



**3RD CONFERENCE OF THE
DEPARTMENT OF PRIVATE AND PROPERTY LAW
FACULTY OF LAW
RIVERS STATE UNIVERSITY
NKPOLU-OROWORUKWO, PORT HARCOURT**

Theme

**EXPLORING
NEW FRONTIERS IN
PRIVATE AND PROPERTY
LAW FOR SUSTAINABLE
DEVELOPMENT
IN NIGERIA**

Date: Thurs. 5th & Fri. 6th June, 2025

TIME: 9.00AM

Venue: Dr. Nyesom Wike Senate Building



PROCEEDINGS OF THE

THIRD CONFERENCE OF

THE DEPARTMENT OF PRIVATE AND PROPERTY LAW

FACULTY OF LAW, RIVERS STATE UNIVERSITY

Theme:

**Exploring New Frontiers in Private and Property Law for
Sustainable Development in Nigeria**

Edited by: Prof. G.O. Akolokwu



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**COMMUNIQUE ISSUED BY THE DEPARTMENT OF PRIVATE AND
PROPERTY LAW, FACULTY OF LAW, RIVERS STATE UNIVERSITY,
NKPOLU-OROWORUKWO, PORT HARCOURT AT THE CLOSE OF HER
CONFERENCE HELD ON 5TH JUNE, 2025 AT DR NYESOM EZENWO
WIKE SENATE AUDITORIUM, RIVERS STATE UNIVERSITY**

1. The third conference of the Department of Private and Property Law with the theme: Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria held at the Dr Ezenwo Nyesom Wike Senate Auditorium, Rivers State University on the 5th day of June, 2025.
2. The conference had a panel discussion and 6 paper presentations. 286 persons with 132 undergraduate students registered for the conference.
3. A welcome address was delivered by Prof Grace O Akolokwu, Head, Department of Private and Property Law while the conference was declared open by its Chairman, Hon Justice Iche N Ndu (Rtd), OFR, DSSR and former Chief Judge of Rivers State. The keynote address was delivered by Dr. Lawrence Ewhrudjakpo, Deputy Governor, Bayelsa State represented by Hon Justice Iche Ndu, DSSRS (Rtd).
4. Goodwill messages were received from:
 - a. Prof C.C Wigwe, SAN, Dean, Faculty of Law, Rivers State University represented by Prof Samuel C Dike, the Associate Dean, Faculty of Law
 - b. Prof Isaac Zeb-Obipi, Vice Chancellor, Rivers State University
 - c. Hon Justice Simeon C Amadi, Chief Judge of Rivers State
 - d. Prof Lucky I. Worika, Secretary to the Rivers State Government
5. The topics treated at the conference were as follows:
 - a. Property Rights and Land Grabbing in Rivers State: Legal Issues and the Role of Government. A panel discussion of this paper was carried out by



Hon Justice P.C Mini, Chief O.T.K.D Amachree, and Superintendent James Abba, Divisional Police Officer, Olu-Obasanjo Police Division, Rivers State Command.

- b. Valuation and Compensation Issues in Land Administration in Nigeria by the Nigerian Institute of Estate Surveyors and Valuers, Port Harcourt Branch.
- c. Application of Data Protection and Artificial Intelligence in Property Law by Henry Chibor, Esq represented by Mr Allen Amadi.
- d. Analysing Private Rights in Nigeria for Sustainable Development by Faculty of Law, Niger Delta University.
- e. Private and Property Law in a Digital Age by the Faculty of Law, University of Uyo.
- f. Evolving Family Law Issues in Contemporary Times by the Faculty of Law, Rivers State University.
- g. Redefining Parenthood under Nigerian Laws: Adoption and Legitimacy by the Faculty of Law, University of Port Harcourt.

HIGHLIGHTS OF PAPERS

1. Property Rights and Land Grabbing in Rivers State: Legal Issues and the Role of Government

The Conference noted that land grabbing has become a major social menace inhibiting real estate development and occasioning loss of lives in Nigeria. It is an illegal and forceful acquisition of an area of land by individuals, families, communities and government without regard to any previous rights to the land. Land is grabbed to exploit resources, do business, set up industries, or for the construction of residential quarters.



Conference observed that land grabbing is an illegal act and can be compared to acquisition of land by conquest which is a questionable mode of land acquisition in modern Nigeria. Poor registration of lands, abuse of the court process by lawyers and collusion of police officers promote land grabbing. Many persons have had to pay twice for the same piece of land through the activities of land grabbers. Conference therefore recommended that relevant laws on land be reviewed to ensure that they serve current realities and provide better protection to land owners. In addition, there should be increased monitoring of police officers by police authorities to ensure that they do not inadvertently facilitate land grabbing. The conference further recommended the promotion of values of integrity and fairness in the Nigerian society; and that lawyers who facilitate land grabbing should be disciplined by the Nigerian Bar Association (NBA) for professional misconduct.

2. Valuation and Compensation Issues in Land Administration in Nigeria

Conference recognised that land is essential for social stability, economic growth and livelihood of individuals. Key valuation issues in Nigeria include inconsistent and outdated valuation standards, data scarcity and unreliability, lack of capacity and expertise, discrepancies between market value and fair or adequate compensation, and influence of non-market factors.

Conference observed that the laws in Nigeria promote the payment of inadequate compensation in cases of compulsory acquisition of land. In addition, the existence of multiple land tenure systems complicates land rights determination and valuation. Land grabbing and speculation can distort



market values and create conflicts that complicate acquisition and compensation processes. Furthermore, outdated and inefficient land registry systems make title verification and information retrieval difficult, impacting valuation accuracy and delaying compensation. Conference therefore recommended the standardization of compensation in Nigeria, legislative reforms to address the problem of inadequate compensation, and the establishment of the office of Valuer-General.

3. Application of Data Protection and Artificial Intelligence in Property Law

Conference recognised that the protections granted to intellectual property in Nigeria are copyright, patent, trademark and industrial design rights. By adopting a balanced approach, Artificial Intelligence (AI) and data protection can be deployed in a manner that enhances the objectives of property law administration.

Conference observed that with the massive deployment of AI agents that can act on their independently drawn inferences, the presence of close human supervision and assistance becomes important. The laws in Nigeria are not flexible enough to accommodate the opportunities that lie in the mass adoption of AI. Conference therefore recommended the formulation of a clear national AI policy and a strategy for comprehensive data protection compliance among property stakeholders in Rivers State.

4. Analysing Private Rights in Nigeria for Sustainable Development

Conference recognised that the world is going through a myriad of economic challenges in the midst of unprecedented technological advancement. The



recognition and protection of private rights and private enterprise by the government is crucial in motivating individuals to invent, create and innovate. It is only when private enterprise thrives, that economic poverty can be addressed.

Conference noted that private rights are largely enforced through the courts or alternative dispute resolution mechanisms, and despite an abundance of legislation designed to foster private rights, enforcement remains weak due to incompetence, political interference and poor funding of relevant institutions, among other things. Conference recommended the adoption of fair dispute resolution mechanisms and employment of judges who must be proactive, competent and capable of adjudicating disputes within a reasonable timeframe. Conference further recommended that the Nigerian judiciary embrace digital technology in order to speed up the process of litigation.

5. Private and Property Law in a Digital Age

Conference recognised that the digital age impacts both private and property law in areas such as innovations in reproductive technology, ease of filing court processes on private and property law, wealth creation and ease of transactions through electronic money channels.

Conference observed that digitalization sometimes aids the anonymity of digital communication which complicates the identification of actual tortfeasors. In addition, digital technologies such as aviation security scanners and other body search technologies pitch an individual's constitutional right to privacy against the need to protect the public against crimes. Furthermore, there are no uniform global laws governing the use of digital currency.



Conference therefore recommended digital cooperation among nations. In addition, national governments must make specific and proactive laws to regulate areas where digital gaps exist. Conference further recommended the maintenance of a strong balance between public regulation of digital space and protection of the rights of genuine business operators from undue intrusions and interferences with their privacy rights.

6. Evolving Family Law Issues in Contemporary Times

Conference recognised that Family law, which traditionally centred on marriage, divorce, child custody, and inheritance, has undergone profound transformation in recent decades. These changes are driven by shifting social values, advances in reproductive technology, legal recognition of diverse family structures, and global interconnectedness. Conference noted that as a result of evolution in science and human relationships, law must evolve to effectively regulate human activities and accommodate scientific advancements made in the interest of the human race.

Conference observed that there is no law expressly recognising surrogacy contracts in Nigeria and outlining the requirements for a valid surrogacy agreement in the country. This legal uncertainty deters formalization, encourages exploitation and limits judicial protection for the surrogate and the intended parents. In addition, despite its growing occurrence, Nigerian law currently provides no formal recognition or protection for couples who choose to cohabit, leaving them exposed to legal uncertainty. Furthermore, there is no law specifically designed to regulate prenuptial agreements in Nigeria. Polyamory is also not explicitly addressed in Nigerian law, rendering such unions legally invisible.



Conference therefore recommended that drawing lessons from Australia, India and the United Kingdom, detailed legislation should be enacted regulating prenuptial agreements, Artificial Reproductive Technology and surrogacy, taking the socio-cultural realities of Nigeria into consideration. Furthermore, legislation on civil partnerships should be passed granting limited recognition and protection to cohabiting partners; with necessary amendments made to statutes on wills and administration of estates to accommodate persons in civil partnerships.

7. Redefining Parenthood under the Nigerian Laws: Adoption and Legitimacy

Conference recognised that in Nigeria, adoption may be under statute or under customary law. Adoption confers legitimacy on the adopted child as a child of the adoptive parents. However, adoption in Nigeria suffers from challenges of stigmatisation, abandonment of adoptive parents by adopted child, illegal adoptions, among others. Conference therefore recommended public sensitization on adoption and adoption procedures. In addition, the statutory adoption process should be made less stringent.

Conclusion

The Conference noted that the law must evolve to become a tool for sustainable development in Nigeria. Conference generally observed that the following are challenges in the utilisation of private and property law for sustainable development in Nigeria:

- a. Inadequate laws on aspects of Private and Property law such as land valuation, surrogacy, Artificial Reproductive Technology, prenuptial



agreements, civil partnerships, and the impact of Artificial Intelligence and other digital technologies on private and property law.

- b. Large number of unregistered lands occupied by individuals in Rivers State.
- c. Complicity of some police officers and lawyers in the activities of land grabbers.
- d. Outdated and inefficient land registry systems that make title verification and information retrieval difficult, impacting valuation accuracy and delaying compensation.
- e. Illegal adoptions and stigmatisation of adopted children.

Towards utilising new frontiers in private and property law for sustainable development in Nigeria, the Conference recommended the following:

- a. Passage of adequate laws governing land valuation, surrogacy, Artificial Reproductive Technology, prenuptial agreements, civil partnerships and the impact of digital technology on private and property law.
- b. Digitalisation of land transactions and creation of public awareness on the process and importance of land registration.
- c. Promotion of values in the Nigerian society.
- d. Development of a centralised and publicly accessible national lands valuation database and establishment of the office of Valuer-General.
- e. Conduct of public sensitization on adoption and statutory adoption procedures.

Dated this 6th day of June, 2025.



