid assertive question and resist any further attempt by any politician or political party to unsettle the issue again as far as the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 remain unaltered.

In tandem with the relevant provisions of the extant Rules of Professional Conduct for Legal Practitioners in Nigeria, it is further submitted that lawyers in Nigeria should understand that their duties to accept briefs and represent their clients must be subject to the rule of law and/or within the ambits of the law. Accordingly, a lawyer shall not knowingly advance a claim or defence that is unwarranted under existing law, although he may advance such claim or defence if it can be supported by argument in good faith for an extension, modification, or reversal of existing law. More so, a lawyer is prohibited from knowingly making a false statement of law or fact. It is further recommended that lawyers should resist the temptation of being 'tossed to and fro' by the political cum selfish interests of some politicians. In view of the plain provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999, it should have by now become unwarranted for any lawyer to advance the claim in any Court in Nigeria that votes cast in an election belong to the political parties and not to the candidates.

LEGAL FRAMEWORK FOR ASCENSION OF WASTE GENERATION TO WEALTH CREATION: AN INNOVATION TOWARDS ENVIRONMENTAL SUSTAINABILITY AND DEVELOPMENT IN NIGERIA

Livinus I. Nwokike, PhD*

Abstract

Waste can be refuse or superfluous material especially that remains after a manufacturing or chemical process. Waste has become a recurring decimal in the lives of every human being. We tried in this work to x-ray how this by-product called waste could be a raw material for a new product; thereby creating wealth rather than generating waste to the company or nation. Ascension of waste generation to wealth creation in Nigeria has the consequences of leading to a sustainable development in Nigeria which is the development that meets the needs of the present society in Nigeria without compromising the ability of the future generation to meet their own needs. The aim of this work is to appraise the legal framework for ascension of waste generation to wealth creation and the likely innovation towards environmental sustainability and development in Nigeria. We adopted doctrinal methodology of research with analytical approach of data collection through primary and secondary sources. This research found that improper management and use of wrong technology gave rise to waste generation which is inimical to the natural environment. The work therefore focuses on how legal framework and regulations can be established and applied to properly manage waste and generate wealth for sustainable development in Nigeria. We recommended institution of legal framework and application of regulations, recycling, use of advanced technologies and proper waste management mechanism for managing waste and generate wealth there from, for enhanced productivity and sustainable development in Nigeria. The work concluded on the note that institutionalizing legal framework and application of regulations thereto will provide platform for generation of wealth towards sustainable development in Nigeria.

Keywords: Law Waste Generation, Wealth Creation Environmental Sustainability, Development, Nigeria

1.0 Introduction

Waste generation is a recurring situation in the lives of every human being. Waste can be generated during the extraction of raw materials, the processing of raw materials into immediate and finished products. The consumption of final products or other human activities including municipal, residential, institutional, commercial, agricultural and special healthcare, household, hazardous waste, and sewage sludge.[1] Ordinarily, waste is something which the owner no longer wants at a given time and place and which has no current or perceived market value. Waste generation varies depending on the source of its generation.

Waste contains a lot of valuable resources in the form of nitrogen, phosphorous, potassium and other chemicals which are useful.[2] The ever increasing volume of solid wastes generated in Nigeria cities has shown Nigerian complacency regarding the management of urban environment. The ever-increasing solid waste generated in cities might mean that by the year 2010, the volume might rise to over 15 million tons.[3] Microorganisms play an important role in the biogeochemical cycles and convert these valuables resources into harmless and useful products.[4] However, there are

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[1]Sankoh F, Environmental and Health Impact of Solid Waste disposal in Developing Cities. A case study of Greenvilla Broik Dumpsite, Sierra leone, *Journal of Environmental Protection*, (2013), 4 (7), pp. 665-670

[2]Hammed T B, An abattoir waste transfer management through complex, *International Journal of Interdisciplinary Social Sciences*, 6(2), (2014) pp. 67 – 68

[3]WP Cumingham and MA Cumingham; *Principles of Environmental Science,* (4th edition, New York: McGraw Hill Co., 2008) p. 312

[4]KC Sridhar and TB Hammed; 'Turning Waste to Wealth in Nigeria: An Overview. *Journal of Human Ecology*, 46(2), (New Delhi, 2014)

certain wastes arising from industries or healthcare facilities which may be hazardous, infectious and need to be treated as special wastes, this is the reason why wastes should be properly recycled. In fact, recycling creates job opportunities and should be adopted as a proper waste management strategy for sustainability. The precise of this paper is how can these materials which ordinarily should have been thrown away as wastes can sustainably create wealth to the growth of economy. The work will further examine the present waste management practices in Nigeria and suggest a better regulatory and integrated plan by the government, oil companies and individuals using modern equipment and technologies of artificial intelligence in managing our wastes.

2.0 Clarification of Terms

Waste *simpliciter* is defined as unproductive, empty, rejected and superfluous.[5] Waste is defined as refuse or superfluous materials especially that remain after a manufacturing or chemical process.[6] Waste is also any unavoidable material resulting from domestic activity or industrial operation for which there is no economic demand and which must be disposed of.[7] Ascension is the act of moving up or of reaching a high position.[8] Wealth is defined as large amount of money, property that a person or country owns. Generation is defined as the generation of something especially electricity, heat et cetera.

Creation is defined as the act or process of making something that is new or of causing something to exist that did not exist before. Innovation is the introduction of new things, ideas or ways of doing something, an age of technological innovation. To innovate is to introduce new methods, ideas etc. to make changes.[9]

Sustainable Development is seen as constituting development that meets the needs of the present without compromising the ability of future generation. It is also defined as a requirement that the use of resources today should not reduce real income in future.[10]Strategy is the creation of a unique and valuable position involving a different set of activities.[11]

Strategy is also defined as plans that are intended to achieve a particular purpose.[12]
It is also defined as an integrated plan through which an organization accomplishes its basic long term-goals such as integrated plan [that] consists of the corporate long term goals of purpose, mission and objectives and the growth strategies through which corporate strategies are realized.[13] However, this paper examines how sustainable development is achieved in Nigeria by the application of innovative strategy of modern technologies and equipment in turning wastes generated to wealth creation by recycling processes.

3.0 The Legal Frameworks for waste management in Nigeria

Primarily as a result of industrialization, great and sometimes irreparable damage is done to the environment. Mankind is now faced with the fact that the current of destruction might lead to a very bleak or even non-existent future for the earth and its inhabitants. The control and regulation of the

[5]IS Oliver; 'Waste management and disposal, in Purchasing and Supply Management' (1991) pp. 22-24

[6] BA Garner; *Black's Law Dictionary*. (11th edition, United States of America: Thomson Reuters, 2019) p.1906

[7]Op.cit

[8] AS Hornby; *Oxford Advanced Learner's Dictionary of Current English*. (New 9th edition, Oxford: Oxford University Press, 2004) p. 74

[9] GEDDES & GROSSET, Webster's Universal Dictionary & Thesaurus (Geddes & Grosset, UK) p. 258

[10]Atsegbua L, *Environmental Law in Nigeria: Theory and Practice*. (New edition, Lagos: AMBIK Press, 2010) p. 69

[11] Porter, M E, *What is Strategy in On Strategy, Harvard Business School Publishing Corporation* (United States of America: Library of Congress Cataloging-in-Publication Data, 2011)

[12]Op.cit

[13]CI Onwuchekwa; *Business Policy and Strategic Management. (*Onitsha: University Publishing Coy, 2000) p.27

use of the environment by all nations is therefore essential. Laws, which achieve this purpose, provide the framework for such regulation and control.[14]

We shall therefore discuss legal framework for waste management under the following sub headings: Common Law, The Constitution of the Federal Republic of Nigeria 1999 as amended, The Petroleum Act, Oil in Navigable Waters Act, (ONWA) LFN, 2004, Oil in Navigable Waters Regulation (ONWR), LFN 2004, Associated Gas Re - Injection Act (AGRA), LFN 2004, National Environmental Protection (Effluent Limitation) Regulations (NEPELR), 1991, National Environmental (Pollution Abatement in Industries and Facilities Generating Waste) Regulations, 1991. (NEPAIFGWR), National Environmental Standards Regulation and Enforcement Agency Act (NESREA), 2007, Environmental Impact Assessment (EIA) ACT, 1992, Harmful Waste (Special Criminal Provisions e.t.c) Act, 1988 (HWSCPA), Basel Convention on Transboundary Movement of Hazardous Matter and Disposal, Oil and Gas Pipeline Regulations, 1995 (OGPR, Environmental Guideline and Standards for the Petroleum Industry, 1991 (as Revised in 2002) EGASPIN, National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006, Oil Spill and Oil Waste Management Regulations, (OSOWMR) 2011, Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulation, 2011 (OSRCRDAR), Hydrocarbon Oils Refineries Act (HORA), 1965, Niger Delta Development Commission Act, (NDDC), Anambra State Waste Management Law, The Lagos Waste Management Authority Law, Enugu State Waste Management Authority (ESWAMA). but for the purpose of this paper, we shall briefly discuss only the following; Common Law, The Constitution of the Federal Republic of Nigeria 1999, Oil in Navigable Waters Act, (ONWA) LFN, 2004, National Environmental Standards Regulation and Enforcement Agency Act (NESREA), 2007, Basel Convention on Transboundary Movement of Hazardous Matter and their disposal 1991.

3.1 Common Law

The common law, in contrast to legislation, comprises various legal principles which have been developed by the judiciary through decided cases over many years. This is the case law rather than statute law. Actions under common law consist of "one on one" disputes involving an action commenced by an injured plaintiff (claimant) in the appropriate courts against the person (defendant) who allegedly caused the injury. Thus, common law is a mechanism to regulate the legal relations between private persons, whether individuals or companies.[15]

The most important set of common laws which have application to environmental protection in general and pollution in particular is the law of torts (wrongs). The principal function of the law of torts is to provide a range of remedies for any person who suffers a wrong consisting of damage to property or person (personal injury) caused by the activities of another person. Although common law actions have been criticized for "being too expensive, too long winded and too uncertain", nevertheless, it has, in recent years proved to be a fertile grounds for environmental litigation, although the judiciary have demonstrated a rather lukewarm response to attempts to use the common law of torts as a mechanism to control the adverse impacts of environmental pollution on people, property and the wider environment.[16]

3.2 The Constitution of the Federal Republic of Nigeria 1999

First, the Constitution is the formulation of the country's law and basic principles that governs a country. It spells out the responsibilities of the various organs of government as well as

[14] L Atsegbua et al *op.cit,* p. 50
[15] S Wolf et al, *op.cit*, 339
[16] *Ibid*, 34

the relationship between the citizens.[17] For Nwabueze, "a Constitution is a body of fundamental principles according to which a state is governed. It is therefore a declaration of how certain goals are to be achieved in any society.[18]

The CFRN, 1999[19] as amended has no express provision for environmental protection. The constitution also excludes international treaties from being applied as law in Nigeria until they are enacted as law by the National Assembly.[20] By implication, international treaties on environmental protection to which Nigeria is signatory shall have no force of law in Nigeria unless they are enacted as laws by the National Assembly.

Chapter II of the 1999 Constitution is not an enforceable part of the constitution. A section in the said Chapter II provides for environmental protection by the State.[21] This provision is however merely persuasive and does not possess the binding force of law.

It would appear that economic expediency is at the root of not making environmental protection an enforceable part of the constitution. In view of the wanton destruction of the environment by oil industry operators, it is suggested that environmental protection should be made justiciable under the constitution.

The Petroleum Act

This is an Act which came into effect on the 27th of November, 1969 to provide for the exploration of Petroleum from the territorial waters and the Continental Shelf of Nigeria and to vest the ownership of and all on-shore revenue from Petroleum resources derivable therefore in the Federal Government and for all other matters incidental thereto. By the provision of section 2, the Minister of Petroleum and Solid Minerals is empowered under 2(a-c) to grant a license, to be known as an oil exploration license, to explore for petroleum; a license to prospect for petroleum, and a lease to be known as an oil mining lease, to search for, win, work, carry away and dispose of petroleum. Section 8(a) states that the Minister shall exercise general supervision overall operations carried on under licenses and leases granted under this Act, and to report annually to the Federal Government on the progress of the oil industry in Nigeria.

The minister reports directly to the federal government and as such, it is obvious that the above provision leaves the Minister with enormous powers and duties as that does not place such duties or powers of the Minister under any obvious check. The Minister having such powers may decide to abuse his wide powers and may even refuse or neglect to perform the prescribed duties. Although section 12 provides that the Minister may in writing under his hand delegate to another person any power conferred on him by or under the Act, unfortunately, the minister by virtue of the same Act cannot delegate the powers to make orders and regulations. To say the least, the powers of the minister are two wide and ought to be curtailed. The power to make regulations prescribing anything requiring to be prescribed for operations carried out under this Act, includes among others, ensuring safe work conditions, conservation of Petroleum resources, prevention of pollution of water courses and the atmosphere, making of reports and returns (including reports of accident) and inquiries into accident.[22] This Act has been amended

[17] Alfred Okukpon in L. Atsegbua (ed) 'the 1999 Constitution of Nigeria and the Protection of the Right of Citizens to a clean environment' in selected essays on petroleum and environmental law, Atsegbua (ed.), (Benin: Department of Public Law, 2000) p. 25

[18] BO Nwabueze, *The Presidential Constitution of Nigeria*, (London: C Hurst & Company, 1982)P. 7

[19] Cap C 23, LFN, 2004

[20] Section 12, *ibid*

[21] Section 20, *ibid*

[22] Section 9(b)(i-v) of the Petroleum Act

Oil in Navigable Waters Act, (ONWA) LFN, 2004

The Act provides for penalty for violation of its provisions but failed to stipulate the minimum or maximum amount for such penalties. It only stated without adducing any reason that where trial is by a court of summary jurisdiction other than a High Court, such penalty, shall not exceed Two Thousand Naira.[23] It also failed to provide for the level of offences under the Act triable by inferior courts and those that should go to the High Court. It is suggested that in future amendments, the Act should graduate the level of spills triable at the minor courts and those that should proceed to the High Court as well as the appropriate fines or penalties for each level of spill into navigable waters. This will make for uniformity in its enforcement.

3.3 National Environmental Standards Regulation and Enforcement Agency Act (NESREA), 2007

The NESREA Act was enacted in 2007 to replace the FEPA Act. The Act created the National Environmental Standards Regulation and Enforcement Agency and conferred on it the responsibility for the protection and development of the environment in Nigeria and other related matters. The Act came seven years after FEPA was scrapped and its functions transferred to the Federal Ministry of Environment but the latter was unable to cope with the challenges of managing the Nigerian environment. The Act tried to integrates the key environmental stakeholders into its governing body.[24] A major strength of the new agency created by this Act is that unlike FEPA which is stated to be an arm of the presidency, the new Agency is an independent body with perpetual succession.[25]

3.4 Basel Convention on the Control Transboundary Movement of Hazardous Wastes and their Disposal, 1991

The Convention came into force in Nigeria on 5th May 1992 but was ratified by Nigeria on 13th March in 1991. The Convention has among other things at its preamble "aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good housekeeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes."

The objectives of the Convention are:

(a) Reducing transboundary movement of wastes to a minimum, consistent with the environment's sound and efficient management of such wastes.
(b) Minimizing the amount and toxin of hazardous waste and ensuring that environmentally sound management, including disposal and recovery operations as close as possible to the source of generation.
(c) Assisting developing countries in environmentally sound management of hazardous and other wastes they generate.[26]

4.0 Modern Methods of Waste Management

Sanitary Landfill

Sanitary land filling method is the simplest and widely used waste disposal management method of solid, non-hazardous and non-radioactive wastes. The operation is basically a biological method of waste management. The solid wastes are spread in layers, compacted to the smallest practical volume, and covered by material applied at the end of each operating day.[27]. Radioactive wastes emit ionizing radiations that can harm living organisms. However, the handling and disposal of such

[23] Section 5 *ibid*
[24] Section 3 NESREA Act, 2007
[25] Section 2 *ibid*
[26] L Atsegbua et al, *op.ci*
[27] L I Nwokike. 'Sustainable Strategies for Waste Management in Nigeria: A Legal Appraisal' being Dissertation for the award of Doctor of Philosophy in Laws, Faculty of Law, Nnamdi Azikiwe University, Awka, (2021) p. 230

materials under specialized category and is not a responsibility of municipal authorities but is usually entrusted to specialist organizations in practically all countries.[28]

The danger of improper waste storage lies, mainly, in its potential to contaminate surface and ground water supplies, Modern storage methods tend to eliminate or minimize such dangers, Sometimes, temporary storage of solid waste is done by forming new waste piles that are carefully constructed over an impervious base. To prevent dispersal, such piles have to be protected from wind and erosion. Long-term storage of waste is done in sanitary landfills. One of the important aspects of these modern landfills is that buried waste never comes in contact with ground water. An adequate distance is maintained between the bottom of the landfill and seasonally high ground water table. The landfill is built up in units called "cells". It is a disposal site that is carefully selected, designed, constructed, and operated to protect the environment and public health. The advantages are low cost, flexible operation and final disposal. Disadvantages are that the process is slow, requires large land area and there exists the possibility of leaching of pollutants and toxic metals from the site into the groundwater.

Daily solid waste is transported to a landfill site, spread in a layer and covered with 10-20 cm thick soil and a plastic liner. When refuse "cells" in a site are filled a layer of -0.5-meter impervious soil, called final cover, is spread on top of the landfill. Area and trench methods are also in use. The geographic and topographic selection for a landfill is important. Monitoring and control systems are provided for detecting and, if necessary, eliminating contamination of the soil around the pits and under-ground water sources with offensive leachates from the piles.

Composting

Composting is the biochemical degradation of organic materials (biodegradable trash) under carefully controlled conditions to yield humus-like sanitary soil supplement. Composting offers a method of processing and recycling both garbage and sewage sludge in one operation. The volume of the waste can be reduced by as much as 50 per cent. Digested compost is processed and used as mulch. Processing includes drying and screening. The decomposable materials in refuse are isolated from inorganic materials- through sorting and separating operations based on size, density and magnetic and other physical properties. Shredding reduces the size of the waste articles to uniform size. Both aerobic and anaerobic decomposition can extract useful products. Aerobic system of decomposition is known as composting. It is the only process that provides for recycling of organic residue. In a common procedure of composting, the polluted material is mixed with a solid organic substance that is readily degraded (e.g. wood chips, sawdust straw, etc.), The pile is supplemented with nitrogen, phosphorous and other inorganic nutrients and is placed hi a single heap. Moisture and aeration are maintained by periodic mixing and turning and exposing the materials to air.[29]Composting method can be developed into a major process for handling sewage sludge to maintain an eco-friendly environment. As more stringent environmental rules and siting constraints limit the use of solid waste incineration and land filling options, the application of composting is likely to increase.

Incineration

Incineration is a controlled combustion process used for volume reduction and destruction of residual organic matter and pathogens. Advantages of incineration are:

1. Applicable to all combustible (organic) materials
2. Suitable to handle biohazard waste
3. Large land areas are not required.

[28]P Narayanan (2014). *Environmental Pollution: Principles, Analysis and Control*. (New Delhi: CBS Publishers & Distributions Ltd.) p 619.

[29]Op.cit, p 238

The disadvantages are:
- Environmental nuisance
- Products may be hazardous to health
- It is not the ultimate disposal method. Combusted residues still have to be disposed.

By the early part of the twentieth century very few urban communities in the world were incinerating solid waste. Most cities were following the primitive method of dumping it on land or water. General recognition of the pollution and public health problems, resulting from the open dumping of waste as well as of improper incineration, resulted in change in attitudes in adoption of sanitary landfills, which were designed and operated in a manner that minimized risks to environment and public health. At the same time, the incinerators have been redesigned to recover heat energy from the waste and. to provide extensive air pollution control devices to satisfy stringent standards of air quality.[30]Modern municipal incinerators are designed to operate on the basis of continuous feeding and burning of the solid waste. From storage pit the waste is lifted and deposited into a hopper and chute above the furnace and released on to a charging grate or stoker. The grate shakes and moves the waste through the furnace allowing air to circulate around the burning material. Rectangular as well as rotary kiln and vertical circular furnaces are in use. The furnaces are lined with refractory bricks to withstand high temperatures.

Complete burning in any incineration process depends on: *(i)* combustibility of the pollutants, *(ii)* residence time, *(iii)* flame temperature and (iv) turbulence. For burning carbonaceous waste without smoke, temperature >750° C has to be maintained. The degree of turbulence of the air in the incinerator affects oxidation and Us overall performance. If the material to be disposed is in the form of waste gas containing organic materials that are combustible, incineration can be considered as the final method of waste disposal.

Pyrolysis is a thermochemical process, under anaerobic conditions, for conversion of organic solids to combustible gases, water vapor and a solid residue. The liberated gases can be used as fuel. 'Synpyrol' is a new technology, a combination of synthesis and pyrolysis, during which cellulose and water molecules react together to produce hydrolyzed cellulose, which is broken into hydrocarbons and other organic compounds. Conversion involves neutralization of acidic or alkali wastes and proper disposal. Special storage and handling facilities are required for radioactive waste.[31]

Recycling

Recycling of part of the solid waste generated in the domestic and industrial sectors is an attractive way of conserving resources as well as reducing the burden on sorting and final disposal. For example, converting wastepaper from offices into corrugated boxes or newsprint (post-consumer recycling).

Evidently, recycling involves separation; recovery and reuse of components of solid waste that may still have economic value. Two of the safe disposal methods mentioned above namely, composting and incineration with heat recovery, can be considered as recycling technologies. From the municipal waste paper, metals, glass, plastics and rubber are potentially reusable if not as they are, at least after some processing. Of the various steps involved in recycling separation poses greatest problems. After experimenting with various alternatives the general consensus arrived at is that separation of recyclable material from the garbage can be done at centralized mechanical processing plants.

In developed countries major cities have established Material Recycling Facilities (MRF). At a typical MRF the collected garbage is loaded on to a conveyor. Electromagnetic separators are employed to removes steel cans. The remaining material passes over a vibrating screen where broken

[30]*Ibid,* p. 234
[31] *Ibid*

glass is removed, the conveyor then passes through an air classifier, which separates plastic and aluminum containers from the heavier glass containers.[32]

Methods of recycling solid-wastes are given in Table 2 and solid-waste management methods in Table 3.

Table 1: Methods of Recycling Solid-Wastes

Recycling Process	Components
Steam generation	Combustible components
Composting	Garbage, rags wood chips and paper
Waste recovery	All refuse
Metal recovery	All refuse
Gasification and pyrolysis	Organic fraction of wastes

Table 2: Solid-Waste Management Methods

Process	*Waste Disposed*	*Cost*	*Remarks*
Compaction	Non-hazardous materials	-	Volume reduction for transport & refill
Landfill	Non- hazardous materials	Low	Simple operation
Composting	Biodegradable organic materials	Medium	Better suited for clean environment economical
Recycling	Selected materials	-	Depends on economics, usage, impact and social acceptance
Incineration	Combustible organics (except for explosives and special compounds)	High	Reduction in volume. End disposal for combustibles
Pyrolysis	Combustible organics (except for explosives and special compounds)	High	Reusable products .
Special storage & handling	Radioactive waste	High	Very necessary

Radioactive Waste Disposal

Nuclear industry, nuclear power plants, medical establishments, research facilities and some Government organizations are the sources of generating commercial low-level radioactive waste. The International Atomic Energy Agency (IAEA) defines low- and intermediate-level waste as "radioactive wastes in which the concentration or quantity of radionuclides is above clearance levels established by the regulatory body, but with a radionuclide content and thermal power, below those of high level waste (i.e. about 2 kW/m^3)." This type of waste is, usually, separated into short-lived and long-lived wastes, for purposes of storing and disposal. In the context of radioactive waste, 'disposal' is defined as "an emplacement of waste in an approved, specified facility without the intention of retrieval." Land disposal is the prevailing current common practice. In that case, the objective is to provide sufficient isolation of waste to protect humans and the environment and not to impose any undue burden on future generations.[33]

[32] Ibid

[33] *Ibid*

Sewage or Wastewater Management

Sewage or Wastewater originates mainly from domestic, industrial, ground water and meteorological sources. The management of "body elimination" which is part of the liquid waste before now was managed by "Night soil carriers" (an acronym for the kind of waste they carry and the time of the day in which it is done) Although the practice is now extinct, there is still little or no respite in the management of body elimination as the raw waste find itself in the open land or river untreated by those who contract to evacuate the waste *albeit* in a more modern way than what it was. Development of municipal water supply systems and household plumbering brought about flush toilets and the beginning of modern sewer systems. At about the same time, the septic tank was introduced as a means of treating domestic sewage from individual households both in sub-urban and rural areas.

However, there was still the problem of what to do with the sewage collected from individual households as it was recognized that the discharge of sewage directly into open land or into streams caused health problem. To solve this problem, it was fit that sewage treatment facilities be constructed to limit the health problems associated with its improper management.[34]

5.0 Conclusion

Waste is something which the owner no longer wants at given time and place and which has no current or perceived market value. However, legal framework and proper method should be applied and adopted to recycle them and they can be reused. Nigeria should engage the application of modern technologies and equipment and apply modern methods of waste collection, transportation, treatment and disposal to optimize our wastes for sustainable development. Our laws should be reformed to provide for the modern methods such as pulverization, modern sanitary landfill, composing and recycling to manage our generated wastes for sustainability.

6.0 Recommendations

The researcher recommended the application of legal means, regulation, recycling, use of advanced technologies and proper waste management mechanism for managing our waste for enhanced productivity and sustainable development. Again enacting active laws and legislations at national, regional and international can be helpful to sustainable development.

[34]Ibid

FIGHT AGAINST TERRORISM AND THE HUMAN RIGHTS CONCERN: A CASE STUDY OF ISRAEL AND HAMAS CONFLICT IN GAZA STRIP

Oyepho, Akeuseph, PhD*

Abstract

Terrorism includes criminal acts intended or circulated to provoke a state of terror in the general public which acts are unjustifiable in any circumstance by whatever considerations. In recent times terrorism has increased exponentially in different parts of the world where hitherto it never occurred. The brazen style of attack on Israel by Hamas terrorists and eventual counter measures by Israel led to war against Hamas terrorist in the Gaza. The pursuit of the war further led to quantum violation of fundamental rights and how peoples' basic freedoms have been affected in the course of the war in the Gaza are evaluated. The work critically examined the fight against terrorism and human rights concern particularly the fight against Hamas by Israel in response to the October 7, 2023 attack on Israel by Hamas. The doctrinal research methodology was adopted. It was found that the October 7th Hamas terrorists attack on Israel violated the Isrealis human rights without justification and further resulted in egregious repression of fundamental rights and basic freedoms of the inhabitants of the Gaza Strip. It was concluded that Hamas invasion of Israel on October 7th, 2023 and the corresponding reprisal attack and further war by Israeli Defence Force (IDF) against the Hamas in Gaza have occasioned continual repression of human rights and fundamental freedoms. Such as the rights to life, dignity of human person, privacy fair trial, education, health; and rights against torture, and so on. It is recommended that Israel adopts counter-terrorism strategies that will not violate human rights and fundamental freedoms in Gaza.

Keywords: Terrorism, Fight against Terrorism, Human Rights, Gaza and Israel Conflict.

1.0 Introduction

The term terrorism is not subject to a universally agreed definition; terrorism can be generally understood as a method of coercion that utilizes or threatens to utilize violence in order to spread fear and thereby attain political or ideological goals.[1] Contemporary terrorist violence is thus distinguished in law from "ordinary" violence by the classic terrorist 'triangle'; A attacks B, to convince C to change its position regarding some action, or policy desired by A, The attack spreads fear as the violence is directed unexpectedly against innocent victims, which in turn put pressure on third parties such as governments to change their policy or position.[2] Contemporary terrorists utilize many forms of violence, and indiscriminately target civilians, military facilities and state offices[3] and so on.

The term 'terrorism' was initially coined to describe the Reign of Terror during the French Revolution from 5th September 1793 to 27th July 1794, during which the Revolutionary Government directed violence and harsh measures against citizens suspected of being enemies of the Revolution.[4] Also, popular resistance to Napoleon's invasion of the Spanish Peninsula led to a new form of fight – the "guerrilla" which derives from the Spanish word *Guerra*, meaning 'little war'.[5]

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[1] United Nations Office on Drugs and Crimes, 'Introduction to International Terrorism' <https://www.unodc.org> accessed 16th April, 2024.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*

[5] AR Friedlander, 'the Origins of International Terrorism: A Micro Legal Historical perspective' (1976)(6) *Israel Yearbook on Human Rights,* 52.

As a weapon of politics and warfare, the use of terrorism by groups can be traced back to ancient times; in its various forms terrorism is as old as government and armed struggle.[6] The advent of computers and ancillary gadgets, tools, information communication technologies have brought about a new dimension of terrorism, called 'cyber terrorism', which refers to the use of computers and/or computer networks, technologies and internet powered equipments to unleash violence or fear on civilian, military facilities, state officials, or attack on critical national information infrastructure of a state in order to attain political or ideological benefits. Accordingly, terrorists carryout their terrorist activities via offline and online or through the physical world and the cyber world. Consequently, countering terrorism now requires technical and scientific knowledge on the workability of computers and computer networks and related technologies in addition to the conventional methods of combating crimes and insecurity.

It has been said that terrorism includes 'criminal acts intended or circulated to provide a state of terror in the general public, a group of persons or particular persons for political purposes', and that such acts are in any circumstances unjustifiable, whatever the considerations of a political philosophical, ideological, racial, ethnic, religious or other nature that may be involved to justify them.[7] Similarly, it has also been said to include "criminal acts" including against civilians, committed with the intent to cause death or serious bodily harm, or taking of hostages, with the intent to provoke a state of terror in the general public or in a group of persons or particularly persons, intimidate a population or compel a government or an international organization to do or to abstain from doing an act.[8]

In the United States of America, the Department of State under the Bureau of Counter-terrorism has listed many foreign organizations as terrorist organizations. They include but not constraint to: Segundo Marquetalia, a Revolutionary Armed Forces of Colombia – Peoples' Army designated on the 1st day of December, 2021 as terrorist organization;[9] ISIS – Democratic Republic of Congo, designated on 11th day of March 2021 as terrorist organization,[10] ISIS – Mozambique, designated on 11th day of March, 2021 as terrorist organization;[11] Harakat Sawa'd Misr (HASM), designated on 14th January, 2021;[12] Asa'b Ahl at-Haq, designated on the 10th of January, 2020;[13] Islamic Revolutionary Guard Corps (IRGC), designated on the 15th of April, 2019;[14] Jama'at Nusrat al Islamic wal-muslim (JNIM), designated on the 6th of September 2018;[15] al- Ashtar Brigades, designated on the 11th July, 2018;[16] ISIS in the Greater Sahara (ISIS-GS), designated on 23rd May, 2018.[17] Boko Haram in Nigeria, designated on 14th November 2013;[18] Hamas in Gaza strip, designated on 8th October, 1997,[19] Hezbollah in Lebanon, designated on 8th October 1997;[20] and so on.

At the United Nations level, the United Nations Office of Counter – terrorism is the body charged with the responsibility to promote international cooperation in the fight against terrorism

[6] AR Falk, 'Revolutionaries and Functionaries: The Dual Face of Terrorism' in Charles C Kegle (ed) *International Terrorism: Characteristics, causes, controls* (Charles St. Martin's press 1990), 39 – 41.

[7] UN General Assembly Declaration on Measures to Eliminate International Terrorism (Resolution 49/60) 1994.

[8] United Nations Security Council Resolution 1566 (2004).

[9] U S Department of State, 'Foreign Terrorist Organizations' <www.state.gov> Accessed 18th April, 2024.

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid.*

and support member states in implementing the global counter – terrorism strategy.[21] At the national levels, the responsibility of fighting terrorism principally rest on their various Armed Forces and special units; the fight against terrorism whether cyber-terrorism or the conventional one requires international cooperation for optimal results.

Terrorism and counter-terrorism impact negatively on human rights. A reasonable number of political & civil rights, economic and social rights as well as the right to live in a wholesome environment and development are usually negatively impacted. These rights include the rights to life,[22] right against torture, cruel, inhuman or degrading punishment or treatment,[23] right to liberty and security of the person;[24] right to non-discrimination,[25] right to freedom of expression,[26] right to health[27] and so on.

The October 7, Hamas attack on Israel and Israel reprisal attack and eventual war against Hamas in Gaza have as well affected negatively the human rights of Israelis as well as Palestinians in Gaza. This work will examined and exposed the human rights concerns in the on-going Israel – Hamas conflict in the Gaza strip, with a view to proffering solutions that will assist the actors to respect, protect and honour human rights even in the face of the armed conflict.

2.0 Major Terrorist Attacks in the World

The terrorist attacks of September 11, 2001 has heightened awareness and focus on terrorism around the world; while the 9/11 was certainly one of the worst terrorists' attacks in world history, it is far from the only one.[28] Below are some of the worst terrorist attacks around the world; from bombings to hijackings to mass shootings; these attacks have claimed thousands of lives and left families and communities reeling in their aftermath:

2.1 New York City September 11th, 2001 Attacks: In the morning of 11th September, 2001, nineteen terrorist hijacked four planes and carried out coordinated attacks on New York City and Washington D.C, forever changing the course of history; two million, nine hundred and ninety-six (2,000,996) people were killed in the attacks,[29] and over six million people were injured making it the deadliest terrorist attack in human history.[30]

2.2 Boko Haram Uprising: The group Boko Haram, which means 'Western Education is Forbidden' in Hausa was formed in 2002; however, it was in 2009 that they began to gain traction and carry out attacks.[31] Between 2009 and 2015, Boko Haram carried out a number of attacks; in that time frame, they bombed the United Nations Headquarters in Abuja, killing at least 21 persons and injured sixty (60).[32] They also carried out attacks in Baga, where a large number of Boko Haram

[21] Office of Counter-Terrorism <https://www.un.org> Accessed 18th April, 2024.

[22] African Charter on Human and Peoples' Rights 1981,art 4; Constitution of the Federal Republic of Nigeria 1999 (as amended), s.33(1); International Covenant on Civil and Political Rights 1966, art 6; Universal Declaration of Human Rights 1948, art 3.

[23] *Ibid,* art 5; *Ibid,* s. 34; *Ibid,* art 7; *Ibid*, art 5.

[24] Constitution (n[22]), s. 35; African Charter (n[22]), art 9; International Covenant on Civil and Political (n[22]), art 9.

[25] *Ibid,* s. 42; *Ibid,* art 2; *Ibid,* art 26.

[26] *Ibid,* s. 39; *Ibid,* art 9; *Ibid,* art 19.

[27] Universal Declaration (n[22]), art 25.

[28] World Atlas, 'Worst Terrorist Attacks in World History <https://www.worldatlas.com/articles/worst-terrorist-attacks-in-history.html> Accessed 18th April, 2024.

[29] *Ibid.*

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

fighters seized the town and invaded the multinational joint task force headquarters and army base. The death toll was over seven hundred.[33]

2.3 Yumbi Violence of December 16, 2018: Not fewer than eight hundred and ninety people, predominantly Banunus, were killed in Yumbi and three other nearby villages (Bongende, Nkolo, and Cam Nbanz) in Mai – Ndombe province, Democratic Republic of the Congo (DRC), between December 16 and 18, 2018.[34] The violence was sparked by a dispute over burial of a local Chief. The violence in Bongende fishing village was the worst seen in years; an estimated 465 houses and buildings were burned down or looted. Many people were left homeless, and without food or water.[35]

2.4 Yazidi Communities Bombings in Iraq in August 14, 2007: On the 14th day of August, 2007, Yazidi communities in Iraq were bombed by Sunni insurgents; the attack killed seven hundred and ninety six (796) people and wounded one thousand, five hundred (1,500) more.[36] The bombings were some of the deadliest attack against the Yazidi people. The Yazidi is a religious minority group that is persecuted by Sunni Muslims in Iraq. Many homes and businesses were destroyed and many people were killed or wounded.

2.5 Mogadishu Bombing of October 14, **2017**: On the 14th day of October, 2017, series of bombings occurred in the capital city of Somalia, which resulted in the killing of over five hundred and eighty seven (587) people and victims were civilians, including many women and children.[37] The bombings were carried out by a group of suicide bombers who drove trucks loaded with explosives into busy market places and then detonated them. The explosives occasioned widespread destruction leveling entire buildings, and leaving large craters on the ground.

2.6 Cinema Rex Fire in Iran on 29thAugust, 1978: The **C**inema Rex was one of the most popular movie theaters in Abadan, Iran. On the night of August 19, 1978, while theater goers' were watching the Deer, four men locked the doors and doused the theatre with airplane fuel, and set it ablaze. The Fire killed between three hundred and seventy seven (377) and four hundred and seventy (470) people. Only a couple of hundred people managed to escape.[38]

2.7 Hamas Terrorist Attack on Israel on October 7, 2023: On the 7th day of October, 2023 armed attacks and massacres by Hamas in kibbutz Re'im, kibbutz Be'ri, kfar Aza, Ofakim, and other communities near Gaza border plus rocket attacks throughout central Israel left 2,199 killed and about 5,400 people injured, while many taken hostage.[39]

2.8 Beslan School Siege in Russia on September 1, 2004: The siege began early in the morning on September 1, when a group of armed men burst into school number one during a ceremony to mark the start of the school year. The militants took more than 1,100 people hostage, including 777 children.[40]

[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] W R Johnson, 'Worst Terrorist Strikes Worldwide' <https://www.johnsonsarchive.net/terrorism/wrjip255.html> Accessed 21st April, 2024.
[40] World Atlas (n[28]).

From the above stated major terrorist attacks, one thing is evident, that is, terrorism attacks human rights and basic freedoms; same is true of badly prosecuted counter-terrorism efforts.

2.9 Hamas Terrorist Attack in Israel on October 7, 2023

Hamas attack of October 7, 2023 violates a number of human rights and fundamental freedoms. The rights to life,[41] the right against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[42] rights to freedom of movement,[43] association[44] and assembly[45] and the right to sound physical and mental health[46] were violated. There were unlawful interference with privacy, enforced disappearances and abductions, restrictions to freedom of expression and media freedom, including violence or threats against journalists,[47] and violation of right to liberty and security of the person.[48] The Hama attack on Israel left 2,100 individuals killed and injuring more than 5,400 and abducting 253 hostages.[49] It has been approximated that 30,000 persons are internally displaced as a result of the Hamas attack of October 7, 2023 on Israel communities.[50] Houses and valuable properties were set ablaze by the various blasts from the attack, consequently, houses and families were shattered. All these are clear human rights violations and violators must be held accountable.

3.0 Specific Human Rights Violations in the Context of Israel Counter – Terrorism Efforts in Gaza

Terrorism and counter- terrorism or the fight against terrorism generally affects the enjoyment of human rights. While it is not possible to provide an in-depth analysis of all human rights concerns in the context of the on-going conflict in Gaza, this sub-section identifies current and emerging human rights challenges.

3.1 The Right to Life

Both international human rights law,[51] regional human rights law[52] and national laws[53] recognize the right and duty of states to protect those individuals subject to their jurisdiction. Article 6 of the International Covenant on Civil and Political Rights 1966 provides for the right to life as follows: 'Every human being has inherent right to life; the right shall be protected by law; no one shall be arbitrarily deprived of his right to life'. Similarly, Article 4 of the Universal Declaration of Human Rights 1948, guarantees the right to life thus: 'Everyone has the right to life liberty and security of person. The state of Israel has obligation under international law to respect, and protect the right to

[41] Constitution (n[22]), s. 33; African Charter (n[22]), art 4; International Covenant on Civil (n[22]), art 6; Universal Declaration (n[22]), art 3.