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**WELCOME ADDRESS BY THE HEAD, DEPARTMENT OF PRIVATE AND
PROPERTY LAW; PROFESSOR GRACE O. AKOLOKWU**



I am deeply honoured and privileged as Head, Department of Private and Property Law in the Faculty of Law, Rivers State University to welcome the Vice-Chancellor, Prof. Isaac Zeb-Obipi and the University Management Team, the Chairman of the Occasion, our former Pro-Chancellor, former Chief Judge of Rivers State; Hon. Justice Iche Nwenenda Ndu (Rtd), the Keynote Speaker; His Excellency, Senator Dr Lawrence Ewhrudjakpo, the Deputy Governor of Bayelsa State, the Dean of Law, Prof C.C. Wigwe SAN, Deans of other Faculties and Directors of Institutes and Centres, Professors, Heads of Departments, erudite Scholars and Speakers, esteemed colleagues, Ladies and Gentlemen to the 3rd Conference of the Department of Private and Property Law with the theme “Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria.”

The reality of this occasion of the 3rd Annual Conference of the Department of Private and Property Law is an amazing feat for which I, on behalf of the Department give all the glory to God. This unbroken chain of serious academic exercise in this very austere times would have remained a mirage but for the support of the Vice-Chancellor, the Dean of Law, and the unequivocal and deliberate support of our former Head of Department, Eze Dr. Anugbum Onuoha who initiated the idea. I acknowledge the role of the hardworking and very committed members of the Department and in fact, the Faculty who sustained this noble idea, and ran with the vision to make impact.

It is true that the university is a community of scholars engaging in the business of acquiring and dispensing of knowledge and skills with the aim of solving societal problems. This conference provides a forum for knowledge exchange, for education in critical legal matters, for promotion of academic excellence in the ivory tower as well as translating knowledge garnered from teaching and research to confronting



societal challenges. It is the dawn of new realities locally, nationally and globally as the world has become intricately intertwined and no reasonable nation can afford to remain aloof. Humankind, faced with the inevitable outcomes of the digital age where the world has become a village through globalization must take deliberate steps to study these new normals and provide answers to ranging questions which remain critical for the survival of homo sapiens who learn and improve existence with learning. Developmental strides of nations can therefore only be achieved through the organised quest for knowledge and the determination to convert such knowledge to productive ventures which remain a major distinguishing feature of man in comparison to other mammals.

This 3rd conference is an opportunity to learn something new, to possibly unlearn and learn again the intricacies of the private rights of citizens of this great country and to learn the dynamics of property law hence the theme ‘Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria.’ These new frontiers concern the place of private and property law in the Digital space as artificial intelligence and cyber technology remain new realities of the 21st century. The conference will interrogate this. Land grabbing is a new normal causing incessant hostilities resulting in loss of lives and destruction of property. The legal and social consequences of this menace which has left real estate investors confused and discouraged is on the table of this conference to be discussed by eminent jurists and practitioners in the justice system. The disaffection and claims of inappropriate and inadequate compensation that usually attends the compulsory acquisition of land by Government for public purposes remain topical. The conference offers further education on this area of property law through the lens of experts in Valuation and Compensation for victims of Government acquisition of property. It promises to be very interesting and informative.



The challenges of private law and particularly those of family life have led to the early demise persons, truncated productive careers, produced recluses, social deviants, depressed and suicide-inclined individuals. There is need to interrogate these challenges in family law which give new meanings to marriage, justify baby purchase without adequate legal, institutional and social controls. These social upheavals which stare us in the face every day have grave consequences for our mental, emotional and physical well-being. Nigerian law on parenthood appear to be replete with lacunae yearning to be filled as issues of surrogacy, assisted reproductive technologies recognised globally, lack regulatory frameworks in Nigeria. This conference would be discussing re-defining parenthood, adoption and legitimacy.

Our desire is to generate interest in private and property law matters, interrogate these issues and generate an enviable pool of relevant knowledge to assist humankind live better and be more productive. I invite you to sit back, listen attentively to the speakers and be encouraged to raise questions or make contributions that would make this conference worthwhile and remarkable. Thank you for honouring our invitation to attend. Once again welcome to the 2025 conference of the Private and Property Law Department of the Faculty of law, Rivers State University. God bless us all.

**OPENING ADDRESS BY HON. JUSTICE ICHE N. NDU, CHIEF JUDGE
EMERITUS, OFR, LL.D, DSSRS, FLGS, FIMC, CHAIRMAN, 3RD ANNUAL**



**CONFERENCE OF DEPARTMENT OF PRIVATE AND PROPERTY LAW,
FACULTY OF LAW, RIVERS STATE UNIVERSITY: 5TH JUNE, 2025.**

Protocols -

The theme for this Conference is **EXPLORING NEW FRONTIERS IN PRIVATE AND PROPERTY LAW FOR SUSTAINABLE DEVELOPMENT IN NIGERIA.**

It is, indeed, a pleasure and an honour for me to chair the 3rd Annual Conference of the Department of Private and Property Law, Faculty of Law, Rivers State University. I extend my heartfelt gratitude to the Dean and the Organizing Committee for the kind invitation and for sustaining what is fast becoming a pivotal intellectual tradition within the legal community.

I find it instructive that the organizers of this conference chose this theme which is to explore New Frontiers in Private and Property Law for Sustainable Development in Nigeria.

What is Sustainable Development?

Let us draw strength from the definition by Gro Harlem BRUNDTLAND as the Chair of the World Commission on Environment and Development which produced the Brundtland report officially titled OUR COMMON FUTURE in 1987. (She is a former Prime Minister of Norway and is a product of Harvard University). The report say, sustainable development is “development which meets the needs of present generation without compromising the ability of future generations to meet their own needs”.



That definition throws up the issue of intergenerational equity as the major goal of sustainable development, hence the challenge of the theme becomes how private and property law could be administered to achieve equity both now and in future. In an era where sustainable development is no longer a mere buzzword but a global imperative, it is essential that the legal profession, particularly those engaged in private and property law, respond with clarity, creativity, and courage.

Private law, as you all know, governs relationships between individuals, organizations, and, at times, non-state actors. It encompasses contract law, tort, family law, and succession and crucially for today's discussions, property law. These areas form the bedrock of social order and economic prosperity. In contrast to public law, which regulates the state's relationship with its citizens, private law is the canvas upon which the colours of individual autonomy, economic interaction, and social justice are painted.

Property law, in particular, sits at the heart of both economic development and social stability. In Nigeria, land remains one of the most contested and valuable resources. The way it is owned, transferred, and protected has far-reaching implications not just for individuals and communities, but also for national development. As the world pivots toward sustainability-environmental, economic, and social-our legal structures must evolve to accommodate the needs of both present and future generations.

Let me offer a practical insight by referencing two landmark Nigerian cases which demonstrate both the strengths and challenges within our private and property law jurisprudence. First is the celebrated case of *Savannah Bank v. Ajilo* (1989) 1 NWLR (Pt. 97) 305. In that case, the Supreme Court held that a mortgage of family land by a member of the family without the consent of the family was null and void. That decision reaffirmed the communal nature of land ownership among many Nigerian



communities and emphasized the importance of consent and customary rights in the conveyance of property. Yet, the case also exposes the tension between traditional practices and modern economic imperatives-particularly the need for clear individual land titles to support access to credit and investment.

The second case worth mentioning is *Shell Petroleum Development Company v. Farah* (1995) 3 NWLR (Pt. 382) 148. In that case, the Court of Appeal condemned the unlawful entry and occupation of land by a multinational oil company without the due consent and compensation to the customary landowners. That case highlights the crucial intersection between property rights and corporate accountability, especially in resource-rich areas like the Niger Delta. It is a reminder that the exploitation of land and natural resources, if not legally regulated and ethically managed, can lead to social unrest and undermine sustainable development.

The New Frontiers:

The New Frontiers should extend to how technology could be harnessed to enhance land administration, digital land registries, block chain-based title verification systems, and AI-assisted property dispute resolution mechanisms which will enhance efficiency and expand access.

The New Frontiers should include Climate Change which is the big elephant in the room for sustainable development in this century. Attention should be focused on the international treaty adopted in 2015 which is aimed at limiting global temperature to a target level of 1.5 degrees Centigrade.

The New Frontiers should deal with how private law frameworks can be designed to promote environmental sustainability. Such includes the introduction of green leases and environmental impact clauses in contracts, facilitating land use planning that balances development with ecological preservation.



It is worth noting that our legal education must respond to those evolving demands. In this Conference, therefore, I urge the participants to pay attention to the key presentations that should touch new frontiers that must be explored. Such should include the assurance that land tenure is secure, and adaptable to the needs of a dynamic economy.

To you, our Law students present today, I urge you to approach your studies, not as mere exercises in legalistic memorization, but as opportunities to engage with real-life problems, to interrogate outdated doctrines, and reimagine the law as a tool for justice and development.

To the learned Dean of Law, Lecturers and Faculty members, I am profoundly proud of what you are doing in this Faculty. I am sure many others are too. Let me add that the New Frontiers for Private and Property Law will require curriculum review and adaptation to achieve the purpose of sustainable development in Nigeria.

In closing, let me reiterate that this conference is more than an academic gathering-it is a call to action. It is a challenge to all of us-judges, scholars, practitioners, and students alike-to use the law not as a fortress for the privileged, but as a bridge to opportunity and equity. If we must truly explore new frontiers, we must be willing to ask difficult questions, confront entrenched interests, and embrace innovation.

I wish you all fruitful deliberations.

Thank you, and God bless.

ICHE N. NDU, CHIEF JUDGE EMERITUS.

**GOODWILL MESSAGE BY PROF. ISAAC ZEB-OBIPI,
VICE-CHANCELLOR, RIVERS STATE UNIVERSITY, NKPOLU-
OROWORUKWO, PORT HARCOURT.**



**AT THE 3RD CONFERENCE OF THE DEPARTMENT OF PRIVATE AND
PROPERTY LAW, HELD AT THE NYESOM WIKE SENATE BUILDING,
RIVERS STATE UNIVERSITY, NKPOLU-OROWORUKWO, PORT
HARCOURT FROM JUNE 5-6, 2025.**

**EXPLORING NEW FRONTIERS IN PRIVATE AND PROPERTY LAW FOR
SUSTAINABLE DEVELOPMENT IN NIGERIA.**

Protocol -

It is with great pleasure that I extend my warmest greetings and best wishes to all participants of this distinguished academic conference, themed “*Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria.*”

This timely gathering addresses a subject of immense importance. In an era defined by global challenges such as climate change, population growth, urbanization, and economic disparity, the legal system plays an indispensable role in shaping the track of sustainable development. Particularly in Nigeria, the intersection of private and property law with sustainable development is a critical area that holds great potential for advancing equitable growth, strengthening legal institutions, and promoting responsible governance. As the nation seeks innovative pathways toward economic, social, and environmental sustainability, the insights generated from this conference will be invaluable. Private law, by its nature, governs the relationships among individuals and entities. It serves as a framework for the enforcement of rights, duties, and obligations that influence economic behaviour, resource allocation, and societal harmony. Meanwhile, property law, deeply rooted in our traditions and modern jurisprudence, remains pivotal to issues of land tenure, access to housing, environmental stewardship, and economic empowerment.



I commend the organizers for their foresight and commitment in bringing together experts, scholars, practitioners, policymakers and students to deliberate on these crucial issues. Your dedication to knowledge exchange and policy-oriented research is commendable and essential for developing a just and forward-looking legal framework. I believe this conference has converged the brightest minds and seasoned professionals who are determined to rethink, redefine, and reconstruct the application of law as a tool for social engineering and national transformation. Your engagement in this academic dialogue enriches the legal discipline and strengthens the broader movement toward justice, equity, and sustainable prosperity for all Nigerians.