[42] *Ibid,* s. 34; *Ibid,* art 5; *Ibid*, art 7; *Ibid,* art 5.

[43] *Ibid,* s. 41; *Ibid,* art 12.

[44] *Ibid,* s. 40; *Ibid,* art 10; *Ibid*, art 22.

[45] *Ibid; Ibid,* art 11; *Ibid*, art 21.

[46] International covenant on Economics, Social and Cultural Rights 1966, art 12.

[47] US Department of State, '2023 Country Reports on Human Rights Practices' <https://www.state.gov> accessed 22nd April, 2024.

[48] *Ibid*

[49] *Ibid.*

[50] J K Rozdilsky, 'Gaza War: The Displaced survivors of the October 7 Attack Remain in Need of Support<https://theconversation.com> Accessed 22nd April, 2024.

[51] International Convention on Civil (n[22]), art 6; Universal Declaration (n[22]), art 3.

[52] African Charter (n[22]), art 4; European convention for the protection of Human Rights and Fundamental Freedoms 1950, art 2(1); 1969, art 4.

[53] Constitution (n[22]), s. 33(1); African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap A 9 Laws of Federation of Nigeria, 2004, s.4; Constitution of India 1949, art 21; Constitution of the Republic of South Africa 1996, s. 11; 14th Amendment to the United States Constitution (1868), s.1; Constitution of the Federal Republic of Brazil 1988; art 5.

life of inhabitants of the Gaza Strip. On the other hand Israel owes a duty to life of its nationals and non-nationals resident in Israel or the Gaza Strip from attack from state and non-state actors. Some of the measures that states (including the state of Israel) have adopted to protect individuals from acts of terrorism have themselves posed serious challenges; 'deliberate or targeted killings' to eliminate specific individual as an alternative to arresting them and bring them to justice; shoot-to-kill law enforcement polices in response to perceived terrorist threats.[54] These measures, which are: shoot-to-kill and deliberate or targeted killings have been adopted by the IDF in Gaza. The Israel Defence Force has shot and killed many Hamas terrorists and non-Hamas individuals in their on-going war in Gaza against Hamas terrorists group. The Gaza ministry of Health has reported that about 34,183 have been killed, and about seventy two percent of those killed were children.[55]

It has been expressed by the Pakistani Court, that implicit in the right to life is the right to food and protection against wastage of excess food.[56] In *Shehla Zia v Wapda*,[57] it was held by Paskistani Supreme Court that the right to healthy environment was part of the fundamental right to life and right to dignity under article 9 and 14 of the Constitution of Pakistan respectively. Similarly the Indian Supreme Court in *Francis Choleric v Union Territory of Delhi*,[58] observed Par Justice Bhagwati regarding the right to life as follows:

> We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and, co-mingling with fellow human beings.[59]

It was further held in Indian case of *Subash kumar v State of Behar*,[60] that the right to life as a fundamental right under Art 21 of the Constitution of India includes the right to enjoyment of pollution free water and air for full enjoyment of life. In *Olga Tellis* case,[61] the Supreme Court of India observed that an important facet of the right to life is the right to the means of livelihood, because no person can live without the means of livelihood; if the right to the means of livelihood is not treated a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

The United Nations Human Rights Committee in its General Comment No.36 has stated that Article 6 of the International Covenant on Civil and Political Rights recognizes and protects the right to life of all human beings. The right to life is the supreme right for which no derogation is permitted, even in situation of armed conflict and other public emergencies that threaten the life of the nation.[62] The right to life has crucial importance both for individuals and for society as a whole.[63]

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[54] P Alston, 'Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur Phillip Alston' (E/CN4/2006/53, paras 44 – 54; MSchenin, 'Report and protection of Human and Fundamental Freedoms while countering terrorism' (A/HRC/4/26 paras 74 – 78.

[55] Aljazeera, 'In numbers: 200 Days of Israel War on Gaza' <https://www.aljazeera.com> Accessed 24th April, 2024.

[56] *Mohammed Ahmad Panson and Others v Federation of Pakistan*, HCJDA 38, Write Petition No. 840 of 2019 (24 December, 2019).

[57] PLD 1994 SC 693.

[58] Air 1981 SC 746.

[59] *Ibid.*

[60] (1991) ISCC 598.

[61] 1986 SC 180.

[62] Human Rights Committee, General Comment No. 6 (1982) on the Right to life, para 1; General Comment No. 14 (1984) on the Right to life, para 1; *Camargo v Colombia, communication* no. 45/1979, para 13.1; *Babaeram-Adhim v Suviname, communications* nos. 146/1983 and 154/1983, para 14.3.

[63] Human Rights Committee General Comment No. 36 on Article 6 of ICCPR on Right to life.

The committee further stated that the right to life is a right that should not be interpreted narrowly; it concerns the entitlement of individuals to be free from acts and omissions that are intended to cause premature death, as well as to enjoy a life of dignity.[64]

Considering the above positions on the right to life, it is hereby expressed that the destruction of over sixty two percent of residential homes by relentless bombing by IDF,[65] over one million people facing catastrophic lack of food,[66] lack of water and unprecedented air and land pollutions are clear infractions of the right to life of dwellers of the Gaza strip and Israel ought to be held by the International Community to account. Though, it is the right of the nation of Israel to defend itself and citizens against attacks from within and outside, however, this right is not to be exercised outside the circumference of international law. Hamas terrorist violated international law when it invaded the nation of Israel and killed over two thousand (2,000) persons and injured over five thousand persons. Both of them are supposed to be held accountable by the international community for war crimes.

3.2 The Right Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The right against torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. It is a peremptory norm or a norm of *jus congens* and is non derogable even in state of emergency threatening the life of the nation under international and human rights treaties.[67] Article 5 of the Universal Declaration of Human Rights 1948 provides for the right against torture, as follows: 'No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. On the same vein, Article 7 of the International Covenant on Civil and Political Rights 1966, states that 'No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment; in particular, no one shall be subjected without his free consent to medical or scientific experimentation'.

The prohibition of torture does not submit to the threat posed by terrorism or alleged danger posed by individuals or group of individuals to the security of a state.[68] It does not also submit to counter terrorism efforts by state actors. In practice however, states have often adopted policies and methods to confront terrorism that affect, circumvent and undermine this absolute prohibition.[69] For instance, the use of torture to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of 'secret evidence' put forward by prosecution in violation of the principle of non-admissibility of evidence extracted by torture.[70] Regarding conditions of detention, practices such as the use of secret and incommunicado detention,[71] as well as prolonged solitary confinement and similar measures aimed at causing stress, may amount to torture, cruel, inhuman or degrading treatment.[72]

The 2023 country reports on Human Rights practices on Israel, West Bank and Gaza by the United States Department of State indicated torture, and other cruel, inhuman, or degrading treatment or

[64] *Ibid.*

[65] Aljazeera (n[54]).

[66] *Ibid.*

[67] International Convention on Civil (n[22]), art 7 and 4(2); European Convention on Human Rights (n[51]), arts 3 and 15(2); American Convention on Human Rights (1969, art 5 and 27(2); African Charter (n[22]), art 5; Geneva Convention art 3; Inter-American Commission on Human Rights, 'Report on the situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System' (OEA/ser.L/Vii.105, doc. 40 rev, para 118).

[68] Committee against Torture, Views on Communication No. 39/1996, *Tapia Paez v Swedan*, 28 April, 1997.

[69] Committee against Torture Report (A/59/44. Paras 67, 126 and 144; M Nowark, (special Rapporteur). On question of torture and other cruel inhuman or degrading treatment or punishment report (E/CN4/2006/6).

[70] Convention against Torture and other cruel inhuman or degrading treatment or punishment 1984, art 15.

[71] Commission on Human Rights Resolution 2005/39.

[72] Human Rights Committee, General Comment No. 20 (1992), para 6; and situation of Detainees at Guantanamo Bay (E/CN4/2006/120, para. 53.

punishment by the Israel defence forces.[73] Human rights organizations raised concerns over reports of systemic torture and cruel, inhuman and degrading treatment or punishment of Palestinian detainees in Isreali facilities after October 7.[74] Prisoners are being tortured to death in some detention centers in Israel as capture by the 2023 country reports on Human Rights practices in Israel, West Bank and Gaza.[75]

3.3 Right to Liberty and Security of the person

All persons are protected against the unlawful or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the state might affect the liberty of person.[76] In practice, states as part of their efforts to counter terrorism, have adopted measures which have impacted on the liberty of persons, such as: pretrial procedures for terrorism offences, including provisions concerning bail and remand of persons in custody awaiting trial.[77]administrative detention,[78] control orders,[79] and compulsory hearings.[80]

States in their quest to counter terrorism, can lawfully detain persons suspected of terrorist activity, as it is with other crimes; however, if a measure calls for denial of an individual liberty, due compliance with international and regional human rights laws related to liberty and security of persons, the right to recognition before the law and right to due process are essential. Any such measures must at least, allow for judicial examination and the ability of detained persons to have the lawfulness of their detention determined by a judicial authority.[81] Adherence to due process and the right to fair hearing is pertinent for the proper safeguarding of persons liberty and scrutiny. Most of the measures adopted by the Nation of Israel in her fight against Hamas terrorists since the 7th October 2023, have violated the right to liberty and security of the person.[82]

It is reported that since the Hamas terrorist attack of 7th October 2023 on Israel which over a thousand persons were killed and over two hundred and fifty abducted, the number of Palestinians arrested in the Gaza strip exceeds seven thousand, three hundred and fifty (7,380).[83] It is further stated that those figures do not include the thousands of adults and children the Israeli Army has reportedly detained, tortured and interrogated in the makeshift prisons across Gaza, outside any legal or civilian oversight.[84] Similarly, it has also been reported that Israel has also employed quasi-judicial measures to arrest thousands of Palestinians without charge; of all the Palestinians detained since October 7, about 3,050 are held in 'administrative detention', an emergency measure that Israel inherited from the colonial British mandate for Palestine.[85] Under administrative detention, prisoners

[73] United States Department of State, 'The 2023 country reports on Human Rights practices: Israel West Bank and Gaza' (n[46]).

[74] *Ibid.*

[75] *Ibid.*

[76] Human Rights Committee, General Comment No. 8 (1982) on the right to liberty and security of persons (art 9), para s.1 and 4.

[77] This simply means detention before laying a criminal charge against a person for purpose of further investigation whether that person was involved in the commission, or assisted in the commission, of a terrorist offence

[78] This means detention to prevent a person from committing, or assisting in the commission of, a terrorist offence.

[79] Imposing conditions on a person, short of detention, to prevent that person from committing or assisting in the commission of, a terrorist offence, including in the detention of a person awaiting determination of immigration or refugee states

[80] This is detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities

[81] International Covenant on Civil (n[22]), art 9(3) – (4); *Civil Liberties Organization v Nigeria, Communication* No. 137/94, No. 139/94, No. 154/96 and No. 161/97, para 33.

[82] United States Department of States (n[46]).

[83] Aljazeera, 'more than 7,350 West Bank Palestinians arrested by Israel during Gaza War' <www.aljazeera.com>Accessed 30/07/2024.

[84] *Ibid.*

[85] *Ibid.*

are held indefinitely and given no information about the charges against them or the ostensible evidence incriminating them.[86] In many cases, Israeli authorities do not inform Palestinian families of the whereabouts of their detained loved ones – which amounts to an enforced disappearance, a violation of international law.[87] According to the Israel – Palestine Director at Human Rights Watch 'Israel's sweeping use of administrative detention is not lawful.[88]

3.4 Right to non – discrimination and prohibition of profiling

The Principles of equality and non-discrimination are central to human rights law and are recognized as norms of *jus cogens.*[89] The Inter-American Court of Human Rights, for instance, has stated that 'the principles of equality before the law, equal protection before the law and non-discrimination belong to *jus cogens,* of national and international public order rest on it and it is the principle that permeates all law'.[90] In the specific context of counter – terrorism, the committee on the Elimination of Racial Discrimination has said that the principle of non-discrimination is not capable of limitation since it has become a norm of *jus cogens;* this is reflected within international and regional documents on the promotion and protection of human rights while countering or fighting against terrorism.[91]

Also, in its General Recommendation[92], the committee on the Elimination of Racial Discrimination has called on states to ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, decent or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping. On its part, the Inter-American Commission on Human Rights has cautioned, 'any use of profiling or similar devices by a state must comply strictly with international principles governing necessity, proportionality and non-discrimination and must be subject to close judicial scrutiny'.[93] Similarly, the European Commission against Racism and Intolerance has asked Governments to ensure that no discrimination ensues from legislation and regulations, or their implementation, in the field of law enforcement checks.[94]

On their part, the European Union Network of Independent Experts on Fundamental Rights has expressed serious concerns about the development of terrorism profiles; profiling on the basis of characteristics such as nationality, age or birth place, the experts have cautioned, 'presents a major risk of discrimination'.[95] This is also applicable to profiling based on their religion. Profiling or similar devices must strictly comply with the principles of necessity, proportionality and non-discrimination; they should be subject to close judicial scrutiny and should be periodically reviewed'.[96]

The 7th October attack on Israel has given rise to her adoption of measures apparently discriminatory and profiling in nature in the fight against Hamas terrorists on the Gaza strip. It has been reported by the United States Department of State, that the October 7th, 2023 attack gave rise

[86] *Ibid.*

[87] *Ibid.*

[88] *Ibid.*

[89] Universal Declaration (n[22]), art 1; International Covenant on Civil (n[22]), art. 26.

[90] Inter-American Court on Human Rights, Advisory Opinion OC – 18/03 on the juridical condition and rights of the undocumented migrants, 17 September 2023, para 101.

[91] Human Rights Committee, General Comment No. 29 (2001) on Stats of Emergency (art 4), paras 8 and 16, and E/CN4/2002/18 annex, para 4(1).

[92] No.30 (2004)

[93] Inter-American Commission on Human Right, 'Report on Terrorism and Human Rights', para 353.

[94] European Commission against racism and intolerance, general policy recommendation No. 8 on combating racism while fighting terrorism' (CRI (2004) 26).

[95] European Union Network of Experts in Fundamental Rights, 'The Balance between freedom and security in the response by European union and its member states to the terrorist threats' (2003), p.21.

[96] E/CN4/2005/103, paras 71 – 76; A/HRC/4/26, paras 32 – 62.

to significant concerns, including heightened fear and mistrust between Jewish and Arab citizens in daily life, impacting workplaces, campuses, and social media as well as a widespread fear of potential for inter communal violence within the country; there were numerous reports of discrimination against Arab/Palestinian and Druze Israel citizens and residents.[97] Citizens, including Arab/Palestinian Muslims, Ethiopian origin, faced persistent institutional and societal discrimination.[98] Palestinian doctors in Israel penned an open letter decrying 'racism', militarism and hypocrisy' in Israeli medical system.[99] These and many more are evidences of discriminatory measures adopted by the nation of Israel in the fight against Hamas terrorist, particularly, after the October 7 attacks on Israel by Hamas.

3.5 Other Human Rights Violations by Israel in the Fight Against Hamas Terrorism in Gaza

The right to freedom of expression and opinion, right to privacy and unlawful surveillance, right to freedom of movement and association, right to property, right to fair trial are constantly being violated in the on-going Israel – Hamas Wars in Gaza according to the 2023 Country Reports on Human Rights Practices on Israel, West Bank and Gaza by the United States Department of State.

4.0 Conclusion and Recommendations

Terrorism includes criminal acts intended or circulated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes and such acts are in any circumstances unjustifiable, whatever the considerations of the political, philosophical, ideological, racial, ethnic, religious or other nature that may be involved to justify them. It can also be understood to mean criminal acts including against civilians, committed with the intend to cause death or serious bodily harm, or taking of hostages, with the intent to provoke a state of terror in the general public or a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing an act.

Acts of terrorism injure or violate human rights and curtail the exercise of fundamental freedoms. It also aims at destabilization of democratic governments. Whenever terrorists attacked a people, rights such as the rights to life, dignity and security of human person, non-discrimination, privacy, due process and fair trial; and the right against torture, and other cruel, inhuman or degrading treatment or punishment are majorly infracted. Terrorism is an enemy of the exercise and enjoyment of human rights and fundamental freedoms. The fight against terrorism must be carried in consonance with international and regional human rights instruments. Any measure adopted by states in the fight against terrorism should be laced in conformity with international human rights law, as any such measure adopted by states without considering human rights obligations may be counterproductive.

The fight against Hamas terrorists' organization by Israel in Gaza has witnessed large-scale violations of human rights and basic freedoms. The right to life of Palestinians in Gaza is constantly violated as about 34,185 Palestinians including women and children have been killed as reported by Gaza Ministry of Health; the rights to live in a wholesome environment, the right to the means of livelihood, shelter, water are near elusions to the inhabitants of the Gaza strip. There are serious cases of torture, discrimination, profiling on religious, ethnic and nationality and so on. It is therefore recommended and of the essence too that Israel adopts measures that conform to International Laws in the fight against terrorism to minimize human rights violation and allow citizens especially civilians enjoy fundamental freedoms in Gaza.

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[97] United States Department of State (n[46]).

[98] *Ibid.*

[99] J Deaz and L Frayer, 'Palestinians in Israel cite threats, firings and discrimination after Oct. 7' <www.npr.org> accessed 29th April, 2024.

HIRED –TO- INVENT: A CRITICAL APPRAISAL OF EMPLOYEES' INVENTION, LICENCES AND AGREEMENT

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Abstract
Inventions are the result of methodological research. However, when an invention is made in the course of employment or in the execution of a contract, then the question as to who owns the invention arises. Thus, ownership of employee's inventions brings to limelight the intersection of intellectual property rights and labour law. One question we commonly hear from inventors who are employees is whether they have ownership rights to a patentable idea they conceived while working for a company. The answer can be quite tricky and uncertain. It is on this premise that this paper aims to examine the general rule, in the absence of a written agreement to the contrary, whether an employer has a non-exclusive license to use an invention devised by an employee while working for the employer. The doctrinal method of legal research was employed. The paper finds that the more difficult situation arises when an employment contract is silent as to intellectual property rights. The paper further finds that under the "hired-to-invent" doctrine; if an employee is hired to invent something or solve a particular problem, the property of the invention related to this effort may belong to the employer. The paper concluded inter alia that there is usually absence of certainty and clear specification of the terms of ownership of intellectual property rights in an employment relationship in Nigeria. The paper recommended among others that certainty and clear specification of the terms of ownership of intellectual property rights in an employment relationship before any intellectual property is developed is paramount, otherwise, the question of who owns the rights to employee inventions becomes complicated.

Keywords: Invention, Employers Agreement, Licenses, Employer, Employee Invention, **Nigeria**

1.0 Introduction

Employment inventions is defined as any invention which is made wholly or partially by the employee at any time in the course of his employment with the company (whether or not during working hours or using company premises or resources, and whether or not recorded in material form).[1] It was further defined as a means any invention or part thereof conceived, developed, reduced to practice, completed or created which is: (i) conceived, developed, reduced to practice, completed, or created by employee (whether solely by employee or jointly with others) within the scope of employee's employment with the company; on the company's time; or with the aid, assistance, or use of any property, equipment, facilities, supplies, resources, personnel, or intellectual property of the Company; (ii) the result of any work, services, or duties performed or suggested by Employee for or on behalf of the Company; (iii) related to the industry or trade of the Company; or (iv) related to the current or demonstrably anticipated business, research, or development of the Company.[2]

A large number of patentable technical inventions are created under employment contracts and are designated as "employee inventions", accordingly. Due to the close relation between the invention and the employing company of the inventor, the company has the right to claim the invention for itself. In contrast, the full rights to a "free invention" remain with the employee who may determine at his own discretion if and how the invention shall be used.[3]

The Law on Employees' Inventions aims at balancing the interests of the employer and the employee when the latter developed a patentable invention within the boundaries of his employment contract. Thus, if the employer claims the invention for itself, the inventor has the right to

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[1]Employment Inventions Definition, Available at https://www.lawinsider.com.Accessed on 12th July, 2024.

[2]*Ibid*

[3]*Speck v. N.C. Dairy Foundation., Inc., 311 N.C. 679, 686 (1984)*

an appropriate amount of compensation. The amount itself is generally calculated based on the Guidelines for Determining Compensation for Employees' Inventions.[4]
In Germany, in case of a dispute between the employer and the employee inventor with regard to an employee's invention, for instance when determining the appropriate amount of compensation as mentioned above, the Board of Arbitration for Employees' Inventions at the Patent and Trademark Office can be called upon for mediation and settlement. In a lot of cases, a proceeding before the Board of Arbitration is a prerequisite for a following court proceeding.

2.0 Who Owns Employee Inventions? The Employer or the Employee

It is dangerous for an employer to assume that it owns an employee's inventions merely because its employee invented them. Similarly, employees should not assume that they own inventions merely because they invented them at home. Employee-inventors present unique problems for the employer, and the answer to who owns an invention may depend on the type of invention.[5] The rules for ownership of creations protected by a copyright differ from inventions protected by a patent.

These are some of the issues arising from the employee-employer relationship. It is estimated that 80% to 90% of patent inventions are the result of employee-inventors.[6] Almost all ownership disputes can be avoided if addressed in a written agreement at the outset. But if there is no written agreement, these rules generally apply:

1. The author of the work is usually the owner of the copyright, unless the work was prepared by an employee in the scope of his or her employment. If so, then the work is a "work for hire" and the employer is the owner.
2. If the author is an independent contractor, and not an employee, the work does not belong to the employer. It is often difficult to distinguish between an employee and independent contractor, so employers should seek legal advice in establishing this distinction.
3. The ownership of patents is different than ownership of copyrights. In the absence of a written agreement, an employee's patentable inventions may not belong to the employer, except in special circumstances. The employee - employer relationship does not necessarily entitle the employer to ownership of inventions made by the employee.
4. If the employee was hired for the specific purpose of inventing a defined product or process, the invention belongs to the employer.
5. General inventions made at the employer's expense but not at the employer's specification are often not the property of the employer.
6. Does this mean that the employee can then stop his employer from using the invention, which he made at the employer's expense? No. The employee may have the duty to license the invention at no cost to the employer. This is called the "shop right rule." A shop right is a nonexclusive license to use, manufacture and sell an invention without financial obligation to the inventor. However, the employee retains ownership of the patent. Inventions made on the employee's own time, but not at the employer's expense, can be the property of the employee, even if they relate to the employer's business.

[4]Dulheuer M., "MD Legal Patent, Patent Law Firm Deutschland – Germany [https://legal-patent.com/company-info/fields-of-law/employees-inventions/] retrieved 7th February, 2024.

[5]*Banks v. Unisys Corp*., 228 F.3d 1357, 1359 (Fed. Cir. 2000).

[6]M Schonfeld,"Who Owns Employee Inventions? The Employer or the Employee?"Edited and reviewed by Find Law Attorney Writers (March 26, 2008*)* reprinted from the winter 2004 Focus, Burns & Levinson LLP.www.burnslev.comHQ 617.345.3000.

The absence of a written agreement causes these disputes to arise. Accordingly, it is advisable to follow these guidelines in order to avoid ownership disputes between employers, employees and independent contractors:

1. Consult your attorney. It is essential to obtain legal advice so that you can protect your intellectual property.
2. Always use written agreements which spell out the rights of employer, employee and independent contractors. Ensure that the agreements are valid under your state's law.
3. Employers should make sure that employees read and sign the written agreements, preferably before they commence their employment.
4. Employers should ensure that written employment agreements have confidentiality clauses and appropriate non-compete provisions.

3.0 Ownership of Inventions under Nigerian Patent Law

Under the World Intellectual Property Organization (WIPO), Article 13 defines patent as a document issued, upon application, by a government office (or a regional office acting for several countries), which describes an invention and creates a legal situation in which the patented invention can normally only be exploited (manufactured, used, sold, imported) with the authorization of the owner of the patent.[7] Patent is governed in Nigeria by the Patents and Designs Act,[8] and the regulations made thereunder. According to section 6(1) of the Act[9] "A patent confers on the patentee the right to preclude any other person from doing any of the following acts:

a. Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and
b. Where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any other acts mentioned in paragraph (a) of this subsection".
c.

A person upon whom a patent is issued is known as a patentee. Whilst it is straightforward in most cases as to who a patent is issued to, it is however not the case with the invention made in the course of employment. The crucial issue is whether the right of a patent is vested on the employee or the employer with respect to the invention made by an employee in the course of employment.[10]

At common law, an invention made by an employee in the course of employment was regarded as that of the employer.[11] Thus, an employee who is desirous of securing himself the right to a patent in respect of his invention had to ensure that a provision to that effect is made in his contract of employment. Under the present regime, however, the Act attempts to balance the various interests involved in the process of an invention in determining the person on whom the right to patent vests. Accordingly, section 2 (4) (a) of the Act[12] provides: "When an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or, as the case may be, in the person who commissioned the work: Provided that, where the inventor is an employee, then –

(a) If
(i) His contract of employment does not require him to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal; or

[7] Intellectual Property Reading Material, WIPO Publication No. 476(E)
[8] Cap P2 LFN 2004.Hereinafter referred to as "the Act".
[9] *Ibid*
[10] R Ibekwe"Legal View: Who owns Patent to an Invention, Employee or Employer?" (March 17, 2018)
[11] *United States v. Dubilier Condenser Corp.,* (1933) 289 U.S. 178, 187–88.
[12] *Op.cit*

(ii) The invention is of exceptional importance,
He is entitled to fair remuneration taking into account his salary and the importance of the invention".

As can be gleaned from the above provisions of the Act[13], where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is respectively vested in the employer or the person who commissioned the work.[14]The phrase "in the course of employment" was interpreted by the court in the case of *Patchet v. Sterling*[15], to mean the use of the employer's time and materials. It, therefore, follows that if an invention is made in the spare time of the employee (e.g. while on break or vacation) with his own materials, the right to a patent in such an invention would be vested in the said employee.

Nevertheless, where an invention is made by an employee in the course of employment, section 2(4)(a) of the Act[16] makes provisions for remuneration of the employee by the employer in certain cases. The first case is where the employee's contract of employment does not require the employee to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal. The second case is where the invention is of exceptional importance.

This arises where the employee has done something extraordinary. For instance, an employee pharmacist who invents drugs for the cure of *Ebola* virus, cancer or *AIDS* would be deemed to have made an invention that is of exceptional importance.
In the above two cases, the Act[17] provides that such an employee is entitled to fair remuneration taking into account the employee's salary and the importance of the invention. The remuneration contemplated here is not modifiable by contract and may be enforced by civil proceedings as provided under section 2(4)(b) of the Act[18].On the whole, while patent in respect of an invention made in the course of employment is vested in the employer, the employee should be compensated in deserving a case.

4.0 Employees' Inventions Invented Outside Work Hours

Section 39 of the Patents Act[19] provides that:

> an invention made by an employee belongs to the employer if they are made 'in the course of the normal duties of the employee or in the course of duties falling outside his normal duties, but specifically assigned to him, and the circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties.

But what if the invention was made by the employee in his own time at home and using his own equipment, in this case his computer? This was precisely what the court had to consider in *Prosyscor Ltd v Net sweeper Inc &Ors*[20]. The ex-employee, Mr. Kite, had been working remotely in the UK as a sales consultant and software developer for Canadian company, Netsweeper. The invention in question concerned a method of discriminating between requests to access a website. The dispute concerned the entitlement to an international patent application, and the national and regional

[13] *Ibid*
[14]*Teets v. Chromalloy Gas Turbine Corp.,* 83 F.3d 403, 408 (Fed. Cir. 1996).
[15][1955] AC 534
[16]*Ibid*
[17] *Ibid*
[18] *Ibid*
[19] 1977
[20] [2019] EWHC 1302 (IPEC).

applications derived from it. Mr. Kite had first come up with the idea for the software application, and then another of Net sweeper's employees had developed the invention to the point at which the international patent application was made.

4.1 The Court's Decision

HHJ Hacon considered the law on entitlement to a patent under an international convention as stated in *BDI Holding GmbH v Argent Energy Ltd and another*.[21] This informs us that it is first necessary to identify the inventive concepts disclosed in the patent application through the eyes of the skilled person, and then decide who devised them.The judge found that the inventive concept of claim 1 of the patent application was devised by both the Mr. Kite and another inventor and that the other claim in issue was devised solely by the other inventor.

However, Mr. Kite's contribution was found to have been made as part of his duties as an employee. This was supported by the fact that he had posted his idea on an internal company website after commencement of his employment. This sharing of information by the employee with the employer will be a key fact to guide on how inventive work is assessed as being linked to employment or not. In particular, the judge noted how the Netsweeper intranet site where Mr. Kite had shared his ideas was known within the company as a useful tool for pooling ideas for development. Perhaps unsurprisingly, it is a seemingly high hurdle for employees to be able to lay claim to ownership of inventions conceived in the course of their normal duties but made at home and out of normal working hours. The judge stated that while the time and place of the devising of an inventive concept may be relevant to an assessment under Section 39, they are secondary considerations. The judge went on to say that in a case where there is doubt as to whether the acts were conducted in the course of normal duties, the fact that they were done at home and outside of normal hours may tip the assessment to a finding that the invention was not made in the course of normal duties.

However, where as in this case, the work leading to the invention was very much the sort of work the employee was paid to do, the fact that the work was done at home and out of hours was not relevant.[22] The judge emphasized that *"*acts of a nature such as to be within the normal course of an employee's duties do not cease to be so merely because the employee decides to carry out those normal duties at home and/or outside office hours and/or on his own equipment."The judge's ruling and common-sense approach to ownership of employee inventions should provide comfort to companies at a time when an increasing number of employees are working both flexibly and often remotely.

5.0 Overview of Patent Licenses and Its Assignment

A patent is considered as the transferrable property that can be transferred from the original patentee to any other person by assignment of patent or operation of law. A patent can be licensed or can be assigned only by the owner of the patent. In the case of co-owners or joint-owners, a co-owner can assign or license the patent only upon the other owners' consent.[23] Section 68 of the Indian Patents Act[24] provides for the mortgage, license, or creation of any interest in the patent. A patent license can be an exclusive license or a nonexclusive license. Other forms of license agreements include oral licenses, label licenses, electronic licenses, implied licenses, compulsory licenses in foreign

[21][2019] EWHC 765 (IPEC)

[22]Pountney D &Tumbridge J. **"**Employees' Inventions – Who Owns Them When Invented Outside Work Hours", (2019) [https://www.vennershipley.co.uk/insights-events/employees-inventions-who-owns-them-when-invented-outside-work-hours/] Retrieved 7th February 2022.

[23]*S. Bajpai, "*Difference between Assignment of Patent and License" (2020) [https://corpbiz.io/learning/patent-assignment-difference-between-assignment-of-patent-and-license] Retrieved 7th February 2022.

[24] The Patent and Designs Act of India VI of 1970. Enacted the 21st year of the Republic of India.

countries, licenses which arise by the sale of a patented or unpatented article, or license by estoppel.[25] An exclusive license prevents the licensor from entering into a similar agreement with another party or asserting the right to use the patent on its own behalf unless the licensor has specifically reserved the right to do so. If the licensor retains the right to practice the licensed subject matter, such licenses are often referred to as a "sole license."

The granting of an exclusive license may also involve certain other terms and conditions, such as the ability of the licensor to obtain a higher royalty than for a nonexclusive license. This recognizes the fact that, unless the licensor has obtained a sole license, the licensee will be the sole source of revenue under the patent. Typically, a best efforts clause is often found in exclusive license agreements so as to make certain that the licensee exercises its best efforts to commercialize the invention.

A non-exclusive license typically allows the licensee to practice the invention or authorize others to do on behalf of the licensee. It is normally not transferable by assignment to any other party. As a general rule, the nonexclusive licensee does not have the right to sue for infringement whereas if an exclusive license is granted to the licensee, this would typically be permitted, as provided for in the agreement. A label license is a license which can be granted under either patented or unpatented products. These label licenses typically require labeling of the patent number on patent products. For unpatented products used in a patented process, the label indicates that the process for use of the product as claimed in an identified patent. An oral license may be void or unenforceable if it violates the Statute of Fraud provisions of the jurisdiction in which the contract is made. Electronic licenses are a type of contract which appears on a computer screen and invites acceptance by clicking on the acceptance symbol on the computer screen.

Non-exclusive licenses may permit the licensor to grant further licenses and a non-exclusive license is normally considered as being a mere agreement by licensor not to sue the licensee for infringement in exchange for a lower royalty than would otherwise be obtainable under an exclusive license. Generally, the non-exclusive licensee does not have the right to sue for infringement and cannot assign its right to others without written permission from the licensor. A cross-license normally results where, for example, both parties of a prospective license agreement have patent rights which the other party wishes to acquire. Thus, each party may operate without being charged with infringement of the patent rights of the other. Depending upon the value of the patents rights involved, an agreement of this type may be concluded by exchange of a license and a cross-license may, if needed, be accompanied by payment of royalties. Cross-licenses frequently arise for the purpose of unblocking technology of each party so that each can produce the same without the threat of litigation.

5.1 Assignment

An assignment is as a transfer of the whole intellectual property owned by the assignor. The distinction between a license and an assignment is relevant to taxation and in for standing to sue for infringement. As a general rule, payments made for an assignment of a patent must be capitalized by the assignee and may be taxed as capital gains to the assignor. In contrast, royalties paid under a license are deductible business expenses of the licensee and comprise ordinary income for the licensor. Assignment of Patent would not be valid unless in writing and duly executed. An assignment of patent or share in a patent, mortgage, license, or the creation of any other interest in a patent must not be valid unless the same were in writing. The agreement between the parties concerned will reduce to the document's form embodying all the terms and conditions governing their rights & obligations and duly executed.

[25] See Note 24

List of the Requirements

a. The assignment, mortgage, or license must be reduced to writing in a document embodying all the terms and conditions governing the rights & obligations between the parties
b. An application for registration of such a document must be filed in a prescribed manner in Form-16 within the prescribed time under section 68 of the Act[26]. The document, when gets registered, will have effect from the date of execution.

5.2 Forms of Transfer of Patent Rights

Patent Registration or Grant of the Patent confers to a patentee 'the right to prevent others' from making, exercising, using, or selling an invention without his permission. The methods in which a patentee can deal with the transfer of patent are as follows:

5.1.1. Assignment

The term 'assignment of patent' is not defined in the Patents and Designs Act[27]. An assignment is an act by which the patentee assigns whole or part of the patent rights to the assignee who acquires a right to prevent others from making, exercising, using, or vending the invention. There are three kinds of assignments.[28] They are as follows:-

5.1.2 Legal Assignment

An assignment or an agreement to assign for an existing patent is the legal assignment, where an assignee may enter his name as the patent owner. A patent that is created by the deed can only be assigned through a deed. A legal assignee entitled as a proprietor of the patent acquires all rights thereof.

5.1.3 Equitable Assignments

Section 24 of the Patent and Designs Act provides that "a person's right is a patent application may be transferred, assigned by succession or held in joint ownership." Any agreement that includes a letter in which the patentee agrees to give the certain defined share of a patent to another person is an equitable assignment of patent. However, in that case, an assignee cannot have his name entered in the register as a proprietor of the patent. But the assignee can give notice of his interest in the patent entered in a register.

5.1.4 Mortgages

A mortgage is an agreement where the patent rights are wholly or partly transferred to the assignee in return for the sum of money. Once an assignor repays the sum to an assignee, the patent rights are restored to the assignor and patentee. A person in whose favor the mortgage is made must not be entitled to have his name entered in the register as a proprietor, but he can get his name entered in the register as the mortgagee.

5.2 Licenses

The Patents Act allows the patentee to grant a license by way of an agreement under section 8(2) of the Act[29]. A patentee, by way of granting a license, may permit a licensee to make, use, or exercise the invention. The license granted is not valid unless it is in writing. A license is a contract signed by the licensor and the licensee in writing. The terms agreed upon by them include the payment of

[26] *Ibid*
[27] Patent and Designs Act 2004
[28] Section 24 of the Act
[29] Patent and Designs Act of 2004

royalties at a rate mentioned for all articles made under the patent. Licenses are of the following types:

5.2.1 Voluntary Licenses

It is a license given to any other person to make, use, and sell the patented article as agreed upon the terms of the license in writing. Section 23(1).[30] As it is a voluntary license, the Controller and Central government do not have any role to play. The agreement is mutually agreed upon the terms and conditions made by the licensor and licensee. In case of any disagreement, the licensor has the right to cancel the licensing agreement[31].

5.2.2 Statutory Licenses

The central government grants statutory licenses by empowering the third party to make/use the patented article without the patent holder's consent in view of public interest. For an example of such statutory licenses which is a compulsory license. Compulsory licenses are defined as "authorizations permitting a third party to make, use, or sell a patented invention without the patent owner's consent.[32]

5.2.3 Exclusive Licenses and Limited Licenses

It depends upon a degree and extent of rights conferred on the licensee; a license can be an Exclusive or Limited License. An exclusive license excludes all the other persons, including the patentee, from the right to use the invention. Anyone or more rights of the patented invention can be conferred from the patentee's bundle of rights. The rights can be divided and assigned, restrained entirely, or in part. The limitation may arise in a limited license as to persons, time, manufacture, place, use, or sale.

5.2.4 Express and Implied Licenses

An express license is one where the permission to use a patent is given in express terms. This license will not be valid unless it is in writing in the document embodying upon terms and conditions. In case of implied license, though permission is not given in express terms, it is implied from the circumstances.[33] For instance, where a person buys a patented article, either within a jurisdiction or abroad either directly from a patentee or his licensees, there is an implied license in any way and to resell it.

5.3 Transmission of Patent by Operation of law

When the patentee dies, his interest in the patent passes to his legal representative. In case of the dissolution or winding up of a company or bankruptcy, the transmission of a patent by operation of law will occurs.

5.4 Differences between Assignee and Licensee

In turn, an assignee can reassign his rights to third parties while the licensee cannot change a title and cannot reassign his rights to the third person. An assignee is assigned with all the patent owner's rights while the licensee cannot enjoy the rights. An assignee has the right to sue an infringer while a licensee is not empowered with the right to sue any party for the infringement of the patent in his name. In summary, a patent right may be transferred by assignment or license, an assignment comprises a transfer of the right to exclude others from making, using or selling, and a license

[30] See Note 28
[31] Section 23 (2) (b) of the Act
[32] The Patent and Designs Act 2004. Section 11.
[33] Note 31

comprises a waiver of that right. The patent holder should select a particular form of a contract or license agreement as part of an overall patent licensing strategy.

6.0 Conclusion and Recommendations

From the employer's perspective, the potential risks that may arise from improper handling of inventions and improvements made by employees include: Failure to obtain rights to an invention or the issuance of a patent, Loss of rights to an invention or the issuance of a patent, Exposure to claims for damages or unjust enrichment, Disputes concerning claims for additional compensation, Obtaining a license on terms that are less favorable than those that could have otherwise been obtained and Unreasonable compensation claims for relatively minor improvements

Consequently, from the perspective of an investor or purchaser, these risks may translate into:

a. A lack of certainty of ownership of intellectual property of a target company
b. Difficulty calculating potential exposure to third party claims for damages or additional compensation
c. Unforeseeable potential exposure to litigation.

Hence, employers should institute policies to ensure the proper handling of employee invention matters, including compliance with the requirements of the law and the calculation of reasonable compensation. It is of equal importance to carefully consider provisions safeguarding the company's rights to inventions made by third parties in the course of certain agreements and to use caution in drafting and negotiating agreements in connection with inventions or improvements.

From the perspective of an investor or purchaser, employee inventions and related issues must be a focal point of due diligence concerning technology-dependent target companies. Both the due diligence process and the subsequent negotiation of the transactional documents, including the particular representations and warranties contained therein, should be individually tailored depending on the type of target company, its technology and the risks identified.