Once again, I commend the organizers of this conference for curating such a purposeful theme- ***“Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria”***. This thematic focus resonates deeply with several of the United Nations Sustainable Development Goals (SDGs), particularly:

1. SDG 1 (No Poverty) and SDG 11 (Sustainable Cities and Communities) focus on addressing land rights, ensuring equitable access to property, and promoting affordable housing.
2. SDG 10 (Reduced Inequalities) focuses on legal innovations that empower marginalized populations, some in the areas of land and housing.
3. SDG 16 (Peace, Justice and Strong Institutions) emphasizes the rule of law, access to justice, and accountable governance in private and property transactions.

For the participants, through your research, presentations, and discussions, I encourage you to be bold in your ideas and collaborative in your approach. I also urge you to address issues such as:



- a. Reforming land use and ownership policies to improve access and enhance security of tenure.
- b. Filling the legal void in Nigeria's rapidly growing digital and shared economy, especially concerning virtual property and data ownership.
- c. Strengthening dispute resolution mechanisms to ensure timely and equitable adjudication in property and contract-related matters.
- d. Integrating customary law with statutory provisions to reflect Nigeria's plural legal system while promoting gender equity and social inclusion in private and property matters.
- e. Evaluating the role of private contracts in environmental compliance, green financing, and corporate social responsibility.

Your insights and recommendations have the potential to shape policies, educate future leaders, and provide actionable blueprints that lawmakers and public institutions can adopt. In doing so, we not only enrich the academic canon but also offer practical solutions for Nigeria's socio-economic growth.

As we look ahead, it is crucial to understand that sustainable development cannot be achieved in isolation. It requires cross-sector collaboration, legal innovation, and a profound commitment to justice. Conferences like this provide the needed platform for such collaboration, and I am confident that your discussions will inspire new pathways and partnerships across various disciplines.

Let me take a moment to celebrate the students and early-career researchers participating in this event. Your energy, creativity, and dedication are the lifeblood of our legal future. I encourage you to seize this opportunity to learn, share, and network. May this conference serve as a springboard for your ongoing pursuit of



excellence and advocacy for legal reform that addresses the developmental needs of Nigeria.

In conclusion, I wish you fruitful discussions, impactful interactions, and the forging of lasting academic and professional bonds. May this conference be remembered not only for its intellectual rigor but also for its contributions to a more just, equitable, and sustainable Nigeria. Once again, congratulations to the organizers and participants. May the outcomes of this conference resonate beyond these walls and inspire real change in the years to come. On behalf of Rivers State University (RSU), I wish this conference great success and a lasting impact.

Thank you.

**GOODWILL MESSAGE BY HON. JUSTICE SIMEON C. AMADI, DSSRS,
THE CHIEF JUDGE OF RIVERS STATE, AT THE 3RD CONFERENCE OF
THE DEPARTMENT OF PRIVATE AND PROPERTY LAW, FACULTY OF**



**LAW, RIVERS STATE UNIVERSITY, NKPOLU-OROWORUKWO, PORT
HARCOURT HOLDING ON THE 5TH OF JUNE, 2025**

**THEME: “EXPLORING NEW FRONTIERS IN PRIVATE AND PROPERTY
LAW FOR SUSTAINABLE DEVELOPMENT IN NIGERIA”**

Protocol:

It is a great honour to be asked to deliver a goodwill message in this conference organised by the Department of Private and Property Law of this unique university. I say unique university in the sense that what started as a College of Science and Technology advanced to University of Science and Technology with the name limiting its expansion; and then metamorphosed to a conventional university where arts, science and technology are being taught.

The theme of the conference: “*Exploring new frontiers in Private and Property Law for Sustainable Development in Nigeria*” perfectly captures the essence of innovation and progress in Private and Property law. It further resonates with the growing intrigues around property law and the outcry for strengthened legal framework to cope with the attendant challenges. Your deliberations on it will certainly contribute to the formulation of policies and standardization in line with global best practices.

As Nigeria strives for sustainable development, the academia as the fulcrum of research and innovation is needed to drive economic growth. I am confident that the cross-fertilisation of ideas in the course of this conference will shed light on pressing man-made and legal challenges, including the critical issue of land grabbing in Rivers State, in particular and in the country in general. Land grabbing poses significant threats to property rights, economic stability and social justice. The State



must ensure that legitimate land owners' rights are protected. This can be done by creating public awareness; educating residents on their rights and land registration process to prevent land grabbing.

Permit me to use this opportunity to mention that recently, the Real Estate Developers Association of Nigeria (REDAN) paid me a courtesy call in my office and shared their sad experiences with land grabbers. The Chairman of REDAN, Rivers State Branch, Mr. Ory Martins in his address had this to say:

Your Lordship, the Real Estate Sector in Rivers State has been grappling with numerous challenges, which if not addressed, may severely impact investor confidence and the overall growth of the sector.

One of the most pressing issues is the prevalence of land ownership disputes. The absence of a centralised and digitalised land register has made it increasingly difficult for developers to verify legitimate land ownership before embarking on projects. This gap has not only led to multiple claims over the same parcel of land, but has also resulted in protracted legal battles and costly delays in project execution.

As the Chief Judge of Rivers State, I cannot but agree with the above statement of the Chairman. This is because in the Port Harcourt Judicial Division, I assign cases to Judges and I can tell you land disputes form about 60% of cases in our court. I wish to add that aside from the litigants, members of the Bar are not helping matters to curb this ugly situation of land grabbing as they file on behalf of their clients, cases that ought to go to the Multi-Door Court House for arbitration, mediation or conciliation.



I charged members of REDAN to collaborate with regulatory agencies, security agencies and the Nigerian Bar Association for hitch-free and safe property business in Rivers State. I also encourage them to utilise the Rivers State Multi-Door Court House for speedy resolution of disputes, especially where arbitration clauses are included in land agreements. Unfortunately, I must note that uncomplimentary practices in real estate smear the image of the whole community and not just those engaged in such unlawful acts. Thus, a scholarly proposition on such topical issues will definitely aid strategic policy framers in that regard.

Finally, I commend the Rivers State University in general and the Department of Private and Property Law particularly, for her commitment to academic excellence and community engagement, as well as fostering intellectual discourse and promoting knowledge. The choice of the various lecture topics, the paper presenters and discussants reveal the passion of the organizers to think outside the box and chart a new course for sustainable development in a digital age. The cross-fertilisation of ideas will significantly advance not just legal scholarship on Private and Property law but aid policy makers and practitioners brace-up for hard developmental changes aimed at guiding us towards a more just and prosperous society where property rights are protected and economic development thrives.

Lastly, I wish you a productive and enriching conference.

THANK YOU.

**GOODWILL MESSAGE BY PROFESSOR LUCKY I. WORIKA
SECRETARY TO THE RIVERS STATE GOVERNMENT
AT THE 3RD CONFERENCE OF THE DEPARTMENT OF PRIVATE AND**



PROPERTY LAW, FACULTY OF LAW, RIVERS STATE UNIVERSITY
THEME: "EXPLORING NEW FRONTIERS IN PRIVATE AND PROPERTY
LAW FOR SUSTAINABLE DEVELOPMENT IN NIGERIA"

It gives me great pleasure to extend my heartfelt goodwill to the Department of Private and Property Law, Faculty of Law, Rivers State University, on the occasion of its 3rd consecutive annual conference.

I warmly congratulate the Vice Chancellor and Chief Host of the Conference, *Professor Isaac Zeb-Obipi*, the distinguished Host *Professor C. C. Wigwe, SAN*, the indefatigable Head of Department, *Professor Grace O. Akolokwu*, and the entire planning committee for sustaining this laudable academic tradition. Additionally, I commend the Chairman of the Conference, the esteemed retired Chief Judge of Rivers State and former Pro-Chancellor of this esteemed institution, for his ongoing dedication to legal scholarship.

The theme of this conference, '**Exploring New Frontiers in Private and Property Law for Sustainable Development in Nigeria**' is particularly relevant in today's rapidly evolving legal landscape. This theme is timely and speaks to the critical intersection between law, policy, and the pursuit of national development. In an era marked by evolving socio-economic realities and technological advancement, it is imperative that legal scholarship keeps pace with change, especially in areas as pivotal as private and property law.

This conference is particularly noteworthy for the richness of its agenda from the keynote address by the Deputy Governor of Bayelsa State, *Dr. Lawrence Ewhrudjakpo*, to robust panel discussions on land grabbing and the role of government, and the engagement with emerging issues like data protection and



artificial intelligence in property law. I commend the involvement of reputable institutions such as the Nigerian Institute of Surveyors and Valuers (Port Harcourt Branch).

Equally commendable is the **robust participation of the judiciary** in this conference, particularly in the panel discussion on *Property Rights and Land Grabbing in Rivers State*. The presence of eminent Justices and legal luminaries reinforces the crucial connection between legal theory and judicial practice. It ensures that academic discourse remains grounded in real-world challenges, while also providing an opportunity for the bench and the bar to engage constructively with scholars and policymakers. Their insights lend both authority and depth to the discussions and are essential in shaping a legal system that is just, responsive, and development-driven.

I am particularly pleased to note the spirit of academic collaboration demonstrated through the active participation of the Departments of Private and Property Law from **Niger Delta University, University of Uyo, and the University of Port Harcourt**. Their diverse contributions demonstrate a shared commitment to strengthening legal education and reform in the South-South region. Such inter-institutional synergy sets a powerful example of how knowledge-sharing can shape progressive legal frameworks that respond to the realities of our time.

It is gratifying to note that the discourse around valuation, compensation, digital rights, family law, and evolving notions of parenthood will take centre stage during this two-day event. These are not just legal questions they are governance issues that touch directly on the lived realities of our people. I encourage all participants, especially young scholars and practitioners, to seize this opportunity for critical engagement, knowledge exchange, and policy-relevant discourse.



Let me also express my personal sense of connection with this Private and Property Law Conference. Having had the honour of presenting a paper at last year's conference, on 'The Nuisance of Noise Pollution and the Citizens' Right to a Peaceful Environment.

I remain deeply appreciative of the intellectual vibrancy and institutional excellence that define this department.

As Secretary to the State Government, I reaffirm the Rivers State Government's commitment to supporting academic inquiry and legal reforms that advance justice, equity, and sustainable development in our State and beyond.

I wish you all a successful and impactful conference.

Prof Lucky I. Worika

Secretary to the Rivers State Government

**KEYNOTE ADDRESS PRESENTED BY HON. JUSTICE ICHE N. NDU
(CHIEF JUDGE EMERITUS) AT THE 3RD ANNUAL CONFERENCE OF
DEPARTMENT OF PRIVATE AND PROPERTY LAW, FACULTY OF LAW,
RIVERS STATE UNIVERSITY ON 5TH JUNE, 2025.**



Theme: EXPLORING NEW FRONTIERS IN PRIVATE AND PROPERTY LAW FOR SUSTAINABLE DEVELOPMENT IN NIGERIA.

Distinguished scholars, students, members of the legal community, and esteemed guests, I am honoured to deliver this keynote address in place of the original scholar assigned to do it, who is regrettably absent.

Our theme -“**Exploring New Frontiers in Private and Public Law for Sustainable Development in Nigeria**” - is timely and critically important to the future of our nation, Nigeria. As our nation confronts economic, environmental, and social challenges, the law must evolve to become a tool for sustainability. Nigeria is blessed with abundant natural and Human Resources but yet is challenged by legal, environmental, and developmental obstacles. We should, therefore, use the law, particularly the Private and Property Law, to deal with such challenges.

Understanding the Intersection of Law and Sustainable Development:

The 1992 Rio Declaration, Principle I, states that “human beings are at the center of concerns for sustainable development.” Legal frameworks, both private and public, must create the enabling environment for these principles to take root. Public Law-comprising constitutional, administrative, and criminal law-ensures the state upholds its responsibilities, while Private Law-comprising contract, tort, property, and family law-governs the relationships between individuals and institutions in a way that promotes fairness, justice, and sustainability.

The Role of Private Law in Sustainable Development:

Private law, particularly Property Law, plays a pivotal role in how resources are accessed, used, and preserved. It is, therefore, crucial in achieving sustainability. It governs the acquisition, use, and disposition of land and natural resources. See the



case of *SPDC vs Farah* (1995) 3 NWLR (pt.382) 148 where the C.A reiterated the rights of landowners against trespass and environmental degradation by an oil company. It highlights how property rights, when respected, can protect communities and environment. To buttress this point, I should add that there is a need to recalibrate our land laws to reflect modern principles of environmental stewardship.

1. Property Rights and Land Tenure Systems:

The Nigerian Land Use Act of 1978 vests all land in the state, to be held in trust by the governors. While the Act was intended to streamline land ownership and enhance development, it has become a major bottleneck. The centralization of land ownership often results in bureaucratic delays. It is advocated that a reform is introduced to facilitate efficiency and expand access.

In the case of *Ogunleye v. Oni* (1990) 2 NWLR (Pt. 135) 745, the Supreme Court emphasized the right of individuals to possess and use land according to established customary and statutory rights. The decision reinforces the need to secure land rights as a critical foundation for investments in agriculture, housing, and environmental conservation-all key to sustainable development.

2. Contract Law and Green Innovation:

Sustainability also requires that communal land rights are protected while integrating environmental impact considerations. Again in *SPDC vs Tiebo VII* (1996) 4NWLR (pt 445) 657, the Supreme Court held SPDC liable for environmental damage to land and livelihoods.

There ought to be a legislative reform to include this duty of care by owners of businesses towards even the communities and environment.



Contract law must now accommodate emerging environmental standards and sustainability clauses. In *I-Tel Nigeria Ltd v. Oyo State Board of Internal Revenue* (2009) 17 NWLR (Pt. 1169) 343, the court reiterated that parties are bound by their contractual terms, provided they are lawful. This implies that contracts involving development projects, procurement, and industrial activity can-and should-incorporate environmental impact requirements.

Green procurement clauses, carbon offset provisions, and renewable energy agreements must become standard features in commercial contracts, pushing private actors toward sustainability. The clauses make it imperative in introducing eco-friendly materials, renewable energy, and sustainable practice

3. Tort Law and Environmental Liability:

Tort law, particularly nuisance and negligence, is an underutilized tool in environmental accountability. In *Shell Petroleum Development Company v. Farah* (1995) 3 NWLR (Pt. 382) 148, the court upheld the liability of the oil company for environmental degradation due to negligence. This principle, if robustly enforced, can compel industries to adopt eco-friendly practices and provide remedies to affected communities.

However, for tort law to be effective, barriers such as access to justice, legal literacy, and delay in litigation must be addressed.

4. Environmental Regulation and Administrative Law:

The National Environmental Standards and Regulations Enforcement Agency (NESREA) has the statutory mandate to ensure environmental compliance. However, because of political interference, its work is hindered. It is submitted that the body be directed towards its mandate to achieve transparency.



Emerging Frontiers and Legal Innovations:

1. Customary Law and Community-Based Natural Resource Management

Customary law continues to govern the use of land and natural resources in rural Nigeria. Recognizing and integrating indigenous knowledge into formal legal systems can enhance sustainability.

2. Technology and the Law:

Digital technologies, such as blockchain for land registration, artificial intelligence in contract drafting, and e-justice platforms, can enhance transparency and efficiency. These innovations reduce corruption, eliminate delays, and promote trust in legal systems-all of which are prerequisites for sustainable development.

3. Climate Change:

Climate Change is the big elephant in the room for sustainable development in this century. There is a global surge in climate-related litigation, and Nigeria must not be left behind. Legal practitioners should endeavor to key into it; and the judiciary must be empowered and trained to adjudicate emerging environmental and climate issues. Strategic litigation could compel the state to implement international obligations under agreements like the Paris Accord. As you know, the Paris Agreement is a landmark international treaty, adopted in 2015, focused on addressing climate change. It aims to limit global temperature increase to well below 2 degrees Celsius above pre-industrial levels.

Conclusion and Recommendations:

The legal profession has a pivotal role in shaping a more equitable and sustainable Nigeria. To unlock the potential of law in sustainable development, the following recommendations are key:



- Mainstream environmental sustainability in contract drafting and enforcement.
- Strengthen judicial capacity in environmental and climate law through training and resources.
- Leverage technology for efficient land registration, dispute resolution, and regulatory enforcement.
- Foster legal education and advocacy on sustainable development goals across all levels of society.

Acknowledgement:

I commend the Department of Private and Property Law, Rivers State University, for hosting this important conference. Your dedication to critical inquiry and legal development is the kind of academic energy Nigeria needs.

Let this gathering inspire meaningful action, cross-disciplinary collaboration, and a commitment to justice, not only for today, but for future generations.

Thank you all.

ICHE N. NDU, CHIEF JUDGE EMERITUS, OFR, LL.D, DSSRS, FLGS, FIMC



1.0 VALUATION AND COMPENSATION ISSUES IN LAND ADMINISTRATION IN NIGERIA; PAPER PRESENTED BY ESV. SIR, CHIEF EMMANUEL OKAS WIKE, PPNIVS, RSV, DSSRS, AT THE 3RD ANNUAL CONFERENCE OF THE DEPARTMENT OF PRIVATE AND PROPERTY LAW, FACULTY OF LAW, RIVERS STATE UNIVERSITY, NKPOLU-OROWORUKWO, PORT HARCOURT ON 5TH JUNE, 2025

Protocol -

It is great honour to stand before you as one of the Guest Speakers/Paper Presenters at this Conference. Let me thank the Department and the Faculty for extending their hands of association to the Rivers State Branch of the Nigeria Institution of Estate Surveyors and Valuers (NIESV) and by extension to the Department of Estate Management of the Faculty of Environmental Sciences. This is a welcome development that will serve those that require our services better and the society at large. May I on behalf of Rivers State Branch of NIESV congratulate the Department for this 3rd Annual Conference and I wish you fruitful deliberations that will make us better professionals.

I will be sharing my thoughts on the subject – **VALUATION AND COMPENSATION ISSUES IN LAND ADMINISTRATION IN NIGERIA**. The key issues I seek to explore are land acquisition, valuation for compensation, payment of compensation and their challenges

1.1 INTRODUCTION

Land is an essential resource for economic growth, social stability, and the livelihood of individuals in Nigeria. As such, land administration, which includes the processes of determining, recording, and distributing information about land tenure, value, and usage, is crucial. Within this system, two critical and often



contentious aspects are valuation-determining the economic worth of land and property-and compensation, which refers to the financial or alternative recompense offered for land acquired by the government for public purposes.

Land acquisition is the process by which government and/or its agencies acquire private land for public purposes, as authorized by law. This process includes compensating landowners for the loss of their properties. It enables governments to secure land for public infrastructure, natural resource management, and disaster preparedness. Land acquisition also plays a role in addressing future needs by facilitating land development, whether for urban expansion, industrialization, or agricultural growth (Chandman, 2008).

Governments hold the right to compulsory land acquisition, accompanied by compensation, for the broader public benefit. However, the exercise of this right is often met with controversy. In particular, the implementation of land acquisition for urban expansion may undermine tenure security, especially when inadequate or no compensation is provided. This can lead to inequities, transparency issues, and in some cases, displaced landowners resorting to encroachment or selling their land in informal markets at lower prices in anticipation of future expropriation.

The widespread use of compulsory acquisition powers has resulted in several negative consequences, such as encroachments on acquired land, unpaid compensation, the misuse of land intended for public purposes, and the privatization of state-owned assets. To address these challenges, establishing fair, transparent, and equitable valuation and compensation mechanisms is essential for ensuring fairness, mitigating disputes, facilitating public development projects, and safeguarding citizens' property rights (FAO, 2010).



However, land administration in Nigeria is currently hindered by a number of challenges that significantly affect the valuation and compensation processes. These challenges have led to public dissatisfaction, prolonged legal battles, and, in some instances, social unrest. This paper seeks to critically analyze the key issues surrounding valuation and compensation in Nigeria's land administration system, drawing on recent research and legal frameworks to provide insight into the complexities of land acquisition in the country.

1.2 OVERVIEW OF LAND ADMINISTRATION AND POLICIES IN NIGERIA

1.2.1 Land Administration

Land Administration refers to the system that integrates various sub-systems to implement strategies for land policy execution and management. It is a binding framework that ensures the regulation of land access, applying rules of land tenure to make them operational. Specifically, urban land administration deals with state land offices that are responsible for identifying, managing, and administering state public land (Larr, 2011). The benefits of effective public land administration include:

- Availability of land for allocation
- Facilitation of rational land use planning in both rural and urban areas, free from delays or obstructions from landowners
- Allocation of land to farmers without land to settle on fenced farms
- Prevention of farmland fragmentation
- Blocking avenues for investing ill-gotten wealth
- Effective redistribution of wealth to prevent large-scale land ownership by only the wealthy and powerful (Ighalo & Akinbami, 1994).



1.2.2 Land Policies

Land policies consist of the rules, customs, and regulations that govern the use, allocation, distribution, planning, and management of land resources. They guide activities through location, communication, and the provision of complementary services. These policies are fundamental to sectors such as agriculture, industry, and urban planning. The availability and management of land are key determinants of a community's economic performance, as land impacts virtually all forms of production. The re-allocation or reform of land is seen as a means to achieve greater equity, social justice, and increased productivity (Aluko, 2002).

1.2.3 Objectives of Land Policies

The objectives of land policies are rooted in their purpose. For instance, the Land Use Act (LUA) of 1978 was established to address challenges such as:

- Resolving land-related controversies that often led to loss of life and property
- Streamlining and simplifying land management and ownership in the country
- Controlling speculation in urban and rural land
- Ensuring all citizens, regardless of social status, have access to land for peaceful living
- Enabling government control over land use for planning and zoning purposes across the country (Fabiya, 1990; Aluko, 2002).

1.2.4 Land Ownership in Nigeria

According to Section 1 of the Land Use Act (Cap L5 of LFN 2004), all land within each state in Nigeria is vested in the state's Governor, who holds the land in trust for the benefit of all Nigerians. The Governor has the power to grant



statutory rights of occupancy to individuals and corporate bodies for various purposes. This right of occupancy can be held for a maximum of 99 years, with payment of ground rent throughout the period (Aluko, 2002). Section 9(1) empowers the Governor to issue a certificate of occupancy as evidence of this right.

1.2.5 Land Alienation and Acquisition

The Act regulates land alienation, including the assignment, mortgage, transfer, and sub-leasing of both statutory and customary rights of occupancy. Section 21 and 22 of the Act prohibit these actions without the Governor's consent. Section 50 of the Act differentiates between statutory and customary rights of occupancy. The Governor may revoke a right of occupancy if it serves overriding public interest, with compensation provided for unexhausted improvements (Utuama, 2008).

1.2.6 Land Management

As stated in Section 2(1) of the Act, urban land is under the control of the state governor, while land outside urban areas falls under the jurisdiction of local governments. Section 2(2) requires the establishment of Land Use and Allocation Committees (LUAC) in each state to advise the Governor on land management issues. Similarly, Section 2(5) mandates the formation of Land Allocation Advisory Committees (LAAC) in local governments to advise on land management matters. The goal of the Land Use Act is to address the inadequacies of pre-existing land tenure systems, promoting easier access to land for economic development and fostering national cohesion (Utuama, 2008).