Moreover, the increased risk of successful compensation claims and the potential amount of compensation that may be awarded may adversely impact cost analyses conducted prior to engaging in research and development projects; collaboration projects and acquisitions and may discourage employees from working together effectively and sharing the results of research as "to some extent the fact that an employee makes an invention can be a consequence of his being assigned a routine task at the right time" and employees may not wish to prejudice any potential claim that they may have; and will not necessarily be defeated by paying employees the appropriate industry rates relevant to the nature of the work and the employees receiving other benefits or advantages as a result of the patent or invention or both as these factors affect the amount of compensation payable.

CHALLENGES OF ENFORCEMENT OF FUNDAMENTAL HUMAN RIGHTS *VIS A VIS* UPHOLDING NATIONAL SECURITY: THE PERSPECTIVE OF THE STATE SECURITY SERVICE

Raleke I. Nwangeneh*
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Abstract
From the inception of declaration of Universal Human Rights in 1948 by the UN several States' constitutions have continued to embody human rights within it. These basic rights inure naturally in man and their derogation will disrupt peace and affect society's' equilibrium. The state will not pursue human rights at the expense of state's security or either way. However there have been instances where national security is projected by governments as its main priority. Where national security has been made a priority, several legislations aimed at derogating certain human rights are usually enacted. Constitution having placed certain limitations on human rights makes it not to be at odds with national security matters. This paper *appraises* national security vis-a-vis human rights enforcement under the 1999 Constitution of Nigeria. The work employs doctrinal research methodology. The work found that despite the limitation on enforcement of human rights in certain circumstances by the constitution the state actors still delight in extra subjugation of these rights in pretensions of national security enforcement. It is recommended that further and continual subjugation of human rights beyond the limitations of the constitution is an exertion that will suddenly burst the bubbles in human rights matters and disrupt societal equilibrium.
Keywords: Fundamental Human Rights, Enforcement, National Security, State Security Service

1.0 Introduction

Human Rights are inalienable rights of human beings. These rights provide freedoms, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.[1] On the other hand, Security basically refers to, "the state of being secure especially from attack.[2]" National Security can therefore be said to be the "state of a nation being secure, especially from danger or attack. The national security of a nation is of vital interest to her survival to such an extent that without national security, there can hardly be the nation itself.[3] National security as a concern of the government occupies the highest level of priority in the hierarchy of interests in state affairs, to ensure that the country is stable and safe for her citizens.

In developing countries like Nigeria there seem to be inherent tension between the promotion and enforcement of human rights and protection of national security. This tension is largely assumed by the government and policymakers. Almost without an exception, each administration has treated the two goals as mutually exclusive; i.e., to promote human rights at the expense of national security or to protect national security while overlooking human rights. In the latter they tend to define and conceptualize national security in highly militarized terms by emphasizing the Nation's armed forces and security agencies.

At the international level, Nigeria as a sovereignty is a recognized member of the Comity of Nations and a regular signatory to several International Treaties including Human Rights Treaties. Although Nigeria has been active in signing and ratifying the various international human rights treaties over the years, Nigerian citizens have encountered challenges in the course of an attempt to

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[1]B.A. Garner, *Blacks Law Dictionary*, (Thomas Reuters) 9th Edition, 2004, p.809; *Ransome Kuti& Ors vs AG Federation& Ors* (1985) NWLR (Pt.6)211

[2]*Ibid*; p.1476

[3]E. O. Ugwu, The Interaction between Human Rights and National Security in Nigeria (November 22, 2021). Global Journal of Politics and Law Research2021, Vol.9, No.7, pp.61-69, Available at SSRN: <https://ssrn.com/abstract=3968739>accessed on 6th June, 2024.

enforce any of the international treaties. (you can cite the case of Gani v FRN in enforcement of HR under African charter) the challenges stems from the fact that content of such treaties already exists in our law.[4] While the Nigeria constitution protects civil and political rights, some international treaties, for instance the African Charter on Human and Peoples Rights expanded the scope of the rights to include cultural, socio-economic and group rights. It has been aid that since the birth of human right movements in the mid to late twentieth century, the promotion of human rights according has been seen as competing with or even compromising core issues of national security.[5] In Burke-White's, opinion, promoting human rights have long been viewed as a luxury to be pursued when the government has spare capacity and national security is not being jeopardized.[6] Human rights are inalienable rights of human beings that live in a particular nation and national security of such nation is the means of ensuring that the nation is protected from danger or any form of attack.

The problem of insecurity in Nigeria is widespread and has continued to spread like wide fire. The idea of adopting restrictive measures in case of threats to national security - as one of the core values which States cherish as non-negotiable and that do not admit compromises[7] - is an essential component of the legal system both at international and domestic level, and one of those adjustment variables that allow human rights to accommodate and ascertain its social functions. The government and security agencies have often used '*national security*' as a pretext to violate human rights and fundamental freedoms to monitor and deny political opponents their certain privileges,[8] conceal embarrassing or illegal behaviour, bypass investigations by independent and democratic bodies or to suppress political and social unrest.

Security has been defined conceptualizing the modern society thus: Security is not military force though it may involve it, security is not traditional military activity though it may encompass it, security is not military hardware though it may include it, security is development and without development, there can be no security."[9] Reflecting on the concept of security as stated herein it is without a doubt that the country's security challenges are obviously enormous and very disturbing. However the fundamental question remains whether Nigerias convoluted security challenges will limit human rights values enshrined in our constitution?

2.0 Fundamental Human Rights Enshrined in Nigerian Constitution

Fundamental Human Rights as enshrined in Constitution of Federal Republic of Nigeria 1999 are inalienable rights of every person or individual regardless of race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.[10] It is a right derived from fundamental law. They remain the basic moral guarantees that people in all countries and cultures allegedly have, simply because they are humans. Thus, for this sole reason such rights are clearly written in the constitution of nations. Fundamental right has been said to be a right that has its origins in a country's constitution or that is necessarily implied from the terms of that constitution. (We are not aware of who said and the author has to be acknowledged) In Nigeria these rights are protected as sacred by the 1999 Constitution of the Federal Republic of Nigeria, based on the legal and political traditions of the country.[11] Before considering these rights as enshrined in the 1999 Constitution (as

[4]Chapter IV of Constitution of Nigeria 1999 as amended. The Supreme Court often resolves such conflicts in favour of the Constitution (supply case law authority) thus, restricting the expansion of potential human rights.

[5]Burke-White, William W., "Human Rights and National Security: The Strategic Correlation" (2004). All Faculty Scholarship. 960. <https://scholarship.law.upenn.edu/faculty_scholarship/960>accessed on 6th June, 2024, p.251.

[6]*Ibid*; p.252.

[7]IA Badmus, Nigerian National (In)Security: The Threat Analysis, Peace Research (Vol.37) No.1 (May2005) p. 87-88 <https://www.jstor.org/stable/24469683> accessed 9th June, 2024.

[8]*Awolowo & Ors v Federal Minister of Internal Affairs & Anor*(1966) All NLR 178; (1966) NSCC 208.

[9]RS McNamara, *The Essence of Security: Reflections in Office*, (London: Harper and Row) 1968. Include the page of the quotation

[10]Punch Editorial Board, 'Fundamental Rights remain elusive in Nigeria,' *Punch Newspaper*, 13th December, 2023.

[11]A. Yusuf, Issues in Fundamental Human Rights- Department of Arts and Social Sciences Education, University of Ilorin, Ilorin,

amended), it will be apposite to first highlight some of the definitions ascribed to fundamental human rights in case laws.

Kayode Eso JSC[12] in *Ransome Kuti v AG Federation*,[13] observed that a fundamental right is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. Ideally, they form the cornerstone of any democratic society by safe-guarding the freedom of citizens. These fundamental rights cannot be waived by the State or by any person whereby the right is not for his sole benefit but in the control of the State or the courts, and it is rightly pointed out that these rights have a changing content or growing content and new rights are constantly being interpreted into old ones and some formerly thought to be unimportant are being elevated to new heights.[14] Check the quotation properly to ensure you do not paraphrase. In the same vein the Court of Appeal following the definition of Eso JSC, per Orji-Abadua JCA, in *Hassan v EFCC*,[15] defined fundamental human rights as a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself and as such it remains the primary condition to civilized existence. These rights pertain to life[16], dignity of the human person[17], personal liberty[18], fair hearing[19], private and family life[20], freedom of thought, conscience and religion[21], freedom of expression and the press[22], peaceful assembly and freedom of association[23], freedom of movement[24], freedom from discrimination[25], freedom to own acquire and own immovable property anywhere in Nigeria[26]. We shall briefly examine these fundamental human rights enshrined in the 1999 Constitution.

2.1 A Brief Appraisal on the Key Fundamental Human Rights.

We will briefly examine the basic fundamental human rights as enshrined not just in the 1999 Nigerian Constitution, but in various national constitutions, as well as regional and international human rights instruments. Nevertheless, the focus shall remain on the Nigerian aspect.

2.1.1 Right to Life

The right to life makes it unlawful to intentionally deprive a person of his life. Section 33[27] provides that "every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty."[28] From the above quotation, it can be seen that death penalty is enshrined in the Nigerian Constitution only when a suspect is found guilty of a criminal offence by a court of competent

Nigeria;<https://kwcoeilorin.edu.ng/publications/staff_publications/abdulraheem_yusuf/ISSUES_%20IN_%20FUNDAMENTAL_%20HUMAN_%20RIGHTS.pdf> accessed on 8th June, 2024.

[12] Justice Kayode Eso is a former Justice of the Supreme Court of Nigeria.

[13](1985) 2NWLR complete the citation or use another citation

[14]Z. O. Lawal, 'Synopsis on Enforcement of Fundamental Human Rights Under the Nigerian Constitution,<https://www.aaachambers.com/articles/an-analysis-on-the-enforcement-of-fundamental-human-rights-under-the-nigeria-constitution/> accessed on 8th June. 2024.

[15](2014) NWLR (Pt.1389) p.607 at 610.

[16]Chapter IV, CFRN 1999 (as amended), s.33

[17]*Ibid*, s.34

[18]*Ibid*, s.35

[19]*Ibid*, s.36

[20]*Ibid*, s.37

[21]*Ibid*, s.38

[22]*Ibid*, s.39

[23]*Ibid*, s.40

[24]*Ibid*, s.41

[25]*Ibid*, s.42

[26]*Ibid*, s.43

[27] CFRN 1999

[28] *Ibid*

jurisdiction.[29] However, a person who deprives another person of his life in an act of defending a third party from harm or property is not deemed to have intentionally killed or deprived that person of his life.[30]

2.1.2 Right to Dignity of the Human Person (Recheck the section)

The right to dignity of the human person provision forbids all manner of inhuman treatment. Inhuman treatment 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 properties (who is the author of this definition ?). Section 34[31] highlighted this right thus: Every individual is entitled to respect for the dignity of his person, and accordingly – (a) no person shall be subjected to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour. Moreover, the Court of Appeal in *Uzoukwu v Ezeonu*[32]added, "any barbarous or cruel act or acting without feeling for the suffering of the other is a violation of the dignity of person.

2.1.3 Personal Liberty

The provision under s.35[33] states that "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty…", except …[34] The meaning of personal liberty was construed by the court in *Adewole v Jakande*[35] to mean privileges, immunities, or rights enjoyed by prescription or grants. It denotes not merely freedom from bodily or physical restraints,[36] but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized by law for happiness of free men.[37] The section further provides ancillary rights with limitations.[38] Thus, a person arrested or detained has the right to remain silent and not answer questions unless duly represented by a legal representative of his own choice.[39] The person shall be informed in writing within twenty-four hours and in the language he understands of the facts and grounds of his arrest.[40] Such a person reserves the right to compensation and demand for public apology if unlawfully detained.[41] However, the above section does not invalidate any law concerning members of the armed forces or the police,[42] as long as such person is found guilty of an offence punishable by such detention.

2.1.4 Right to Fair Hearing

The right to fair hearing is also about equality of persons before the law, and the concept of being innocent until proven guilty.[43] The position of the law as enshrined in the constitution under section

[29] J.M Maikomo, N.S Gambo, "Fundamental Human Rights," A Publication of the Department of Political Science and International Relations & Department of Peace Studies and Conflict Resolution, <https://www.researchgate.net/publication/369762562_Fundamental_Human_Rights> accessed on 8th June 2024.

[30] *Ibid,* s.33(2)

[31] CFRN 1999

[32] (1991) NWLR (Pt. 200) 708 CA.

[33] CFRN 1999

[34] *Ibid*, s.35(1) (a-f)

[35] Y. Olomojobi, "Right to Personal Liberty in Nigeria," citing *Adewole v Jakande*(1981)1 NCLR 262, 278(H.C of Lagos State)<https://www.researchgate.net/publication/369762562_Fundamental_Human_Rights> accessed 9th June, 2024.

[36] O.N Ogbu, "*Human Rights Law and Practice in Nigeria. Volume 1*" (Snaap Press Ltd) 2d ed. 2013.

[37] Y. Olomojobi; *Op cit*, p.8

[38] CFRN 1999, s.35 (2)(3)(4)(5)(6)(7)

[39] *Ibid*, s.35(2); *Awolowo v Minister of Internal Affairs* (supra), on his limitations.

[40] *Ibid*, s.35(3)

[41] *Ibid*, s.35(6)

[42] *Ibid*, s.35(7)

[43] *Ibid*, s.36(5); *Alaya v The State* (2007)16 NWLR (Pt.1061) 487.

36(1) is thus: In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. The following constitute the major features of the right to fair hearing under the constitution: (a) equal access to, and equality before the courts;[44] (b) the right to an interpreter and legal representation of his choice;[45] (c) the right to obtain copies of records of all proceedings of the court or tribunal;[46] (d) the right to a hearing within a reasonable time;[47] (e) the right not to be tried again for the same offence;[48] (f) the conviction and punishment for the criminal offence shall not be retroactive;[49] and (g) the right of the accused not to give evidence at the trial.[50]

2.1.5 Right to Private and Family Life.

Section 37[51] provides for the protection of right to privacy of citizens, their homes, correspondence, telephone communications and telegraphic communications is guaranteed and protected. This fundamental right is another important human right that reinforces the values of human dignity, freedom, equality, and respect. It further extends to privacy of emails, text messages, and to an extent, personal information sent via the internet.[52]

2.1.6 Right to Freedom of Thought, Conscience and Religion

This is an all important as aspect of human rights as it deals with the freedom to think independently, have a free conscience, and the choice of religion that edifies the human spirit, soul and mind.[53] It is also inalienable and one of the oldest and most controversial rights in traditional and contemporary international system.[54] Section 38[55] provides that every person shall be entitled to freedom of thought, conscience and religion including freedom to change his religion or belief, and freedom (either alone or in community with others and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.[56]

2.1.7 Right to Freedom of Expression and the Press

The right to have and express an opinion is a fundamental human right on every person resident in Nigeria notwithstanding the fact such person may not be a citizen of Nigeria. It is therefore necessary to allow for dissecting opinions (check the quotation to ensure it tallies with what is in the paper) in every society. Section 39[57] outlined this freedom thus: (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish, and operate any medium for the dissemination of

[44] *Ibid*, s.36(2); *Sani v The State* (2018) All FWLR (Pt. 950) 1622 at 1665.
[45] *Ibid*, s.36(6); *Iwuoha v Okorioke* (1996)2 NWLR (Pt.429) 234; also,*Guinness (Nig) Plc v Ufor* (2008)2 NWLR (Pt.1112) 12.
[46] *Ibid*, s.36(7)
[47] *Ibid*, s,36(3) &(4)
[48] Ibid, s.36(8)
[49] *Ibid*, s.36(9)
[50] *Ibid*, s.36(11)
[51] CFRN 1999
[52] CI Okafor; RI Nwangeneh, "Fundamental Human Rights in Nigeria," Chapter 14, under "*Fundamentals of the Nigerian Legal System*," (Eunique Press) Revised Edition, 2022. Page 237.
[53] J.M Maikomo, N.S Gambo, *Op cit*.
[54] *Ibid*.
[55] CFRN 1999, S.38 (1)
[56] *Ibid*, s.38(2)
[57] CFRN 1999

information, ideas and opinions.[58] The press, which is generally referred to as the 'Fourth Estate' serves as check on political leaders, as well as framing of political, economic and socio-cultural issues in societies.[59]

2.1.8 Right to Peaceful Assembly and Association

The court in *Abubakar v A.G Federation*[60] described freedom of assembly as the bone of any democratic form of government. Indeed, these democratic governments have enshrined the right to free speech, movement, peaceful assembly and association in order to actualize individual and group interest. Section 40[61] states that "every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests." However, assembly of persons must be peaceful and seen to be peaceful. Free people are allowed to create and join civil rights movements, pressure groups, professional unions, and labour unions in order to press forward their interests, most often, before the government. This precludes the drafting of a person into an association or union against his will, even though such is backed by operation of law.[62]

2.1.9 The Right to Freedom of Movement

The right to move freely from one place to another for either to search for economic opportunities or for pleasure is very fundamental because it is part of the right to personal liberty. The provision under s.41[63] states that "every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom." Whereas, in reading this provision together with s.35[64], not only guarantees the right to move freely, it also guarantees the right to reside in any part of one's choice and guarantees the right of entry and exit from Nigeria.[65] However, this provision is subject to restrictions to the extent that it shall not invalidate any law made that will be reasonably justifiable in any democratic society.[66]

2.1.10 Right to Freedom from Discrimination

There is a universal consensus on the dignity and equality of the human being, and the need to respect everyone.[67]Thus, no one should be discriminated against because of their territories, race, gender, culture, colour, religion, philosophy, or even physical features. Section 42[68] states that: A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person – (a) be subject either expressly by, or in practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion, or political opinions are not made subject; or (b) be accorded expressly by, or in practical application of, any law in force in Nigeria, or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions. In spite of

[58] This right is not absolute and such provisions are thus subject to Government regulations. *Ukegbu v N.B.C* (2007)4 NWLR (Pt.1055)551
[59]J.M Maikomo, N.S Gambo,*ibid*.
[60](2007)3 NWLR (Pt. 1022) 601
[61] Ibid CFRN 1999
[62]*James v Okereke* (2008)13 NWLR (Pt. 1105) 552
[63] CFRN 1999
[64]*Ibid*.
[65] C.I Okafor; R.I Nwangeneh; *Op cit*, p.239
[66] CFRN 1999, s.41 (2)
[67]J.M Maikomo, N.S Gambo; *Op cit*
[68]CFRN 1999

this, in some communities, even to this day, people are still subjected to some form of discrimination or the other based on their sex or ethnicity. The provision further provides for discrimination against persons by reason of birth.[69]

2.1.11 Right to Acquire and Own Immovable Property

The right to acquire and own immovable property applies to citizens of Nigeria only. The right to ownership of property is very crucial because it is an economic endeavour that allows an individual or group of individuals to acquire landed properties as assets. It thus provides under s.43[70] that, "subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria."[71] Section 44(1) further provides that no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, (among other things) (a) requires the prompt payment of compensation therefore; and (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria." The section further vests the entire property in and control of all minerals, mineral oils and natural gas in, under or upon the land in Nigeria or its territorial waters or exclusive economic zone upon the Federal Government.[72]

3.0 National Security in Nigeria: Concept and Overview

The term "National Security" has been construed in different ways, each of which emphasizes vital factors underlying ideals.[73]It is conceived that the concept of security has been traditionally perceived or associated with the whole gamut of processes defined in terms of the capacity of the coercive apparatus of the State to uphold sovereignty, define territorial integrity, ensure stability and peace as well as pursue armed conflict.[74] National Security can be described as the state of being secure or free from any danger – whether imminent or remote, and risks. Scholars have lend their thoughts and feelings, capturing their experience on the meaning of National Security. National Security has been said to be the condition of a nation or country as a whole, not being threatened especially physically, psychologically, emotionally or financially. Thus, anything which threatens the physical well-being of the population or jeopardizes the stability of the nation's economy or institutions is considered a national security threat.[75] It has further been described as the sum total of the vital interest of the State, and a vital interest is one of which a nation is willing to resort to force or war either immediately or ultimately.[76] The author maintains that the concept of national security will vary from State to State in direct proportion to their individual willingness to risk either conflict or war at any given time to safeguard its national values.[77]

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[69]CFRN 1999, s. 42(2); *Mojekwu v Mojekwu* (1997)7 NWLR (Pt. 512) 283; Also, *Adewole v Jakande* (*supra*),

[70]*Ibid*.

[71]*Timothy v Oforka* (2008)8 NWLR (Pt. 1091) 204.

[72] CFRN 1999, s.44(3)

[73]J. I Ebeh, "National Security and National Development: A Critique," International Journal of Arts and Humanities (IJAH) Bahir Dar-Ethiopia, Vol.4(2) S/No. 14, April 2015, pgs. 1-14 >ajol-file-journals_511_articles_118887_submission_proof_118887-6037-328395-1-10-20150701.pdf> accessed on 11th June, 2024.

[74] A.E Orhero, "Human Security: The Key to Enduring National Security in Nigeria," Department of Political Science, Faculty of Social Sciences, Delta State University, Abraka <https://www.jopafl.com/uploads/issue17/HUMAN_SECURITY_THE_KEY_TO_ENDURING_NATIONAL_SECURITY_IN_NIGERIA.pdf> accessed on 11th June< 2024.

[75]C.I Okafor, "National Security in Nigeria: A Legal Perspective," Idemili Bar Journal (Vol.3 2023), p. 17.

[76] Z.B Peterside, "The Impact of Proliferation of Small Arms and Light Weapons on the Quest for National Security in Nigeria," Saudi Journal of Humanities & Social Sciences, Vol 3(7), 2018, pgs. 852-860.

[77]*Ibid*.

Threat challenges a nation's power and disrupts its well-being, hence the call for national security to help put up safeguards against such threats.[78] At different times, national security has been seen as the protection or national survival or capacity for self-defense both in the acquisition of military weapons and the recruitment and deployment of military personnel. National security has thus been expanded to include the pursuit of international trade, economic concerns or health priorities aimed at sustaining the continuity and survival of a nation. In Nigeria, the institution primarily tasked with this responsibility is the Office of the National Security Adviser (ONSA), established by the National Security Agency Act,[79] whose essential mandate consists of intelligence gathering, processing and dissemination towards warding of threats to the well-being of the nation.[80]

It should be pointed out that the NSA Act established three principal agencies: the Department of Intelligence Agency (DIA), the National Intelligence Agency (NIA), and the State Security Services[81](SSS) (Is it still SSS or DSS?). The Act also mandates the ONSA to ensure the formulation and implementation of a comprehensive counter-terrorism strategy and build capacity for the effective discharge of the functions of relevant security, intelligence, law enforcement and military services.[82]

Nigeria, regrettably has in recent times recorded unprecedented challenges, the foremost being insecurity which have constantly threatened the stability of the country. Since the advent of the present democratic dispensation in the country, while democratic norms are taking root, the nation's security outlook remains precarious in the face of diverse threats such as Militant Islamic Groups (Boko Haram & ISWAP), herdsmen clashes with local farmers, banditry, kidnapping for ransoms pervading throughout the country, cultism and ritual killings etc.[83] The rise of these groups has had significant influence on the numbers of ethnic-religious conflicts the country has witnessed. It is indeed of consequence that the ability of the Nigerian government to perform her primary role is in itself the guarantee of her existence; whereas failure of the government to perform this role equals to failure of government existence; again, failure of government existence equals to failure to the continued existence of the nation. Such has been the argument.[84]

It must be emphasized that national security involves a situation where either an individual, social group or geopolitical entity is protected against any form of attack, whether internally or externally. The nation's most basic fundamental value must be its survival, self-preservation and self-perpetuation. It is maintained that the major factors which easily undermine the security of any nation are injustice and corruption.[85] These elements may manifest outright in the actions or inactions of the government, in their relationship with the governed and they have great capacity to generate devastating ripple effects.[86]

4.0 Fundamental Human Rights Limitations by National Security: Department of State Services (DSS) Experience.

Not all the rights provided under the constitution are absolute. In other words, it is safe to say that rights are inconceivable without limitations. Under the same constitution, there are legislative derogation of fundamental rights on grounds of National security. This is provided for in s.45(1) and

[78] C.I Okafor; *Op cit*, pg. 17

[79]CAP N74, Laws of the Federation of Nigeria 2010.

[80]National Security Agency Act (hereinafter referred to as NSA Act) s. 2.

[81] Presently the Department of State Services (DSS).

[82] NSA Act,*Ibid*.

[83] Brig. Gen S. Bala, E. Quedraogo, "National Security Strategy Development (Nigeria Case Study). A Working Paper, July, 2018<https://africacenter.org/wp-content/uploads/2019/04/2019-04-NSSD-Case-Study-Nigeria-EN.pdf> accessed 12th July, 2024.

[84]*Ibid*, p.179

[85]T. B Mofolorunsho *et al*, "Challenges of National Security in Nigeria," International Journal of Research and Innovation in Social Science (IJRISS) |Volume III, Issue VII, July 2019|ISSN 2454-6186<www.rsisinternational.org//> accessed on 12th June, 2024.

[86]*Ibid*, p.5

(2).[87] Under the section, the following rights could suffer derogation: Right to life, Right to personal liberty, Right to private and family life, Right to freedom of thought, conscience and religion, Right to freedom of expression and the press, Right to peaceful assembly and association, and Right to freedom of movement.[88] The provisions concerning right to life and right to personal liberty, could however only suffer derogation upon declaration of emergency in fulfillment of section 305[89]. Derogation of sections 37 to 41 under section 45 (1) provides states:

> "Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons".

Therefore, the plain interpretation of the above section is that rights may be derogated by law that is reasonably justifiable in a democratic society for the interest of defense, public safety, public order, morality, public health, or for the purpose of protecting the rights of other persons.[90]

The Department of State Services (DSS) is one of the internal security forces in Nigeria created as the Nigerian Security Organization (NSO) during the military regime. The historical account was that the organization was split into three agencies,[91] each with its own mandate. The Department of State Services[92] which reports to the National Security Adviser in the Office of the President is responsible for counter intelligence, internal security,[93] counter-terrorism and surveillance, as well as protection of senior government officials.

In a majority of cases, where the DSS had in the past exercised its powers to protect state security, Nigerian courts have held that their power to offer redress is limited.[94] Realistically, the courts in not only acknowledging the constitutional rights of persons, for instance, the right to practice his religion but goes further to caution such right cannot be allowed to be practice in such a way that would disturb the peace of others.[95] The courts further advanced two arguments to support their position; the first is that they cannot intervene in cases of proper exercise of security powers because the issues calling for consideration of the exercise of the powers are political, hence, non-justiciable. Second, the facts giving rise to the exercise of security powers are generally hidden from the public and it is not in the national interest that they be disclosed.[96] It can be recounted on February, 2024, where the agency released a statement directing the organized labour in Nigeria to desist from holding its slated rally for 27th and 28th February on grounds that the action would disrupt peace and public order. Somewhat interestingly, the DSS acknowledged it recognized protest as the legitimate

[87] *Ibid* CFRN

[88] *Olisa Agbakoba v Director SSS* (1994)6 NWLR (Pt.351) p.475. "Court dismisses Emefiele's Ally Human Rights Suit against DSS," <https://punchng.com/court-dismisses-emefieles-ally-human-rights-suit-against-dss/>accessed on 14th June, 2024.

[89] CFRN 1999, s.305(3).

[90] E.A Taiwo, "Enforcement of Fundamental Rights and the Standing Rules under the Nigerian Constitution: A Need for Liberal Provisions." African Human Rights Journal, p. 573<https://scielo.org.za/pdf/ahrlj/v9n2/09.pdf> accessed on 15th June, 2024.

[91] The Defence Intelligence Agency (DIA), the National Intelligence Agency (NIA) and the State Security Service (SSS). The latter now known as the Department of State Services (DSS).

[92] Hereinafter referred to as the Agency or acronymically DSS.

[93] A further appraisal of the task includes the detecting and preventing within Nigeria any crime against the internal security of Nigeria and the protection and preservation of non-military classified matters concerning the internal security of Nigeria.

[94] B. Ugochukwu, "The State Security Service and Human Rights in Nigeria," Third World Legal Studies Vol. 14, The Governance of Internal Security Forces in Sub-Saharan Africa-Article 15, 1997, <https://core.ac.uk/download/pdf/303859358.pdf> p. 81. accessed on 15th June, 2024.

[95] Department of State Services: Media Center, "Court Dismisses Nnamdi Kanu's Fundamental Rights suit against the DSS," (A Publication), 4th June, 2022,<https://www.dss.gov.ng/dss_more?id=1P4uH1Qfulistdufru7BsQ==> accessed on 15th June, 2024.

[96] B. Ugochukwu; *Op cit*, p.81

right of Nigeria Labour Unions, but nevertheless, maintained that it was important to prevent a situation where some hostile forces would use the protest to destabilize the peace of the nation.[97]

5.0 Conclusion.

Nigeria, like most countries, will forever continue to fight for the protection of its national security against internal or external aggressors. Some arguments have persisted as to which of the two; fundamental rights and national security, has priority over the other. We have earlier provided an answer to this question, by highlighting what should be the primary purpose of the state. In our opinion, the primary purpose of the state is the well-being of its citizens and this includes both security, sociopolitical and economic welfare. This has been constitutionally provided to mean the promotion of the security and welfare of citizens.[98] In Nigeria, the DSS exercises most of the powers available to the police: arrest, search, detention, interrogation, and the scope of their activities cover all plans, acts and schemes that threaten the security of the State. The fluidity of the term "State Security" has however become what an author described as "*catchall*" making every act or dissension of the political opposition a security issue.[99]

In other circumstances against natural and environmental disasters like floods, earthquakes, health epidemics, poverty, etc., under the constitution of the Federal Republic of Nigeria 1999 as amended, these circumstances could again, permit the government to invoke the mantra of national security to derogate human rights. Invoking this mantra is however not enough. It must be statutorily provided for in accordance with the Constitution and strictly for the purpose of combating the identified threat to national security. Furthermore, s.14(1) (b) provides that the security and welfare of the people shall be the primary purpose of government.[100] This provision is made under Chapter II of the CFRN 1999 as amended, which chapter incorporates the Fundamental Objectives and Directive Principles of State Policy. Despite this appellation of "Fundamental Objectives", they have been consistently adjudged as non-justiciable while adjudging Chapter IV which provides for Fundamental Rights justiciable. However this dichotomy is flawed because the security and welfare of citizens can only be demonstrated by the achievement of the provisions and protections guaranteed by Chapter IV: the so-called justiciable rights. This is perhaps why in certain jurisdictions, for instance India, it has been held that fulfillment of civil and political rights without fulfillment of social and economic rights is deficient.

The conclusion is not precise as to exact position of the writers. The work has not made any recommendation. It is advised that recommendation be made and conclusion recouched to show a precise stand of the researchersz.

[97] M. Hile, "Is protest An Endangered Human Right of Nigeria?" <https://www.financialnigeria.com/is-protest-an-endangered-human-right-of-nigerians-blog-863.html> accessed on 17th June, 2024.

[98] Chapter II, CFRN 1999, s.14(1) (b) "the security and welfare of the people shall be the primary purpose of government". This provision provides for the Fundamental Objectives and Directive Principles of State Policy.

[99] B. Ugochukwu, *Ibid*.

[100] CFRN 1999.

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JUDICIARY AND ADMINISTRATION OF JUSTICE: AN OVERVIEW OF THE PERSISTENT CHALLENGES TO JUSTICE DELIVERY IN NIGERIA

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Abstract
The authority for administration of justice rests with the judiciary.[1] The authority is encapsulated in the judges and magistrates in the exercise of their hallowed duties through the courts.[2] These duties encompass the determination of any question as to the civil rights and obligations of parties concerned[3] as well as the necessity of maintaining societal order in the realm of criminal justice administration. However, the judiciary over the years has encountered persistent challenges in the course of performing the hallowed duties. Congested course lists thereto dilapidated facilities, corruption coupled with lack of continuing legal education for the justice administrators are just but few. Employing doctrinal approach the work found that while corruption may appear to be a major setback and clog in the wheel of justice, improved harmonized incentives thereto availability of modern justice administration equipment will be a great boost in justice delivery in Nigeria.

Keywords: Judiciary, Administration of Justice, Justice Delivery, Challenges of justice Delivery, Nigeria

1.0 Introduction

The judiciary being a product of law is itself subjected to the law.[4] The judiciary appears long ago to have lost its quality before the saying, *why don't you go to court* or *you can go to court* started emerging in Nigeria's special parlance.[5] This statement about the judiciary is not a positive compliment but a blatant mockery of the system of administration of justice and its delivery in Nigeria by some of her citizens. The character that before now was associated with the court and justice delivery in Nigeria has somewhat disappeared. It may not be out of place to say that majority who sit at the bench whether lower or higher bench got there through unequal opportunities. The embrace of corruption found its way through the constitution so much as to gag the judiciary from questioning certain *status quo ante bellum*, without justification.

The constitution also sets limits as to the questions upon which the court can be called to determine. Of particular interest is the provision that the judicial power vested in accordance with the constitution "Shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any law."[6] However we may be here confined to the challenges of the judiciary towards delivery and attainment of real justice for development in our society. Where there is an infraction of law, the court will order sanctions to ensure that such societal order or values are not eroded.

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[1] Section 6(1) Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN).

[2] The several Tribunals that are set up or may be set up by law are all encapsulated within this fora.

[3] Section 6 (6) of the constitution as amended.

[4] Chapter VII of the Constitution of FRN 1999 as amended.

[5] You can go to court' in the ordinary parlance means that the court can decide and you will get justice. However its special parlance is not a positive accolade. It simply means that you cannot get justice even in the court because we or the person speaking in such a tone is in charge and can determine to a very large extent what happens in the court and its outcome.

[6] Section 6 (6) (d) CFRN 1999. This paragraph of section 6 depicts the mindset of the makers of the Constitution. The insertion of the paragraph into the constitution clearly depicts the document as not the will of the people and would never had been in any circumstance. Such law ought not to be found within the walls of any constitutional democracy but in an authoritarian regime.

2.0 Judicial Strata

The Constitution of Federal Republic of Nigeria 1999 as amended has made ample list and status of the courts in Nigeria. It further classifies them into federal and state courts with varying jurisdictions. The superior courts derive their authority from the constitution as designated and so to their powers.

2.1 The Supreme Court

At the apex of the courts in Nigeria is the Supreme Court of Nigeria. It is measurably an appellate court and the final appeal court in the country. The Supreme Court however has original jurisdiction in matters involving Federal and State(s) governments and in matters between States *inter se*.[7] The court also has original jurisdiction in any other matter the National Assembly confers jurisdiction on it by an Act save in criminal matters.[8] It is the only body that can hear appeals from the Nigerian Court of Appeal.[9] It comprises the country's Chief Justice and an additional 21 justices appointed by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate.

2.2 **The Court of Appeal**

Following the Supreme Court in the hierarchy of courts in Nigeria is the Court of Appeal. The Court hears appeals from the following courts: Federal high court, High court of the FCT, Abuja, State high courts, Sharia court of Appeal of the FCT, Abuja, Sharia court of Appeal of States, Customary court of Appeal of the FCT, Abuja, Customary court of Appeal of the States, Court Martial and other Tribunals as may be prescribed by Acts of National Assembly.[10] It also hears circumscribed appeals from the National Industrial Court. The court also has original jurisdiction to hear and determine questions as to whether any person has been validly elected to the office of the President or Vice President under the Constitution, or the term of the President or Vice President has ceased or the office of the President or Vice president has become vacant.[11] The Court of Appeal is one of the judicial bodies in which the country's three legal systems (English law, Customary law, and Islamic Personal Law) converge. The body should have at least three judges who are well-versed in Islamic personal law and three in Customary law. The court is comprised of the President of the Court of Appeal and any number of justices not less than 49. Their appointment is by the President on recommendation of the National Judicial council subject to confirmation by the Senate.

2.3 **The High Courts**

The other major superior courts of record are the High Courts. High court includes the federal high court, high court of the FCT, Abuja and high court of the several States in Nigeria. The Federal high court, FCT high court and States' high courts are courts of coordinate jurisdictions. Both courts are presided over by a Chief Judge and such other number of judges as may be determined by the National Assembly or House of Assemblies of various States as the case may be. The Federal high court[12] has original jurisdiction over civil cases connected with revenue of the Federal Government of Nigeria. Such other jurisdictions include admiralty, copyright, banking, excise duties, customs, and taxation. Banking and taxation are as it may be connected with the federal government or any of its agencies. The State high court[13] is presided over by a Chief Judge and such number of judges determined by State House of Assembly. The State high court has the widest jurisdiction of judicial

[7] Section 232(1) Constitution, *Ibid.*
[8] *Ibid.*Section 232(2) .
[9] *Ibid.*Section 233(1).
[10] *Ibid,* Section 240.
[11] *Ibid.*Section 239 (1).
[12] *Ibid.*Section 249.
[13] *Ibid,* Section 255

bodies in Nigeria on matters of civil and criminal law. There is also the high court of the FCT with coordinate jurisdiction with State high court in such matters as are within its jurisdiction.

2.4 The Customary Courts of Appeal

The Customary Court of Appeal is presided by the president and is constituted of any number of judges as may be determined by the National Assembly for the FCT, Abuja or House of Assembly of a State that has Customary court of Appeal. The body is provided for under Section 265[14] of the 1999 Constitution of the Federal Republic of Nigeria. It exercises appellate and supervisory jurisdiction involving questions of customary law.[15] It hears and determines appeals on questions arising from subordinate customary judicial bodies bordering on interpretation or application of customary laws.

2.5 Sharia Courts of Appeal

Sharia court of Appeal is entrenched under Section 260[16] of the 1999 Constitution of the Federal Republic of Nigeria. It reviews cases involving the application of Sharia law, particularly in northern parts of Nigeria. The Sharia court of Appeal is among the constituent judicial bodies of the unified justice system of North-East Nigeria. This is the region in which Sharia law is widely practiced. The judicial body is presided over by a Grand Kadi and other Kadis. Its duties include reviewing cases relating to Sharia and Islamic personal law. It interprets Islamic customary personal laws. It handles Islamic litigation cases, especially where all the parties are Muslims, and the question of Islamic personal law regarding marriage or its validity or dissolution, family relationship, etc.[17]

2.6 National Industrial Court of Nigeria (NICN)

The National Industrial Court is provided for under Section 254A of the 1999 Constitution of the Federal Republic of Nigeria as amended. It is a specialized court established for industrial and labour matters. The NICN has original and exclusive jurisdiction over Industrial Arbitration Panel. Registrar of Trade Unions, Decision or Recommendation of any administrative body or Commission of Inquiry, arising from or connected with employment, labour, trade union or industrial relations, etc.[18] The court has jurisdiction throughout the Federation.[19] The court also exercises criminal jurisdiction in all matters it exercises civil jurisdiction.[20] NICN as stated earlier is a specialized court with exclusive jurisdiction in labour matters and matters ancillary thereto. The right of appeal in civil matters exists only in connection with fundamental rights arising from or connected with matters upon which the NICN has jurisdiction.[21] The only other circumstance whereby an appeal can lie from NICN to Court of Appeal shall be by an Act of the National Assembly.[22] The prescription of the National Assembly by an Act to enable a litigant appeal is with a proviso that such appeal can only be with leave of the Court of Appeal. This is a departure from the usual legislation and practice whereby it is the court whose decision may be appealed against that application for leave to appeal will first be made and heard. Whereby the application is refused the applicant can then make such application to the Court of Appeal.[23]

[14] *Ibid,* See also section 280.
[15] *Ibid,* Section 267 & 282.
[16] *Ibid,* See also section 275.
[17] Section 262 & 277 CFRN 1999
[18] Section 254C (1) (a)-(k), (2) and (4) CFRN as amended
[19] Section 21(1) NIC Act 2006
[20] Section 254C (nn 5) CFRN 1999
[21] Section 243(2) CFRN 1999
[22] Section 243(3) CFRN 1999
[23] The Proviso to Section 243(3) CFRN 1999

3. 0 Determination of Courses

At the helm of affairs in the judiciary strata are the judges and magistrates. The power to determine the course or matter brought to the regular court is vested in the judges and magistrates. The period within which judgments will be delivered after conclusion of evidence and final address, and mode of delivery of judgments are spelt in the Constitution. Judgment shall be delivered not later than 90 days after the conclusion of evidence and final address.[24] This extended period within which to deliver judgment is an unusually long period for a litigant to wait for an outcome of a concluded course in court.[25] This provision *ipso facto* appears to be only applicable to superior courts of records. However same is deemed applicable to inferior courts by practice and procedure of courts in Nigeria.