1.3 THEORY OF COMPENSATION VALUATION

Compulsory acquisition, or purchase, refers to the process by which local and national governments obtain land and premises for development purposes when deemed to be in the best interest of the public. The valuation process for compensation in compulsory land acquisition occurs within various legal, cultural, socio-economic, political, and historical contexts, all of which influence how key actors in the process perform their roles. Although the basic principles are generally consistent across countries or regions, the application of compensation valuation methods may differ. Local and national statutes, enactments, and laws typically serve as the foundation upon which professional standards and methods are applied in the valuation process (Kakulu, Byrne & Viitanen, 2009).

Property valuation is the art and science of estimating the value of a particular interest in property at a given time for a specific purpose. This process considers the features of the property as well as the underlying economic factors of the market, including the range of alternative investments (Prof. Allan F. Millington, 1988 – *Introduction to Property Valuation*). Compensation, whether in the form of financial payment or replacement land or structures, lies at the core of land acquisition. As a result of government action, individuals may lose their homes, land, and even their livelihood. Compensation aims to repay them for these losses and should be just and adequate in all respects.

In the case of *Horn v Sunderland Corporation* (1941), Scolt, L.T., stated that the purpose of compensation is to restore the owner, as far as money can do, to the same position as if their land had not been taken from them. This principle reflects the equity and equivalence concept of compensation, where the compensation should neither leave the individual worse off nor grant them more than what was lost in the public interest.



1.4 EFFECTIVENESS OF COMPULSORY ACQUISITION AND COMPENSATION IN NIGERIA

The effectiveness of compulsory acquisition and compensation in Nigeria has been a subject of research and critique. Deeyah and Akujuru (2016), in their study on The Effectiveness of Nigerian Compulsory Acquisition Practices in Road Infrastructure Provision in Rivers State, found several challenges. The study revealed that issues such as lack of transparency, unfairness, and inconsistencies in property value assessments for compensation were prevalent. A significant 73.3% of the affected landowners were unaware of the items that would be compensated. The lack of transparency in the compensation assessment process led to suspicion among claimants regarding the fairness of the compensation awarded.

The researchers recommended that to protect the rights of individuals and prevent impoverishment when government acquires land for urban road infrastructure development, best practices should be adopted and effectively implemented. Clear, transparent acquisition procedures must be put in place to ensure affected individuals are fully informed about their rights and receive fair compensation that restores them to the position they were in before the acquisition.

Further analysis by Odudu (2017) highlighted the inadequacies in compensation valuation in Nigeria. In Boboroku Community, for instance, 40 out of 142 claimants received N4,146,120.00 as compensation, while they should have been awarded N8,802,750.00 under open market values. This discrepancy clearly placed the claimants in a worse position, as the compensation computed by the acquiring authority was abysmally low.



Odudu's findings suggest that compensation claims should be based on open market values rather than values assigned by an "appropriate officer" or the acquiring authority. Additionally, the compensation for economic crops and trees should reflect their productivity value and lifespan, with professional Estate Surveyors and Valuers conducting proper assessments. The study concluded that the Nigerian government must review existing laws to align with global best practices in compulsory acquisition and compensation to ensure fairness and equity for affected citizens.

1.5 COMPENSATION VALUATION AND DISPUTE RESOLUTION UNDER THE LAND USE ACT

1.5.1 Constitutional Provision on Compensation

Compensation for land acquisition in Nigeria is governed by various laws, including the 1999 Constitution of the Federal Republic of Nigeria, the Land Use Act of 1978, the Oil Pipeline Act Cap 338 of 1990, and the Petroleum Act Cap 350 of 1990.

Section 44(1) of the 1999 Constitution stipulates that no movable property or any interest in immovable property can be taken or acquired compulsorily, except in accordance with laws that requires the prompt payment of compensation. It further grants individuals the right to access the determination of their interest in the property and the amount of compensation in a court or tribunal with jurisdiction in that region. This provision emphasizes the importance of compensating individuals fairly and promptly when their property is taken for public purposes.

This constitutional provision contrasts with the 1963 Republican Constitution, where the phrase "payment of adequate compensation" was substituted with



“prompt payment of compensation” in the 1979 and 1999 Constitutions, reflecting a shift towards ensuring timely compensation rather than just adequate compensation.

1.5.2 Compensation under the Land Use Act

The Land Use Act of 1978 governs the assessment of compensation when land is acquired for public purposes under Section 28 of the Act. However, when land is acquired for mineral or oil pipeline purposes, the Act originally referenced the Mineral Oil Act of 1958 (Cap 121), which was repealed before the Land Use Act came into effect. Consequently, the Oil Pipeline Act Cap 338 of 1990 and the Petroleum Act Cap 350 of 1990 now govern compensation in such cases.

1.5.3 Compensation for Communities

The Land Use Act recognizes the role of communities in land ownership and compensation. In Section 29, the Act specifies that when compensation is due to a community, the Governor has the authority to direct that compensation be paid to the community as a whole, to the community’s chief or leader for distribution according to customary law, or to a designated fund for the community’s benefit. This provision highlights that land can be held by the community, albeit as a right of occupancy rather than outright ownership.

1.5.4 Dispute Resolution and Legal Recourse

Section 30 of the Land Use Act mandates that any dispute regarding the compensation amount, as calculated under Section 29, shall be referred to the Land Use and Allocation Committee. However, Section 47(20) of the Act states that no further appeal shall lie from the decision of the committee. This provision presents a potential challenge to the administration of justice, particularly under the 1999 Constitution, which provides that only the Judiciary has the authority to



adjudicate disputes. The inclusion of the Land Use Act as part of the Constitution has led to concerns about the fairness and independence of the Land Use and Allocation Committee, as its members are appointed by the Governor. When compensation disputes involve the government, it raises the issue of the government being a judge in its own case, undermining the principles of impartiality and fair hearing.

1.5.5 Constitutional Inconsistencies

The 1999 Constitution, which takes precedence over other laws, includes provisions that could render parts of the Land Use Act inconsistent with constitutional guarantees of judicial review. Section 6 of the Constitution grants the Judiciary exclusive jurisdiction to hear disputes within the Federal Republic of Nigeria, meaning that the decision of the Land Use and Allocation Committee may be subject to judicial oversight. Any provision of the Land Use Act that conflicts with the Constitution is rendered null and void to the extent of the inconsistency, as outlined in Section 1 of the 1999 Constitution. This ensures that individuals have a right to seek judicial review if their compensation claims are not handled fairly.

1.6 KEY VALUATION ISSUES IN NIGERIA

i. Inconsistent and Outdated Valuation Standards:

- While Estate Surveyors and Valuers Registration Board of Nigeria (ESVABON) provides valuation standards for members of the Nigeria Institution of Estate Surveyors and Valuers (NIESV), their application is not uniformly enforced, leading to disparities in valuation outcomes across different states and even within the same state.
- Valuation methodologies employed may not always reflect current market realities, leading to under-valuation or over-valuation.



- Lack of a centralized and regularly updated national valuation database contributes to inconsistencies.
- ii. Data Scarcity and Unreliability:**
 - Access to accurate and reliable market data (e.g., comparable sales, rental values, construction costs) is often limited.
 - Informal land markets and cash transactions make it difficult to track and verify property values.
 - Poor record-keeping and inefficient land registries further exacerbate data challenges.
- iii. Influence of Non-Market Factors:**
 - Valuations can be influenced by political considerations, corruption, and personal interests, rather than purely objective market principles.
 - Speculative activities can artificially inflate land values in certain areas.
- iv. Lack of Capacity and Expertise:**
 - There may be a shortage of adequately trained and experienced Estate Surveyors and Valuers, particularly in government agencies.
 - Insufficient continuous professional development can lead to outdated practices.
- v. Valuation of Communal/Customary Land Holdings:**
 - Assigning monetary value to communal land rights, which often involve complex social and cultural dimensions, presents unique challenges.
 - The Land Use Act's focus on individual rights of occupancy sometimes inadequately addresses the nuances of communal ownership when it comes to valuation for compensation.
- vi. Discrepancies between Market Value and "Fair" or "Adequate" Compensation:**



- The legal definition of compensation often focuses on "unexhausted improvements" and may not fully capture the total economic loss, social disruption, or livelihood impacts experienced by landowners.
- The concept of "market value" itself can be contentious, especially in rapidly urbanizing areas or where markets are underdeveloped and uncertain.

1.7 CHALLENGES IN LAND ACQUISITION AND COMPENSATION

Land acquisition and compensation in Nigeria face numerous challenges that hinder the effectiveness and fairness of the process. These challenges include inadequate compensation, data dilemmas, conflicts of interest, outdated master plans, and difficulties in land acquisition, among others.

1.7.1 Inadequate Compensation

One of the most contentious issues in land acquisition and compensation is the adequacy of compensation. According to Kakulu (2007), the primary concern among acquiring authorities and claimants has always been whether the compensation paid for acquired properties, particularly for damages to people's land interests, is sufficient. The principle behind compensation is to ensure equity, meaning affected persons should neither be worse off nor better off than before the acquisition. However, there is a widespread belief that compensation for compulsorily acquired land and damages are insufficient.

Alias and Daud (2006) highlighted that there are no clear guidelines or measures within compulsory acquisition laws to assess the adequacy of compensation. This lack of standardization is a concern globally. In Nigeria, the compensation framework under the Land Use Act of 1978 is viewed as grossly inadequate. It primarily serves as an institutional response, rather than adopting a market value



approach that includes additional claims such as severance, disturbance, and injurious affection. Furthermore, the social security function of land in Africa makes it challenging for any compensation framework, whether market value-based or institutional, to adequately satisfy claimants. This issue is further complicated by cultural beliefs, where land is seen not only as belonging to the living but also to the deceased and future generations, making compensation for deceased ancestors and unborn generations is impossible.

1.7.2 Data Dilemma

Compensation valuation relies heavily on accurate data input, which is often problematic. Section 29 of the Land Use Act of 1978 recommends the Depreciated Replacement Cost (DRC) approach for compensation valuation. However, Estate Surveyors and Valuers often face difficulties obtaining reliable cost data per square meter and determining depreciation rates. This problem is particularly significant when assessing compensation for historic properties such as sacred sites, monuments, and artifacts. The challenge lies in determining the appropriate depreciation concept, as older properties tend to increase in value, creating complexity in compensation calculations.

1.7.3 Prosecutor and Judge

Under the Land Use Act, the Land Use and Allocation Committee (LUAC) is responsible for managing state lands and resolving disputes arising from compensation and resettlement. However, Section 30 of the Act mandates that disputes regarding compensation be referred to the LUAC, which poses a conflict of interest. The members of the LUAC are appointed by the Governor, meaning the same body is both the prosecutor and the judge, which conflicts with the principle of natural justice that requires impartial adjudication. This raises concerns about the fairness and transparency of the dispute resolution process.



1.7.4 Absence of Up-to-Date/Current Master Plans

Many cities and towns in Nigeria still rely on outdated master plans inherited from colonial times. As a result, land use planning is often carried out through a trial-and-error method. The lack of updated master plans hinders effective land administration and acquisition processes. It is important that these master plans be updated in line with the strategic development plans of the cities. A well-maintained master plan is a crucial precondition for landowners to accept land expropriation, and the failure to update these plans impacts both the planning and compensation processes.

1.7.5 Land Acquisition Problems

Despite the provisions in Section 1 (Vesting Declaration) and Section 28 of the Land Use Act, which grant the Governor the power to revoke a right of occupancy for public interest, the land acquisition process is often challenging. In practice, it is difficult for the Governor to acquire land using executive fiat without consulting with local paramount rulers in the affected areas. This issue stems partly from Section 1, which positions the Governor as a trustee, and the effects of Section 29(3) and Section 48, which affect the validity of the allodia root of title in the country. Additionally, the Land Use Act, 1978, represents a socialist policy in a capitalist economy, further complicating its implementation.