4.0 Judiciary and Rule of Law in a Constitutional Democracy

The position occupied by an efficient judiciary and her role thereof in a constitutional democracy is germane to maintenance of social order and elevation of rule of law. The judiciary is one of the tripartite arms of government in the constitution. The role of the judiciary is mainly embodied or encapsulated in the judges and magistrates. The function of judges is more than acting as mere umpires in a game who are there to ensure that neither side commits foul. They must direct and control the trial according to recognized rules and procedures and ensure that justice is not only done but is manifestly seen to be done.[26] Law exists to achieve justice in a given case. So where the rule of law or procedure is strictly adhered to and absurd result is produced, that is justice according to law. Real and substantial justice in the real sense of it where it must be said that justice has been done objectively has not been achieved or done thereunder. It is absolutely technical and abstract justice that will leave both litigants and the judge(s) disappointed. It is immaterial that the judge handed down the judgment and unconcerned. Judges are concerned: the symbol of justice depicted in the popular statute of justice; *lustitia* is immaterial. In African society such absurd judgment will ring bell for a long time.

Lord Denning rightly said, "My roof belief is that the proper role of a judge is to do justice between parties before him. If there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can do to avoid that rule – or even to change it – so as to do justice in the instant case before him. He need not wait for the legislature to intervene, because that can never be of any help in the instant case. I would emphasize, however, the word legitimately: the judge is himself subject to the law and must abide by it".[27]

The concept of justice is not in abstraction. One ought to feel its impact. A judge faced with the dilemma of rules of procedure that may lead to manifest absurdity will have no alternative than to fall back upon what he considers will meet the justice of the case through some technique of legal reasoning at which some are more adept than others.[28] Where he is unable to do this and rely much on technicalities the result may be catastrophic in developing countries like ours.[29] Similarly, it had been said that the criterion of judgment must adjust and adapt itself to the changing circumstances of life.[30] It must have some life in it thereby bringing to the fore the aphorism that justice should not

[24] S. 294 (1) CFRN 1999

[25] The trial of Derek Chauvin started on 29th March, 2021 and verdict was passed on April 20, 2021. In Nigeria such a case will last for several years.

[26] Role of Judges; Handbook for Criminal Cases, Zimbabwe Legal Information Institution https://zimilii.org/content/section-1 Accessed 30/4/2021.

[27] Lord Denning, *The Family Story* (Butterworth London, 1981) P 174, See also footnote 3 ante.

[28] T. A Aguda, *The Crisis of Justice* (Eresu Hills Publishers, Akure 1986) P. 5.

[29] *Ibid,* P. 8.

[30] Lord Macmillan in *Donoghue v Stevenson* [1932] Ac 562 at p. 617.

only be done, but should manifestly and undoubtedly seen to be done.[31] Nothing is to be done which creates even a suspicion that there had been an improper interference with the course of justice.[32]

The competent and conscientious performance by judges of the duties of their office is the most way to maintain respect for the rule of law.[33] Could this assertion be magnified today in Nigeria and indeed in many African States? Today in Nigeria and indeed in many African States, how much respect do we have for the rule of law? Judiciary has always been viewed as the last hope of the common man against oppression and tyrannical government. Oputa JSC righty observed when he stated thus, "The judiciary is the mighty fortress against tyrannous and oppressive laws. It is the judiciary that has to ensure that the state is subject to the law. That government respects the rights of the individual under the law. The courts adjudicate between the citizens *inter se* and also between the citizens and the state".[34] This dictum of Justice Oputa appears to have vanished in today's Nigerian jurisprudence. The hope appears not to exist anymore. *You can go to court.* What an irony of what the system of administration of justice used to be. People used to be afraid of contravening the law, but not anymore.

The delivery of justice in election petition suits appears to be an entirely different ball game. The restoration of the Governor Mutfwang[35] of Plateau State as Governor elect of the state and the holding of the Court of Appeal that certain members of the House in the state are disqualified beggars description. It's a matter ordinarily the court of Appeal ought not to have delved into being an internal or intra party affair. If the Supreme Court rightly held that Court of Appeal had no jurisdiction to delve into the matter, how will the sacked members get justice in the circumstances knowing that they do not have constitutional right to appeal against the judgment of Court of Appeal?

No doubt, there ought and always is much praise for the judiciary in diverse ways. In *Nwanegbo V Oluwole*[36] the court has this to say, "clearly whenever the need arises for the determination of the civil rights and obligations of every Nigerian, this provision guarantees to such a person a fair hearing within a reasonable time…Which is synonymous with fair trial and as implying that every reasonable fair minded observer who watches the proceedings should be able to come to the conclusion that the court or other tribunal has been fair to all parties concerned".[37]

5. 0 Concerned Challenges

Our judiciary and lawyers seem to have failed the common man in the street. The community is disenchanted with the court procedures and unending adjournments. Our courts are so congested that the time for determination of any course in regular court is indeterminate. The judiciary and the courts have always been viewed as the last hope of the common man. This confidence seems to have been lost if not completely to a certain reasonable degree. The resort to violence and jungle justice may not be unconnected with the lost hope in the judiciary and the courts.

So much as there are praises for the judiciary much also needs to be done and urgently too. In Nigeria judicial corruption is no longer an aberration or isolated conduct. It is disturbingly a dominant and recurrent feature of the Nigerian Judicial system.[38] He went further; interference with

[31] Lord Hewart in *Rex v Sussex Justices* [1924] 1 KB 256.

[32] *Ibid.*

[33] The Role of the Judge, A Paper delivered at National Judicial Orientation Programme, Novotel Northbeach, Wollongong by The Hon. Sir Gerard Brennan, AC KBE, Chief Justice of Australia on 13th October, 1996. (https:/www.hcourt.gov.au) Accessed 30/4/2021.

[34] C. Oputa, 'Understanding the Place and Role of the Judiciary in our Society' cited in *The Judiciary and Democracy in Nigeria,* ed. E Amucheazi and O Olatawura; National Orientation Agency, Abuja 1988 P. 113, cited by J. A Yakubu in *Constitutional Law in Nigeria* (Demyaxs Law Books) 2003 p.317.

[35]https://www.vanguardngr.com/2024/01/breaking-supreme-court-reinstates-gov-mutfwang-of-plateau-state.

[36] [2001] 37 WRN p. 101

[37] *Ibid*

[38]K Umana, 'Problems, Challenges and Failures of Nigerian Judiciary; (https:/researchcyber.com) Accessed 1/5/2021

the judicial process is so deeply ingrained in the Nigeria culture that politicians continue to influence court proceedings. The observation of Justice Krishna of India judiciary is apt here. He said, "The disease of corruption, in its widest connotation, has affected all parties and even militant organizations although substantial differences in degrees and opportunity may exist. The purity and mentality of the judiciary itself is in jeopardy. A broad consensus on vital values enshrined in constitution and a basic integrity in the instrumentalities and the actors who operate, baffles my grasp.[39] The manner of judicial appointments in Nigeria has almost become a family affair or more profoundly hereditary through affiliation with the government in power. The appointment of any member from such families or with political affiliation is almost always certain.

Beyond the issues of corruption of judiciary either by the executive or some wealthy public there are varying institutional bottle necks that have and will continue to pull down the judicial process save urgent steps are taken. The aphorism that justice delayed is justice denied has been part of Nigeria jurisprudence. The concept of fair hearing is not limited to affording parties all the opportunities available to them in search of justice but also that courses in court are dealt with expeditiously. The longer the course stretches in court the economic value of the result would have diminished so much that most often litigants abandon matters and blame lawyers for not wanting their matters to be concluded in the court.

Fair hearing further presupposes that pursuing a course in the court will not render a litigant bankrupt. If budgets are made by most litigants in Nigeria especially it will in most cases never be enough in the course of litigation. This is because the matters are almost always indeterminate. The level of congestion in the courts is alarming. This is further exacerbated by very poor infrastructure. The judge or magistrate will achieve almost nothing with the present infrastructure and other working conditions. The executive in the government is cruising in a luxurious vehicle from well furnished conditioned office while the judges and magistrates are expected to work from cubicles without air conditioners. What can such a judicial officer achieve in that environment? Surprisingly some of our judicial officers in the lower bench are yet to receive official vehicles long after they were appointed. Fair hearing encapsulates speedy dispensation of justice while issues in a suit are still very much alive.

Another disheartening circumstance is the giving of discordant orders by courts of coordinate jurisdiction over the same subject matter by the same parties and almost at the same time thereto disobedience to court orders by the executive. The first arm is most often seen in political courses where the parties' forum-shop. If the integrity of the judiciary can be attested to, there would certainly not be need for the politician to forum-shop since the outcome irrespective of the forum will almost always be the same. If it is almost always easy to influence judicial officers, it is also inherent in the person who influences not to obey any order therefrom. The reason is not farfetched. The judicial officer's worth is quantifiable in monetary terms.[40] Who pays the piper dictates the tune. This ought not to be so with the judiciary. This has always been a selfless service to humanity in maintenance of societal order and equilibrium. It appears that disciplinary measures put in place have been compromised by the very festering corruption.[41]

One other factor which its importance cannot be overemphasized is the independence of the judiciary. Elementary knowledge tells us that there are three arms of government which are independent of each other but work in synergy. The concept of independence appears to be in theory most especially in this country where the executive is the alter ego in all respects after all *you can*

[39] K Ayer; Law versus Justice: Problems and Solutions. Deep & Deep 1981 p. 13, cited by T.A Aguda , *Op Cit* p. viii,

[40] It has to be emphasized that not all judicial officers are corrupt. So it will be wrong to make a blanket or general deductions and apply same to all judicial officers.

[41] The principle of abuse of court process needs to be reviewed. Where the order sought by same parties to a suit is the same sought by another party with the same facts save that there is an addition of a party who is inconsequential and merely added to hoodwink the judge to believe that parties differ, the court ought to declare that such process that is later in time is an abuse of court process. With this discordant orders may be reduced to the barest minimum.

go to court. Securing independence of the judiciary appears to us to be the beginning of securing proactive and strong judiciary. The judiciary cannot generate enough money to meet its needs towards administration of justice. Proper budgeting by the judiciary and its approval by the National Assembly together with disbursement of funds to judiciary without interference of the Executive will enhance administration of justice without interference.

The importance of continuing legal education is limitless. Times have continued to change and one has to be abreast of developments legally and globally. The duties and functions of the judiciary which are personified in the judges cannot be well delivered save they are vast in trends in the changing world of judiciary and administration of justice. Evidence evaluation and sentencing trends around the globe can be understood more through continuous legal education. Except the judiciary is involved in continuous legal education our jurisprudence may continue to lose flavor until the wordings *you can go to court* resonates daily to our detriment.

6.0 Conclusion and Recommendations

We have strenuously been able to avoid the concept of remuneration as part of the challenges affecting justice delivery and administration in Nigeria. Judges and magistrates cannot protest payment howsoever you consider it. Their remuneration is from a special account and not usually dealt with as labour matters. Getting judiciary off corruption may not be an easy task but minimizing corruption will bring about a radical positive transformation in our justice delivery and administration. We recommend reorientation and improved incentives for the justice administrators as well as provision of modern working facilities to aid in the administration of justice.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROMOTION OF RIGHTS OF WOMEN IN DOUBLE- DECKER MARRIAGES IN NIGERIA

Helen Obiageli Obi, PhD*

Abstract

In Nigeria, most marriages are conducted under the customary law and the Marriage Act. The parties rarely feel adequately married until both are contracted. There exist two different streams of law that meet harmoniously in the marriage life of the parties. The aim of this work is to espouse the legality of this variant marriage, which is entered into by either of the two different processes and analyze the controversy regarding its effects and incidents on women's rights and empowerment. Essentially, this article adopted the doctrinal research methodology aimed at investigating the impact of double-decker marriages on women's Rights and Empowerment. Accordingly, it was found that the issue of women's rights and empowerment in double-decker marriage is much affected by the competing values of these multi-systems of law; that the area of marriage is still one in which customary law still applies even to those who subscribe largely to the common-law system. It also found that many of such double-decker marriages are contracted illegitimately, in an offending reversed order. The study recommended a legal reform that amend the Marriage Act and the Matrimonial Causes Act to recognize and integrate customary marriage rites, values and procedures, ensuring compliance with international human rights standards. And establish a regulatory body to oversee marriage registrations ensuring uniformity and standardization across both customary and statutory marriage system.

Keywords: Double-Decker Marriages, Women's Right, Empowerment, Nigeria

1.0 Introduction

It is predominant that Nigerian couples tend to opt for the celebration of at least two types of systems of marriage referred to as "double-decker" marriage. This area of marriage is still one in which customary law still applies even to those who subscribed largely to statutory law system. Even where marriages are validly contracted under the marriage Act, most women still feel unprotected. In fact, they are regarded as having cheaply given themselves away and denigrated by both their own family and their husband's family[1] for want of consent.

Thus, the issue of parental consent remain relevant to marriages in Nigeria under the Act, no parental consent is required once both parties have attained the age of eighteen years. It is only when one party is a minor that such consent is required by the party. However, under customary law, the bride's parents' consent is an essential requirement of a valid marriage even where the female has attained majority, although there is no such requirement of parental consent on the part of the male. The reason for this is that the bride price is mandatory and it is in fact the acceptance of this which seals the marriage contract under customary law. It is the consideration for the contract. It is in this area that the woman's right is to be treated with dignity as any other human being is much abused.[2]

The issue of weather women's rights and Empowerment is possible in double-decker marriages will be analyzed in this work. When I talk of women's rights, it means that body of claim which women by virtue of their sex-gender classification may exact from men. Empowerment in marriage become a reality when two people who come together are able to stand strong in knowing who they are, where they come from, where they're going and what they bring to the table. Indeed empowerment is the idea that we don't work to limit others through control and manipulation, which

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[1] A.O Obilade, *Women in Law* (Lagos: Mayodele Ajayi Enterprises Nigeria, 1993) p.119

[2] This is in spite of the fact that this right is constitutionally recognized and protected in S.34 of the 1999 constitution of Federal Republic of Nigeria.

is common in marriage, but instead we freely give of ourselves to lift the other up. This work shall concentrate on conceptualization of Double-Decker marriage**.**

Women's Right Empowerment: The contract of double-decker marriage and the validity of the subsequent customary marriage; the contract of double-decker marriage and validity of the later Act marriage. Then Legal framework promoting women's Rights and Empowerment in Double-Decker Marriage.

3.1 The Contract of "Double-decker" Marriage and the Validity of the Subsequent Customary Marriage.

While customary law does not preclude a couple already married under the Act from subsequently marrying under it, the marriage Act expressly forbids it. Under Section 35[3] "Any person who is married under this Act, shall be incapable during the continuance of such marriage, of contracting a valid marriage under customary law". Section 47**[4]** then prescribes the penalty where the above is breached, it provides thus, "whoever, having contracted marriage under this Act, during the continuance of such marriage, contracts a marriage in accordance with customary law, shall be liable to imprisonment for five years".

There are reasons and cases where statutory spouses still marry under customary marriage law[5] notwithstanding the invalidity under **section 35** of the marriage Act. The main reasons for the subsequent marriage under the customary law are that 'our tradition makes it imperative and it is the traditionally recognized of the two marriages. If such a couple failed to marry subsequently under the customary law, they would be regarded as mere cohabitees'[6].

There is a case where initial Act marriage was celebrated by a couple because the parties envisaged opposition to their marriage from their families and so sought to side track customary marriage, they still perform the traditional marriage at the earliest opportunity. This is the case of *Oloko v Oloko and Anor*[7], Here the couple married first in a London Registry in 1955. In 1958, they celebrated a subsequent marriage under customary law. During the proceedings, the husband averred that they were obliged to celebrate the statutory marriage first in order to avoid foreseeable family opposition to their marriage and the second marriage under customary law was celebrated to show the community that they were actually husband and wife[8]. Akin to this is where there is a child of the marriage. The rational here is the avoidance of any dispute about the ownership of the children of the marriage. A subsequent customary law marriage enables the families involved to assume that they can decide questions of the ownership; and inheritance rights of the children of the marriage.

The truth of the matter is that couples in Nigeria rarely do feel adequately married until both customary and statutory marriages are contracted. This confirms the extent to which even those who have become westernized still subscribe to customary values and norms and the legal systems which uphold these.

According to Morgan, 'there is hardly a marriage by Nigerians at which the customary form of marriage is not celebrated.'[9] Another fact leading to the inducement of the subsequent customary marriage is that the marriage Act is still regarded as an imported form of marriage. That is why a non-Nigerian who married a Nigerian girl under the Act is subjected to perform a customary law

[3] Marriage Act Cap M6, Law of the Federation 2004.

[4] *Ibid.*

[5] Even though the initial Act Marriage Carries Legal rights and obligation.

[6] People speak of a woman acquired without the customary marriage ceremony as a "Lover or Concubine. Even when the dowry is paid without the accompanying handing over ceremony the public is not convinced.

[7] (1959) W.N.L.R.

[8] C J Morgan "The interaction of English and Customary Law in Western Nigeria" A Lecture delivered at the Ahmadu Bello University, 2000.

[9] Fonseca V Passan (1958) W.R.N.L.R. 41 at P.42.

marriage.[10] The issues of bride price being sure was given to the family and parental consent already discussed are equally inducement of the subsequent customary marriage ceremony.

3.2 The Contract of Double-Decker Marriage and the Validity of the later Act Marriage.

The marriage Act[11] sustain the preservation of double decker marriage in Nigeria while setting out circumstances under which marriages celebrated with the parties' acquiescence are to be considered null and void. Although customary law neither encourages nor prohibits a couple married under it from subsequently contracting an Act marriage, the marriage is not entirely silent on the issue. To this end, marriage Act S.33(1), S.35 and S.47 are germane.

S.33 (1)[12] "No Marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had". By implication of S.33(1) a customary law couple may marry again under the Act, this has resulted in the celebration of double-decker marriages which involves the performance of legal essential to each of the two marriage types.

> S.35[13] Any person who is married under this Act or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage of contracting a valid marriage under customary law; but, save as aforesaid, nothing in this Act contained shall affect the validity of any customary law, or in any matter apply to marriages so contracted.

And then the marriage Act[14]prescribes the penalty where the above is breached. It provides thus "whoever, having contracted marriage under this Act, or any modification or re-enactment thereof, or under any enactment repealed by this Act, during the continuance of such marriage contracts a marriage in accordance with customary, shall be liable to imprisonment for five years".

Not withstanding the above legal protection for the practice of double-decker marriage, the legal essentials of the two marriages differ, a couple who had the capacity to marry under customary law and who wished to remarry under the Act might find they lacked the capacity to do so in the latter. Integrated consideration of Section 11 (1) (c) of the Marriage Act "that there is not any impediment of kindred or affinity or any other lawful hindrance to the marriage", no doubt prohibits a man from celebrating a statutory marriage with the widow of his father. However, under the customary law rule of "widow's inheritance", a man may marry his deceased father's wife.[15]

3. 2.1 Practice and Procedure of Double-Decker Marriage

Irrespective of the Legal Protection for the practice of double-decker marriage stated above, it is noteworthy that an acceptable double-decker marriage has its order. The customary marriage must precede the statutory marriage. The proceedings for the two marriages must not be held simultaneously or about the same time or thereafter. This is because the marriage Act section 47 outlaws the contract of customary marriage to any person either between any of the couple or any person out there. The section prescribes the punishment of five years imprisonment. The pathetic woe of double-decker marriage in Nigeria is that about 80 percent of double-decker marriage contracted constitute criminal proceedings by reason of the order of proceedings of such marriages

[10] Marriage Act Cap M6 Laws of the Federation 2004.
[11] *Ibid*
[12] *Ibid*
[13] *Ibid*
[14] *Ibid*, Section 47
[15] M C Onoka*, Family Law* (Ibadan: Spectrum Book Limited 2003) P147

being wrongly reversed. Most couples run early enough in the morning to conduct the statutory marriage and, thereafter, conduct the customary marriage perhaps with the reception of the statutory marriage either together or as different proceedings[16]. This is wrong in Law because after the statutory marriage is contracted, no other marriage, either statutory, is allowed, any longer either between the couple or with either of them with any other person. Under the Nigerian marriage legislation, the couple risk a five-year imprisonment. The import of this part is to bring to the attention of the reader the proper order of proceedings in a double-decker marriage to avert being victimized in one's own engagement.

3. 2. 2 Summary of Factors Leading to Later Marriage Act

Marriage Act Section 33 (1) impliedly authorizes the celebration by the same couple of the subsequent Act marriage following their initial customary law one. There are several reasons which people may choose to celebrate a statutory (Act) marriage after a customary ceremony[17].

a. **Legal recognition**: Statutory marriage provides Legal recognition and protection, which may not be available under customary law.
b. **International recognition**: A statutory marriage certificate is recognized internationally, it's an evidence of marriage and it makes it easier to travel or conduct business abroad.
c. **Social status**: Having a statutory marriage certificate may be seen as more prestigious or modern.
d. **Security of monogamy and its benefits**, however, the decision of the English court in *Ohochukwu v Ohochukwu*[18] was to the effect that a potentially polygamous customary law marriage cannot be converted into a monogamous marriage merely because the parties intended it to be so. Although the marriage would have become monogamous, the fact of a statutory marriage in Nigeria is not necessarily a guarantee of monogamous marital union. The learned author[19] concluded that "Here the expectations of the woman married under the Act are frustrated in that she had married the man with the hope that he would not take another wife.
e. **Religious reasons**: Some couples may want to have a religious ceremony in addition to their customary ceremony.
f. **Family pressure**: Families may pressure the couple to have a statutory marriage to ensure legal recognition and security. This is supported in the statement of Uwais C.J.N. in the Supreme Court case of *Jadesimi V. Okotie-Eboh*[20] that "some refer to customary marriage as 'traditional engagement' while others simply referred to it as 'solemnization of customary marriage".
g. **Personal preference**: Some couples simply prefer to have a statutory marriage ceremony for personal or emotional reasons.
h. **Legal Benefits**: Statutory marriage grants access to legal benefits like health insurance, inheritance, property rights and tax benefits.
i. **Certainty**: Statutory marriage provides a clear legal framework for the marriage, which may not be the case with customary law.
j. **Integration**: Celebrating both customary and statutory marriages allows couple to honor their cultural heritage while also accessing legal benefits.

[16] E F Ijalana and JO Agbana, A Criminal Appraisal of the Concept of Double-Decker Marriage under the Nigeria family Law. https://www.Scrip.Or/journal/Paper information>accessed 14th July, 2024

[17] *Ibid*

[18] (1960) I AII E.R. 253

[19] *Op cit* 24

[20] (1996) 2 N.W.L.R. 128 at P.132

Another inducement to celebrating the later Act Marriage is that "Act Marriage is enforceable. It presupposes that customary marriage is not a Legal enforceable contract of marriage.[21]

4. Legal Framework Promoting Women's Rights and Empowerment in Double-Decker Marriage

The institution of marriage is a fundamental aspects of Nigerian society, this work found it crucial to state the rights of women and how women are empowered in double-decker marriage. The rights, obligations and empowerment of spouses are regulated by various Laws and Legal Principles as Nigerians Law have undergone considerable changes.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) forms the foundation of all law relating to women's rights and Empowerment. Under section 42 of the CFRN[22] gender discrimination has been abolished. Accordingly, "a woman shall not be subjected, either expressly or impliedly to any law, executive decision or administrative action, disabilities or restriction because of her sex or circumstances of her birth". The section 42 actually opened all opportunities and privileges for women to the empowered and enjoy the rights in double-decker marriage. Granting women the right to work and earn a living. Free to pursue their careers and earn a living, Right to equality right, to education, right to dignity of human person, right to private life, right to freedom of movement, right to acquire and own immovable property anywhere in Nigeria, right to personal liberty[23].

The Married Women Property Act, 1882 emancipated the double-decker married woman from most of her contractual disabilities. She can now enter into binding contract and to maintain action against anyone in respect of her separate property as if she were a female sole (S.1&12 MWPA)[24]. The Act removed the procedural principle against actions between husband and wife; she now has a separate action by or against her. Under the law of contract, there is a possibility of wife acting as husband's agent in purchase of necessaries[25]

The Marriage Act

> Under the marriage Act, these sections 33(1) 35(1) and 49[26] are major laws which make extensive specific provisions for the validity of double-decker marriage in Nigeria. Section.33(1) provides that "No marriage in Nigeria shall be valid where either of the parties thereto, at the time of the celebration of such marriage, is married under customary law to any person other than the person with whom such marriage is held**".**

[21] *Op cit* 24

[22] CFRN: Constitution of Federal Republic of Nigeria (as amended 1997.S17 of the constitution outline the elimination of demographically derived disparity as a fundamental objective of state policy)

[23] Section 18 (34) (35) (37) (41) (43) CFR (as amended) 1999

[24] *Edet v Edet* (1966/67)10 ENLR 90

[25] The "agency of necessity in a marriage contract refer to a legal doctrine that grants a wife the authority to act as an agent to her husband in certain situations, particularly when it comes to managing the family's daily needs and expenses. In essence, the agency of necessity doctrine implies that a wife has the implied authority to: Enter into contracts, in cure debts & manage the family's financial affairs. The doctrine is based on the idea that a wife should not be left without the means to provide for herself and her family in situations where her husband is unable or unavailable to do so

[26] Cap m6. Laws of the Federation 2004

Section.35 Marriage Act provides that:

> Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law; but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriage so contracted.

Marriage Act S.47 then prescribes the penalty where the above is breached "whoever, having contracted marriage under this Act, or any modification or re-enactment thereof, or under any enactment repeated by this Act during the continuance of such (and) contract a marriage in accordance with customary law shall be liable to imprisonment for five years".

Thus, these provision expressly allows the validity of both the customary marriage earlier contracted by the parties and the statutory marriage subsequently contracted by the same couple. Accordingly, the couple is entitled to rights and empowerment provisions of the nation.

The Matrimonial Causes Act established the principles of equality between spouses, sections 70, 71 and 72[27] are apposite. Right to maintenance and support, equal right to child custody and distribution of marital property: Section 15 of the **MCA** provides grounds for the grant of a decree of dissolution of marriage allowing either spouse to file for divorce.

The violence Against Persons (Prohibition) Act 2015 The main thrust of the law is to eliminate violence in private and public life: Prohibit all forms of violence against persons, particularly women who are disproportionately affected. It provided maximum protection and effective remedies for victims, Violence is identified as the most pervasive human rights violation in the world, affects 1 in 3 women in their life time. The Act is the first criminal legislation which expanded Nigeria criminal jurisprudence by recognizing various forms of related crimes hitherto unacknowledged. It addresses a broad – spectrum of violence – physical, verbal, emotional, sexual, economic, psychological abuses, forced financial dependence and discrimination against persons, particularly women. The right to personal security and safety definitely will pave way for women's right and empowerment.

The wills Act[28]. The law governs the testamentary disposition of property in Nigeria. It ensures that women have the right to make wills and bequeath their property to whomever they choose, including other female relatives. This is adequate exercise of women's right and empowerment.

The administration of Estate Law: various state in Nigeria enacted Legislation relating to the administration of estates. These laws generally aim to ensure that widows and female children are adequately provided for in the distribution of the deceased's estate. Examples, Lagos State Administration of Estate Law[29], Ogun State Administration of Estate Law; The Oyo State Administration of Estate Law,[30] Administration and Succession (Estate of Deceased Person) Law, Cap 4 Laws of Anambra State of Nigeria, 1986. Thus by these Laws Women in double-decker marriages have the right to inherit property from their husbands. Property such as land is the anchor of all that is valuable and key to empowerment.

[27] Cap m7. Laws of the Federation 2004

[28] Wills Act Cap w8, LFN 2004

[29] Administration of Estate Law Lagos State. Section 46, 2005

[30] Administrative of Estate Law, Cap 1, 1959, Laws of western Nigeria

International legal frameworks

Many international laws equally impacted on Women's Rights and Empowerment in Double-decker marriages. **The universal Declaration of Human Rights (1948)** Article 2 "Everyone is entitled to all the rights and freedoms set out in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This section promotes the equal rights of men and women, thus energise social and better standard of life.

The International Covenant on Economic, Social and Cultural Right (ICESCE) 1976. This law recognized that the ideal of free human beings from fear and want can only be achieved if conditions are created whereby everyone may enjoy his/her economic, social and cultural rights, as well as his/her civil and political rights sections 1-11 are germane.

International covenant on civil and political Rights (1 CCPR (1976) Article 3 State parties to the present covenant undertake to ensure that equal right of men and women to the enjoyment of all and political rights set forth in the present covenant; also sections 23, 24, 25, 26, 40 are apposite.

The African Charter on Human and Peoples' Rights 1980;[31] the charter considered that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African people. Article 2, talked about non-discrimination. 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without discrimination of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3 (i) "every individual shall be equal before the law 3 (2) every individual shall be entitled to equal protection of the law. Article 18, 27, 28 are also very relevant.[32]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[33] This is a culmination of the standard-setting work of the CSW and the burgeoning forward of the women's right movement. The convention is often described as an "International bill of rights for women. The CEDAW provisions are meant to respect, protect, prevent and promote women's right. The convention, unequivocally, prohibits discrimination against women on the basis of their sex and enjoins state parties to take all appropriate measures, including Legislation to modify or abolish existing Laws, regulations, customs and practices which constitute discrimination against women. Article 1 defines discrimination against women and state that denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitute offence against human dignity. Article 2, All appropriate measures shall be taken to abolish existing laws, norms, regulations and practices which are discriminatory against women. To repeal all national penal provisions which constitutes discrimination against women. Article 3-11 are apposite.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa[34] **Better known as Maputo protocol**. The protocol recognizes and guarantees a wide range of women's civil and political rights as well as economic, social and cultural rights, thus reaffirming the universality, indivisibility and interdependency of all the internationally recognized human rights

[31] Article 26 (ICCPE) "All persons are equal before the law and are entitled without discrimination to the equal protection of law. In this respect, the law shall prohibit by discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[32] F. Fulana, cases and material on women's Rights Law (Lagos; Legal Text Publishing Coy Ltd, 2008) p. 164

[33] Adopted by United Nations General Assembly in 1979 and came into force in 1986

[34] Better known as the Maputo protocol, 2005

of women. Main articles are; Article 2: Elimination of Discrimination Against women, Article 3; Right to dignity; Article 4; The Right to life, integrity and Security of the Person, Article 5, Elimination of harmful practices; Article 6 – 24 are appropriate.

Declaration on the Elimination of Violence Against Women, 1993, Article 3, Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

International Conference on Population and Development[35] (ICPD) 1994 chapter IV discussed gender Equality, Equity and Empowerment of women. Chapter IV (9) espoused Empowerment and status of women. The empowerment of women and improvement of their status are important end in themselves and essential for the achievement of sustainable development. The objectives are to achieve equality and equity between men and women and enable women to realize their full potential; to involve women fully in policy and decision-making processes and in all aspects of economic, political and cultural life. Recommendations include, establishing mechanisms for women's equal participation and equitable representation at all levels of the political process and public life; promoting women's education, skill development and employment; and eliminating all practices that discriminate against women, including those in the workplace and those affecting access to credit, control over property and social security. Countries should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women. In addition, development interventions should take better account of the multiple demands on women's time with greater investments put in measures to lessen the burden of domestic responsibilities, and with attention to laws, programme and policies which will enable employees of both sexes to harmonize their family and work responsibilities.

Institution frameworks. Apart from legal framework (national and international) much judicial and academic thought have impacted on women's rights and empowerment in double-decker marriages. Judicial pro-activeness on women's inheritance cannot be overemphasized. Despite initial resistance, recent Supreme Court judgments in the landmark case of *Ukeje v Ukeje*[36] have affirmed the right of Nigerian women to inherit from their deceased parents, reinforcing constitutional provision. In *Onyibor Anekwe & Anor v Maria Nweke*[37], the Supreme Court found that any custom that denies women, particularly widows, their inheritance, is repugnant to natural justice, equity and good conscience and is condemned by the Supreme Court.
Mojekwu & others v Ejikeme & ors[38] The Court of Appeal held that a female child is generally entitled to inherit her deceased father's estate and does not need to perform any customary ceremony such as *Nrachi* to exercise that right. The court held that the custom *of Ili-Ekpe* also is discriminatory against women *Mojekwu v Mojekwu*[39].
These pivotal courts' decisions on women's inheritance have challenged discriminatory customary law and highlighting the unconstitutionality, thereby advancing Women's Rights and Empowerment in Double-decker Marriages.

[35] ICPD was held in Cario, Egypt in 1994 to finalize a programme of action on population and development and development but focuses on meeting the needs of individual women and men rather than achieving demographic targets.
[36] (2014) II NWLR (Pt. 1418) 384
[37] SC. 129/2013
[38] (2000) 5 NWLR 402
[39] (1997) 7 NWLR (Pt. 512) 283, 304 – 305 (Nig.CA)

5.0 Conclusion

The universality of marriage within different societies and cultures are attributed to the many basic social and personal functions for which it provides: It serves as a foundation for establishing families, nurturing emotional connections and promoting stability and harmony in the larger community. Marriage grants Legal rights and benefits thus the essence of marriage in the Society cannot be overemphasized. Given the diverse nature of the Nigerian Legal System, there exist three forms of marriage in the Country viz the customary law marriage, Islamic law marriage and the statutory law marriage while both the customary law and Islamic law marriage are potentially polygamous, the statutory marriage is monogamous in nature. Thus, it is prevalent that couple tends to opt for the celebration of at least two of these system of marriage, known as double-decker marriage. This work had x-rayed reasons for the practice of double-decker marriage, and legal affects of double-decker marriage on women's right and empowerment. The writer realized the need to harmonize customary marriage and statutory marriage to avoid double-decker marriages and harness the full benefits of marriage.

6.0 Recommendations

The paper recommended as follows:

1. Legal reform by amendment of the marriage Act and the matrimonial causes Act to recognize and integrate customary marriage rites and procedures, ensuring compliance with international human rights standards.
2. Establishment of a regulatory body to oversee across both customary and statutory marriage systems.
3. Conduct of public education and enlightenment campaigns to inform citizens about the harmonized marriage system, its benefits, and procedures.
4. Registration of marriages under both customary and statutory laws and standardization of marriage certificates that acknowledge both customary and statutory marriages, serving as proof of marriage for legal purposes.
5. Establishment of meditation and dispute resolution mechanisms to address conflicts arising from cultural or legal differences between customary and statutory marriage systems.
6. Training and capacity building for marriage registrars, judges and legal practitioners on the harmonized marriage system with emphasis on the importance of respecting cultural diversity and uphold human rights.

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TERRORISM, GLOBAL INSECURITY, AND HUMAN RIGHTS: A COMPARATIVE ANALYSIS OF NIGERIA AND THE UNITED STATES

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Abstract
In an interconnected world, terrorism poses a significant threat to global security and human rights. This paper examines the terrorism threats in Nigeria and the United States, the responses of Nigeria and the United States to terrorism, and the impact of such responses on human rights within each country. Crucially, the impact on human rights is scrutinized through a comparative lens. In Nigeria, counterterrorism efforts have sometimes led to extrajudicial killings, arbitrary detention, and violations of freedoms, particularly in regions affected by insurgency. Conversely, the United States has faced criticisms for practices such as indefinite detention at Guantanamo Bay, targeted drone strikes, and mass surveillance programs, raising concerns about due process and privacy rights. This analysis concludes by identifying key lessons and recommendations for policymakers in both countries and the international community. It emphasizes the importance of adopting comprehensive, rights-respecting approaches to counterterrorism that address root causes, strengthen the rule of law, promote inclusive governance, and uphold human rights principles.

Keywords: **Terrorism, Global Insecurity, Human Rights, Counterterrorism, Freedoms**

1.0 Introduction

Human rights are directly and seriously impacted by terrorism, and victims' ability to enjoy their right to life, liberty, and physical integrity can be severely damaged as a result. Apart from these particular expenses, terrorism has the potential to topple governments, erode civil society, endanger safety and security, and impede social and economic advancement. The actual impact of each of them on the exercise of human rights is also significant. Individual security is a fundamental human right, and as such, government protection of persons is an essential duty of states. States are therefore required to protect the human rights of both their citizens and other people by taking proactive steps to shield them from the prospect of terrorist attacks and by holding those responsible for such acts accountable.

But in recent years, counterterrorism measures taken by States have themselves frequently presented grave threats to human rights and the rule of law; some have resorted to torture and other forms of ill-treatment in the name of combating terrorism, while practical and legal safeguards against torture like independent, frequent monitoring of detention facilities have been routinely disregarded; still others have sent people suspected of being terrorists back to nations where they face the risk of torture or other serious human rights abuse violating the international legal obligation of non-recoupment.

2. 0 Threats of Terrorism

Terrorism has become a major conundrum both nationally and internationally with terrorist groups causing mayhem in recent times. Nigeria, a nation plagued by insurgent groups like Boko Haram, faces complex challenges in balancing security imperatives with the protection of human rights.

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Conversely, the United States, despite its robust counterterrorism measures, grapples with issues of civil liberties and privacy concerns in the aftermath of events such as 9/11. The analysis begins by exploring the terrorism threats in both countries, tracing the evolution of terrorist threats and government responses

2.1 Threats of Terrorism in Nigeria

Nigeria has one of the highest terrorism threat levels globally. Although there has been a general decline in terror-related fatalities, the nation recently registered the second-highest number of terrorist attack deaths globally, after Myanmar. In Nigeria, several militant organizations carry out operations against both military and civilian targets. The deadliest group is by far Boko Haram, which is primarily present in the nation's north. Conflicts between other herdsmen, farmers, and ethnic groups have resulted in extra violent outcomes, and some killings have also been linked to Fulani extremists.[1] Attacks by Boko Haram have surged in recent times. It is a group of jihadist fundamentalists that want to create an Islamic state in Nigeria and free the nation from Western education. But thousands of deaths have been caused by Boko Haram in Nigeria, Cameroon, Chad, and Niger, among other places. The northern Nigerian state of Borno, where the group is primarily concentrated, is the area hardest hit by the violence of Boko Haram. The 2014 abduction of 276 female students from a secondary school in Chibok, Borno, was one of the attacks that made headlines throughout the world. Boko Haram divided into two factions in 2016. These organizations consider themselves to be part of the Islamic State of Iraq and the Levant, or ISIS (Islamic State of Iraq and Syria).[2]

Also, the nomadic Fulani herdsmen has caused carnage in Nigeria. About 25% of all terror-related fatalities in the country in 2019 were caused by Fulani extremists. Extremist Fulani people don't make up a single terrorist organization. The use of terrorist attacks as a tactic in the continuous confrontations between famers and the nomadic Fulani people has really been linked to multiple deaths. In recent years, thousands of Christians have also been killed by Fulani herders who support jihad. Over 10,000 Christians have been killed in Nigeria by robbers, highway kidnappers, jihadist Fulani herders, and Boko Haram. Terrorist groups and the State are facing serious clashes as a result of political, economic, and social instability. These confrontations with Boko Haram resulted in nearly 22,000 fatalities between 2011 and 2023. The enormous economic cost of terrorism is one thing to keep in mind. It accounts for just 2.4% of Nigeria's GDP, which is just less than the amount spent by the government on healthcare. It is the biggest economic impact ever recorded in a single African nation, costing 142 billion US dollars between 2007 and 2019. In the Niger Delta, there have been cases of militant groups claiming to be fighting social and political injustice. These organizations carried out several kidnappings and attacks, primarily targeting workers and oil installations in the area, including pipelines. As a result, oil prices dropped. Despite having oil riches, this region is incredibly impoverished because the wealth produced there hardly makes it to the Nigerian people. Ultimately, a court ordered Shell Oil Company to reimburse Nigerian farmers for oil spills on their land in the Niger Delta region in January 2021.[3]

Nigeria faces significant terrorism threats, particularly from groups like Boko Haram and its offshoots, as well as splinter factions such as the Islamic State in West Africa Province (ISWAP). Boko Haram, founded in northeastern Nigeria, has been responsible for numerous attacks, including

[1] S.D Dokua , 'Terrorism in Nigeria - statistics & facts' 2023 statista<https://www.statista.com/topics/7396/terrorism-in-nigeria/#topicOverview> Accessed 23 April 2024.