1.7.6 Land Use Act as Part of the Constitution

The inclusion of the Land Use Act in the Nigerian Constitution has created obstacles in amending the Act, especially with regard to compensation provisions. Any amendment of the Act requires the approval of two-thirds of the members of the National Assembly and a resolution from two-thirds of the state assemblies. This high threshold makes it difficult to address issues such as inadequate compensation, which directly affect the daily lives of citizens. This entrenchment



in the Constitution has become a major hindrance to reforming the Act and improving the land administration system.

1.7.7 Inconsistencies and Lack of Clarity

Kakulu (2007) pointed out that inconsistencies, lack of clarity, and ambiguity in the Land Use Act and its enabling statutes contribute to inadequate compensation. The study revealed that the application of multiple standards and procedures in valuation results in significant discrepancies in compensation amounts for the same land interest. To address these issues, the study recommended the introduction of a compensation valuation code in Nigeria, which should adhere to international standards of valuation for compensation. This would help streamline the process and improve the consistency and fairness of compensation assessments.

1.8 CHALLENGES IN LAND ADMINISTRATION AFFECTING VALUATION AND COMPENSATION

Beyond the specific issues listed above, broader systemic challenges in Nigerian land administration impact valuation and compensation:

- i. Outdated and Inefficient Land Registry Systems: Manual records, lack of digitization, and bureaucratic bottlenecks make title verification and information retrieval difficult, impacting valuation accuracy and delaying compensation.
- ii. Weak Enforcement of Land Laws and Regulations: This creates room for impunity and makes it difficult to hold parties accountable.
- iii. Multiple Land Tenure Systems: The coexistence of customary, statutory, and informal tenure systems complicates land rights determination and valuation.



- iv. Land Grabbing and Speculation: These activities can distort market values and create conflicts that complicate acquisition and compensation processes.
- v. Lack of Political Will for Comprehensive Reforms: Meaningful and sustainable reforms require strong political commitment, which has often been lacking.

1.9 POTENTIAL AREAS FOR REFORM AND RECOMMENDATIONS

Addressing the valuation and compensation challenges in Nigerian land administration requires a multi-pronged approach:

i. Legal and Regulatory Reforms:

- Review and Amend the Land Use Act: Specifically, provisions related to compensation need to be revised to ensure "fair and adequate" compensation that reflects current market realities and includes considerations for land value, disturbance, injurious affection, and loss of livelihood.
- Enact a National Valuation Act: This could standardize valuation practices, establish a clear framework for determining compensation, and mandate adherence to international best practices.
- Strengthen Land Instrument Registration Laws: To improve transparency and data availability.

ii. Institutional Strengthening and Capacity Building:

- Invest in training and professional development for Estate Surveyors and Valuers within government agencies and the private sector.
- Enhance the capacity of land registries through digitization, staff training, and streamlined processes.



- Strengthen ESVABON/NIESV to play a more robust role in regulating valuation practice and enforcing standards.

iii. Improving Data Availability and Management:

- Develop a centralized and publicly accessible national land valuation database.
- Invest in modern land information systems (LIS) and geographic information systems (GIS) to support accurate mapping, titling, and valuation.

iv. Enhancing Transparency and Participation:

- Mandate meaningful consultation with affected communities and landowners throughout the acquisition and compensation process.
- Ensure transparency in valuation methodologies and compensation calculations.
- Publish information on land acquisitions and compensation payments to the stakeholders.

v. Streamlining Dispute Resolution:

- Establish accessible, affordable, and efficient dispute resolution mechanisms, including promoting the use of ADR (mediation and arbitration).
- Ensure judicial processes are timely and fair.

vi. Fair and Comprehensive Compensation:

- Adopt a broader definition of compensation that includes not just unexhausted improvements but also land value, economic losses, social impacts, and resettlement costs where applicable.
- Ensure prompt payment of compensation at assessed values, with mechanisms to adjust for inflation if delays occur.



- Explore non-monetary compensation options like land-for-land, skills training, and livelihood support programs.

vii. Effective Resettlement and Rehabilitation Frameworks:

- Develop and implement comprehensive resettlement action plans (RAPs) that adhere to international best practices, ensuring that displaced persons are left no worse off, and preferably better off.

viii. Tackling Corruption:

- Implement robust anti-corruption measures within land administration agencies.
- Ensure accountability and prosecute offenders.

ix. Public Awareness and Education:

- Educate citizens about their land rights and the processes involved in valuation and compensation.

1.10 CONCLUSION

Land is an invaluable resource that significantly influences economic development, social stability, and individual livelihoods. The effective management of land, including valuation and compensation, plays a critical role in ensuring that land acquisition for public purposes is just, transparent, and equitable. However, despite its importance, land administration in Nigeria faces a range of challenges that undermine its effectiveness and fairness.

The valuation and compensation process is often hampered by inadequate compensation, data discrepancies, lack of transparency, and conflicts of interest. These issues not only affect landowners but also contribute to widespread dissatisfaction, protracted legal disputes, and, in some cases, social unrest. The challenges in land administration have far-reaching consequences, including



encroachments, unproductive land usage, and a failure to fully compensate affected individuals for the losses they incur due to compulsory acquisition.

To address these issues, a comprehensive approach is needed, involving legal reforms, institutional strengthening, improved data management, enhanced transparency, and streamlined dispute resolution mechanisms. It is essential for the Nigerian government to review and amend the Land Use Act to reflect current market realities and to provide fair and adequate compensation. Additionally, fostering public awareness and education on land rights, valuation, and compensation processes is crucial for empowering citizens and ensuring that their interests are adequately protected.

Ultimately, land administration reforms should focus on safeguarding citizens' property rights, promoting fairness in land acquisition, and ensuring that public development projects are executed in a way that benefits the wider community. By adopting best practices and international standards, Nigeria can improve its land administration system, foster economic development, and reduce conflicts related to land acquisition and compensation.



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2.0 APPLICATION OF DATA PROTECTION AND ARTIFICIAL INTELLIGENCE IN PROPERTY LAW

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ABSTRACT

When the Land Use Act was enacted in 1978, electronic means of title verification, documentation, transfer and property hypothecation was not commonplace. Also, a lot of non-urban areas existed where customary law (largely undocumented) was applicable. Things are now a lot different, with the technology advancement and Artificial Intelligence (AI) boom. At present, there is technology for charting, land document storage, fractionalization of land interest (also known as tokenization), etc. It also democratizes intellectual property of individuals which big data companies deploy in training of large language models (LLM), without appropriate compensation to the creators. The data footprints of individuals can be easily collected and processed, even via automated means, in a manner that can adversely affect such individuals. Information Technology Systems of institutions can be breached in a manner that adversely impacts the confidentiality, integrity and availability of its records. Without a doubt, AI and data protection can be deployed in a manner that enhances the objectives of property law administration, however, not without its inherent risks. This gives rise to the need for a balanced approach. This paper examines the applicability of AI and data



protection in property law (both land, moveable and intangible property). It starts by defining the terms that will be used repeatedly. Thereafter, it examines the current legal position and the ways in which AI and data protection can be applied for a better outcome. Finally, it shall examine the inherent risks/challenges in AI and data protection adoption and make recommendations on cautionary measures. This work is recommended to the academia, policy makers and industry leaders, alike.

2.1 DEFINITION OF TERMS

In this work, the following terms will be used repeatedly, hence are defined as follows:

- Artificial intelligence** Means the theory and development of computer systems capable of performing tasks that historically required human intelligence. Artificial Intelligence can be General (GAI) or Agentic AI.
- Block Chain** Also known as a distributed ledger technology, is a peer-to-peer system of ledgers that utilizes a software units that consists of an algorithm which negotiates the informational content of ordered and connected blocks of data together with a cryptographic and security technologies in order to achieve and maintain its integrity.
- Coordinates** Means the geographic compass readings used to ascertain the physical location of land. It is along the four principal points of the compass being north, east, south and west.



Corporate data	Corporate data means records relating to artificial persons or non-living things including but not limited to financial and real estate.
Data Protection	Means the protection of personal data or any information that can directly or indirectly identify a living person in Nigeria or a Nigerian abroad. The principal legislation governing data protection in Nigeria is the Nigerian Data Protection Act 2023 and the subsidiary legislations under it.
Data Controller and/or Processors	These are persons who receive, store, analyse, categorise, examine, share, delete or conduct other forms of processing of personal data. They include the Lands Registries, Government MDAs and other public bodies
Data subject	Means a living person in Nigeria or a Nigerian abroad.
Smart contracts	Are self-executing program that automates the actions required in a blockchain transaction. Once completed, the transactions are trackable and irreversible. A clear example of a smart contract is a vending machine.
Tokenization	Means the breaking down of assets into granular assets which are non-fungible and easily transferred.

2.2 SUMMARY OF REAL PROPERTY LAW IN RIVERS STATE, NIGERIA

From the legal concept, every land in the State belongs to the Governor of the State, who shall hold the land in trust and administer for the use and common



benefit of all Nigerians in accordance with the Land Use Act.¹ The exceptions however are Federal lands² and Non-urban lands in the State.³ Whilst a certificate of occupancy is *prima facie* proof of title to land, it however rests on the original right to land which can be proved in any of these five ways: traditional evidence (traditional history), production of duly executed title documents, proof of acts of ownership extending over a sufficient length of time e.g., sale, lease, use of land, proof of long possession and enjoyment of land and proof of possession of connected and adjacent land.⁴

For a document alienating title to land to be deemed as duly executed, it shall be executed by the Family head with the concurrence of the principal members (for customary communal land)⁵, signed pursuant to a duly executed Deed of Assent (for deceased's estate)⁶ the valid predecessor-in-title (for personal property), two directors or one director and secretary (for company owned land). It can also be executed by a representative pursuant to a valid and subsisting power of attorney. For alienation of title to be valid, Governor's consent must be sought and obtained.⁷

2.3 SUMMARY OF MOVEABLE AND INTELLECTUAL PROPERTY LAW IN RIVERS STATE

The protections granted to intellectual property in Nigeria are copyright, patent, trademark and industrial design. Trade secrets are not formally protected.

¹ LUA 1978, s 1(1).

² *Ibid* s 49.

³ *Ibid* s 51; *Adisa v Oyinwola & Ors* (2000) LPELR-186 (SC) 10 paras. B.

⁴ *Anyimba v Onovo* (2025) LPELR-80876 (SC) per Okoro, JSC, 21-22 paras. D-E (reechoing the rule in *Idundun v. Okumagba*).

⁵ *Aiyeola v Pedro* (2014) LPELR-22915 (SC) per Peter-Odili JSC, 38 paras. A

⁶ Administration of Estate Law of Rivers State, s 38(4).

⁷ LUA 1978, ss 21 and 22.



Although platforms such as Boom play, Spotify, YouTube, GoDaddy, etc. grant copyright protection to creative works and trademarks, there appears to be little protection for patent and industrial designs. Often times, the owners/interest holders in the patent need to commence an action to protect their patent. Patent theft, state sponsored espionage appears to have increased with the increasing global tension and multipolarity.

The Investment and Securities Act, 2025 (ISA) comes close to providing for the tokenization of intellectual property via the Virtual Asset Service Provider licence (VASP) which can be used for cryptocurrency and digital assets transactions.