[2] *Ibid.*

[3] Measuring the economic impact of violent extremism leading to terrorism in Africa' 2019<https://www.undp.org/sites/g/files/zskgke326/files/publications/undp-rh-addis_Measuring_the_Economic_Impact_of_Violent_Extremism_Leading_to_Terrorism_in_Africa.pdf> Accessed 24 April 15, 2024

bombings, kidnappings, and raids targeting civilians, security forces, and infrastructure. The group's activities have resulted in widespread violence, displacement of populations, and humanitarian crises, particularly in the northeastern regions of Nigeria and to other states within that region. In addition to Boko Haram, Nigeria also contends with other security challenges, including communal violence, banditry, and conflict over resources.[4]

2.2 Threats of Terrorism in the United States:

The United States faces diverse terrorism threats from both domestic and international sources. Domestic extremist groups, including white supremacists, anti-government militias, and radical fringe movements, pose significant security concerns. Internationally, the U.S. confronts threats from terrorist organizations such as al-Qaeda, ISIS, and their affiliates, which have targeted U.S. interests abroad and attempted to inspire or carry out attacks on American soil. While the U.S. has implemented stringent security measures to prevent large-scale terrorist attacks since 9/11, the evolving nature of terrorism, including online radicalization and lone-actor plots, presents ongoing challenges.[5] Given the widespread availability of firearms, political polarization, and other factors coupled with the power of social media and online communication, it is best to understand the main terrorist threat facing the United States today as originating from across the political spectrum. This has resulted in a complex and varied threat from terrorist organizations that defy conventional understandings and cross ideological boundaries. There has only been one instance of a jihadist foreign terrorist organization planning or carrying out a lethal attack within the United States in the nearly 20 years since 9/11. This incident involves Mohammed Al-Shamrani's shooting attack at the Naval Air Station Pensacola on December 6, 2019, which resulted in the deaths of three individuals. The attack was claimed by Al Qaeda in the Arabian Peninsula, and the FBI claims that evidence from Al-Shamrani's phone shows that he was in contact with an AQAP militant and AQAP before coming to the United States and that AQAP continued through the attack. It also shows that the will that AQAP presented in their video claim was sent to them by Al-Shamrani. It's still unclear how exactly and to what extent Al-Shamrani and AQAP interacted.[6]

Inside the US, terrorists have claimed the lives of 107 people since 9/11. This death toll is comparable to that of far-right terrorism, which has claimed 134 lives and included acts of violence against the government, militia, white supremacists, and abortion rights. Recent years have also seen attacks in the United States motivated by misogynistic and black separatist/nationalist ideologies. 13 to 17 people have been killed by those driven by these ideologies, respectively, while one person has been killed by those holding Far-Left ideas. Today's terrorism issue in America is domestic and not the exclusive domain of any certain faction or point of view.[7]

3.0 Responses of Government on Terrorism

Counterterrorism measures implemented by governments can have significant implications for human rights, as they often involve measures that may restrict individual freedoms, undermine due process rights, and lead to abuses. Nigeria's approach often involves militarized responses, which have been criticized for human rights abuses and lack of accountability. Meanwhile, the United

[4] Violent Extremism in the Sahel' Center for Preventive Action 2024, global conflict trafficker < https://www.cfr.org/global-conflict-tracker/conflict/violent-extremism-sahel> Accessed April 15, 2024

[5] P. Bąkowski, 'United States: Domestic violent extremism on the rise' European Parliamentary Research Service 2023<https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/754561/EPRS_BRI(2023)754561_EN.pdf > Accessed April 15, 2024.

[6] ' What is the Threat to the United States Today' New America <https://www.newamerica.org/future-security/reports/terrorism-in-america/what-is-the-threat-to-the-united-states-today/> Accessed April 15, 2024.

[7] *Ibid*

States has employed a mix of military interventions, intelligence operations, and legislative measures, raising debates over the balance between security and civil liberties

3.1 Responses of Government on Terrorism in Nigeria:

The Nigerian government has been grappling with terrorism for years, particularly from groups like Boko Haram and the Islamic State West Africa Province (ISWAP). To counter this menace, various strategies have been employed, encompassing military operations, diplomatic efforts, socio-economic initiatives, and legislative measures. A counterinsurgency strategy aimed at not only defeating terrorist groups militarily but also addressing the underlying grievances and socio-economic factors driving recruitment into these groups. This strategy involves a combination of military pressure, community engagement, deradicalization programs, and efforts to promote good governance and socio-economic development in affected regions. Here, I'll outline some of the key steps taken by the Nigerian government to counter-terrorism:

3.1.1 Military Operations

Nigeria has conducted numerous military operations aimed at rooting out terrorist groups from their strongholds. Operations like Lafiya Dole and Operation Safe Corridor have been launched to combat Boko Haram and ISWAP insurgents. These operations involve joint efforts by the Nigerian Army, Air Force, Navy, and other security agencies to neutralize terrorists and reclaim territories under their control.[8] The Government aim to combat Boko Haram and other terrorist groups through offensive operations, raids, and airstrikes targeting insurgent strongholds. The Nigerian government also collaborates with neighboring countries, such as Chad, Cameroon, and Niger, to address cross-border threats and disrupt terrorist networks operating in the region.

3.1.2 Deradicalization and Rehabilitation Programs

The government has established deradicalization and rehabilitation programs to reintegrate former terrorists into society. These programs provide counseling, vocational training, education, and psychosocial support to individuals who have renounced violence and disengaged from terrorist groups. The aim is to prevent recidivism and promote reconciliation and peacebuilding in affected communities.[9]

3.1.3 Community Engagement and Support

Recognizing the importance of community support in countering terrorism, the Nigerian government has engaged in dialogue with local communities, religious leaders, traditional rulers, and other stakeholders to build trust, gather intelligence, and mobilize support against terrorist groups. Community-based initiatives such as neighborhood watch groups and vigilante networks have been encouraged to complement security forces' efforts in detecting and preventing terrorist activities.

3.1.4 Legislative Measures

Nigeria has enacted laws and implemented legal frameworks to enhance its counterterrorism capabilities. The Terrorism (Prevention) Act criminalizes terrorist activities and provides a legal basis for prosecuting individuals involved in terrorism-related offenses. Additionally, the government has strengthened border security, improved intelligence gathering and analysis

[8] 'Northeast Nigeria' Security, <https://statehouse.gov.ng/policy/security/> accessed April 24, 2024

[9] S. Brechenmacher, 'Achieving Peace in Northeast Nigeria: The Reintegration Challenge' Carnegie endowment for international peace,<https://carnegieendowment.org/2018/09/05/achieving-peace-in-northeast-nigeria-reintegration-challenge-pub-77177> Accessed April 16, 2024.

capabilities, and enhanced coordination among law enforcement agencies to disrupt terrorist networks and prevent attacks.[10]

3.1.5 Socio-Economic Development

Addressing the root causes of terrorism requires addressing underlying socio-economic grievances and disparities. The Nigerian government has launched various initiatives aimed at promoting economic development, job creation, education, and poverty alleviation in marginalized and conflict-affected areas. These initiatives seek to address the grievances that terrorists exploit for recruitment and support, thereby undermining the appeal of extremist ideologies.

3.1.6 Human Rights and Rule of Law

Upholding human rights and the rule of law is essential in the fight against terrorism to prevent abuses, maintain public trust, and deny terrorist groups propaganda fodder. The Nigerian government has committed to respecting human rights standards in its counterterrorism operations, including ensuring accountability for security forces' misconduct and providing avenues for redress for victims of terrorism.

3.1.7 International Cooperation

Recognizing the transnational nature of terrorism, Nigeria has engaged in partnerships with neighboring countries and international organizations to combat terrorism. Joint military operations, intelligence sharing, and capacity-building initiatives have been pursued with countries like Chad, Cameroon, Niger, and regional bodies such as the African Union and the Economic Community of West African States (ECOWAS).[11] Nigeria is a member of the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), an ECOWAS regional body and affiliate of the Financial Action Task Force. Nigeria largely prefers intelligence, military, and law enforcement responses to terrorism, as opposed to methods that counter-terrorist financing. Nigeria is seeking Financial Action Task Force (FATF) membership and is working toward meeting its requirements. Nigeria's Financial Intelligence Unit (NFIU) was readmitted to the Egmont Group in 2018 after the NFIU became an independent agency, a change intended to make the NFIU more effective at combating money laundering and corruption.[12]

These are just some of the steps taken by the Nigerian government to counter terrorism, reflecting a multifaceted approach that combines military, diplomatic, socio-economic, and legal measures. Despite significant challenges and setbacks, Nigeria remains committed to addressing the threat of terrorism and restoring peace and stability to affected regions.

3.2 Government Responses in the United States:

The United States employs a range of measures to counter terrorism, including law enforcement, intelligence gathering, military operations, and cooperation with international partners. The U.S. has enacted legislation such as the USA PATRIOT Act and established agencies like the Department of Homeland Security to enhance counterterrorism capabilities and protect national security. Law enforcement agencies, including the FBI, play a crucial role in investigating and disrupting terrorist plots, while intelligence agencies like the CIA focus on gathering intelligence to identify and thwart threats. To combat terrorist threats on a worldwide scale, the United States also participates in

[10] Country Reports on Terrorism 2021: Nigeria, bureau of counterterrorism, US department of state<https://www.state.gov/reports/country-reports-on-terrorism-2021/nigeria/>Accessed April 26 2024

[11] UN Security council Speakers Warn Security Council Terrorism Spreading across Africa at Alarming Rate, Call for Greater Support, Enhanced International, Regional Cooperation <https://press.un.org/en/2023/sc15245.doc.htm> Accessed March 30, 2024.

[12] Country Reports on Terrorism 2021: Nigeria, bureau of counterterrorism, US department of state<https://www.state.gov/reports/country-reports-on-terrorism-2021/nigeria/>Accessed April 26 2024.

international collaboration through military alliances, intelligence sharing, and diplomatic initiatives. Following the 9/11 attacks, President Bush put into effect an all-encompassing and innovative foreign policy against international terrorism after the 9/11 attack. The world was made aware by the President's stance that any country that harbors or encourages terrorists would be seen as a hostile nation. Here are some of the counter-terrorism measures deployed by the United States:

3.2.1 Diplomacy

The US formed an international alliance to combat terrorism. Following the September 11 attacks, more than 80 countries suffered losses; 136 nations provided a range of military support; 46 multilateral organizations expressed their support; and, with international assistance and U.S. leadership, the Afghan people overcame long-standing ethnic and political divisions to establish a new, representative government.[13] The diplomatic engagement of the United States to combat terrorism is multifaceted and dynamic, evolving in response to global threats and geopolitical dynamics. Here are several key aspects of US diplomatic efforts in combating terrorism. The US actively engages with international organizations such as the United Nations, NATO, and the G7/G20 to coordinate efforts and formulate strategies to counter terrorism. Multilateral cooperation enhances information sharing, capacity building, and the implementation of joint counterterrorism measures.[14] The US establishes bilateral partnerships with other nations to strengthen intelligence sharing, law enforcement cooperation, and joint military operations against terrorist organizations. These partnerships are often tailored to specific regional contexts and mutual interests. The US uses diplomatic channels to pressure states that support or harbor terrorist groups, urging them to crack down on terrorist financing, dismantle safe havens, and extradite suspected terrorists. This includes both public statements and behind-the-scenes negotiations. The US provides training, equipment, and technical assistance to partner nations to enhance their counterterrorism capabilities. This assistance may include support for border security, intelligence gathering, law enforcement, and judicial reforms. Addressing the root causes of terrorism often involves promoting good governance, rule of law, and respect for human rights.[15] The US works with partner countries to strengthen their institutions, promote inclusive governance, and address socioeconomic grievances that can fuel extremism. Diplomatic efforts also focus on preventing radicalization and recruitment to terrorist organizations through CVE programs. These initiatives involve engaging with communities, religious leaders, and civil society to counter extremist narratives and promote alternative pathways for at-risk individuals. Diplomatic efforts are complemented by financial measures, including sanctions and targeted financial actions, to disrupt terrorist financing networks and prevent the flow of funds to extremist groups.[16] The US works to strengthen international legal frameworks and norms related to counterterrorism, including through initiatives to prevent the proliferation of weapons of mass destruction and to combat the use of cyberspace for terrorist purposes.[17]

The diplomatic engagement of the US in combating terrorism is characterized by a comprehensive approach that combines diplomatic, military, law enforcement, and development tools to address the multifaceted challenges posed by terrorist threats.

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[13] The Global War on Terrorism: The First 100 Days,US department of state Archive, 2009<https://2001-2009.state.gov/s/ct/rls/wh/6947.htm> Accessed April 20 2024

[14] North Atlantic treaty organization, 'Countering terrorism',(2023), **<https://www.nato.int/cps/en/natohq/topics_77646.htm>** Accessed April 30 2024

[15] *Ibid*

[16] Department of State & USAID Joint Strategy on Countering Violent Extremism, (2016) Department of State <https://2009-2017.state.gov/documents/organization/257913.pdf>Accessed April 30 2024

[17] North Atlantic treaty organization, 'Countering terrorism',(2023), **<https://www.nato.int/cps/en/natohq/topics_77646.htm>** Accessed April 30 2024.

3.2.2 Terrorist Finances

By seizing financial assets and cutting off the terrorists' sources of funding, the United States initiated the war on terrorism. The international banking community took action to cut off the terrorists' source of funding. 196 nations backed the financial war on terror; 142 nations took action to seize terrorist assets; 153 identified terrorists, terrorist groups, and terrorist financial hubs had their assets frozen in the United States alone; and significant terrorist financial networks were shut down.[18]

3.2.3 The Military Campaign

Commencing on October 7, 2001, Operation Enduring Freedom had the backing of several nations, including the UK, Australia, and Japan. Major cities were forcefully taken from the Taliban. Thirty-nine Taliban command and control centers as well as 11 terrorist training camps were leveled by the troops. And militants affiliated with al-Qaeda were either killed, captured, or fled.[19]

3.2.4 Law Enforcement

The US President then moved to defend the country from more terrorist attacks by approving $20 billion for homeland security, stepping up intelligence gathering, establishing the Office of Homeland Security and the Homeland Security Council, putting strict new airline security regulations into place, and taking action to safeguard US mail.[20] The United States has spearheaded an international effort to apprehend terrorists and deter future acts of terrorism. This includes establishing the Foreign Terrorist Tracking Task Force to stop terrorists from entering the country, apprehending and prosecuting known terrorists, enhancing the exchange of law enforcement data across borders, and enacting stringent new anti-terrorism legislation.[21]

3.2.5 Humanitarian Aid

Since October 2001, the United States has been Afghanistan's top humanitarian donor, sending $187 million in aid to the country's citizens, including food, shelter, blankets, and medical supplies. Additionally, the United States established the America's Fund for Afghan Children, which in its first year of operation raised over $1.5 million for the benefit of the Afghan children. This step also tried addressing the socio-economic theory of theory of terrorism which is one of the reasons terrorists are recruited. Helping the Survivors of September 11**,** The American people responded with overwhelming compassion for the families of the victims of September 11, donating at least $1.3 billion to charities.[22]

3.2.6 Respecting Islam

Almost immediately after the attacks, the President took steps to protect Muslim-Americans from hate crimes. The President also held a series of events, including hosting the first-ever White House Iftar and an Eid event at the end of Ramadan; the President visited the Islamic Center; and the President created the "Friendship Through Education" initiative to bring American and Muslim children closer together.[23]

Conclusively, Terrorist organizations that plan attacks against the United States such as ISIS, al-Qaeda, and Hizballah. The Department of State seeks to forge an international alliance to weaken and destroy these enemies as the threats posed by these groups keep changing. The Department

[18] The Global War on Terrorism: The First 100 Days,US department of state Archive, 2009<https://2001-2009.state.gov/s/ct/rls/wh/6947.htm> Accessed April 20 2024.

[19] *Ibid*

[20] *Ibid*

[21] *Ibid*

[22] *Ibid.*

[23] *Ibid.*

works with foreign government partners to develop the capacities required to prevent, degrade, identify, and respond to terrorist threats through a combination of diplomatic engagement and foreign assistance. This includes initiatives to improve crisis response, counter violent extremism, increase international information sharing, strengthen law enforcement and judicial capacities, and expand border and aviation security. The State Department helps countries develop counterterrorism capabilities in their respective regions and advocates for increased burden sharing to combat terrorist threats through its global involvement. Additionally, the State Department leads an integrated, whole-of-government strategy for international counterterrorism in close collaboration with the Departments of Defense, Homeland Security, Justice, Treasury, and the Intelligence Community.[24]
In summary, both Nigeria and the United States face significant terrorism threats but employ distinct approaches in responding to these challenges. While Nigeria focuses on military operations, multinational cooperation, and community engagement, the United States emphasizes law enforcement, intelligence gathering, and international partnerships to combat terrorism.

4.0 Human Rights Implications of Counterterrorism Measures: A Comparative Assessment of Counterterrorism Measures.

Actions taken by the US and Nigeria to defend their countries have an impact on human rights. States therefore need to implement strong counterterrorism policies. Even though States and other parties may face difficult and complex obstacles in their fight against terrorism, international human rights law is adaptable enough to deal with them. This subtopic will concentrate on the implication of counter-terrorism measures on human rights, and the connection between human rights and counterterrorism, specifically looking at the States' duty to make sure that all counterterrorism measures adhere to human rights norms and the legal framework's ability to accommodate exceptional situations.

4.1 Human Rights Implications of Counterterrorism Measures in Nigeria

4.1.1 Extrajudicial Killings

Reports of extrajudicial killings by security forces during counterterrorism operations have raised concerns about violations of the right to life and due process rights. Suspects may be subjected to summary executions or arbitrary killings without proper legal proceedings.[25]

4.1.2 Arbitrary Arrests and Detentions

Security forces in Nigeria have been accused of engaging in arbitrary arrests and prolonged detention without trial, violating the rights to liberty and fair trial. Suspects may be held in custody for extended periods without access to legal representation or judicial review.[26] A typical example being in the case of *Sikuru v Alade* was held in pretrial custody for more than nine years without being tried. The Community Court of Justice of the Economic Community of West African States (ECOWAS) found that this violated the prohibition on of arbitrary detention in the African Charter on Human and Peoples' Rights.[27]

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[24] US Department of state, countering terrorism <https://www.state.gov/policy-issues/countering-terrorism/#:~:text=This%20includes%20efforts%20to%20strengthen,response%2C%20and%20counter%20violent%20extremism.> Accessed April 16, 2024.

[25] A. Abdulrasheed 'Counter-Terrorism Activities and Human Rights Violation in Nigeria's Fourth Republic'*Lapai International Journal of Administration Volume 3 Number 4 June, (2021)* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881649> Accessed March 31, 2024.

[26] 2022 Country Reports on Human Rights Practices: Nigeria, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABORhttps://www.state.gov/reports/2022-country-reports-on-human-rights-practices/nigeria/ accessed March 31, 2024.

[27]*Alade v. the Federal Republic of Nigeria*

4.1.3 Torture and Ill-Treatment

There have been allegations of torture and ill-treatment of individuals suspected of involvement in terrorism-related activities. Security forces may use torture as a means of extracting information or confessions, in violation of the absolute prohibition against torture under international law.[28]

4.1.4 Restrictions on Freedom of Expression and Assembly

The Nigerian government has imposed restrictions on freedom of expression and assembly in the name of counterterrorism, including censorship of media outlets and crackdowns on peaceful protests. These measures limit individuals' rights to freedom of speech and association.[29]

4.2 Human Rights Implications of Counterterrorism Measures in the United States:

4.2.1 Mass Surveillance

Counterterrorism measures in the United States have involved extensive surveillance programs targeting communications, internet activities, and financial transactions of individuals suspected of involvement in terrorism. Mass surveillance raises concerns about violations of the right to privacy and freedom from arbitrary interference.[30]

4.2.2 Targeted Killings

The United States has conducted targeted killings of suspected terrorists, including drone strikes in countries like Afghanistan, Pakistan, Yemen, and Somalia. These targeted killings raise legal and ethical questions about the right to life and due process rights, particularly when conducted outside of traditional battlefields.[31]

4.2.3 Racial and Religious Profiling

Counterterrorism efforts in the United States have been criticized for engaging in racial and religious profiling, particularly targeting Muslim and Arab communities. Profiling based on ethnicity or religion violates the principles of non-discrimination and equality before the law.[32]

4.2.5 Detention Without Trial

The detention of individuals suspected of involvement in terrorism-related activities, including indefinite detention at Guantanamo Bay, raises concerns about the right to a fair trial and habeas corpus rights. Suspects may be held without charge or trial for extended periods, without adequate judicial review.[33]

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[28] Amnesty international 'Welcome to hell fire' Torture and other ill-treatment in Nigeria'<https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440112014en.pdf> Accessed march 31 2024.

[29] *Ibid*

[30] Office of the United Nations High Commissioner for Human Rights'Human Rights, Terrorism and Counter-terrorism'<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> Accessed march 25 2024.

[31] Parliamentary Assembly 'Drones and targeted killings: the need to uphold human rights and international law' Resolution 2051 (2015)<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21746> Accessed march 30 2024.

[32] Office of the United Nations High Commissioner for Human Rights'Human Rights, Terrorism and Counter-terrorism'<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> Accessed march 25 2024.

[33] A. De Zayas 'Human rights and indefinite detention' international review of the Red cross, Volume 87 Number 857 March 2005<https://international-review.icrc.org/sites/default/files/irrc_857_2.pdf> Accessed march 30 2024.

4.3 Evaluation:

Counterterrorism measures in both Nigeria and the United States have led to human rights violations, including extrajudicial killings, arbitrary arrests, torture, surveillance, and restrictions on freedom of expression and assembly. These violations undermine the rule of law, erode public trust in government institutions, and may fuel grievances that contribute to radicalization and extremism. Balancing security imperatives with respect for human rights is essential for effective counterterrorism strategies that uphold the principles of democracy, justice, and human dignity. Overall, addressing the human rights implications of counterterrorism measures requires a commitment to accountability, transparency, and respect for the rule of law. By ensuring that counterterrorism efforts comply with international human rights standards and principles, governments can enhance their legitimacy and effectiveness in combating terrorism while upholding fundamental freedoms and human rights.

5.0 Protection and Promotion of Human Rights in Counter-terrorism

As previously mentioned, terrorism seriously affects some fundamental human rights, States have a duty as well as a right to take effective counterterrorism measures. The protection of human rights and effective counterterrorism measures are complementary and mutually reinforcing goals that must be pursued in tandem as part of States' duties to protect individuals within their jurisdiction. Accordingly, counterterrorism measures can have an impact on human rights and the functioning of society. Following the terrorist attacks on September 11, 2001, the Security Council moved quickly to strengthen the legal framework for international cooperation and common approaches to countering the threat of terrorism. These measures included preventing terrorist financing, lowering the likelihood that terrorists would obtain weapons of mass destruction, and enhancing cross-border information sharing by law enforcement authorities. The Counter-Terrorism Committee was established as a monitoring body to oversee the implementation of these measures. The African Union, the Council of Europe, the European Union, the League of Arab States, the Organization for Security and Cooperation in Europe, the Organization of American States, the Organization of the Islamic Conference, the South Asian Association for Regional Cooperation, and other organizations have all served as contexts for the development of regional approaches.[34] Since the passage of Security Council resolution 1373 (2001),[35] security and counterterrorism laws and policies have proliferated globally, with many affecting the exercise of human rights. Most nations have negatively impacted core human rights and civil liberties as a result of hastily passing legislation and practical steps to fulfill their counterterrorism duties. The following will outline the most important human rights issues that States need to be mindful of to make sure that any action they take to fight terrorism conforms with their legal commitments;

6.0 Conclusion and Recommendations

Based on the comparative analysis of terrorism, global insecurity, and human rights in Nigeria and the United States, several policy implications and recommendations emerge:

6.1 Upholding Human Rights and Rule of Law: Both Nigeria and the United States should prioritize human rights and rule of law in their counterterrorism strategies, ensuring that security measures are conducted in accordance with international human rights standards and legal safeguards. Policy recommendations include strengthening legal frameworks, oversight

[34] Office of the United Nations High Commissioner for Human Rights, ' Human Rights, Terrorism and Counter-terrorism'<https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> Accessed April 24 2024.

[35] UN Security Council resolution S/RES/1373 (2001)<https://www.refworld.org/legal/resolution/unsc/2001/en/12519> Accessed April 24 2024

mechanisms, and accountability mechanisms to prevent human rights abuses by security forces and promote justice for victims of terrorism.

6.2 Addressing Root Causes and Grievances: Both countries should address the root causes of terrorism, including socio-economic disparities, political marginalization, and ethno-religious tensions, through inclusive governance, poverty reduction, and conflict resolution efforts. Policy recommendations include investing in education, job creation, and community development programs to address underlying grievances and promote social cohesion and resilience.

6.3 Promoting Community Engagement and Empowerment: Nigeria and the United States should prioritize community engagement and empowerment in designing and implementing counterterrorism strategies, fostering trust, dialogue, and cooperation between communities and security forces. Policy recommendations include supporting grassroots initiatives, civil society organizations, and community-led interventions that promote resilience, prevent radicalization, and address local grievances.

6.4 Enhancing International Cooperation: Both countries should strengthen international cooperation and coordination in addressing transnational terrorism threats, including information sharing, capacity-building, and joint law enforcement operations. Policy recommendations include supporting regional and international mechanisms for counterterrorism cooperation, promoting adherence to international human rights standards, and addressing the root causes of terrorism through diplomatic and development efforts.

6.5 Investing in Preventive Measures: Nigeria and the United States should invest in preventive measures that promote dialogue, reconciliation, and social cohesion, including countering violent extremism (CVE) programs, community policing initiatives, and efforts to address radicalization and recruitment. Policy recommendations include supporting community-based prevention programs, providing psychosocial support to victims of terrorism, and promoting positive alternatives to violence through education and economic empowerment.

6.6 Strengthening Legal and Judicial Systems: Both countries should strengthen their legal and judicial systems to ensure accountability, transparency, and access to justice in counterterrorism cases.

6.7 Implementation of Policy Recommendations: Policy recommendations include providing training and capacity-building for judges, prosecutors, and law enforcement officials, enhancing due process rights for suspects, and promoting judicial independence and impartiality. By implementing these policy recommendations, Nigeria and the United States can enhance the effectiveness, legitimacy, and accountability of their counterterrorism efforts while upholding human rights, rule of law, and democratic values. This comparative analysis provides a framework for informed decision-making and policy development to address the complex challenges of terrorism, global insecurity, and human rights violations.

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THE DISPROPORTIONATE EFFECT OF INTERNAL DISPLACEMENT ON THE NIGERIAN CHILD: A LEGAL VIEW

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Abstract

Many children have been displaced in Nigeria either by armed violence, insurgency, communal clashes, inter-ethnic conflicts and natural disasters. There is no child more vulnerable today than a child internally displaced as they are forced to leave their homes and communities behind. As the children run for safety, they further experience discrimination while trying to survive. The effect of this can be extremely devastating and traumatizing on a growing child who may likely be displaced all through childhood with no hope of a home. This paper discusses children internally displaced in Nigeria and how it affects them disproportionately. The Paper employs doctrinal methodology with analytical approach using statutes, case laws, conventions, textbooks, journal articles, Internet sources and reports of various authors on the subject. It further employs analysis as a tool to assess the legal protection available to internally displaced children in Nigeria and the limitations to their protection. It was found that despite the vulnerability and the disproportionate negative effect of internal displacement on children, Nigeria has not taken adequate steps to combat the situation. It is recommended that all concerned institutions and relevant stakeholders be alert to their duties concerning the issue.

Keywords: Internal Displacement, Children, Disproportionate Effect, Nigeria.

1.0 Introduction

By the end of 2022, a global record of 43.3 million children lived in forced displacement, many of them for their entire childhood.[1] Of the 43.3 million children, almost 60 percent (25.8 million) were internally displaced by conflict and violence. The Internal Displacement Monitoring Center (IDMC) records a whooping 75.9 million internally displaced people as at 2024, of which 68.3 million were displaced by conflict and violence, and 7.7 million by disasters.[2] In Nigeria, an estimated 3 million people (59 percent children) are internally displaced in the northeast, northwest and northcentral part.[3] Over a million displaced children in Nigeria are out of school, and according to IDMC, the proportion of children in displacement camps is higher than in the national population.[4] Children are disproportionately affected by internal displacement which is a devastating experience for them due to the specific risks they encounter. They face increased dangers during displacement, and worse still, is the fact that internally displaced children are twice as invisible in national and international data. Firstly, because internally displaced persons (IDPs) cases of all ages are frequently unaccounted for. Secondly, because it is difficult to separate data by age, especially for IDPs.[5] These children are in dire need of protection and aid and the national authority as well as the international community should be the primary source of this aid. It is important to take into account the unique needs of children when developing policies and interventions for displacements. Infant may require immunization, dietary supplements, and educational support for school-age children and vocational

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[1]UNICEF '*Number of displaced children reaches new high of 43.3 million'*https://www.unicef.org/press-releases/number-displaced-children-reaches-new-high-433-million accessed 24 June 2024

[2]IDMC *'2024 global report on internal displacement'*https://www.internal-displacement.org/global-report/grid2024/ accessed 20 June 2024.

[3]UNICEF *'Humanitarian action for children Nigeria'* https://www.unicef.org/media/149926/file/2024-HAC-Nigeria.pdf accessed 20 June 2024.

[4]ZB Ibrahim *'More than a million displaced children in Nigeria are not in school'* https://humanglemedia.com/more-than-a-million-displaced-children-in-nigeria-are-not-in-school/ accessed 24 June 2024

[5]IDMC *'Twice invisible: accounting for internally displaced children'*https://www.internal-displacement.org/publications/twice-invisible-accounting-for-internally-displaced-children/ accessed 20 June 2024.

training for young adults.[6] The effects are often more severe for girls given that such displacement can worsen already-existing obstacles to girl's schooling and raise their risk of sexual abuse and violence.[7]

Results show that displaced children are especially vulnerable and are at high risk of exposure \before, during or after flight to adverse childhood experiences (ACEs). They are further prevented from a stable, developmentally appropriate environment during a critical stage of life by the insecurity, frequent housing changes, restricted access to healthcare, educational resources, lack of play materials and peer interaction that characterize their daily lives in refugee accommodations and camps.[8] This work still examines the disproportionate effect of internal displacement on children in Nigeria. It assesses the legal protection available to them and the limitations to this protection.
For the purposes of this work, internally displaced persons are persons or group of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations or generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border. Disproportionate effect then refers to a situation where a practice affects a particular group of people more negatively than others, and persons disproportionately affected in this work are children internally displaced. A child is a person below 18 years of age.

2.0 The Effect of Displacement on Children

Internal displacement severely disrupts the lives of those affected. Occasionally, it offers new opportunities, but most often jeopardizes their welfare and wellbeing; as displaced persons are uprooted from their homes and cut off from their assets, livelihoods and networks.[9] Internally displaced children suffer from adverse childhood experiences (ACEs): an intense and frequently occurring source of stress that children may suffer early in life, such as abuse, neglect, violence, household dysfunction, peer, community or collective violence.[10] Report has shown that when adapting different experiences internally displaced children encounter, it ranges from constant acts of violence, either experiencing any type of war or armed conflict; witnessing or experiencing the death or injury of a parent or relative, or being separated from family members; threat of violence either by witnessing or experiencing violence while in transit; exposure to harmful conditions.[11] ACE exposure can affect the development of the neurological, immunological and hormonal systems of a child. As a result, children who have experienced more ACEs are more prone to engage in unhealthy and antisocial behaviours including drinking, smoking and drug abuse. In addition, they have a higher propensity for engaging in violent and other antisocial behaviour, and for doing poorly academically. Individuals with poor health and behavioural issues are likely to develop diabetes,

[6]IDMC *'Internally displaced children, youth and education'* https://www.internal-displacement.org/focus-areas/children-youth-education/ accessed 10 July 2024

[7] *Ibid*

[8] K Bernhardt *et al*. '*Young children's development after forced displacement: a systematic review'* Child Adolescent Psychiatry Ment Health 18, 28. (2024) https://capmh.biomedcentral.com/articles/10.1186/s13034-024-00711-5#citeas accessed 10 July 2024.

[9]IDMC *'Children and youth in internal displacement'* https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf accessed 10 July 2024.

[10]WHO *'Adverse childhood experiences international questionnaire (ACE-IQ)'* https://www.who.int/publications/m/item/adverse-childhood-experiences-international-questionnaire-(ace-iq) accessed 10 July 2024.

[11] K Bernhardt *et al*. *'Young children's development after forced displacement: a systematic review'Op cit.*

cancer, heart diseases and mental illness amongst others.[12] In Nigeria, internal displacement has the following adverse effect on children:

Out of School: Internally displaced children are denied their fundamental right to education. A new analysis shows that more than a million Nigerian children who are of school age and have been internally displaced lack access to high-quality education, which significantly limits their prospects for the future.[13] As a result of conflict, schools which have been damaged or intentionally destroyed are unavailable to displaced children. In addition to depriving displaced children quality education, displacement itself can interfere with non-displaced children's access to education in host communities. This is because displaced persons who do not have access to camps or similar environments take refuge instead in school buildings.

Child labour: There will inevitably be child labour among IDPs as a result of their parents'/guardians' terrible financial situation and inability to support their family. Fearing starvation and destitution, affected families may turn to sending their children to hawk, work or beg alms in order to survive.

Malnutrition, Diseases and Death: It has been reported that 450 children died of malnutrition in 28 IDP camps in Borno in 2015.[14] These victims were aged between 1-5 years. It is also reported that among 209,577 children screened for various illnesses including malnutrition, diarrhea and vomiting, 6,444 were malnourished severely and 25,551 had mild to moderate symptoms. Thus, malnutrition is as a result of lack of access to highly nutritious foods in camps, poor feeding practices such as inadequate breastfeeding.[15] Malnutrition could also lead to distorted growth in children.

Sexual Exploitation: Child protection laws applicable in Nigeria guarantee the fundamental right to dignity of persons and as such, no one should be subjected to torture, inhuman or degrading treatment. Children internally displaced face all kinds of sexual violence in their plight to safety and survival and this can cause debilitating psychological harm on the child. Victims/survivors may experience stigmatization and rejection from families and societies, long-lasting depression, post-traumatic stress disorder, isolation and even suicide.

Poor Socialization: Socialization takes place at the primary, secondary and adult stages. The primary stage involves socialization of young children in the family, secondary stage involves school and the last stage takes place in adulthood.[16] Displacement destroys the family structure which is the agent of primary socialization of children. Again, the avenue for children to learn their cultures and traditions of the society is destroyed. As a result, children are likely to engage in deviant behaviour or find it difficult to integrate within their communities when they return. In addition to missing out on education during their formative years, displaced children experience unimaginable trauma and psychological hardship.

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[12] UNICEF *'Adverse childhood experiences (ACE) study: research on adverse childhood experiences in Serbia'* https://www.unicef.org/serbia/media/10726/file/Adverse%20Childhood%20Experiences%20(ACE)%20Study.pdf accessed 10 July 2024

[13] ZB Ibrahim; *'More than a million displaced children in Nigeria are not in school'Op cit.*

[14] Vanguard News '*450 children died of malnutrition in 28 IDP camps in Borno'* (2016) https://www.vanguardngr.com/2016/02/450-children-died-of-malnutrition-in-28-idp-camps-in-borno/ accessed 10 July 2024

[15] *Ibid*

[16] PM Okoro;*'The impact of internal displacement on women and children in Nigeria'* International Journal of Innovative Research and Advanced Studies (IJIRAS) Vol. 3, Iss 8 (2016)

3.0 The Disproportionate Effect of Internal Displacement on Children.

Children are especially vulnerable to the destructive effects of displacement because of their developmental stage as well as the potential for socioeconomic deprivation that comes with it. The Office of the Special Representative of the Secretary- General for Children and Armed Conflict recognizes that displacement is particularly a destabilizing and traumatic experience for children as it uproots and exposes them to risks at a time in their lives when they most need protection and stability.[17] Children especially displaced due to armed conflict are at high risks of recruitment as soldiers and are often sexually abused or subjected to other forms by unprincipled adults, including peacekeepers or humanitarian workers. They are trafficked as sex workers or forced labourers, pushed into prostitution, or made to work as slaves in coltan or diamond mines all for their personal or material gain.[18] They suffer in IDP camps without access to clean water, food or education, or they blend in large cities when they need food and a safe place to sleep. Amidst wars and escape, children internally displaced sometimes find themselves abandoned on the streets, subject to the worst kinds of abuse, or sent to orphanages devoid of supplies and, it seems, hope.[19]

4.0 Legal Protection of |Internally Displaced Children in Nigeria

4.1 The Constitution of the Federal Republic of Nigeria: The Constitution[20] is the supreme law and has a binding force on all authorities throughout Nigeria. In general, it protects all Nigerians including internally displaced children from violations of their fundamental human rights as well as guaranteed freedoms. Chapter IV of the Constitution guarantees the fundamental human rights of all persons. These rights include the right to life; right to personal liberty; right to dignity of human person; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; prohibition of discrimination on ground of sex, religion, political opinion, ethnic group or place of origin. Chapter 2 provides for the fundamental objectives and directive principles of the state towards the protection and promotion of children's interest in Nigeria. It requires the Nigerian government to provide free compulsory and universal primary education, free secondary education, free university education and free adult literacy programme.[21]

Section 13 of the Constitution imposes the fundamental obligation on all tiers and arms of government to observe the objectives relating to the socio-economic, political, educational and cultural matters. Section 17 obligates state to direct its policy towards ensuring that there are adequate medical and health facilities for all persons; children, young persons and aged are protected against any exploitation whatsoever, and against moral and material neglect. However, the above provisions are non-justiciable and are merely directive principles of state policy and no action can be brought against the government to enforce these provisions.

4.2 Child's Right Act: The Child's Right Act (CRA)[22] is a domestication of the UN Convention on the Rights of the Child and the African Union Charter on the Rights and Welfare of the Child, in Nigeria. It addresses the rights, responsibilities, protection and welfare of children, institutions for children, duties and responsibilities of government as well as other miscellaneous matters. In all matters concerning a child, the best interest of the child is considered. The CRA stipulates that Article

[17] E Mooney and D Paul; *'The rights and guarantees of internally displaced children in armed conflict'* Office of the Special Representative of the Secretary- General for Children and Armed Conflict, working paper no. 2, (2010) at 11. Available at https://childrenandarmedconflict.un.org/publications/WorkingPaper-2-Rights-GuaranteesIDP-Children.pdf accessed 10 July 2024.