The Secured Transactions in Moveable Assets Act, 2017 is the closest legislations governing moveable assets in Nigeria. It provides that moveable assets can be mortgaged and used as collateral, provided that they are stored and receipted by a warehouse duly licenced in that regard by the SEC.

2.4 PROBLEMS WITH PROPERTY LAW ADMINISTRATION IN RIVERS STATE

For real property, the persistent challenges to property law and administration are, land sale to multiple buyers, sale by unauthorised persons or persons without a legal interest, sale of non-existent or wrongly described land, indiscriminate revocation and reclamation of title to land by the Governor, adverse claims of ownership to land by family members, etc. Although The Greater Port Harcourt Development Authority Law, 2009 (GPHDA) makes enhanced provisions around records keeping, title verification and alienation, it still leaves a lot to be desired. For moveable and intangible property, the recurrent challenge remains data



localization/residency,⁸ security of personal data,⁹ detection of intellectual property violation,¹⁰ tokenization and ease of asset transfer and ownership.¹¹

2.5 APPLICATION OF AI TO REAL PROPERTY LAW IN RIVERS STATE, NIGERIA

AI can be used to solve the following real property law problems:

- (a) Authentication of property location via GPS/VPS detectors administered by AI agents. This can detect the location of a property and the identity of the valid owner. It can also detect trespass to land, even by malicious actors. To preserve the earnings of surveyors, official survey plans and statements of ownership/trespass can then be issued and stamped for a fee, by a licenced surveyor.
- (b) Authentication of property ownership, transfer and prevention of double dealing. This can be achieved through the deployment of AI agents that document and store land transaction details on a publicly available distributed ledger (blockchain) that cannot be unilaterally altered. It also stores the history of ownership and temporary/permanent interests thereon. It can also serve as a platform for real-time assignment/lease/licence of property via smart contracts.
- (c) Valuation of property to ensure adequate tax collection.
- (d) Simplification of fractional ownership of land via the tokenization and real time trade in land assets. This can be achieved via AI agents deployed as

⁸ Guidelines for Nigerian Content Development in Information and Communication Technology (ICT) 2019 as amended, art 13.1(2).

⁹ Nigeria Data Protection Act, 2023, s 24(1)(f).

¹⁰ Copyrights Act, 2022 s 36(1)(a).

¹¹ Accelerated Regulatory Incubation Program (ARIP) Framework for the Onboarding of Virtual Assets Service Providers (VASPs) and other Digital Investments Service Providers (DISPs), s 5.



market makers, custodians, evaluators and investment holders, by SEC licenced entities.

- (e) Simplification of proper use of land. This can be achieved via AI agents that determine the proper use of land after analysing available the geospatial data, metrological data. Often times, the certificate of occupancy emphasis the use of land which is at variance with the best use of such land. Where land should be used for agriculture, AI agents can even pick the coordinates where certain crops will do well, draw up a list of agricultural inputs, suppliers, measures, projected yield and even place orders for delivery.

2.6 APPLICATION OF AI TO MOVEABLE AND INTANGIBLE PROPERTY LAW IN RIVERS STATE, NIGERIA

AI agents can be used to solve the following moveable and intangible property problems:

- (a) Detection of copyright breach and notification to cease and desist; and
- (b) Tokenization and encryption of confidential information at rest and in transit

2.7 OBLIGATION OF DATA CONTROLLERS AND PROCESSORS IN RIVERS STATE, NIGERIA

The obligations of data controllers and processors are:

- (a) Duty to publish a privacy notice at every point where personal data will be collected.¹² The notice will be easy to read and comprehend and will inform the data subjects of the types of personal data to be collected/processed, the lawful bases for such processing and the rights of data subjects.

¹² General Application and Implementation Directive (GAID) 2025, art 7(m).



- (b) Implement technical and organisational measures that ensures continuous confidentiality, integrity and availability of personal data.¹³ The technical measures include informational security solutions/safeguards and relevant policies. The organisational measures include the adoption of information systems, network access control and presence of logs.
- (c) Appoint a data protection officer who shall be the Chief privacy compliance officer and interface with the regulators and data subjects, alike.¹⁴
- (d) Observe the data processing principles of lawfulness, transparency, legitimate purpose, data minimization¹⁵, security, clear consent and accountability.¹⁶
- (e) Register with the Nigeria Data Protection Commission where it falls within the threshold of data controller/processor of major importance.¹⁷
- (f) Ensure continuous capacity building for its staff members involved in the processing of personal data.¹⁸
- (g) Engage a licenced Data Protection Compliance Organisation to conduct and file your audit report to the NDPC, where up to 1000 – 2000 data subjects' personal data is processed in 6 months – 1 year respectively.¹⁹
- (h) Conduct a privacy impact assessment when deploying novel technology or processing large sets of personal data, or processing sensitive personal

¹³ NDPA 2023, s 29(1)(c).

¹⁴ NDPA 2023, s 32(1)(c).

¹⁵ *Digital Rights Ireland Ltd and Others v Minister for Communications, Marine and Natural Resources*

¹⁶ NDPA 2023, s 24.

¹⁷ *Ibid* s 44.

¹⁸ General Application and Implementation Directive (GAID) 2025, art 46.

¹⁹ *Ibid* Schedule 7 Paras 3(1)(d).



data, or deploying technology that can be used for monitoring/surveillance of data subjects.²⁰

- (i) Give notice to the NDPC within 72 hours of occurrence of a privacy breach and where sensitive personal data or the data or vulnerable/differently abled persons were impacted, give notice to those persons and provide reasonable assistance to them.²¹
- (j) Some of the data subjects rights which data controllers/processors are mandated to recognise are; the right to inquire what personal data is held (access rights)²²; the right to request a transfer of personal data (data portability)²³, the right to request a deletion of personal data (right to be forgotten)²⁴, the right to rectify personal data²⁵, withdraw consent²⁶ or restrict processing²⁷ (amendment rights). These rights are not absolute and can be limited in a framework of policies and terms.

2.8 CHALLENGES TO THE ADOPTION OF AI AND SEAMLESS DATA PROTECTION IN RIVERS STATE, NIGERIA

The following are challenges to the adoption of AI to real, movable and intangible property in Rivers State:

- (a) **Machine bias in AI systems:** AI systems are trained on data and receive the information logically and sequentially. Because they draw inferences

²⁰ NDPA 2023, s 28.

²¹ *Ibid* s 40(2).

²² *Ibid* s 34(1)(a); *Roche v United Kingdom* -European Court of Human right [32555/96](#)

²³ GAID 2025, art 37.

²⁴ *Ibid* art 38; *Google Spain SL, Google Inc v Agencia Espanola de Proteccion de Datos* (AEPD) ECLI:EU:C:2014:317 Court of Justice of the European Union (CJEU).

²⁵ GAID 2025, art 36; *Wegrzynowski and Smolczewski v Poland* – European court of Human right [33846/07](#).

²⁶ NDPA 2023, s 35.

²⁷ *Ibid* s 36.



from the data which may be different from that intended by the Administrator, AI systems often experience algorithmic bias. With the massive deployment of AI agents that can act on their independently drawn inference/bias, the presence of close human supervision and assistance²⁸ becomes important. There is need for a clear National AI Policy that clearly defines what should be done with malignant AI source codes, monetary compensation for AI bias and extent of human supervision.

- (b) **Rigid laws and administration systems:** Our laws are not flexible enough to accommodate the opportunities that lie in the mass adoption of AI. For instance, the ISA and SEC rules on Crowdfunding, Real Estate Investment Trust and the traditional provisions under the Land Use Act.
- (c) **Cybersecurity challenges:** Mass adoption of AI comes with the need for strong cybersecurity capabilities and physical infrastructure that ensures adequate data localization/residency. This is significant in cost and maintenance.
- (d) **Adverse actions of AI agents:** AI agents do not only have the capabilities to draw inference from data but can also act on these inferences. Automated processing and profiling of personal data often comes with significant impact on the rights and liberties of individuals.
- (e) **Data localization/residency requirements:** Although Article 13.1(2) of Guidelines for Nigerian Content Development in Information and Communication Technology (ICT) 2019 as amended requires ICT service providers to host Sovereign data in Nigeria, it has to be appreciated that

²⁸ Reuters, 'Insight - Amazon scraps secret AI recruiting tool that showed bias against women' <[Insight - Amazon scraps secret AI recruiting tool that showed bias against women | Reuters](#)> accessed May 27, 2025



such hosting can at best, be a backup. As long as the infrastructure companies are foreign based, there is likely to be a primary hosting of Sovereign data outside Nigeria. Data colonialization is a major challenge because Nigeria's sovereign data can be analysed and utilized outside Nigeria, in a manner that is detrimental to the Nation. It therefore means that a National Plan should be put in place for the 100% development and hosting of sovereign data in Nigeria.

(f) Economic dislocation which may result from massive AI deployment:

We reckon that AI deployment takes care of repetitive and fast paced work in a detailed manner. However, we need to appreciate that mass deployment of AI means significant job loss. Unless there is a clear plan to reskill and employ the AI displaced persons, this could be a recipe for crisis.

2.9 RECOMMENDATIONS AND CONCLUSION

Whilst we have highlighted the advantages of mass deployment of AI and data protection compliance, they have inherent risks and challenges which may be resolved by the adoption of the following measures:

- (a) Ensure human supervision in the adoption of AI and automated processing of personal data. This ensures speedy detection and resolution of AI bias and adverse automated processing of personal data.²⁹ Prepare a comprehensive AI policy that addresses key questions such as

²⁹ NDPA 2023, s 37(1).



discontinuation programs for malicious AI source codes, monetary compensation for discrimination, etc.

- (b) Ensure the ease of doing business in the deployment and use of AI. This would be achieved via the review of the Land Use Act, ISA, SEC Rules to liberalise the concept of ownership and advance seamless derivative trade of real, moveable and intangible assets in Nigeria.
- (c) Kickstart the building of IT infrastructure to ensure AI independence, data localization and IT sufficiency which is a catalyst for growth and seamless adoption of indigenous AI.
- (d) Commence a strategy for comprehensive data protection compliance amongst property law stakeholders in Rivers State
- (e) Commence a strategy for AI transition and reskilling.



3.0 PRIVATE AND PROPERTY LAW IN A DIGITAL AGE

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ABSTRACT

Like a tsunami, the digital age seems to be throwing every aspect of human life into a state of panic, confusion, uncertainty and redefinition. Spanning from the corridors of information technology, biotechnology, artificial intelligence, robotics, electronic evidence, digital assets, online dispute resolution and more, there seems to be so much to chew in every bite! The legal angle that has historically been defined by her traditional conservatism has been shaken to the foundations, thereby causing rules and laws to change in a bid to catch up with, or operate in, the digital era. What is the status of inheritance of a test tube baby? How can lawyers and judges' function in online dispute resolutions? How do we get restraining orders to stop the sale of digital assets? How easy or effective is the enforcement of orders online? How do we detect fraudulent transactions in the digital age? Are digital issues matters exclusively in the domain of private law or public law? Are the extant laws sufficient to address all the digital concerns? Are our judges, lawyers and other court officials equipped with relevant knowledge, skills and tools to do justice in the digital age? The questions obviously appear to be more than the existing answers. This paper, which is both doctrinal and analytical, makes a bold attempt to address the above concerns and it argues, strongly, that legislators, judges and legal



scholars must look beyond the traditional dichotomization of law as private and public law to address, in substance, the uniqueness of the issues presented by the digital age. A state of emergency must, of extreme necessity, be declared in the arena of legal education, practice and adjudication to fast-track knowledge and experience to handle the slimy dimensions of threat to the traditional understanding of law, especially private and property law, if we must thrive in this digital age.