[18] *Ibid* p. 5

[19] *Ibid* p 5.

[20] Constitution of the Federal Republic of Nigeria 1999 (as amended)

[21] Section 18 *Ibid*

[22] Child Rights Act 2003

IV of the Constitution which details the fundamental rights, freedoms and responsibilities of children should be seen as being part of the Act. It provides specific rights for children including the right to survival and development; right to a name; right to family and private life; freedom of association and peaceful assembly; freedom of thought, conscience and religion; freedom of movement; right to be free from non- discrimination; right to dignity of the child, right to leisure, recreation and cultural activities, right to health services, right to parental care, protection and maintenance; and right to free compulsory and universal primary education. The CRA prohibits child marriage; child betrothal; infliction of tattoos and skin marks; exposure, use, production and trafficking of drugs and psychotropic substances; the use of children in any criminal activity; abduction and unlawful removal and transfer of a child from lawful custody; forced, exploitative or hazardous child labour; buying, selling, hiring or dealing in children for the purpose of hawking, begging of alms, prostitution, unlawful sexual intercourse, and other forms of sexual abuse prejudicial to the welfare of the child. It prohibits recruitment of children into armed forces.

The CRA considers a child in need if he/she is disabled, internally displaced, a refugee, or if his/her health and development are likely to be significantly impaired without assistance. The state is obligated to safeguard and promote the welfare and upbringing of these children by providing services appropriate to their needs. Every state government shall take reasonable steps to identify the extent to which there are children in need within their area and publish information about services they provide as well as services provided by their organisations.[23]

Despite the beneficial provisions of the CRA, only 25 out of 36 states in Nigeria have adopted it and made it their state laws. It is trite that partially domesticated laws emanating from international Treaties must be adopted by states before it becomes binding on such states. Again, issues concerning children in Nigeria are neither in the exclusive or concurrent list but in the residual list. The implication of this is that laws concerning children particularly the CRA is not legally binding on states until they adopt it, and its adoption is at the discretion of states that choose to. Currently, 11 states all in the northern part of Nigeria are yet to domesticate it, and there are no records of discussion about the Act in these state legislatures. This makes it difficult for Nigerian children to be uniformly protected.

4.3National Policy on Internally Displaced Persons in Nigeria: The National Policy[24] document guarantees the rights and obligations of IDPs contained in the Nigerian Constitution, domesticated regional, sub-regional and international human rights and humanitarian instruments guaranteed to all citizens. The policy protects the general and specific rights of IDPs, their rights to protection from displacement, rights to protection and assistance during displacement, protects the rights to internally displaced children, women, persons with disabilities, persons living with HIV, elderly persons, rights of IDPs during return, resettlement and re-integration. It is important to state that this is a mere policy which has no binding effect.

4.4 African Charter on the Rights and Welfare of the Child 1999 (ACRWC): The Summit of the Heads of State of the Organisation of African Unity adopted the ACRWC in 1990, and it came into force in 1999.[25] The ACRWC notes with concern that the situation of most African children is critical due to their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's immaturity, he/she needs safeguards and care. Article 22(3) obligates state parties to protect and care for children who are affected by armed conflict, internal armed conflicts, tensions and strife. Article 23 obligates

[23] Ibid, Part 1, schedule 7

[24] National Policy on Internally Displaced Persons 2012

[25] T Kaime '*The Foundation of rights in the African Charter on the Rights and Welfare of the Child: A historical and philosophical account'* 3 African Journal of Legal Studies, 120, 124 (2009).

state parties to ensure that internally displaced children either through natural disasters, internal armed conflicts, civil strife, breakdown of economic and social order receive appropriate protection and humanitarian assistance in the enjoyment of their rights.

4.5 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) In 2009, the African Union adopted the Kampala Convention.[26] It is the first regional, legally binding instrument imposing clear duties on states with regard to the protection and assistance of IDPs. The Kampala Convention requires states to prevent arbitrary displacement by respecting their obligation under international law. It obligates states to bear the primary duty and responsibility for protecting and providing humanitarian assistance to internally displaced persons without discrimination of any kind.[27] It therefore obligates states to access the needs and vulnerabilities of internally displaced persons and host communities,[28] and to provide adequate humanitarian assistance to internally displaced persons in all phases of displacement.[29] Nigeria ratified the Kampala Convention on April 17, 2012, but has failed to domesticate it into its national laws.

4.6 United Nations Guiding Principles on Internal Displacement, 1998: The UN guiding principle is made up of 30 principles which spells out the rights of internally displaced persons, and the responsibilities of states and actors with regard to internally displaced persons. Though this is not a binding document, it reflects existing binding standards of international humanitarian law and human rights. It affirms the enjoyment of rights by internally displaced persons without discrimination on the ground of being displaced. In situations of armed conflict, civilians are protected from arbitral displacement unless for security or military reasons.[30] In the event of such displacement, it shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.[31]

The UN Guiding Principle pays special attention to internally displaced children. Internally displaced children especially unaccompanied minors, expecting mothers and mothers with young children are entitled to protection and assistance required by their condition, and to treatment which takes into account their special needs.[32]Again, principle 11 prohibits any contemporary form of slavery such as sale into marriage, sexual exploitation, or forced labour of children, and internally displaced children shall not be recruited or permitted to take part in hostilities.[33] They reserve the right of families to remain together and to be rapidly reunified. Internally displaced children reserve the right to education at primary level which should respect their cultural identity, language and religion.[34] Special efforts should be taken to include girls in such educational programs.

5.0 Limitations to Effective Protection of Internally Displaced Children

5.1 Insufficient Legal Protection: The legal framework protecting internally displaced children in Nigeria is insufficient. There is no special legal framework for internally displaced children except for general provisions stipulated in the Constitution and the CRA. Though the Kampala Convention

[26] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). 2009 (entered into force Dec. 6, 2012)

[27] Art 5(1)

[28] Art. 5(5)

[29] Art 9(2)(b)

[30] UN Guiding Principles on Internal Displacement 1998. Principle 6(2)(b)

[31] *Ibid* principle 8.

[32] *Ibid.* principle 4(2)

[33] *Ibid.* principle 13(2)

[34] *Ibid*. principle 23

has been ratified in Nigeria, there has been no effort by the government to enforce it.[35] It is trite that no treaty shall be made enforceable unless domesticated. Section 12(1) of the Constitution gives light to this, and it has been reaffirmed by the supreme court of Nigeria in *General Sanni Abacha v. Chief Gani Fawehinmi*.[36] Thus, it is only where a Convention has been enacted into Law by the National Assembly that such a treaty becomes effective and binding.

The CRA which is the primary child protection law in Nigeria makes reference to internally displaced children, but this is not enough because it does not highlight their protection at all stages of displacement. This is true even when internally displaced children experience assaults and sexual abuse in addition to not having access to proper education, healthcare, food and a healthy diet.[37] Some states have not adopted the CRA while the states that have adopted it make little efforts to implement same. The National Policy stipulates the rights of IDPs, internally displaced children and the obligations of government towards them. However, the policy has no legal backing and is therefore incapable of enforcement either by the government or the delegated actors.[38]

5.2 Political Will: It is trite that the security and welfare of the people shall be the primary purpose of the government.[39] Sadly, the Nigerian government lacks the political will to carry out its obligation to safeguard the welfare of internally displaced children. Many Nigerian politicians vie for positions based on their own self-interest rather than the necessity to improve the lot of the country's less privileged and vulnerable citizens. The government's inability to adequately safeguard the rights of internally displaced children has resulted in unfavourable conditions in IDP camps, including inadequate medical care and food scarcity, all of which have an adverse effect on the health and development of children.

5.3 No Financial Resources: Nigeria is not an exception when it comes to states' inability to defend the rights of internally displaced children due to lack of resources. It is difficult to protect the right to healthcare services due to inadequate resources. This could either be as a result of shortage of medication, medical personnel or proper facilities putting Children at the risk of health hazards, untreated illnesses that endanger their lives. They are also at risks to suffer from malnutrition as a result of food scarcity.

5.4 Improper Data Collection: International and national studies show that internally displaced children are twice as invisible as other internally displaced persons. There are often unaccounted for cases of IDPs of all ages, and it is challenging to separate data according to age, particularly when it comes to IDPs.[40]

6.0 Conclusion

It is indisputable that internally displaced children, despite their vulnerability, continue to suffer greatly the adverse effect of internal displacement. Day in, day out, they are abused, exploited and violated. Despite this, Nigeria has not done enough to address the issue of internally displaced children. In the light of the above conclusion, the researcher has recommended as follows: Domestication of the International Treaties bordering on internally displaced people especially as

[35] OO Olusegun and A Ogunfolu; *'Protecting internally displaced children in armed conflicts: Nigeria in focus'* Notre Dame Journal of International and Comparative law. (2019) Vol.9, Iss. 2, Article 4. Available at https://scholarship.law.nd.edu/ndjicl/vol9/iss2/4/

[36] (2000) S.C 45/1997

[37] OO Olusegun and A. Ogunfolu*Op. cit.*

[38] IA Kanu, MB Bazza, IO Omojola*'Review of the National Policy on Internally Displaced Persons in Nigeria'*Nnadiebube Journal of Social Science Vol. 1 No. 1 (2021)

[39] Section 14(2)(b) Constitution

[40] IDMC '*Twice invisible: accounting for internally displaced children' Op cit.*

they relate to children and minors as well nursing and pregnant mothers should be undertaken. The UN principles on internally displaced children should also be incorporated into the CRA. Additionally, the CRA should be adopted and implemented by all of Nigeria's states. The Nigerian government should demonstrate a genuine desire and commitment to protect internally displaced children by carrying out its obligations and duties under international human rights instrument. Government should ensure that IDP camps are conducive for children, provide sufficient medication for children so as to avoid the risks of health hazards, provision of sufficient food for internally displaced children, guarantee access to education, and generally, to provide every necessity needed to achieve a better life for internally displaced children. Funding is of the essence to enhance the social, educational and health welfare of internally displaced children. In addition to providing proper psycho-social support for victims of sexual abuse and other associated crimes, government should take proactive steps to safeguard the reproductive and sexual health of internally displaced children. Proper and adequate data collection of internally displaced persons including and especially for children is vital to aid in the proper planning. Government should adopt the US. Special Supplemental Nutrition Programme for Women, Infants and Children (WIC), for healthcare and nutrition to enable proper supplementary feeding for children in IDP Camps.[41]

[41]Sule Mele; NEMA Executive Director. Vanguard News '450 children died of malnutrition in 28 IDP camps in Borno' *Op cit.*

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THE *OSU* CASTE SYSTEM IN THE SOUTH-EAST REGION OF NIGERIA AND INTERNATIONAL PROTECTION OF VULNERABLE AND DISADVANTAGED GROUP: A LEGAL APPRAISAL

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Abstract
In some communities in the South-East region of Nigeria, there still exists the degrading and discriminatory practice of Osu caste system despite its abolition many years ago. This continued practice of the caste system has been perceived as constituting a violation of the provisions of the Nigerian Constitution[1] as well as regional and international human rights treaties. The aim of this paper, therefore, is to examine how the practice of the Osu caste system violates certain provisions of domestic, regional, and international human rights laws and makes recommendations on how it can be eradicated. The paper adopts doctrinal legal research methodology using analytical and critical approaches in actualizing the objective of the research. It also makes use of primary sources of literature on the subject matter such as statutes and case law as well as secondary sources such as textbooks, journal articles, internet materials, and so on. The author finds, inter alia, that the practice of the Osu caste system flagrantly violates the provisions of the Nigerian Constitution as well as regional and international human rights instruments. The paper concludes, among other things, that the continued practice of the Osu caste system in the South-East region of Nigeria is gravely discriminatory, illegal in all its forms, and runs contrary to the core principles of dignity of human person and equality of persons inherent in all human beings as enshrined in the Charter of the United Nations and Chapter IV of the Nigerian Constitution. The author, therefore, urges the Nigerian Government to, as undertaken in article 4(a) of the International Convention for the Elimination of All Form of Racial Discrimination and other human rights instruments, take the necessary legislative measures towards amending its existing criminal laws or enacting new ones, criminalizing the practice of Osu caste system by making it an offence punishable by law.

Keywords: **Human Rights, Outcast, Caste System, Disadvantaged and Vulnerable People, Discrimination, South-East Region, and Nigeria.**

1.0 Introduction

The word, '*Osu*' is a local Igbo[2] name meaning 'outcast'. Historically, they are seen as a group of individuals within the region who, according to some unverified traditions and customs, were either "sold into slavery to others or offered as sacrifices to the local deities ('*Alusi*') demanding human offerings during cultural festivals, ultimately leading to their enslavement".[3] They are also believed to arise from ostracism, wherein "those who defied the king's orders or community decisions were banished", thus resulting in the victims and their descendants being labeled as *Osu* (outcast).[4] The *Osu* caste system, as a traditional practice in Igbo land, is characterized by social discrimination,

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[1] Section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the right to freedom from discrimination based on ethnic group, place of origin, sex, religion, or political opinion.

[2] Igbo is one of the three major tribes or ethnic groups in Nigeria, and it is a major language spoken by the people of the South-east and some ethnic groups in the South-south region of Nigeria.

[3] Amadife (1988), '*The Culture that Must Die'*, Sunday Times, Lagos, Nigeria.

[4] C.M, Ezekwugo (1987), '*Ora-Eri Nnokwa and Nri Dynasty',* Lengon Printers, Enugu.

hate, deprivation, and restriction on interactions, marriages, rights, and privileges with a group of individuals known as '*Osu*'.[5]

In his novel, '*No Longer at Ease*[6]', Chinua Achebe noted that those labelled as *Osu* are designated separate seats in churches. This is because "they are seen as unclean and are barred from breaking kola nuts or offering prayers on behalf of individuals outside their own caste due to the belief that they may bring calamity upon the society".[7]

In many communities in the South-East region of Nigeria, the practice of the *Osu* caste system is still conspicuously prevalent, where certain families and individuals are identified as *Osu*. The system divides the Igbo society into the *Diala* community (freeborn) and the *Osu* community (outcast). As a traditional practice, the *Osu* caste system has been successively passed from one generation to the other and has almost remained hardly influenced by civilization, westernization, Christianity, and globalization, as well as fiercely resisted human rights advocacy against the practice. Despite its abolition in Nigeria,[8] the *osu* caste system has possibly remained the most obstinate in resisting extermination unlike other customs and traditions in Igbo land considered to be repugnant to natural justice, equity, and good conscience, including the killing of twins and extrajudicial killing of thieves.

This class of persons are not seen as freeborn ('*Diala*'), are treated as inferiors and second-class citizens, and largely discriminated against by the *Diala* class in their respective communities. Accordingly, they are deprived of certain community rights and privileges, including prohibition of inter-marriage with the freeborn or the *Diala class*, participation in community funeral rights and cultural festivities, receipt of certain traditional titles exclusively reserved for the freeborn, and farming on the same farmlands with the freeborn, among others. Thus, the *Osu* caste system, in its social stratification, discriminates against, and reduces, this class of individuals recognized as *Osu* to a vulnerable and disadvantaged group, who are not treated on an equal basis with the other members of their respective communities.

The caste system also forbids and discourages social interaction and inter-marriage with the other members of the community. Ugobude[8] vividly captured the effect of the caste system when he stated that "as an *Osu*, you are kept in a state of permanent and irreversible disability and subjected to abuse and discrimination. They are not allowed to have any form of relation with the *Dialas*".[9]

Out of the many discriminatory practices that characterize the Osu caste system, I find the prohibition and/or non-approval of inter-marriages with the other members of the community most disturbing. This is because not permitting some persons classified as *Osu* to inter-marry with the other members of the community has some far-reaching implications. It appears to reduce this class of persons to inferior humans, stigmatizes them, and flagrantly violates their various human rights protected by the supreme law of the land as well as national, regional, and international human rights instruments.

Intending couples get disappointed and more often discouraged from getting married when it is discovered that either of them comes from a family classified as *Osu*. These innocent youth may not be aware of the fate that befalls them until the man proceeds to the family of the woman for some

[5] See Wikipedia, the Free Encyclopedia.

[6] No Longer at Ease is a 1960 novel written by the Nigerian and Internationally acclaimed author, Chinua Achebe, who is also the author of one of the world's best-selling novels, "Things Fall Apart".

[7] E, Asinugo (2014), 'The Church and the Fight against Osu Caste System in Eastern Nigeria', *Nigerian Voice*.

[8] See *Uzoukwu v. Ezeonu II* (1991) 6 NWLR (Pt. 200) 708 at 770; Abolition of Osu System Law, 1956 Cap. 1 of the Laws of Eastern Nigeria, 1963; V. O. Chukwuma (2023), 'A Legal Analysis of the Pre-Colonial Igbo Peoples' Perspective to Criminal Justice', African Journal of Culture, History, Religion and Traditions 6(1), 16-45 (at page 25).

[8] F. Ugobude, 'Culture: The Osu Caste System in Igboland', 18 November 2018, accessible at https://guardian.ng/life/culture-the-osu-caste-system-in-igboland/. Accessed 31/07/2024

[9] *Ibid.*

traditional introductory rites. Often, this is followed by some traditional enquiries to ascertain the true status of the family of the woman, who also takes turn to inquire about the status of the family of their intending in-laws. It is at this point that their hopes usually get dashed upon the discovery that either of the families belongs to the *Osu* caste. Upon this discovery, the supposed *Diala* family immediately disapproves of the marriage, not minding the mutual love their children share together, their long-term plans, wills, and preferences. When this happens, the person classified as *Osu* becomes immediately stigmatized by members of the family of the *Diala* class and the marriage ends abruptly.

In a few instances, however, the intending couples may wish to proceed with the marriage despite the disapproval of their family members. This has, in some cases, led to some families totally disowning their children, including any children of such marriages, as all of them are labelled *Osu* with wide discrimination and stigmatization in their communities.

The inter-marriage prohibition or disapproval has more far-reaching consequences on the part of women than their male counterparts. Many women of marriageable age are rendered unmarriageable and may be kept perpetually single because of the circumstances of their birth as coming from the *Osu* background. When they eventually get married, they also face discrimination on social inclusion and integration; they are denied their cultural rights and privileges, are refused participation in some community activities and ceremonies, and permanently wear the toga of stigmatization as *Osu*, including their children, who eventually face the same segregation and consequences.

2.0 Legal Framework for Prohibition of the Practice of *Osu* Caste System in Nigeria

2.1 Constitution of Federal Republic of Nigeria[10]

The *Osu* caste system subjects the class of persons classified as Osu to disability and deprivation contrary to the express provisions of section 42(2) of the Constitution[11] which provides as follows:

> "No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of their birth".

Generally, section 42(1) of the Constitution[12] provides for the right to freedom from discrimination as follows:

> "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion shall not, by reason only that he is such a person:
> (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not made subject; or
> (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions".

It is my submission that the practice of the *Osu* caste system subjects the class of persons classified as *Osu* to disabilities or restrictions to which other citizens of Nigeria in the same community or

[10] *1999 Constitution of the Federal Republic of Nigeria (as amended).*
[11] *Ibid.*
[12] *Ibid.*

other communities are not subjected to. The practice also accords privileges or advantages to citizens of Nigeria in the same community or other communities as those classified as *Osu*, whilst denying this class of persons such privileges or advantages. Thus, the practice of the caste system subjects them to a minority, vulnerable, and disadvantaged group in flagrant violation of the express provisions of the Constitution, which is the supreme law of the land.

The Nigerian Constitution also provides for the right to respect for the dignity of the human person to the effect that no person shall be subjected to torture or other inhuman or degrading treatment.[10] Whilst submitting that the practice of *Osu* caste system may not be subjecting the affected individuals to torture, it is my considered view that it does subject them to inhuman or degrading treatments to which other members of the community or citizens of Nigeria are not subjected to, thereby discriminating against them. The practice also violates the right of the individuals to freely assemble and associate with other persons in their communities, contrary to the express provisions of section 40 of the Constitution.[11] Thus, the *Osu* caste system breaches the human rights provisions as contained in the Nigerian Constitution and this is a matter of a serious concern, as some class of persons, who are citizens of Nigeria, are arbitrarily and discriminatorily subjected to disability and deprivation to which other citizens are not subjected to.

Having discussed the constitutional violations inherent in the practice of the caste system, this paper will now move to discuss similar violations in certain relevant regional and international human rights instruments.

2.2 Convention on the Rights of Persons with Disabilities

The *Osu* caste system also violates certain regional and international human rights treaties, including some provisions of the Convention on the Rights of Persons with Disabilities herein after referred to as CRPD. According to article 5 of the CRPD, all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.[12] State parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.[13] Also, States parties to the Convention, including Nigeria, recognize the equal right of all persons with disabilities to live in the community, with choices equal to others[14] as well as take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood, and relationships on an equal basis with others in the society.[15] As earlier submitted, the caste system subjects the class of persons classified as *Osu* to disabilities or restrictions to which other citizens of Nigeria in the same community or other communities are not subjected to. By subjecting them to disabilities or restrictions, one can rightly argue that this class of persons have been made to live with a disability. Nigeria is a State Party to the CRPD and upon ratification of the Convention, undertook to take effective and appropriate measures to eliminate discrimination against persons with disabilities on all grounds. Therefore, allowing some group of persons in a community to discriminate against this class of persons on grounds of caste, runs contrary to the express provisions of articles 5, 19, and 23 of the CRPD.

[10] See section 34(1)(a) of the 1999 Constitution.

[11] Section 40 of the Nigerian Constitution provides that 'every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interests'.

[12] See article 5(1) of the CRPD.

[13] See article 5(2) of the CRPD.

[14] See article 19 of the CRPD.

[15] See article 23 of the CRPD.

2.3 Universal Declaration of Human Rights

Article 1 of the Universal Declaration of Human Rights herein after referred to as UDHR provides that "all human beings are born free and equal in dignity and rights…" If all human beings are born free and equal in dignity and rights, where then is the place of the dichotomy inherent in the practice of *Osu* caste system, wherein a community is arbitrarily divided between the freeborn and the *Osu* (outcasts)? Are the so-called freeborn in these communities where the *Osu* caste system is practiced acting towards their kits and kins in a spirit of brotherhood as provided in article 1 of the UDHR? By feeling that they are entitled to more rights and privileges and living like first class citizens, these so-called freeborn subjects the class of persons classified as *Osu* to second class citizens, thereby making them have a natural inferiority complex as well as see themselves as deprived of equity by nature. Contrary to this, however, it must be emphasized that although human beings are born in different conditions and backgrounds, everyone is born free in equity, dignity, and rights, and everyone must learn to respect the rights of other citizens and act towards them as equal.

The UDHR also prohibits discrimination of all kinds. Article 2 provides as follows:

> "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Thus, everyone is entitled to all the rights, privileges, and freedoms provided in the Declaration irrespective of who they are, where they are, how they were born, who gave birth to them, and where they are coming from. Therefore, no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment.[16] It is my submission that classifying some individuals as *Osu* and thus subjecting them to disability or deprivations, overtly subjects them to cruel, inhuman, and degrading treatment or punishment. By the provisions of article 6 of the UDHR, "everyone has the right to recognition everywhere as a person before the law, irrespective of class and status". All human beings are equal before the law and are entitled without any discrimination to equal protection of the law. They are entitled to equal protection against any discrimination and against any incitement to such discrimination.[17]

The prohibition or non-approval of inter-marriages between the freeborn and the *Osu* in the communities where the *Osu* caste system is practiced, flagrantly violates article 16 of the UDHR which provides that "men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution."[18] Also, everyone has the rights to freedom of peaceful assembly and association.[19] However, the caste system, by isolating and discriminating against a particular class of persons dubbed as *Osu*, violates their rights to freely assemble and associate with the other members of their communities.

2.4 Convention on the Elimination of All Forms of Discrimination Against Women

The practice of the *Osu* caste system affects women more. As explained in pages 3 and 4 above, the inter-marriage prohibition or disapproval has more far-reaching consequences on the part of women than it has on their male counterparts. Many women of marriageable age are rendered unmarriageable and kept permanently single because of the circumstances of their birth as coming from the *Osu* background. The intersection of being a woman and a person classified as *Osu*, subject women to more disability and deprivation than their male counterparts. This violates certain

[16] See article 5 of the UDHR.
[17] See article 7 of the UDHR.
[18] See article 16 of the UDHR.
[19] See article 20 of the UDHR.

provisions of the Convention on the Elimination of all Forms of Discrimination against Women herein after referred to as CEDAW, including article 2 of the Convention wherein States parties condemn discrimination against women in all its forms and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. Thus, States parties, including Nigeria, upon ratification of the Convention, undertook to "adopt appropriate legislative and other measures, including sanctions where appropriate, to prohibit all discrimination against women; to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination; to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation; to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise; to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women; and to repeal all national penal codes which constitutes discrimination against women."[20]

In addition to the above are the provisions of article 16 of the CEDAW which mandate States parties to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations as well as grant the right to women to freely choose their spouses and to enter into marriages only with their free and full consent."[21] It is obvious that Nigeria is in violation of the provisions of articles 2 and 16 of the CEDAW *vis-à-vis* the practice of the caste system, since it is yet to take any appropriate legislative or other necessary measures to modify and/or abolish the *Osu* caste system (an existing custom and practice in the South-East region of Nigeria) which subjects a certain group of persons (especially women) classified as *Osu*, to disability and deprivation, thereby constituting discrimination against women and contrary to the letters and spirit of the CEDAW. The lack of adoption of any appropriate legislative or other measures by the Nigerian Government towards abolishing or eliminating this discriminatory practice has negatively impacted the ability and chances of women (who are also classified as *Osu*) to contract marriages and found families, thereby violating the principles of equality of rights and respect for their human dignity. Thus, the influence of this culture and tradition seriously affects women's enjoyment of their fundamental human rights and freedoms.

2.5 African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights herein after referred to as ACHPR also provides that every individual is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the ACHPR without discrimination of any kind, including race, ethnic group, color, sex, language, religion, political or other opinion, national or social origin, fortune, birth, or other status.[22] The Charter also provides for the equality of every person before the law, emphasizing that every individual is entitled to the equal protection of the law.[23] Complementing article 3 of the ACHPR are the provisions of article 5 to the effect that every individual is entitled to "the right to the respect of the dignity inherent in a human being and to the recognition of his legal status". Thus, all forms of exploitation and degradation of man, including cruel, inhuman, and degrading treatment or punishment are prohibited.[24] Further, the discriminatory practice of the caste system also violates article 11 of the ACHPR which grants every person the right to assemble freely with others. Article 18(3) of the ACHPR mandates States to ensure the elimination of all forms of discrimination against

[20] See article 2 of the CEDAW.

[21] See article 16 of CEDAW.

[22] See article 2 of the ACHP.R

[23] See article 3 of the ACHPR. See also article 19 which provides that "all peoples shall be equal; they shall enjoy the same respect and shall have the same rights…

[24] See article 5 of the ACHPR.

women and the protection of the rights of women as contained in international declarations and conventions.

The practice of the caste system subjects those classified as *Osu* to cruel, inhuman, and degrading treatment or punishment as they are not duly treated as human beings by those who see themselves as the freeborn. This erodes the respect for their human dignity, equality before the law, and equal protection of the law, as well as the recognition of their legal status as human beings, with equal rights, privileges, and obligations. Such treatment or punishment becomes more discriminatory and degrading when meted to women on the basis of their sex and social origin or status.

2.6 International Covenant on Civil and Political Rights

By virtue of article 2 of the International Covenant on Civil and Political Rights herein after referred to as ICCPR, States Parties, including Nigeria, upon ratification of the ICCPR, undertook "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[25] Thus, where not already provided for by existing legislative or other measures, a State Party to the Convention shall take necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights.[26] Further, article 2(3) provides that a State Party to the Covenant shall "ensure that any person whose rights or freedoms are violated shall have an effective remedy and that any person claiming such a remedy shall have his right determined by a competent judicial, administrative, or legislative authority".[27] Article 26 of the ICCPR provides that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". The article further prohibits any discrimination and guarantees to all peoples, equal and effective protection against discrimination on any grounds, including national or social origin, birth, or other status.

This group of persons from the South-East region of Nigeria classified as *Osu* are individuals within the territory, and subject to the jurisdiction, of Nigeria, a State Party to the ICCPR. Therefore, Nigeria has a duty to ensure that their rights to the dignity of their human persons, recognition as persons, equality before the law, and equal protection of the law, are not discriminated against by any person or group of persons within its territory and/or subject to its jurisdiction, on any grounds, including national or social origin, circumstances of birth, or other status or considerations. Where there is distinction of any kind affecting the enjoyment of the human rights and fundamental freedoms which inhere in them, Nigeria is under an obligation to adopt such necessary legislative or other measures to give effect to the enjoyment of the rights and to ensure that these individuals have effective remedy before competent judicial, administrative, or legislative authorities. This may include modifying existing law(s) or enacting new law(s) that will guarantee full and unimpeded enjoyment of these rights and/or criminalizing the practice of the caste system, thereby giving the authorities in Nigeria the power to arrest, prosecute, and/or convict any person who commits the offence of stigmatizing another person or group of persons by classifying them as *Osu*.

Like other regional and international human rights instruments, the ICCPR also prohibits the subjection of any person to torture or cruel, inhuman, or degrading treatment or punishment.[28] Further, article 23 of the ICCPR recognizes the right of men and women of marriageable age to marry (with their full and free consent) and to found a family.[29] Thus, the prohibition or non-approval of marriages with a particular group of persons because some members of their community classify them as *Osu*, flagrantly violates article 23 of the ICCPR which recognizes the right of men and

[25] See article 2(1) of the ICCPR.
[26] See article 2(2) of the ICCPR.
[27] See article 2(3)(a)-(c) of the ICCPR.
[28] See article 7 of the ICCPR.
[29] See article 23(2) and (3) of the ICCPR.

women of marriageable age to marry and to found a home. It also violates article 7 of the ICCPR as the discrimination and stigmatization suffered by this class of persons subjects them to cruel, inhuman, and degrading treatment or punishment.

2.7 International Convention on the Elimination of All Forms of Racial Discrimination

The *Osu* caste system is a form and manifestation of racial discrimination and, thus, runs contrary to the core principles of dignity and equality inherent in all human beings as enshrined in the Charter of the United Nations and other national, regional, and international human rights instruments. The practice does not promote nor encourage respect for and observance of human rights and fundamental freedoms for all in the communities where it is practiced. Instead, it operates on a doctrine of superiority of the *Diala* class over the *Osu* class based on some sort of racial discrimination. The doctrine of superiority inherent in the caste system is "scientifically false, morally condemnable, socially unjust and dangerous, and theoretically or practically unjustifiable".[30] Therefore, the practice violates the provisions of the International Convention on the Elimination of All Form of Racial Discrimination (ICERD), including article 1 of the Convention which defines racial discrimination as "any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms, in the political, economic, social, cultural, or any other field of public life".

By virtue of article 4 of the ICERD, all propaganda and organizations which are based on the ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, are condemned and prohibited, and States Parties, including Nigeria, are obliged to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination. To this end, therefore, States Parties are mandated to make it an offence punishable by law of "all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and all acts of violence or incitement to such acts against any race or group of persons".[31] States Parties to the Convention, including Nigeria, are also obliged to prohibit and eliminate racial discrimination in all its forms, including the discriminatory caste system, and to guarantee the rights of everyone, without distinction, to equality before the law, in the enjoyment of civil rights, including the right to marriage and choice of a spouse and the right to freedom of peaceful assembly and association, as well as in the enjoyment of economic, social, and cultural rights, including the right to equal participation in cultural activities.[32]

Article 2 of the ICERD condemns and prohibits racial discrimination and States Parties undertook "to pursue by all appropriate means, a policy of eliminating racial discrimination in all its forms and promoting understanding among all". Thus, States Parties shall prohibit and bring to an end, by all appropriate means, including through legislation, racial discrimination in all its forms, by any persons, groups, or organizations.[33] Where, therefore, any persons or group of persons have suffered any form of racial discrimination, article 6 of the ICERD guarantees the right to seek remedy and just and adequate reparations for any damage suffered, and States Parties are mandated to ensure effective protection and remedy to anyone within their jurisdictions through competent national tribunals and other public institutions, including competent courts of law, against any acts of racial discrimination which violate their human rights and fundamental freedoms.

[30] See Human Rights Watch, "Caste Discrimination: A Global Concern", A Report by the Human Rights Watch for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, which took place in Durban, South Africa, in September 2001, accessible at https://www.hrw.org/report/2001/08/29/caste-discrimination/global-concern. Accessed 02/08/2024

[31] See article 4(a) of the ICERD.

[32] See article 5 of the ICERD.

[33] See article 2 of the ICERD.

3.0 Conclusion and Recommendations

The continued practice of the *Osu* caste system in the South-East region of Nigeria is gravely discriminatory, illegal in all its forms, and runs contrary to the core principles of dignity of human person and equality of persons inherent in all human beings as enshrined in the Charter of the United Nations and Chapter IV of the Nigerian Constitution, as well as other national, regional, and international human rights instruments. The practice subjects some group of persons unfairly classified as *Osu* to disability and deprivation contrary to the express provisions of *section 42(2) of the Nigerian Constitution* which provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of their birth. Thus, the caste system flagrantly violates the provisions of the Nigerian Constitution and other national, regional, and international human rights instruments.

Nigerian authorities should, therefore, act to uphold their own constitutional principles and international and regional treaty obligations and work towards the full enjoyment of rights by all citizens without discrimination and regardless of caste or descent. Accordingly, the Nigerian Government, as a signatory and State Party to the afore-mentioned international and regional human rights treaties, should, as a matter of necessity, take urgent positive measures to eradicate the practice.

To this end, the author hereby recommends as follows:

3.1 That the Nigerian Government should, as undertaken in article 4(a) of the ICERD and other human rights instruments, take the necessary legislative measures towards amending its existing criminal laws or enacting new ones, criminalizing the practice of *Osu* caste system by making it an offence punishable by law.

3.2 That the government should also adequately sensitize and equip the Police and other law enforcement agencies to ensure prompt response, arrest, and prosecution of offenders to serve as deterrence to others. When offenders are religiously dealt with in accordance with the law(s) criminalizing the practice, it will progressively work towards eliminating the obnoxious, cruel, inhuman, degrading, and discriminatory treatment targeted against a particular class of persons because of their social origin, circumstances of birth, or descent.

3.3 That the authorities in Nigeria should fully implement the provisions of Chapter IV of the Nigerian Constitution relating to the protection of fundamental human rights of citizens as well as those of the ICERD, ICCPR, CEDAW, UDHR, ACHPR, CRPD, and other relevant regional and international human rights treaties and ensure that the rights of these disadvantaged and vulnerable persons are, at all times, safeguarded, by guaranteeing them the right to seek effective remedy and just and adequate reparations for any damage suffered against any acts of discrimination that violate their human rights and fundamental freedoms. All caste-based discrimination against marginalized, vulnerable, or disadvantaged populations, including those classified as *Osu* in the South-East region of Nigeria, should be explicitly addressed and prohibited.

3.4 That the Nigerian authorities should immediately comply with the provisions of these treaties by adopting all necessary legislative, administrative, and other measures aimed at explicitly acknowledging that the class of persons classified as *Osu* are being subjected to discrimination and abuse on grounds of their origin or descent, and work towards the immediate eradication of the repugnant practice.

3.5 That as recommended by the Human Rights Watch,[34] the Nigerian Government should allocate adequate funds for programs for the socio-economic and educational support of the communities or population that have faced discrimination on the basis of caste or descent as well as launch public awareness campaigns regarding legal prohibition on caste system and explaining what actions are legally prohibited and remedies available to victims of caste discrimination and abuse. It should also ensure greater participation of the affected communities and population in key institutions in the administration of justice, including the Police and the judiciary.

[34] See Human Rights Watch, "Caste Discrimination: A Global Concern", A Report by the Human Rights Watch for the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, which took place in Durban, South Africa, in September 2001, accessible at https://www.hrw.org/report/2001/08/29/caste-discrimination/global-concern. Accessed 08/08/2024.

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THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL IN PROMOTING PEACE AND SECURITY IN INTERNATIONAL LAW

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Abstract
The United Nations Security Council (UNSC) was set up as an arm of the United Nations (UN) with the mandate to promote peace and security between countries in the world involved in one type of dispute or war, and the others. However, the UNSC has played a major role in promoting international peace and security under international law, even though it is often criticised for how well it does this. It is important to remember that the international system and the laws it operates under have also had problems. For independent states, the UNSC can only moderate state behaviours but cannot at all times control its operations perfectly, and the national interest of P5, which often reflects in their use of veto power, remains a challenge to the council's efficiency. This research is aimed at exploring the role of the UNSC in peace and security promotion under international law. The study adopted a doctrinal research methodology for interrogating the existing legal structures available for the UNSC to see how well it has played its role under its mandate. Findings from the study revealed both positive and negative strides. For example, the P5 has the power to veto UNSC decisions, which can be problematic. The study concluded that although there have been challenges in some cases, the UNSC has, to a large extent, executed its mandate in the maintenance of international peace and security under the international legal framework available; thus, the argument that the UNSC is completely irrelevant does not hold. The study recommends that major reforms be introduced to ensure effective administration of the Council's functions. These include that international laws guiding the operations of the UNSC should be encouraged not only in letters of the law but also in practice to achieve the main purpose for which it was created.

Keywords: International Law, Peace, Security, United Nations, United Nations Security Council

1.0. Introduction

The United Nations (UN) was officially formed on October 24, 1945, by a group of people representing about 50 nation-states. The UN Charter, completed and signed in San Francisco at the same time, was the cardinal instrument of the newly formed body. [1] The UN's founding mission was to provide a platform for nations to collectively pursue, promote, and maintain international peace and security. [2] The UN Security Council (UNSC), one of the UN's six principal organs, [3] was also formed at the same time as the UN and charged with the responsibility of maintaining international peace and security. [4] The UNSC's structure was reflective of current events at the time of its formation. The UN Charter initially provided for a total of 11 members of the UNSC, five of whom were permanent and six to be non-permanent. The Permanent Members (P5) represented the great

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[1] The 1945 San Francisco Conference and the Creation of the United Nations <https://www.nationalww2museum.org/war/articles/1945-san-francisco-conference-and-creation-united-nations>. Accessed 1st May 2024

[2] Art 1 of the UN Charter (1945).

[3] *Ibid.,* Art 7.

[4] *Ibid.,* Art 24.

powers that had contributed much to the end of World War Two (WWII), while the remaining members were elected from countries in different geographical regions of the world.

The UNSC currently comprises the P5, who wield Veto Power, and ten non-permanent members elected for a term of two years.[5] Any action taken by the UNSC has to receive not less than nine (9) votes,[6] but substantive matters, as opposed to procedural matters, have to pass without a P5 (China, France, the Soviet Union, now Russia, the United Kingdom and the United States of America) member exercising the veto.[7] An abstention by any member of the P5 does not constitute a veto.[8] The UN Charter specifically mandates the UNSC to handle activities aimed at the promotion of peace and security internationally,[9] and any decision in that respect represents and is binding to the entire UN organization.[10] The core of the UNSC model lay in the great power consensus between the P5 and the other members of the UNSC and the significance of that unity to the promotion of peace and security.[11] The Veto power structure confers on the P5 members of the UNSC the right to obstruct through a single vote any resolution it deems not appropriate to the promotion of international peace and security. The Charter does not explicitly mention the veto, except to affirm that any substantive matters brought before the UNSC can only be passed by affirmative votes of nine members, including by concurring votes of the P5.[12] The members of the UN's P5 were arguably the most powerful military state at the time of the formation of the UN.

The US played a key role in the initial period of talks held at Dumbarton Oaks and would,[13] together with China, the Soviet Union, Britain, and France,[14]. impose the veto and permanent membership to the five members of the UNSC.[15]

2.0. The UN Security Council

Kennedy[16] and the United Nations Foundation[17] recorded that the victors who had invested much in ensuring an end to WW II and an establishment of world peace were – China, France, the USSR, the UK and the US. These countries, known as the Great Victors or Great Powers, were seen as responsible for containing an overly ambitious Germany in its quest for world domination. More than any other country in the world, this group had contributed the most in terms of military strength, financial support and diplomacy – to ending the war. With the leadership of the Great Powers and the support and agreement of the war allies, this new order was born, and the floundering and ineffective League of Nations gave way to a new and promising UN with the following purpose:[18]

a. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of

[5] Art 23 (1) of the UN Charter (1945).

[6] G Weiss, et al., The *United Nations and Changing World Politics (*3rd ed.) (Colorado: West view Press, 2007)

[7] P Kennedy, *The parliament of man: The past, present, and future of the United Nations*. (New York: Vintage Books, 2006).

[8] F Ochieng, *An Assessment of the United Nations Security Council in Maintenance of International Peace and Security. University of Nairobi Collections* (2012) < http://hdl.handle.net/11295/95391 > Accessed 2nd May 2024.

[9] Art 24 of the UN Charter (1945)

[10] United Nations Security Council, 2013

[11] *Ibid*, at article 27

[12] *Ibid*

[13] A Bennet, *International Organizations: Principles and Issues (*New Jersey: Prentice Hall, 1977).

[14] P Gordon, *The Evolution of International Human Rights* (2nd Ed) (Pennsylvania: Pennsylvania University Press, 2003)

[15] Hiscocks, *The Security Council*. (London: Longman Publishers,1973)

[16] P Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations*. (New York: Vintage Books, 2006).

[17] United Nations Foundations. *The UN Security Council* (2015). <http://www.unfoundation.org/what-we-do/issues/united-nations/theun-security-council.html> Accessed 10th May 2024

[18] Art 1 (UN Charter, 1945).

acts of aggression or other breaches of the peace, and to bring about peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

b. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace;
c. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
d. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

The UNSC is the globe's final decision-maker on issues pertaining to international peace and security. Though one of the smaller organs of the UN, it wields the most power and influence. Unlike all the other UN organs that can only make recommendations to UN member states, the UNSC is the only organ that can force binding obligations on members. Kennedy[19] notes that to appease those who had contributed much to quashing Adolf Hitler, Nazi Germany and Japan's aspirations, it was agreed the Great Powers would maintain permanent status on the UNSC. Indeed, at the time, this appeared to make the most sense. These five were the most powerful nations at the time. They had the military might, tactics and deep financial pockets, and they had invested much to ensure global peace and security. With their permanent member status in the UNSC, the Great Powers came to be known as the P5.[20] The UNSC began operations with 11 member states comprising of P5 and six non-permanent members, and it was changed to ten in 1965, making the UNSC's membership reach 15.

2.1 UNSC Mandate

The UN Charter, in Chapters V, VI, VII and VIII, describe the purpose, functions, operations and procedures of the UNSC. Together with the General Assembly, the UNSC is responsible for electing judges to the International Court of Justice. In addition, as designated in the UN Charter, the UNSC has primary responsibility for the maintenance of international peace and security and has the authority to intervene in and settle disputes without prejudice between member states or non-member states that choose to bring their matters before the organ. The UNSC is made up of 15 members who take monthly turns to preside over the affairs of the organ.[21] It is responsible for peacekeeping, as mandated in Chapter V of the UN Charter. It can prevent threats to peace or aggression by recommending measures such as mediation and economic and military sanctions. Regional arrangements like NATO and ECO-MOG can be used to enforce military action which all UN member states must accept UNSC decisions.[22] The UNSC treats each crisis separately, taking issues and circumstances into account before making a decision about how best to respond to threats to peace. According to Okochi, the UNSC has several options available to it and reaches a decision after considering a range of issues, including the existence of a ceasefire, and the safety and security of UN personnel, to mention a few. In addition, the UNSC must adopt its resolution before a peacekeeping operation can be established. It monitors such operations and may amend mandates around these mandates as it deems necessary.[23] According to Sarooshi[24], the peacekeeping operations

[19] *Ibid* .
[20] (n 8).
[21] (n 7).
[22] *Ibid* .
[23] (n 8).
[24] D Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII powers*. (Oxford: Oxford University Press, 2000)

are only dispatched to a crisis area following a ceasefire. Furthermore, Chapter VII of the UN Charter also grants the UNSC the authority to impose other measures in a bid to maintain peace and security; this includes economic and military sanctions.[25]

2.2 The UNSC: 1945 to Present

The UNSC's non-permanent membership structure is set up to represent different geographical regions of the world. These different regions are responsible for providing ten members to make up the two-year temporary membership of the UNSC, as follows:

a. The African Group - supplies three members.
b. The Asian Group - supplies two members.
c. The Eastern European Group - supplies one member.
d. Latin American and Caribbean Group - supplies two members.
e. The Western European and Others Group – supplies two members.

Ten representatives from the five groups above serve staggered two-year terms, with five completing their terms every year. In addition, all members take monthly turns to preside over the UNSC, rotating in alphabetical order of their names. The UNSC is permanently resident in the UN headquarters in New York, and its member countries must have representatives present at all times should the need arise for urgent or emergency meetings or responses to world events.

2.3 UNSC Voting

The UNSC reaches decisions through voting. On this, Article 27 of the UN Charter records that:

a. Each member of the UNSC shall have one vote.
b. Decisions of the UNSC on procedural matters shall be made by an affirmative vote of nine members.
c. Decisions of the UNSC on all other matters shall be made by an affirmative vote of nine members, including the concurring votes of the permanent members, provided that, in decisions under Chapter VI and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting[26].

As illustrated above, the entire UNSC can reach decisions on procedural matters by a majority of votes, in this case, nine out of 15. All other matters, or substantive matters, must also have a majority of nine votes; however, each of the P5 must also cast a positive or 'yes' vote for that resolution to be carried. To this end, Kennedy[27] notes, there is no clear-cut definition of what constitutes procedural matters, and determining this is itself considered a substantive matter, needing full P5 agreement. He also records that the Charter was deliberately crafted this way to encourage the P5, particularly the US and the USSR (later Russia), to remain in the world body, for it was considered *"*better to have the larger nations inside the UN system rather than on the outside*".*[28] Indeed, as earlier mentioned, one of the weaknesses of the League of Nations was that it lacked membership of some strong powers.

Though skilfully and aesthetically written, the language in Article 27(3) empowers each of the P5 to stop decisions or resolutions they are in disagreement with by casting a 'no' vote or veto on such decisions. According to Mahmood,[29] it was the USSR which initially pushed for the P5 to have an unrestrained right to veto resolutions of the UNSC. The Soviet Union had been expelled

[25] *Ibid.*
[26] Art. 27 (UN Charter, 1945).
[27] (n. 5).
[28] *Ibid, at pg. 54.*
[29] F Mahmood, Power versus the sovereign equality of states: The veto, the P-5 and United Nations Security Council reforms*. Perceptions (2013)18*(4), 117.

from the League of Nations in 1939 after its attack on Finland and likely wanted to ensure a substantive decision could not be taken against it in this new world body. While several countries opposed this, the P5 made it clear that the UN could not exist without them having this veto power, as they were the most suitable to guarantee future international peace and stability.[30] The request was ultimately approved, and with their status, the P5 obtained the right to disallow any resolution from the UN that it so desired – in the interest of world peace. Thus, the leaders of the allied nations, which had come together to champion the war against the Axis Powers, transformed their alliance into a permanent institution in which they essentially maintained leadership.

Since the UN's inception, numerous decisions have been disallowed through the use of the P5's veto, causing the UN and other UNSC members to seek alternative measures. The UN's official record of vetoes from 1946 to 2016 shows 194 public matters disallowed by one or more members of the P5. As of October 2022, there have been 2656 UNSC resolutions. Some members, such as the USSR (later Russian Federation) and the US, have been more vigilant in using the veto. The USSR was largely responsible for the use of the veto in the first two decades, with a famous no vote on 16 different matters in December 1955. Kennedy notes that the US did not exercise their right to veto matters in the first 25 years of the UNSC's existence, but suggests that most matters went in its favor.

3.0. The Role of UNSC under International Law

The legal term international law, also referred to as Laws of Nations, was first coined by Jeremy Bentham in 1780. It is a body of rules that governs the relationship between states. Every country is referred to as a 'state' in International Law. It encompasses a set of rules, agreements and treaties that are binding between countries. Countries come together to make binding rules that they believe will benefit the citizens. It is an independent system of law existing outside the legal framework of a particular state.[31] In *Queen v. Keyn*[32] (1876), Lord Coleridge, C.J., defined international law as "the law of nations is that collection of usages which civilized States have agreed to observe in their dealings with one another. The above definitions have provided a clue on what the term international law is, and it is, therefore, seen that significantly the existence of international law is the result of increased interstate engagement. It mainly aims to promote international peace and security among different states, which is the main interest of this work. Specifically, it helps in:

a. promotion of friendly relations among the member states (members of the international community, for example, the United Nations),
b. providing for basic humanitarian rights,
c. to solve international problems through international cooperation,
d. to refrain the state from using threat or force over the territory of any other state to provide for the right to self-determination to people, and
e. to use peaceful methods to settle international disputes are few of its functions.[33]

3.1 UNSC'S Role in the Maintenance of International Peace During the Cold War

The cold war rivalries' activities determined largely the operation of the UNSC. Majorly, there was the issue of the Soviet Union boycotting the UNSC in reaction to the UN's recognition of Taiwan as the legitimate government of China, seriously affecting the legitimacy of UNSC decisions during the Korean War. An attempt by the Soviet Union to bring a resolution to recognize China in the UNSC faced stiff opposition from the US, who promised to veto such a resolution. The Soviet Union thus

[30] B. M Russett, B O'Neill, & J. S Sutterlin, *Breaking the restructuring logjam.* In B. Russett (Ed.), *The Once and Future Security Council. (*New York: St Martin's Press, 1997) (pp. X – Y).

[31] International law- meaning and Definitions (2020)<https://www.google.com/amp/s/blog.ipleaders.in/international-law-meaning-definitions/%3famp=1> Accessed 7th May 2024.

[32] (1876)2 Ex. D. 63, 153, 154.

[33] (n 8).

boycotted the UNSC in protest and in support of China, whose communist ideology was closer to the Soviet Union.[34] Despite the challenges, the UNSC was involved in four major international peace and security crises. These included Palestine (1948), Korea (1950), Suez in 1956, and Congo in 1962. After Israel declared independence in 1948, war broke out between Israel and her neighbours Jordan, Egypt, Lebanon, and Syria.[35] The UNSC acting within its mandate and under Article VII ordered a ceasefire and then created an observer team, the United Nations Truce Supervision Organization (UNTSO), to supervise the ceasefire.[36] In 1950 the UNSC authorized action to repel the armed attack and restore peace and security during the Korean War between North and South Korea. After World War II, North Korea became allied with the Soviet Union, while South Korea was allied with the US. Forces from North Korea attacked South Korea. The UNSC passed a resolution declaring that North Korea had committed a breach of peace, thereby legitimizing US involvement to deter North Korean forces from South Korea. The UN General Assembly voted through the Uniting for Peace resolution to offer support for South Korea with authorization from the United Nations.[37]

However, the Soviet Union was not in agreement with the rest of the UNSC members regarding military action against North Korea; in fact, at the time, the Soviet Union was absconding from its role and position in the UNSC. The uniting for peace resolution by the UN General Assembly was used in this instance by passing the UNSC and authorizing UN action[38]. The seventh Report of the Commission to Study the Organization of Peace, issued in July 1951, concluded that the enforcement action undertaken by the UN in Korea was historical in the sense that it was the first major collective action decision taken by a community of states to deter aggression. In 1961 the UNSC also adopted a resolution[39] to take all appropriate measures to prevent war in the Congo. This set the stage for the deployment of UN peacekeeping operations in the Congo. The peacekeeping operations, however, faced serious challenges as superpower rivalries manifested in the country. In response to the 1973 Arab-Israeli war, the UN created the United Nations Emergency Force II (UNEF II) with a mandate to keep the warring parties apart, especially Egypt and Israel.[40] Its mandate was renewed by the UNSC after the 1979 truce to establish a demilitarized zone and supervise other provisions of the truce.[41] The UNSC also acted decisively during the Iran-Iraq war in 1987- 1988 by imposing economic penalties on Iran for continuing the war[42]. The threat of sanctions helped force Ayatollah Khomeini to finally end the war. By the early 1990s, the UNSC had become effective in mobilizing the world community to repel aggression and maintain peace.[43]

3.2 UNSC'S Role in the Maintenance of International Peace after the Cold War Years

The end of the Cold War brought an era of a more proactive role by the UNSC in addressing intra-state conflict, with interventions in Haiti, Sierra Leone, and Somalia. Despite the right to national sovereignty and self-determination under Article 2(7) of the Charter of the UN prohibiting the UN from intervening in matters of "domestic jurisdiction of any state**"**, Chapter VII allows the UNSC to intervene if it sees any situation to be a 'threat to the peace, breach of the peace, or act of

[34] F Ochieng, 'An Assessment of the United Nations Security Council in Maintenance of International Peace and Security' *The University of Nairobi Collections* (2012) < http://hdl.handle.net/11295/95391 > accessed 8th May 2024.

[35] G Weiss, et al*., The United Nations and Changing World Politics (*3rd ed.) (Colorado: West view Press, 2007)

[36] C. A Stavropoulos. 'The practice of voluntary abstentions by permanent members of the Security Council under Article 27, Paragraph 3, of the Charter of the United Nations' *American Journal of International Law*, (1967) 61(3), 737-752.

[37] Nye Jr, J. S. Soft power and American foreign policy. Political science quarterly, (2004)119(2), 255-270.

[38] N A Palmer, D D Perkins, & Q Xu, 'Social capital and community participation among migrant workers in China' *Journal of Community Psychology* [2011] (39) (1), 89-105.

[39] Resolution 161 A.

[40] (n 8).

[41] *Ibid.*

[42] *Ibid.*

[43] *Ibid.*

aggression; the UNSC uses this exception to Article 2(7) to justify inventions that could threaten international peace and security if they escalate beyond national borders.[44] Sovereignty no longer exclusively protects states from foreign intervention, especially where the welfare of the citizens is at stake. In 2005 at the UN World Summit, member states formally accepted the responsibility of states to protect their citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity. If a state fails in respect to this role, then the UN has a formal responsibility to intervene on humanitarian grounds.[45] Chapter VII of the UN Charter grants special powers to the UNSC to enforce its mandate of maintaining international peace and security, such as economic sanctions, arms embargoes, financial sanctions, travel bans, and collective military actions, including the power to deploy and direct peacekeeping forces. Before the application of this power, the UNSC can attempt alternative steps under Article 34 of the UN charter. This includes: calling for ceasefires, requesting discussions to resolve the issues leading to conflict, and creating investigations into disputes or situations that may disrupt international peace. Still in Iraq, the UNSC adopted several resolutions key including them resolution 1051 of 1996, which set up a mechanism for Iraqi imports and exports relating to weapons of mass destruction. In 1999 the council adopted resolution 1284, creating a new inspections mechanism: the U.N. Monitoring, Verification and Inspection Commission (UNMOVIC).[46]

During this period, the UNSC adopted nearly 185 resolutions regarding peacekeeping missions in conflict areas. The UNSC also enforced sanctions against the government of Iraq in 1990, Yugoslavia in 1991, Libya in 1992, Haiti in 1993, UNITA in Angola in 1993, and Sierra Leone in October 1997. From 1990-96, the UNSC greatly increased its resort to economic sanctions as a means to compel compliance with its decisions, sometimes accompanied by naval blockades, as was the case for Haiti, Iraq, and former Yugoslavia.[47] It is interesting to know that even with the developments and increased consensus after the cold war, the P5 still protected their national interests and aspirations within the UNSC. This has to some extent, hindered the ability of the UNSC to execute its mandate. Where a particular humanitarian crisis falls within the national interests of P5 members or members, they are likely to withhold their support or even threaten to veto unless their national interests are withheld. For instance, Russia and later China obstructed the resolution calling for peace operations in Haiti.[48] Russia wanted UN endorsement of its intervention in Georgia in 1994. In the 1990s, Russia was uneasy about external interference in Eastern Europe and refused to recognize any form of humanitarian intervention in the evolving crisis in Kosovo. Russia was prepared to veto any resolution of the UNSC that would authorize military intervention. It took the unilateral intervention of NATO amidst mounting humanitarian crisis, acting without authorization of the UNSC but with informal support from the UN for action.[49]

In recent times, there have been both consensus and division. In September 2013, the UNSC unanimously adopted a binding resolution on getting rid of Syria's chemical weapons. The vote came amidst accusations from human rights groups and international agencies that work against the proliferation of chemical weapons who accused Syria of using chemical weapons against its civilians. There are today, 12 active peacekeeping operations authorized by the council.[50] While during the

[44] S C Greitens, & T Farrell, 'Humanitarian Intervention and Peace Operations' J Baylis, J Wirtz, & S C Gray, *Strategy in the Contemporary World: An Introduction to Strategic Studies*, (2013)173-194.

[45] E Massingham, Military intervention for humanitarian Purposes: Does the Responsibility to Protect Doctrine Advance the Legality of the Use of Force for Humanitarian Ends? *International Review of the Red Cross*, (2009) 91(876), 803-831.

[46] Brown, C. S. Turkey in the Gulf Wars of 1991 and 2003. *Turkish Studies*, (2007) 8(1), 85-119.

[47] Art 1 (UN Charter, 1945).

[48] (n 8).

[49] SC Res.1160, 1199 and 1203.

[50] United Nations Department of Peace Keeping Operations Report, 2022 <https://peacekeeping.un.org/en> accessed 9th May, 2024.

cold war years, the operations were limited due to cold war rivalry, the end of the cold war saw an increase in the number of actions taken by the council. However, there have been failures regarding the maintenance of international peace and security key among them Somalia, Rwanda, and the Balkan Region.[51] International peace has expanded so much in recent times to include the protection of citizens under the responsibility to protect, a concept that was unanimously adopted by UN member states during the UN World Summit in 2005. The UNSC has branded certain violations of human rights as a threat to international peace and security. In the next section, the study looks at R2P as a UN mandate in international peace and security.

4.0. Challenges Facing UNSC

4.1. The Challenge of the Veto Power

The power of the P5 members of the UNSC (China, France, Russia, the UK, and the United States) to veto any "substantive" resolution constitutes the UNSC veto power. The above members also constitute the nuclear-weapon states (NWS) under the terms of the Treaty on the Non-Proliferation of nuclear weapons. However, it is paramount to note that a P5 member's abstention or absence does not prevent a draft resolution from being adopted.[52] The P5's veto power is controversial. In fact, critics attribute the undemocratic nature of the UNSC and its efficiency in addressing war crimes and crimes against humanity to the veto power structure of the UNSC P5.[53]

For this chapter, the challenges of the veto power of the UNSC will be considered, and also the inability of the UNSC to act in Syria and a few other states will be looked into. The statistics of the P5's exercise of veto power are given by Thomas G. Weiss and Giovanna Kuele in their article "The Veto: Problems and Prospects" state as follows:

> There have been a total of 190 resolutions vetoed since the UNSC's first meeting on 17 January 1946 – 162 through 1989 and 28 since.[54] In fact, between 1946 and 1956, the Union of Soviet Socialist Republics (USSR) vetoed 50 resolutions before other permanent members used the privilege. One hundred sixty-one resolutions were by a single member of the P5, but there were 16 double vetoes and 13 triple ones. Diplomatic protocol and political practicalities make these numbers lower than they otherwise might have been because a threatened veto often means that other states return to the drawing boards rather than pushing immediately for a showdown. For instance, over the last three years, there have been only three vetoes over Syria (all double-vetoes by Russia and China) despite the real-time horror of 150,000 deaths and 9 million people forcibly displaced. Paralysis pervades despite overwhelming revulsion categorically expressed in the General Assembly and the Human Rights Council.[55]

According to Emma McClean and Aidan Hehir in an article titled "Ukraine: UN takes a step towards addressing 'veto problem' which stopped it condemning Russia".

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[51] *Ibid*

[52] Engelhardt, Hanns "Das Vetorecht im Sicherheitsrat der Vereinten Nationen". Archiv des Völkerrechts. (1963). 10 (4): 377–415. ISSN 0003-892X. JSTOR 40796759.

[53] Aisha S Maikudi, The United Nations Security Council's Permanent Five Veto Power: Time to Reform? (2018) *Abuja Journal of Public and International Law*, 88.

[54] T G Weiss, and G Kuele, 'The Veto: Problems and Prospects'(2014).

[55] Dag Hammarskjöld Library, 'Security Council-Veto List,' <http://www.un.org/depts/dhl/resguide/scact_veto_en.shtml> Accessed 12th May 2024.

> The problem of the veto has been a bleeding sore for the UN, effectively dashing hopes and expectations of using the United Nations to maintain a truly collective security. While France and the UK have not formally used their veto since 1989, Russia and the US continue to deploy it and China, having only used it once during the Cold War, has used it 13 times since 1990.[56]

The Syrian conflict emerged out of the Arab Spring in the Middle East. The demonstrations against President Bashar Al Assad's government have escalated to a level that threatens the region at large because the Assad regime became intolerant to protests and resolved to use military force against civilians. A rebel group thus emerged, and the war in Syria has since escalated and poses a serious threat to regional stability, represents a massive and growing humanitarian crisis, and has provedto be an extremely divisive issue within the council itself.[57] John Heieck[59] has argued that there is a need to look at the obligations of individual P5 members, not only the obligations of the UNSC as an organ of the UN. He states that Russia and China have breached their duty to prevent war crimes (which he calls a *jus cogens norm*) by exercising the veto in Syria. Webb went on to add that, in the absence of a clear legal obligation on the UNSC to act—and in the absence of its action in Syria—certain States have been taking their measures.[58] In September 2020, The Netherlands announced its decision to hold Syria responsible under international law for gross human rights violations and torture in particular. Its envisaged route (should bilateral negotiations fail) is the ICJ, not the UNSC, but the Dutch action is no doubt motivated by its frustration with the deadlock in the UNSC. In March 2021, Canada announced that it has requested formal negotiations under the Convention against Torture "to hold Syria accountable for the countless human rights violations it has inflicted on the Syrian people since 2011.[59]" The inability of the UNSC to effectively deal with the Syrian crisis can be attributed to the national interests of Russia and China and their use of the veto to block any such action by the UNSC. Russia has a considerable trade of arms with Syria and the government of Bashar Al Assad.[60] In 2012, Syria was due to take delivery of Russian BUK-M2E surface-to-air missile systems, Pansir-S1 armoured rocket complexes, and, according to some reports, Mig-29 fighter jets. Russia, therefore, vetoed the UNSC resolution on Syria together with China on 19th July 2012 despite an appeal from the UN for a concerted effort that would have pressured Syria owing to sanctions and possible military intervention.[61] Eleven of the members of the UNSC voted in favour of the resolution. Russia and China vetoed, and Pakistan and South Africa abstained from the voting process. Any kind of sanction or military intervention would jeopardize Russia's economic interests with Syria; this would interfere with her national interest. Moreover, Russia has also been having domestic political problems with protests for political reform and free and fair polls; in this regard,

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[56] Mclean et al., 'Ukraine: UN takes a step towards addressing 'veto problem' which stopped it condemning Russia. <https://theconversation.com/ukukukraine-un-takes-a-step-towards-addressing-veto-problem-which-stopped-it-condemning-russia-18197> Accessed 12th May 2024.

[57] Aljazeera, Inside story: United Nations, Time for Reform? (2014). <https://www.youtube.com/watch?v=1Ywr4_Sg0qg> Accessed 12th May 2024.

[59] Heieck, John. *"The P5's Duty to Prevent Genocide under Customary International Law." A Duty to Prevent Genocide.* (Edward Elgar Publishing, 2018.) 72-118.

[58] Webb, Philippa. "Deadlock or restraint? The security council veto and the use of force in Syria." *Journal of Conflict and Security Law* 19, (2014) (19) (3): 471-488.

[59] *Ibid*

[60] Syria gets Russian arms under deals signed since conflict began - Assad (Mar 2015). <https://www.reuters.com/article/uk-syria-crisis-russia-arms-idUKKBN0MQ0RI20150330> accessed 12th May 2024.

[61] United Nations News Centre, Security Council fails to adopt a resolution on Syria (2012) <http://www.un.org/apps/news/story.asp?NewsID=42513&Cr=Syria&Cr1=#.UI4pV1FROkg. accessed 12th May 2024.

Russia has been very uneasy about participating in what it considers a domestic issue of another state.[62] China has a significant bilateral trade agreements with Syria ranging back to the 1940s. While China denies being an arms supplier to Syria, there are reports of China assisting in the development of Syrian ballistic missiles. China participates commercially in Syrian oil: the China National Petroleum Company owns part of the Al-Furat oil company, Syria's main producer.[63]
Ochieng, in his paperwork titled "An assessment of the United Nations Security Council in the maintenance of international peace and security", stated that "all this is centred on the issue of interests of states and how they are using the Veto to protect their interest and in so doing limit the ability of the UN to intervene to maintain peace and security in the international system. Syria, therefore, points to challenges inherent in the veto power model and the efficacy of the UNSC's role in maintaining peace and security in the International System[64]."

4.2. UN Collective Security Regime and the threat of the P5's National Interest.

The United Nations (UN) exists for the collective approach to handling the security of its members, but there are instances where the P5 countries have acted unilaterally in pursuing their national interests without knowing that no UNSC resolution would pass against them. One such example is the US's unilateral approach to the war in Iraq in 2003, which was not sanctioned by the UNSC and greatly undermined the UN. [65] The UN was left with the responsibility of helping with humanitarian support after the war.[66]

The UNSC, under the UN Charter, is authorized to determine threats to peace, [67] breaches of peace, or acts of aggression and how to address them. This led to Resolution 660, which established the foundation for subsequent UN action against Iraq. [68] However, international scholars and jurists view the US and UK's invasion of Iraq under the claim of Chapter VII of the UN Charter without express authorization from the UNSC. [69]

The US's power within the UN, economic might, budget allocation for the UN Organization, and the power of the veto all gave it the impetus to go unilateral in Iraq. [70] The US has also conducted considerable military intervention in South America, including sending troops to the Dominican Republic, overthrowing Salvador Allende's government in Chile, leading operation urgent fury in Granada, and invaded Panama in 1989. [71] When it comes to Israel, the US has always vetoed any resolution that it perceives to be against its interest[72]. In 2011, it vetoed a UN resolution condemning all Israeli settlements established in occupied Palestinian territory since 1967 as illegal, arguing that it harmed chances for peace talks. Fourteen out of fifteen UNSC members, including four permanent members, voted in favor of the resolution. [73]

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[62] *Ibid.*
[63] *Ibid .*
[64] (n 8).
[65] EveryCRSReport.com, Iraq War: Background and Issues Overview (2003) <https://www.everycrsreport.com/reports/RL31715.html> Accessed 12th May 2024.
[66] *Ibid.*
[67] *Ibid.*
[68] Aisha Sani Maikudi, Legality of the War against Iraq: A Passing Frenzy? (2021). <https://www.researchgate.net/publication/350957437> Accessed 12th May 2024.
[69] *Ibid.*
[70] M Berdal, 'The UN Security Council: Ineffective but Indispensable,' Survival, (2003) (45) (2), 10-11 and 21-23.
[71] A History, Cold war and Coups by Proxy <https://alphahistory.com/coldwar/coups-proxy-wars/> Accessed 12th May 2024.
[72] J W Young, & J Kent, *International Relations Since 1995: A Global History* (New York: Oxford University Press, 2004).
[73] *Ibid.*

Division among veto powers has hindered finding a lasting solution to Iran's nuclear arms issue. Britain, France, the US advocate for tougher sanctions, [74] while China and Russia maintain non-interference and resist support for UNSC resolutions that could lead to military intervention. [75]

4.3. The Challenge of the Russia-Ukraine War

Responding to Russia's invasion of Ukraine, the UNSC and General Assembly have met on several occasions to discuss possible action to address the conflict's threat to international peace and security. In the process, these organs have used procedures unused in the United Nations for 40 years.[76] The UNSC has been heightened by the Russian troop buildup and invasion of Ukraine, leading to several meetings. The UNSC has the authority to adopt resolutions and instruct Member States to follow its decisions. It can call for peaceful dispute settlements and recommend actions to achieve a settlement. Chapter VII empowers the UNSC to determine peace breaches and acts of aggression, directing all UN Member States to restore international peace and security.[77] On the night of 23 to 24 February 2022, Russia launched a military offensive in Ukraine. The United Nations considers this attack to be a violation of the territorial integrity and sovereignty of Ukraine. It is contrary to the principles of the Charter of the United Nations.The United Nations General Assembly adopted, on Wednesday, 2 March, a resolution deploring the "aggression" committed by Russia against Ukraine (141 votes in favour, 5 against, and 35 abstentions).[78]

The UN Human Rights Council adopted a resolution on 4 March calling for the "swift and verifiable" withdrawal of Russian troops and Russian-backed armed groups from the entire territory of Ukraine.[79] The UN Human Rights Council decided on 5 March to urgently establish an independent international commission of inquiry following Russia's aggression against Ukraine[80]. On 16 March, the International Court of Justice ordered Russia to immediately suspend its military operations in Ukraine.[81] On Thursday, 24 March, the UN General Assembly overwhelmingly demanded civilian protection and humanitarian access in Ukraine while also criticizing Russia for creating a "dire" humanitarian situation (140 votes in favour, 5 against, and 38 abstentions).[82] On 7 April, the UN General Assembly adopted a resolution calling for Russia to be suspended from the Human Rights Council. The resolution received a two-thirds majority of those voting, minus abstentions, in the 193-member Assembly, with 93 nations voting in favour and 24 against. On 26 April 2022, the UN General Assembly adopted a new resolution calling on the P5 members of the UNSC to justify the use of the veto.[83] The UNSC adopted a statement on 6 May 2022 in which it strongly supports the Secretary-General's efforts to achieve a peaceful solution in Ukraine. The Secretary-General welcomed the fact that, for the first time, the UNSC is speaking with one voice for peace in Ukraine. On 30 September, Russia vetoed a UNSC resolution condemning the attempted annexation of Ukraine's regions.[84]

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[74] (n 8).

[75] *Ibid.*

[76] Congressional Research Service (CRS) 2022. 'United Nations Security Council and General Assembly Responses to the Russian Invasion of Ukraine.' <https://www.google.com/url?sa=t&source=web&rct=j&url=https://crsreports.congress.gov/product/pdf/IN/IN11876&ved=2ahUKEwje64uAiIb7AhUwyLsIHRvKAEg4ChAWegQIDRAB&usg=AOvVaw2qlXZyeMyT7A84Wx-7ic5L> Accessed 12th May 2024.

[77] *Ibid*

[78] *Ibid.*

[79] *Ibid.*

[80] *Ibid.*

[81] *Ibid.*

[82] *Ibid.*

[83] *Ibid.*

[84] United Nations, "The UN and the war in Ukraine: key information" (2022) <https://www.google.com/url?sa=t&source=web&rct=j&url=https://unric.org/en/the-un-and-the-war-in-

In its first unanimous action on the Ukraine war, the UNSC on Friday adopted a statement expressing "deep concern" and "strong support" for diplomatic efforts by the U.N. secretary-general to find a peaceful solution.[85] UNSC statements must be approved by all 15 of its members, and the one adopted on Friday appeared to have averted Russia's veto by referring to the conflict as "disputes" rather than "war" — a term Russia has essentially criminalized within its borders. Russia instead maintains that its invasion, large military deployments, massive shelling, and widespread airstrikes constitute only a "special military operation.[86] The UNSC might continue to address aspects of the Russian invasion and its consequences. For example, the UNSC has already met for a briefing on the humanitarian and refugee crisis in Ukraine and is to consider a resolution addressing this crisis.[87] The Assembly has completed its initial emergency special session but may resume the session to consider new developments. The United States, its allies, and the majority of the international community might act in other U.N. bodies, such as the Human Rights Council or selected U.N. specialized agencies.[88] Russia's obstruction of UNSC action has given new momentum to arguments that the veto power is ill-suited to the principles of the United Nations. Unsuccessful past proposals for reform might reemerge, calling for an end to the preeminent position the permanent UNSC members, including the United States, occupy in the United Nations. Russia's participation in UNSC meetings and votes on the crisis, and its continued participation and membership in the United Nations, could be challenged by a growing number of member states.[89]

5.0. Conclusion

The UNSC's role in maintaining international peace and security has been criticized for its limitations, particularly the overwhelming powers of the P5 members. The study recommends a complete overhaul of the structure to demystify these powers and create a more democratic UNSC. The veto power should be limited, not absolute, and a 2/3rd majority of UNSC members should dismantle any veto by the P5. The UNSC's role in maintaining global peace and security cannot be viewed from a perfect angle due to its numerous limitations. The best expectation from the UNSC is a body capable of mitigating and suppressing recurring acts that threaten global peace and security.

6.0 The study thus recommends the following:

That the UNSC can adopt other approaches, such as the involvement of regional organizations in attaining the goal of ensuring peace and security in the world.

The members of the UNSC must reflect on the philosophy behind the existence of the UN and the mandate cast on them as members of peace and security maintenance agents. This will bring forth a renewed sense of commitment towards the actualization of the goals for which the UNSC exist.

The P5 membership of the UNSC has been widely criticized for being undemocratic. This study recommends that it be reformed to accommodate other regions not covered. This will not only register a sense of belonging but will arouse the members' confidence in the operation of the UNSC.

ukraine-key-information/&ved=2ahUKEwix8Jb9_YX7AhXi_7sIHSHkB1gQFnoECAoQAQ&usg=AOvVaw3CS_mpFNjVIwNMbWVCEVkU> Accessed 12th May 2024.

[85] UN Security Council makes first statement on Ukraine 'dispute' – but doesn't call it a war (2022) <https://www.scmp.com/news/world/russia-central-asia/article/3176859/un-security-council-makes-first-statement-ukraine> Accessed 9th May 2024

[86] *Ibid.*

[87] *Ibid.*

[88] *Ibid.*

[89] UN News, Russia blocks Security Council action on Ukraine, (Feb 2022). <https://news.un.org/en/story/2022/02/1112802> Accessed 9th May 2024

This means that the veto power assigned to the P5 should be reformed. A limited approach in the exercise of the powers is best. Here two-thirds majority votes should be a threshold for the excise of veto power by the UNSC members. In the same vein, the research submits that the international legal structure that governs the UNSC should be applied without reserve when it is in the best interest of the general good. Again, the involvement of disputants in the deliberations before decisions are taken can be another effective way to address the challenges affecting the UNSC. This would go a long way in improving deliberation before a vote is taken, as the UNSC can talk to the parties directly.

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THE RULE OF LAW AND THE JUDICIARY IN MODERN DEMOCRACIES

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Abstract
The rule of law presupposes the equal subjection of all persons and authorities, irrespective of the status or class, to the dictates of the ordinary laws of the land. The judiciary plays a vital role in achieving the aims of the rule of law in modern democracies like Nigeria, to this end an independent judiciary is imperative. This research aimed at discussing the rule of law and the judiciary in modern democracies, with the objectives of finding out the challenges faced by the Nigerian judiciary in upholding the rule of law in Nigeria. The research employed doctrinal research methodology and sourced data from primary sources like the Constitution of the Federal Republic of Nigeria 1999; constitutions of United States of America and that of Ghana which were cited in comparative analysis. Also, secondary sources of data were obtained from journal articles and internet materials. The research found that the process of appointment and removal of judges in Nigeria, financing of the judiciary do not reflect with the accepted international standards and also do not accord with the principles of independence of the judiciary. The research recommended that the judiciary should be completely independent from the other arms of government in line with the doctrine of separation of powers. It went further to recommend that the process and procedure for removal and discipline of judges should be left to the judiciary disciplinary committee. Among other things, the research further recommended that the judiciary should be granted financial and budget autonomy.

Keywords: Justice, Rule of Law, Separation of Powers, Judiciary, Executive.

1.0 Introduction

Law is a system of rules created and enforced through social and or governmental institutions to regulate behaviour.[1] Laws regulate individuals or a community and ensure that there is adherence to the will of the state as duly enshrined in any nation`s constitutional law. Laws ensure the safety of a people and protect rights of persons against abuses by people, organisations and by the government itself.

The Constitution of the Federal Republic of Nigeria is the supreme law of the country and it vests in the judicial arm of government the power to interpret laws made by the legislature. Section 6 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vested judicial powers of the federal and state governments in federal and state courts respectively. Consequently, the judiciary is a system of courts that interpret and implement laws in a state. Nevertheless, the foremost function of the judiciary is to provide justice to the people whenever approached. The Nigerian judiciary as the guardian of the constitution is entrusted with the task of providing justice

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[1] See Robertson Geoffrey in 'Crimes against Humanity' (2006) 3rd ed. Penguin Books, London ISBN 978-0-14-102463-9.

to the state by exercising its powers to conduct judicial review and a transparent and proper interpretation and implementation of the laws without fear or favour.[2] It is upon this premise and foundation that the concept of rule of law is predicated and founded.

The rule of law is a constitutional concept that stipulates that the actions of governance must be done in accordance with the law.[3] It encapsulates such ideals as government according to the law, equality before the law and the independence, and autonomy of the judiciary among others. It emphasizes the supremacy of regular law over arbitrary power and or executive fiat and seeks to achieve societal orderliness and sustainable political and civil power in all sectors of any given polity.[4] This presupposes a situation where everything is done in accordance with law, thereby excluding any form of arbitrariness.[5] Waldron submits that the idea of the rule of law is that the law should stand above every powerful person and agency in the land as the authority of government should be exercised within a constraining framework of public norms. Moreover, the rule of law requires that the ordinary citizen should have access to the law, in two senses. In the first sense, the law in a society is to be promulgated prospectively as public knowledge so that people can assess its impact in advance. The second part of the rule of law is the need for legal procedures to be available to ordinary people to protect them against abuses from public and private powers. The concept assures an independent judicial structure, the accountability of government officials and the integrity of legal procedures.[6]

A certain way to enthrone the rule of law in a society is through constitutional protection of an independent judiciary, executive and legislative arms of a government widely accepted as the doctrine of separation of powers.[7] Under the doctrine, the three branches of government are distinct and separate. The powers given to each are very delicately balanced against the powers of the other two. Judicial independence in view of the separation of powers ensures that courts and Judges perform their duties free of influence or control by other governmental or private actors. A constitutional democracy thus pre-supposes a balanced system of divided or shared powers, and it is only within such a system that institutions of a state can ever hope to enjoy any measure of independence from arbitrary acts of the government. In this sense, the judiciary is independent with court autonomy and can reach decisions free from influence and direction from other arms of government. Judicial independence implies that judges are free from political pressures and influences when they reach decisions. Judges are not to be pressured by a political party, a private interest, or popular opinion in adjudication of cases or interpretation of rules. The independence of the judiciary ensures that even the common man in a society has a fair chance to make their case in court and that judges will be impartial. Such independence is essential to maintain the rule of law.

2.0 The Concept of Justice and the Common Man

A practice of a true and viable separation of powers amongst the arms of government and adherence to the rule of law essentially establishes justice in a society. But what is the nature of justice? Legal and political philosophers have attempted to provide the answer. Perelman for instance, submitted that justice means that the same treatment should be given to persons who have equal merit. He notes that to be just is to treat equally beings that form part of the same essential category.[8] According to

[2]See Hon Justice O.O Goodluck 'The Judiciary as a Pivot for Good Governance' (2020) Nigerian Judicial Institute 2021/12.
[3]Daniel Cole, Rule of Law, 'Definition, History and Examples' <https://study.com/learn/lesson/what-is-rule-of-law-concept-examples.html>. Accessed 20 May 2024.
[4]B Nwabueze, *The Judiciary as the Third Estate of the Realm* (Gold Press Limited, 2007) 3.
[5]ibid.
[6]J Waldron, *The Rule of Law and the Measure of Property*, (Cambridge: Cambridge University Press, 2010) 6 – 7.
[7]See sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria 1999(as amended) establishing the powers of the Legislature, Executive and Judiciary respectively.
[8] See Perelman on Justice by David D. Raphael 'Revue Internationale de Philosophie' (1979) Essais en homage a Chaim Perelman, vol.33, No. 127/128, 260-276.

Miller the conception of justice is a state of affairs in which each individual has exactly those benefits and burdens that are due to him by virtue of his personal characteristics and circumstances.[9] Justice has been defined as the concept of moral rightness based on ethics, rationality, law, natural law, fairness, religion, and equity. It is the result of the fair and proper administration of the law.[10] The quality of being just; in conformity to truth and reality in expressing opinions and in conduct; honesty; fidelity; impartiality or just treatment; fair representation of facts respecting merit or demerit.[11] In these contexts, justice is done in any case before the courts if the courts faithfully interpret and apply the law to the parties before them without bias for or against any of them.

The question then is, what does the common man who seeks justice from the courts expect from the court? Basically the common man expects a quick, fair, and unbiased decision. He expects to obtain the decision at reasonable cost and without undue strain. He expects equal treatment with his opponent. He expects to be treated humanely and with maximum uprightness by everybody involved in the judicial process, irrespective of status or position. He expects a decision that does not violate his sense of morality and the basic norms of the community. The common man will be satisfied that he has obtained justice from the court if practically all the above expectations are met.

The common man also expects to enjoy access to the courts in terms of cost of obtaining justice. This challenge is two-pronged in effect. First is the huge financial implication of the usually complex and tiresome litigation processes which the obviously minuscule resources of a common man can hardly afford. Second is the likelihood of systemic judicial administrative bottleneck that verge on professional incompetence which usually elongates litigation *ad infinitum*. The legal mantra of "Justice delayed is justice denied" should be effectual in guiding judicial officials, especially sitting Judges to timely justice delivery as delay witnessed directly or indirectly dampens the common man's trust in the justice system. The foregoing reasons have caused a vast majority of people to resort to alternative means of dispute resolution.

3.0 Some challenges to the system of separation of power in Nigeria

The Constitution of Nigeria provides for the financial independence of the judiciary by providing that state and federal governments are to pay into the consolidated revenue account; monies standing in the credit of the judiciary to the National Judicial Council for onward disbursement to heads of court and other officers.[12] Unfortunately, the provision of the Constitution have for years operated as a mere slogan as some states are yet to implement the said provisions even after the President signed Executive Order 10 in 2020 to compel states to implement the financial autonomy provision.[13] The problem of the absence of judicial autonomy is further aggravated by the Judiciary's dependence on the executive for its appointment and removal from office. Section 292 and Paragraph 29 (b) of the third schedule of the Constitution which provides for the removal of judicial officers provides that heads of court at the federal level are to be removed by the President upon a recommendation by the National Judicial Council (NJC) and upon an address supported by two-third majority of the senate praying that such head of court be removed for his inability to discharge the functions of his office (whether arising from infirmity of mind or of body) or for misconduct or contravention of the code of conduct. At the state level, the same procedure applies only that it is the Governor acting on an address supported by two-third majority of the State House of Assembly. The part of the provision which states that reference must be made to the legislative arm before a removal occurs has also not

[9] David Miller, *Social Justice* (Oxford: Clarendon Press, 1976) 20-23.

[10] USLEGAL, (Justice Law and Legal Definition) <https://definitions.uslegal.com/justice>. Accessed 10 May 2024.

[11] ibid.

[12] Sections 81 (3), 121(3) and S 162 (9) Constitution of the Federal Republic of Nigeria 1999(as amended).

[13] Also at the federal level, the judiciary has also complained of uncleared allowances that have been overdue for more than six years. Ameh Ejekwonyilo, "Judiciary Workers' Strike: CJN meets with JUSUN leaders again" *Premium Times* (April 23, 2021) <https://www.premiumtimesng.com/news/top-news/456992-judiciary-workers-strike-cjn-meets-with-jusun-leaders-again.html> Accessed 2 May 2024.

been implemented. This may stem cases of unjust and unconstitutional removal of judges in Nigeria; all of which will contradict international declarations on the independence of the Judiciary, particularly the first ground for the substantive removal of judges which is that "the grounds of removal must be discernible"[14] Of course where the removal grounds are not clearly specified then judges cannot be said to have security of tenure in any meaningful sense,[15] as they would serve at the whim of whichever person or body that is authorized to remove them.[16] But in some countries like France and Germany, judges cannot be removed without the decision of courts; neither can they be transferred or promoted without their consent.[17] At the African Court of Human and People's Right, judges are not also removed except on the recommendation of two-third majority of the other members stating that such judge no longer meets the requisite conditions to be a judge. The recommendation of the judges is then communicated by the president to the chairperson of the assembly.[18] In contrast, it is evident that the Nigeria's mode of removal of judges is not at par with global trends on the procedure for removal of judges which ensures security of tenure of judicial officers.

4.0 Comparative model of separation of powers in other democracies

Given the importance of the doctrine of separation of powers, America recently introduced the Separation of Powers Restoration Act[19] with an aim that it strengthens the walls of power between branches of government. The bill restores the constitutional role of the legislature and judiciary which may have been eroded in 1984 in view of the decision in *Chevron v Natural Resources Defence Council*[20] where the American Supreme Court held that courts must defer to agency interpretations of ambiguous statutes. The ruling led to executive branch agencies circumventing Congress to issue rules with the force of law. However, the 2023 Separation of Powers Restoration Act now repeals that precedent and stops executive branch overreach and interference in interpretive roles. However, the application of the doctrine of separation of powers in the American legal system operates through the function of the three branches of the governmental structure with checks and balances in place among them. Each branch of the government must respect the others, and all operate within the limits set by the Constitution. In this order, individual rights are protected where the President can veto legislation passed by Congress, stimulating reconsideration and debate. Congress can override a presidential veto with a two thirds majority in both houses, protecting the legislative process. The federal courts through judicial review, can declare legislation unconstitutional, acting as the ultimate guardian of individual rights. Congress has the power to

[14]UN Basic Principles on the Independence of the Judiciary - General Assembly Resolutions [1985] 40/32 And 40/146.

[15]The case of the removal of the Chief Justice of Nigeria by the President in January 2019 is a classic case that the United Nations special rapporteur on the independence of judges and lawyers describes as having broken international human rights standards on independence of the judiciary and the separation of powers. See the U.N *Africa Briefing* (11 February 2019) <https://africabriefing.org/2019/02/buharis-suspension-of-nigerias-chief-justice-breaches-human-rights-un/> Accessed 20 May 2024.

[16]J Van ZylSmit, The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice (Report of Research Undertaken by Bingham Centre for the Rule of Law).

[17]Ibrahim Sule, *Judicial Independence in Nigeria: Between Global Trends, Domestic Realities and Islamic Law* (2018) available at <https://www.researchgate.net/publication/328914198_Judicial_Independence_in_Nigeria_Between_Global_Trends_Domestic_Realities_and_Islamic_Law> Accessed 20 May 2024.

[18]Article 9 (2) & (3) & (4) of the Protocol on the Statute of the African Court of Justice and Human Rights.

[19]The bill was introduced in the American house on 24th January 2023. H.R. 464-118th Congress (2023-2024).

[20]467 U.S 837 (1984). The case was a landmark in which the United States Supreme Court set forth the legal test for determining whether to grant deference to a government agency's interpretation of a statute which it administers.

impeach and remove federal officials, including the president and judges, ensuring accountability.[21] As a result of separation of power and checks and balances flowing from a commitment to respect the distribution of power as enshrined in the American constitution, the judicial branch (Supreme Court) has powers to resolve any conflicts which might emerge between state and federal laws and to decide conflicts between citizens of different states. More so, the courts decide cases concerning the activities of any agency of the executive and they do so without recourse to the executive irrespective of the presumptive executive's dominance in the power structure. The Supreme Court has the final word on cases heard by federal courts, and all federal courts must abide by the Supreme Court's interpretation of laws. All these are fostered by the security and independence judges enjoy through lifetime appointments. This is a sharp contrast to the Nigerian system that retires judges either at the expiration of a prescribed length of service period or by reason of age.

What Nigeria has done by the present government is to merely elongate the tenure of judges of the High Court.[22] Regardless of the present effort, it may be necessary to review the prospects of appointing lifetime judges for purposes of reducing political pressure on the judicial system.

Most importantly, the American system of separating powers impacts on the strength of political parties in a way that neutralizes the possible influence of a party in power over the judiciary. As a result of institutional division of governmental power, each of the major political parties themselves has been divided into a presidential wing and a congressional wing. Compared with the Nigerian federal system, separation of powers weakens the political parties in the American federal government.[23] The confluence of congressmen and the president as occasionally being members of same party merely renders unity of purpose between them and weakens any sense of collusion far more than a parliamentary system. Thus the federal structure which separates power destroys absolute control of the party leaders over their party as members of the same party are also elected into the various arms of government such as the congress/legislature. In keeping faith with the aims of the branch of government other members are elected into, the powers of the president over his own party is very limited. As such, even if the president's party has majority of congress, this advantage is no guarantee by itself that a president will gain approval for his legislative proposals. The same applies to the judiciary where the president requires co-operation of congress to affect the judicial system generally. Consequently, the president may not be able to centralize his authority and influence over the other branches of government. In addition, political effectiveness largely depends on congressional co-operation and the 20th century has seen presidents of the United States face a congress in which their party members are in the minority. This narrows down the influence of the president over the judiciary as the co-operation of congress is needed to as much as remove a judge.[24] Although the Constitution of the United States allows for impeachment and removal of justices in much the same manner as a president, the house is required to vote for impeachment, and then a senate trial is held, with two-thirds vote needed to convict.[25]

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[21]See Patrick M. Gary "Principle of the Separation of Powers, Involving Checks and Balances on those Powers" Constituting America (2023) <https://constitutingamerica.org/90day-fp-principle-of-separation-of-powers-involving-checks-and-balances-on-those-powers-guest-essayist-patrick-m-garry/> Accessed 17 May 2024.

[22]See the Guardian News "Discordant tunes over elongation of judges tenure in office" 24th July 2023 <https://guardian.ng/news/discordant-tunes-over-elongation-of-judges-tenure-in-office-/amp/> Accessed 17 May 2024. The law which was the first to be signed by President Tinubu after being sworn into office in 2023, elongates the tenure of judges of the High Court from 65 to 70 years.

[23] See the views of Vile, MJC Vile "Constitutionalism and the Separation of Powers" (2nd ed.) (Indianapolis, Liberty Fund 1998).

[24]As a result, the president must work with Senators who disagree with his agenda and this narrows the chances of influencing the judiciary as he may wish to. For example, over the past five decade, every Republican president has had to work with a congress in which at least one of the two chambers has been in the control of Democrats.

[25]The independence of the judiciary in America has for long insulated the judiciary from unnecessary executive interferences so that only one justice has ever been impeached, and it was more than 200 years ago. See the Washington Post by Gillian Brockell 'Can a Supreme Court justice be impeached?' 7 April 2023

But nearer home is Ghana, an African country like Nigeria which judiciary has a history of independence that originates from the 1992 constitution that proclaims that the only body able to outline how the judiciary shall function is the Constitution itself,[26] barring any external influence from other branches of government such as the President and Parliament. In Kenya, it is shown in the case of *Law Society of Kenya v Attorney General & National Assembly Constitutional Petition*[27] that the courts draw a line across executive interferences when it dealt with the appointment procedure of the Chief Justice of Kenya. In that case, parliament enacted an Amendment Act which contained section 30 (3) of the Act, which sought to amend section 30 of the Judicial Service Act. The petitioner, Law Society of Kenya, averred that this provision in the Amendment Act, which required the Judicial Service Commission (JSC) to forward three names of nominees to the President instead of one name, gave the President additional powers of appointment of a Chief justice, which were not contained in Article 166(1) (a) of the Constitution. The petitioner submitted that according to Article 171 of the Constitution the JSC was established with the sole purpose of removing from the President the power to nominate and appoint judges and thus safeguard the independence of the judiciary. The court declared that the amendment to section 30 (3) of the Judicial Service Act, which compelled the JSC to submit three names to the President for appointment of the Chief Justice and the Deputy Chief Justice respectively was contrary to Article 166 (1) of the Constitution and therefore unconstitutional, null and void. It was the firm position of the court that the Constitution dictates that the sole and unfettered discretion of nomination of a person for the position of the Chief Justice lies with the JSC and not the President.

Another classic case that speaks to the issue of the independence of the Kenyan judiciary is the case of *Law Society of Kenya v Attorney General & 2 others*[28] where the JSC conducted interviews for High Court Judges and forwarded 25 names to the President for formal appointment, swearing-in as judges and gazetting. However, the President only proceeded to appoint 11 judges and noted that the 14 remaining names were still being processed and he could approve or disapprove some of the names. The petitioner argued that under Articles 166 and 172 of the Constitution the president has no role in 'processing', 'approving' and/or 'disapproving' the appointment of judges and that this was the JSC's role. It was held that the President violated the Constitution by purporting to 'process', 'approve' or 'disapprove' the nominees for appointment as judges of the High Court by the JSC.[29]

Although the independence of the judiciary can easily be eroded by direct influence of the executive over other branches of the government, it is factual that consistent efforts towards shielding the judiciary as shown in the democracies above will go a long way in enthroning the rule of law. Democratic tendencies and its actual observance should thrive much better in civilised nations and

<https://www.washingtonpost.com/history/2023/04/07/supreme-court-justice-impeached/#:~:=The%20Constitution%20allows%20for%20the,more%20than%20200%20years%20ago> accessed 17 May 2024.

[26] Article 125 of the Ghanaian constitution provides for the judicial power of Ghana as "Justice emanates from the people and shall be administered in the name of the Republic by the judiciary which shall be independent and subject only to this constitution."

[27] No. 3 of 2016; (2016) eKLR (Petition No. 3 of 2016).

[28] Constitution Petition No. 313 of 2014; (2016) eKLR (Petition No 313 of 2014).

[29] In Kenya, the decision of the Judicial Service Commission is binding on the President. All the President is required to do is forward the names of the nominees presented to the National Assembly and swear in the candidates without more after clearance from the assembly. The role of the President of Kenya therefore in the appointment process of the Chief Justice, the Deputy Chief Justice and other Judges is purely facilitative. The conclusion in the case was reached by the court with considerations of the fact that after all the composition of the JSC ensures that the President only indirectly participates in the process of appointing judges by nominating three persons as members of the commission. The President therefore has no express powers to appoint judges as same may result to interference with the independence of the judiciary in view of the separation of powers.

the near absence of positive efforts that should be geared towards improvement among developing nations degenerate values which may affect the Judiciary in no little measure.

5.0 Conclusion and Recommendations

Enthronement and strict operation of rule of law is a crucial societal desideratum for orderliness and peaceful cohabitation. The rule of law is instrumental to a proper and satisfactory justice delivery for a healthy societal edification. Thus, insisting on and making rule of law operative, virile and impactful will mean to recognize that it is a tool for judicial expansion and fulfilment, of which jurists are primarily responsible and which should be employed not only to safeguard and advance civil and political rights of the individual in a free society but also to establish social, economic, cultural and educational conditions. Rule of law application will also enhance judicial independence and balance of political power where the structure of a constitution is based on power sharing among the legislature, the executive, and the judiciary. To ensure absolute control by the law rather than man or office, the judiciary must be totally independent of the other arms of government. It is recommended that the removal of justices of the courts should be by a Judicial Council. Disciplinary and accountability systems for judges should include complaint mechanisms where members of the public can report knowledge or suspicion of corruption, investigative measures, as well as a hearing or 'trial' mechanism for disciplining and dismissing judges. International standards require that the disciplining bodies should be independent of the government, and that disciplinary or removal proceedings against judges 'must be determined in accordance with well-established procedures that guarantee the rights of judges to a fair and transparent hearing and to an independent review.[30] In the case of appointment of judges, recommendations run along three lines: increase the number of actors involved in the selection process; establish clear criteria; appoint judges for a lifetime unless indisposed by reason of health and increase the transparency of the process of impeachment criteria and procedures. In addition, it is important for states to ensure administrative autonomy and budget independence for its judiciary which will prevent the executive from 'starving' the judiciary – or rewarding judges when important decisions are pending. Such problems are avoided where the judiciary receives a guaranteed share of the national budget as may be constitutionally guarded.

[30]Prescriptions of the International Court of Justice ((ICJ, 6 August 2012).

MILITARY NECESSITY, MILITARY OCCUPATION AND THE USE OF FORCE IN INTERNATIONAL HUMANITARIAN LAW: AN EXTRAPOLATIVE APPRAISAL

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Abstract
Military Necessity, basically, borders on International Humanitarian Law, and it entails the principle that a belligerent may apply only the quantity and/or amount and kind of force necessary to defeat an enemy. It demands that a party to an armed conflict may resort only to the means and methods that are necessary to achieve the legitimate goals of the armed conflict. Military necessity is only limited by the principle of humanity. A territory, on the other hand, is considered as occupied the moment it is placed under the power and authority of the hostile army or belligerent. Under International Humanitarian Law, there are rules that govern not just military necessity and military occupation, but also the use and\ or application of force during armed conflict. This Article explored the principles of military necessity, military occupation, use of force and the rules governing their application in the prosecution of war. The study adopted a doctrinal research methodology for interrogating the existing legal structures available for these principles, their uses and the abuse thereof. The paper also looked at the cases of authorized use of force by the United Nations' Security Council. Findings from the study revealed both positive and negative strides. The paper ended with recommendations centered around strict compliance to the rules amongst other things.

Keywords: Military, Necessity, Occupation, Force, International Humanitarian Law.

1.0 Introduction

The Lieber Code[1] (named after Francis Lieber) serves as one of the first national codifications of the military. The code allowed only the use and application of military force justified by "Military Necessity", described as such "measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war".[2] In Article 16 of the Lieber Code, it is clearly stated that "Military necessity does not admit of cruelty – that is, the infliction of suffering for the sake of suffering or for revenges, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the Wanton devastation of a district". It was this historical precedent that inspired the emergency of military manuals of other nations, and the latter codifications of International Humanitarian Law.

Military necessity is only limited by the principle of humanity. The principle of military necessity demands that a party to an armed conflict may resort only to the means and methods that are necessary to achieve the legitimate goals of the hostility or armed conflict. The International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v Blaskic*[3] states that: "The question of military necessity refers to rules of International Humanitarian Law and the principle that a belligerent may apply only that amount and kind of force necessary to defeat the enemy. The unnecessary or wanton application of force is therefore prohibited".

As a matter of fact, any violence or destruction that is not justified by military necessity is prohibited by International Humanitarian Law (IHL). The IHL not only provides for military necessity, but also the rules governing or regulating occupation and the use of force which can be

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[1] The Lieber Code was adopted in 1863 to regulate the conduct of Union Soldiers during the United States of America Civil War.

[2] Article 14 the Lieber Code.

[3] Case no. IT-95-14-T, Judgement, 3 March, 2000. Para. 157.

found in the Hague Regulations of 1907[4], and the fourth Geneva Convention[5], as well as certain Additional Protocol 1 and Customary International Humanitarian Law. This research interrogates these legal structures, their applications and practice by belligerents.

2.0 The Notion of Military Necessity

The notion of military necessity is, like the related principle of proportionality, an essential component of International Humanitarian Law it entails that a belligerent may apply only the amount and kind of force necessity to defeat the enemy.[6] Military necessity enjoins combatant forces to take on only those acts essentials to realize a legitimate military objective. It also permits armed forces to engage in conduct even when such action will result in destruction and harm. It clashes most with humanitarian protection. Attacks are expected to be limited stringently to military objectives only. It does not give the armed forces the freedom to ignore humanitarian considerations altogether and do what they want. Concerning military necessity to targeting, strict application standards may differ.[7] Military necessity must be interpreted in the context of specific prohibitions and in line with the other principles of International Humanitarian Law.

The Lieber Code describes military necessity as:

> Military necessity admits of all direct destruction of life or limb of arned enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor, it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of substance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.[8]

The principle of military necessity confines aerial attack to lawful military targets only.[9]

Military necessity also applies to weapons review.[10] Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with the laws under the

[4] Articles 42-56.

[5] G C iv, Articles 27-34 and 47-78.

[6] https://guide-humanitarian-law.or>

[7] The United States Military may target those facilities, equipment and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission. As an example of compliance with the Principle of Military necessity during Operations Desert Storm, we considered our targeting and destruction of Iraq. SCUB Missile batteries and of Iraqi army and these forces locating these nations quickly achieved his superiority and hastened the Iraqi military defeat.

[8] Article (15) Humanitarian consideration.

[9] Military targets are those that by their own nature, location, purpose, or use make an effective contribution to an enemy's military capability and whose total or partial destruction, capture, or neutralization in the circumstances existing at the time of an attack enhance legitimate military objective.

[10] AF 51 – 402, Weapons Review, requires the Air Force to perform a legal review of all weapons and weapons systems intended to meet a military requirement. These reviews ensure the United States complies with its international obligations, especially those relating to the LOAC, and it help military planners ensure military

International Humanitarian Law. Serious violation or abuse of military necessity will result to war crime under International Humanitarian Law and will incur individual criminal responsibility.

a) Military Objectives During Military Necessity

Military objectives are objects that shall be the targets of a direct attack or bombardments during military necessity hence the trite rule that military operations must be directed at them. They are objects that can be lawfully targeted. Article 52 of Additional Protocol 1 to the Geneva Convention provides a widely-accepted definition of military objective:

> In so far as objects are concerned, military objectives are limited to these objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

Establishments or institutions dedicated to peaceful purposes are accorded a general immunity from direct armed attack. Medical units or establishments; means of transports for wounded and sick personnel; military and civilian hospitals ships; places established under the Geneva Conventions as safety zones such as religious, cultural, and charitable buildings, monuments, and Prisoners of War Camps fall under this description. Subject however to if these objects are located near lawful military objects, they may suffer collateral damage and under the principle of Volenti Non Fit medical aircraft is generally not an object of attack.[11]

1. The Principle Military Occupation

Belligerent occupation otherwise called military occupation or simply occupation, refers to a temporal hostile control exerted by a ruling power's military apparatus over a sovereign territory which is outside of the legal boundaries of that ruling power's own sovereign territory.[12] The territory so occupied, is known as the occupied territory, while the ruling power occupying it is called the occupant.[13]

A territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends to the territory where such authority has been established and can be exercised.[14] Any territory occupied during international hostilities qualifies as occupied territory. Occupation is different from annexation and colonialism in the sense that it is a power structure that the occupant intends to retain only temporarily.[15] They also apply in situations where the occupation

personnel do not use weapons or weapons systems that violate international law. illegal arms for combat include poison weapons and expanding hollow point bullets in armed.

[11] The exception to the rule however are: (1) Initiates an attack (2) is not exclusively employed as a medical aircraft (3) Does not bear a clearly marked Red Cross, Red Crescent, or other recognized symbol and is not otherwise known to be an exclusively medical aircraft (4) Does not fly at heights at times, and on routes specifically agreed to by the parties to the conflict and is not otherwise known to be an exclusively medical aircraft (5) Flies over enemy territory or enemy-occupied territory (unless otherwise agreed upon before parties) (6) Approaches its enemy's territory or a combat zone and disregards a summons to land.

[12] J Bracka, Transitional Justice for Israel/Palestine: Truth-Telling and Empathy in Ongoing Conflict, Spring Series in Transitional Justice, (Springer International Publishing AG, 2021).

[13] F Cecile, "Living with the Enemy: The Ethics of Belligerent Occupation". Achieved from the original on 26/07/2024. Retrieved 26/07/2024.

[14] Article 42 of the 1907 Hague Regulations (HR).

[15] D M Edelstein, "Occupational Hazards: Why Military Occupations Succeed or Fail", International Security (2004) 29(1): 49-91.

of state territory meets with no armed resistance.[16] Laws governing occupation is regulated by the United Nations Charter and the law of *jus ad bellum*, and once a situation exists which literally amounts to an occupation, the law of occupation applies-whether the occupation is considered lawful or unlawful sanctioned by the Security Council, whatever its aim, whether of "Liberation", "administration" or "occupation". The facts on the ground determine the application of military occupation. Military Occupation is largely provoked by humanitarian considerations, and since the World War II and the establishment of the United Nations, it has been the practice for occupied territory to continue to be widely recognized as such. Any country that engages in military occupation and breaches internationally agreed rules runs the risk of criticism, censure or condemnation.

a. The Rules Governing Occupation

The rules governing occupation are basically delineated in various international agreements such as the Hague Regulations of 1907[17] and the fourth Geneva Convention,[18] as well as certain provisions of Additional Protocol 1 and Customary International Humanitarian Law. These of legal instruments cannot be modified or altered by whatever local International Humanitarian Law Provisions[19] and protected persons themselves can in no circumstance renounce their rights.[20] The applicable core rules of the law in case of occupation are trite.[21] The rights the occupying power has regarding property and natural resources in the occupied territory are as to private property[22] and public property.[23]

b. Commencement of Military Occupation

The law of occupation basically becomes applicable whenever a territory comes under the "effectual control" of hostile foreign armed forces, even if unarmed, neither resistance, nor fighting is involved but must operate under International Humanitarian Law. "Effectual Control" manifests in two levels,[24] namely:

[16] Common Article 2, the four Geneva Conventions of 1949.

[17] (Article 42 – 56)

[18] (GC iv, Articles 27-34 & 47-78).

[19] (GC iv, Article 47)

[20] GC iv, Article 8)

[21] GC iv, Article 55)

[22] (1) The occupant does not acquire sovereignty over the territory; (2) Occupation is only a temporary situation, and the rights of the occupation are limited to the extent of that period; (3) The occupying power must respect the laws in force in the occupied territory unless they constitute a threat to its security or an obstacle to the application of the international law of occupation. (4) The occupying power must take measures to restore and ensure as far as possible public order and safety. (5) To the fullest extent of the means available to it, the occupying power must ensure sufficient hygiene and public health standards, as well as the provision of food and medical care to the population under occupation. (6) The population in occupied territory cannot be forced to enlist in the occupier's armed forces. (7) Collective or individual forcible transfers of population from within the occupied territory are prohibited. (8)Transfers of the civilian population of the occupying power into the occupied territory, regardless whether forcible or voluntary, are prohibited (9) Collection punishment is prohibited. (10) The taking of hostage is prohibited. (11) Reprisals against protected persons or their property are prohibited. (12) The confiscation of private property by the occupant is prohibited. (13) The destruction or seizure of enemy property is prohibited. (14)Cultural property must be respected. (15) People accused of criminal offences shall be provided with proceeding respecting internationally recognized judicial guarantees (for example, they must be informed of the reason for there are rest, charged with a specific offence and given a fair trial is quickly as possible. (16) Personnel of the International Red Cross/Red Crescent Movement must be allowed to carry out their humanitarian activities. The ICRC, in particular, must be given access to all protected persons, whether they are, whether or not they are deprived of their liberty.

[23] (HR, Article 53) and (HR, Article 55)

[24] ICRC's commentary to the Fourth Geneva Convention (1958).

1. Whenever a party to a conflict asserts some level of control outside of its territory e.g. advancing troops could be considered bound by the law of occupation in place during the invasion phase of belligerence.
2. Alternatively, and in a more restrictive sense, once a party to a clash exercises sufficient authority over enemy and to enable it to discharge the entire obligation obligatory by the lover of occupation. Military manuals often times adopt this approach.

c. The End of Occupation

The end of occupation is predicated upon the occupying powers withdrawal or they be driven out of it, plus or minus the continued presence of foreign troops. A transfer of authority to native government with exercise of sovereignty will normally amount to end the state of occupation. Change of situation may necessitate a re-occupation and the territory again becomes actually placed under the authority of the hostile army[25] and not essentially with the consent of the local authorities. Should violence continue after the end of occupation, the ICRC's and other NGO protection activities may be predicted on legal back ground based on if the crisis is a non-international armed conflict.[26] Article 3 confers on the ICRC right to render relief action and visit persons detained for reasons related to the conflict.

Geneva Convention[27] applies to captured members of armed forces, Prisoners of War (POW) and associated militias. Prisoners Of War (POW) and civilian internees must be immediately released after the end of hostilities, save for those who are accused of an indictable offence which their fate is subject to the outcome of their trial and[28] until their release, in so far as they remain under the authority of the occupant remain protected by IHL.[29]

2. Use of Force under International Humanitarian Law

Use of Force generally in a humanitarian intervention. It is an intervention in the sense that it entails interfering in the internal affairs of a state of sending military forces into the territory or airspace of a sovereign state that has not committed an act of aggression against another state.

States, most times, are always faced with circumstances in which their officials have to use force to maintain or restore public security, law and order in armed conflicts or situations of violence that do not meet the threshold of applicability of International Humanitarian Law. Force can be applied by persons who exercise state powers, in particular, police and military forces; such use of force is mainly governed by international human rights law and domestic law. The use of force has to strictly regulated by states. As a matters of law, states must ensure that national legislation is brought into line with their international obligations and sanction their officials if they have used force in excessive of otherwise arbitrary manner.

a) Some United Nations Charter and Resolutions on the use of Force: Article 1.1,2(4), Article 24 (1-3), Article 25, Article 35(2), Article 41 and Article 51

It is the honest desire of the United Nations for there to be a peaceful and conflict free world. This desire was evidence from the outset of the purpose and principles of United Nations Charter thus:

[25] (HR, Article 42)
[26] Common Article 3 to the four Geneva Conventions (and Additional Protocol II, where applicable).
[27] GC III, Article 4A (2)
[28] (GC III, Article 119 (5) GC IV, Article 133 (2)
[29] GC III, Article 5 (1) and GC IV Article 6 (4).

> …for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of the peace and to bring about by peaceful means…[30]

It came after the World War II and it was informed by the reactionary realization of the limits afforded by the provisions of the League of Nations concerning war which was discernible from the outset as contained in Articles (1) and followed it up in Article 2(4).[31] This desire, going further, becomes even more evident by the concession granted to non-state members by the provisions of Article 35(2)[32]. It was however, unmistakable before the United Nations that wars constituted an attribute of mankind as manifested in the pages of history books as shall be seen below.

The Security Council was conferred the "primary responsibility for the maintenance of international peace and security" and requires the Security Council to act in accordance with the United Nations purposes and principles and prescribed a method of feedback to the General Assembly thus:[33]

1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties, the Security Council shall act in accordance with the purpose and principle of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in chapter VI, VIII and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the general Assembly for its consideration.

Article 25 requires members to "accept and carry out the decisions of the Security Council". World Court, also, has a similar provision requiring states to accept and carry out decisions once a country has accepted it jurisdiction.[34] This responsibility, the members have agreed to accept and carry out. More so, the Security Council was conferred with the powers to decide measures not involving use of force to give effect to its decisions and it may call upon United Nations member states to apply such measures in Article 41.[35]

[30] Article 1(1): To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international laws adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

[31] Article 2(4): is to the effect that' All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations.

[32] A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is party if it accepts an advance, for the purpose of the dispute, the obligations of pacific settlement provided in the present charter.

[33] Article 24 (1-3)

[34] Article 36 (5)

[35] The Security Council may decide what measures not involving the use of armed force to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of air, sea, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations.

The United Nations provisions are clear on its attempts to have a world free from Wars and conflict by the safeguards provided above. However, perhaps envisaging that such measures free from armed force may fail, it went further to provide in Article 42 what some analysts consider as an ambiguous loophole "use of force".[36] The Article 51 was clear on its stipulation which forms an exception in the United Nations Charter authorizing the use of force.[37] United Nations General Assembly (UNGA) has also overtime made a number of resolutions pertaining the legal use of force for which two of them are outstanding. Firstly, the declaration on the principles of International Law concerning Friendly Relations and Co-operation Among States and[38] secondly, the Definition of Aggression.[39] The Declaration on the principles of International Law Concerning Friendly Relations and Cooperation Among States restate the UN charter provisions that:

> States refrain from the threat or use of force and that International disputes be settled peacefully. States have a duty to refrain from forceful acts of reprisal and that of wars of aggression and crimes against peace.

Since 1947, the International Law Commission (ILC) commenced working on an acceptable definition of the word "Aggression"[40] and finally arrived at a universally accepted piece. The definition listed specific acts that qualify as aggression. While no act of agreession is justifiable, only a war of aggression amounted to a crime against international peace. Hence while an aggressive act short of war violates international law, it is not necessarily a crime against international peace according to some legal pundits. Article 7 recognizes the right to self-determination, freedom and independence of peoples forcibly deprived of those rights to wage wars of aggression so to speak. It also recognizes the right of any such peoples to struggle to achieve the rights, assuring support if sought by such people so fighting. This article appears to legalize use of force in wars of national liberation and for purposes of "humanitarian intervention". Same Article 7 stipulated and confined such struggle for self-determination to conform to the prescription of the United Nations Charter on the Definition of Aggression thus:

> Nothing within the Definition" shall be construed as enlarging or diminishing the scope of the charter, including its provisions concerning cases in which the use of force is lawful.[41]

[36] Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate; it may take such action by air, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operation by air, sea, or land forces of members of the United Nations.

[37] Nothing in the present charter shall impair the inherent of collective or individual self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in exercise of this self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and Security.

[38] Declaration of principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nation, 24 October, 1970, G.A. Res. 2625 (xxv). U.N. G.A.O.R. 25th Session. Supp. No. 28 U.N. Doc. A/8028 (1971). Reprinted in (1971) 65.A.I.I.I. 243.

[39] Definition of Aggression, 14 December 1974. G.R. Res. 3314 (XX DQ. U.N. 29th Session, Supp. No. 31. U.N. Doc. A 19631 (1975) 142. Reprinted in (1975) 69 A.I.I.I., 480 [hereinafter Definition of Aggression]

[40] "Aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any manner in consistent with the charter of the United Nations, as set out in this definition".

[41] Article 6

Arguable, there is no seeming exemption herein. The use of independent or collective force in instances of self-determination thus, must still be grounded in self-defense or authorized by the United Nations Security Council.

b) Instances of Authorized use of Force by the United Nations Security Council

In the year 1950, the Security Council for the very first time in history, authorized the use of force to secure North Korean withdrawal from South Korea. This was otherwise described as the "UN War". The prosecution of the war was an important one to the United Nations as it came barely five years after the inauguration of the "test run" of the adherence or otherwise to the applicability of or to the implementability of the new United Nations Charter by member nations. About a million South Korean civilian were killed and several other million were made homeless. Additionally, about 580,000 United Nations and South Korean troops and about 1,600,000 communist troops were killed or wounded or were reported missing.[42]

The Security Council did not permit the use of armed forced again until the invasion of Kuwait by Iraq in the 1990. After passing resolutions demanding that Iraq withdraw from Kuwait, Iraq refused to heed to that order. The Security Council again passed Resolution 678, which then authorized the use of force and requested all member states to provide the necessary support required, in corporation with Kuwait people and government to make certain the withdrawal of Iraq forces. In 2003, the Security Council also passed Resolution 1441, which both recognized that Iraq's illegal acquisition of weapons of mass destruction which according to that resolution, constituted enough threat to international peace and security. Resolution 678 was then invoked which earlier authorized the use of force to restore peace and security. In 1970, the General Assembly adopted the Declaration on principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.[43] This resolution was adopted without vote by consensus. It is considered an authoritative declaration on the interpretation of certain provisions of the United Nations Charter. The Declaration reaffirmed article 2(4) and detailed upon the occasions when the threat or use of force is forbidden but it does not address the question of whether force includes non-military force within the scope of the Charter. Article 2(4) does not use the term "way" but rather refers to "the threat or use of force". Although clearly encompassed by the article, it is ambiguous whether the article refers to military force or economic, political, ideological or psychological force. Viewed from the other side of the coin, a careful look at the provision when read inclusively has provided for non-military intervention with the word such as "… such action may include demonstration, blockade…". It further provides for what could be deemed military action thus:

> '…and other operations by air, sea, or land forces'.

The word "other" connotes a situation where an alternative exists, creating an option so to speak. Demonstrations ad blockade are connotations of civil actions while operations by air, sea, or land forces many of them to qualify for itself enough as pure military action as air, sea, or land forces cannot be used to achieve or implement demonstrations and perhaps blockade which are ostensibly civil and economic actions respectively.

5. Use and Abuse of Military Necessity, Military Occupation and Force

There exist several use and abuse of military necessity, occupation and force by the so-called Super Powers, and other states alike. Often, untenable justifications such as promotion of self-

[42] Gardner L.C Ph.D. Ibm 1999 World Book Contributor, Rutgers The State University of New Jersey.

[43] (http://www.gibnet.com//library/un625)

determination, anticipatory self-defense,[44] the protection of nationals,[45] just reprisal response to terrorism,[46] national liberation, humanitarian intervention,[47]etc have been adduced.[48] Sometimes, States abuse the principles just to punish. For example, the Operation Desert Fox against Iraq in 1998 employed a modest amount of air power for a short or arbitrary period of time with no goal other than to punish and weaken the adversary's strength to some unspecified degree. Such an action raises serious questions about the use of punitive attacks. On other times, the abuses occur when some of the super powers decide to "show force" or kind of gunboat diplomacy. Dispatching a carrier task force to the Taiwan Straits in 1996 by the United States of America was a classical example of gunboat diplomacy or show of force to deter any action by china.

6.0 Conclusion and Recommendation

This research, no doubt has done justice to the notion and principles of military necessity, occupation and the use of force under International Humanitarian Law. the study examined the legal structures providing for these notions and also x-rayed their applicability during armed conflict. The research, more so, highlighted the instances of authorized use of force by the United Nations' Security Council, pointing out that the first time in history when such happened was in the year 1950 when the Council authorized the use of force to secure North Korean withdrawal from South Korea. It also discussed the uses and abuses of the principle of military necessity, occupation and force by the so called super powers as well as other states. It is recommended that:

a) Military necessity, occupation and force should only be used or resorted to when they are extremely necessary. Doing otherwise would result to abuse of International Humanitarian Law. They should be resorted to sparingly and the use should be to restore peace and not as a means to punish the adversary.
b) States and the super powers should ensure that they observe and comply to the rules governing the use and application of military necessity, occupation and force whenever they resort to such.
c) States at all times should consider humanity first before hostility. It is the basis of International Humanitarian Law. armed conflict must be prosecuted in line with the provisions of International Humanitarian Law.

[44] Caroline Affair and Upper Canadian Rebellion of 1837. In 1842, U.S. Secretary of States Daniel Webster polluted out that the necessity for forcible reaction must be "instant overwhelming, leaving no choice of means, and no moment for deliberation". Germany's invasion of pol and which actually triggered the outbreak of World War II.

[45] Instances include intervention by the U.K in Suez (1956), Israel in Entebbe (1976) and the USA in the Dominican Republic (1965), Grenada (1983) and Panama (1989).

[46] U.S Led Invasion of Iraq in 2004.

[47] Kosovo crisis in 1999, NATO Used Military Force Against the Yugoslav State.

[48] Browulie, The Current Legal Resolution of the Use of Force (Dordecht: Martinus Nuhoff, 1986)

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