Key words; Private Law, Property Law and Digital age.

3.1 INTRODUCTION: THE PROBLEMATIQUE

A discourse about private law and property law in a digital age is like waking up sleeping dogs or standing in the middle of soldier ants to single out some of them for destruction. It is never easy to come out of the reactions without a bark or bite from both scenarios. We are entering a caveat, up front, because we are stirring up a discourse in a field that is not just multifaceted, but one where, as shown below, there is no easy consensus among jurists. A greyhound in any faculty of law should readily be able to say that private law and public law are some of the popular classifications of law.³⁰ The matter does not end there, in the face of the

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classifications, authors and jurists agree that the lines are never so easy to draw because there are manifest overlaps in the sense that one conduct may give rise to actions in the field of public law and private law and vice versa. Conversely, property law, is often seen as an aspect of private law.³¹ When one considers certain aspects of property law dealing with public lands, government or public interests in properties and the growing ramifications of property law, then it is difficult to conclude that property law is in the exclusive domain of private law.³² Are digital rights in the domain of private or public law? They impact both public and private law in the sense that cybercrimes are certainly not in the exclusive domain of private law although they often occur during the invasion of private data among others.³³ The summary of the above prefatory remarks is that the subject under consideration is wide, technical and intertwined. A fruitful discussion would therefore necessitate a brief dissection of some of the key words, nay subjects, to lessen the seeming confusion.

What is the Meaning and Scope of Private Law?

According to Asein, “Private law comprises those laws that serve to regulate the conduct of persons in their interpersonal dealings, conferring status, rights and obligations on individuals and juristic persons. It includes such areas of law as the

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³⁰ Other common classifications are: Criminal Law and Civil Law; Municipal Law and International Law; Substantive Law and Procedural Law, Common Law and Civil Law, English Law and Non-English Law, Customary Law and Non-Customary Law and many others, depending on the classifier; J O Asein, *Introduction to Nigerian Legal System* (2nd edn Ababa Press Ltd, Lagos 2005) and Osita Nnamani, *Modern Nigerian Legal System* (3rd edn SNAAP Press Ltd, Enugu 2013).

³¹ Asein, (n1).

³² Asein, (n1).

³³ Cybercrime (Prohibition Prevention etc) Act, 2015, s 14(1).



law of contract, property, tort, family law and succession, commercial law, equity and trust etc.”³⁴ *Blacks Law Dictionary*, defines private law as; ‘The body of law dealing with private persons and their property and relationships.’³⁵ Going by the above definitions, the question one could ask is, can it be said that when the law of torts deals with public nuisance, it is dealing with private persons? Certainly not, because it could constitute a crime too.³⁶ It is often difficult to draw a strong line of demarcation between private law and Public law and to delimit the scope of Private law itself. For example, in dealing with the subject of aviation law, the following observations were made by a learned author:

*Aviation law is one of the most complex branches of law. This is largely due to a number of factors, such as globalization, the numerous countries involved, commercial and business competition, and its overlap with other branches of law. In many situations it is considered part of international law....The rules of private international law and public international law apply to aviation. Private international aviation law relates to the series of rules pertaining to the relations between private persons from different states involved in the operation and use of aircraft, whereas public international aviation law refers to the legal norms affecting the relations between states or between states and international organizations in respect of matters affecting aviation.*³⁷

³⁴ Asein (n1), 18.

³⁵ Bryan A Garner, *Black's Law Dictionary* (7th edn West Group, Minnesota 1999) 1214.

³⁶ *Ibid* 1095 where “amorphous and unsatisfactory” nature of public nuisance is expatiated.

³⁷ Ugo Ezeugwa, *Aviation Law and Practice in Nigeria* (Princeton, Lagos 2021) 19-20



The scope of private law keeps widening as society develops. With the development of human society, especially in the digital era, new frontiers of private law seem to emerge; even though they are also connected with other classifications of law. As noted by an author:

The internet, digital platforms, and social media are heavily governed by private law. However, courts generally apply contract law to enforce these contracts without due regard for their public aspects, as outlined above. Courts emphasize procedural fairness and assent rather than substantive justice and the contract's social impact. Furthermore, courts usually allow parties to contract away their public rights, such as the right to sue in a court of law and regularly enforce liability waivers.³⁸

What is the Meaning and Scope of Property Law?

Property law is a wide subject that is difficult to define with ease. According to Wyczik, “The term property is rather ambiguous in English. It can mean different things to different people in different contexts, including both an object that belongs to someone and the (normally ownership) right to that same object...therefore the distinction between property rights and their objects is blurred.”³⁹ “Unlike common law systems, legal systems derived from Roman law approach the property problem differently. German law, and the legal systems based on it (including Polish law), distinguish between tangible and intangible

³⁸ Orit Gan, *Contracts in The Digital Age*, JOTWELL (May 1, 2025) (reviewing Andrew Keane Woods, *The New Social Contracts*, 77 Vand. L. Rev. 1831 (2024)) <<https://contracts.jotwell.com/contracts-in-the-digital-age/>> accessed 29 May 2025.

³⁹ Jakub Wyczik, ‘Ownership in the 21st Century: Property Law in Digital Assets.’ <https://doi.org/10.1080/136008834_2024.2408917> accessed 26 May 2025.



property. As a rule, ownership of things is understood only as authority over tangible objects. However, this is not exclusive. Austrian law, for example, treats anything distinguishable from and useful to a person as a thing. Some authors have suggested that Italian law, which defines goods as things that can be subject to rights, as well as French law, which purports to regulate tokens as digital assets, may also provide some solutions.⁴⁰ For the purpose of having a working definition, “Property law deals with the rules and regulations governing the rights, interests, and ownership of real, intellectual, and personal property. It encompasses a wide range of legal principles that dictate how individuals and entities can acquire, use, transfer, and protect their assets. Property can include land, buildings, vehicles, intellectual property, and other tangible or intangible possessions.”⁴¹

It has been argued that what distinguishes property law from other kinds of law is that property law deals with the relationships between and among members of a society with respect to “things.” The things may be tangible, such as land or a factory or a diamond ring, or they may be intangible, such as stocks and bonds or a bank account. Property law, then, deals with the allocation, use, and transfer of wealth and the objects of wealth.⁴² A lot of scholars seem to agree that property law covers personal property, real property and intellectual property. The reality is that property law extends beyond these frontiers and covers digital assets such as websites, social media handles and other assets online.⁴³ The classical notion of

⁴⁰ Wyczik (n10).

⁴¹ Avenue Law Firm, “What Are the Three Different Types of Property Law? <What Are the Three Different Types of Property Law? - Updated Aug 2024> accessed 28 May 2025.

⁴² Gregory Alexander and Charles Donahue, ‘Property Law’ *Encyclopedia Britannica*, <<https://www.britannica.com/topic/property-law>> accessed 28 May 2025.

⁴³ Casey Schmidt, ‘The Unique Power of Digital Property’ <<https://www.canto.com/blog/digital-property/>> accessed 30 May 2025.



property in Nigerian law, as enshrined in the Land Use Act, 1978 and received English common law, largely focuses on tangible and intellectual assets. However, digital assets, cryptocurrencies, Non-Fungible Tokens, domain names and digital wallets have challenged this orthodoxy. Classifying digital assets has remained a conundrum, because questions still arise whether digital assets are personal property, choses in action, incorporeal property or a new category of property.⁴⁴

According to Jakub Wyczik, “The perception of digital assets as property protected by private law was also recognised in 2019 by a Chinese court. The Shanghai High People’s Court also published a document stating that a unit of Bitcoin constitutes a virtual object of property.”⁴⁵ See also the Nigeria Data Protection Act 2023, which was enacted for the regulation of personal information; promotion of data processing practices that safeguard the security of personal data and privacy of data subjects; protection of data subjects' rights, and provision of means of recourse and remedies, in the event of the breach of the data subjects' rights. In the case of *Incorporated Trustees of Digital Rights Lawyers Initiative & Ors. v NIMC*⁴⁶ the Nigerian appellate court held that “the trial court had in my view, rightly held above, that the right to privacy of citizens as guaranteed under the Section includes the right to protection of personal information and personal data.” In *Kolawale & Ors v Oteri Holding Ltd*,⁴⁷ the Nigerian appellate court, in dealing with personal property, held that it includes recorded songs among other intangible proprietary rights.

⁴⁴ B Oni, ‘Digital Assets and Nigerian Property Law: A Critical Review’ *Nigerian Journal of Property Law*, Vol. 12(1).

⁴⁵ Wyczik (n10).

⁴⁶ (2021) LPELR 55623 (CA).

⁴⁷ (2015) LPELR 57010 (CA).



Is there a Distinction or Intersection between Private Law and Property Law?

It is obvious from the discussions above that there are serious points of convergence between private law and property law. Indeed, a lot of scholars group property law under private law.⁴⁸ Majority of cases involving property law are between private persons. On the other hand, it is inauspicious to say that matters of property law are exclusively in the domain of private law. For instance, penalties on issues of violation of personal property could be regulated by public law and not private law even though the offence is created under the private law.⁴⁹ It can safely be said that most of the property law concerns are provided for in the field of private law; however, private law covers the subject of property law only to the extent that public interests are not affected or the law does not expressly classify such issues or violations as crimes or matters of public interests.⁵⁰

Much Ado about the Digital Age

Historians have tried to divide the world into certain dispensations called “age” based on significant developments, discoveries or tools for carrying out key activities in the world; they could be seen as revolutions. According to Hilbert, Digital technology, including its omnipresent connectedness and its powerful artificial intelligence, is the most recent long wave of humanity’s socioeconomic

⁴⁸ Harvard Law School, ‘Private Law’ <<https://hls.harvard.edu/areas-of-interest/private-law/>>accessed May 30 2025.

⁴⁹ Dmitry Gorin, Federal piracy and Privateering Laws, <<https://www.thefederalcriminalattorneys.com/piracyandprivateerinnglaws> >Accessed May 29, 2025. See for instance section 734 of the *Companies and Allied Matters Act of Nigeria, 2020* which provides for prosecution of Offences provided under the Act.

⁵⁰ Amanim Akpabio, ‘An Examination of the Supreme Court Case of *Tega Esabunnor & Anor v Dr Tunde Faweya & Ors* and the Impact of a Parents Religious Beliefs on Decisions Affecting the Health of the Child’ <A AKPABIO-Afrischolar Discovery Repository (Annex), 2021-publications.afrischolar.net> accessed 30 May 2025, Where the Supreme Court of Nigeria held that the rights accruable to a person may interfered with in the public interests; Constitution of the Federal Republic of Nigeria, s 45 that allows for taking away private property in Public interest among other issues.



evolution. The first technological revolutions go all the way back to the Stone, Bronze, and Iron Ages, when the transformation of material was the driving force in the Schumpeterian process of creative destruction. A second metaparadigm of societal modernization was dedicated to the transformation of energy (aka the “industrial revolutions”), including water, steam, electric, and combustion power. The current metaparadigm focuses on the transformation of information.⁵¹ There are lots of conversations going on globally about the digital age, internet age, information age, technological age, web age, online age, computer age, jet age and other words and phrases used to define the present age where these issues are addressed.⁵² There is no specific unanimous day or date when the digital age started, but a lot of historians and scholars share the fact that the shift into the digital age started from the middle of the 20th Century and grew and expanded in dimensions till date.⁵³

It has been argued, for instance, that cybercrime became possible from 1982 when cyberspace was created. Traditional crimes committed in cyberspace became the first genre of cybercrimes until criminalization of new phenomena that arose from the use or misuse of cyberspace which are identifiable as spamming, e-bombing, phishing, pharming, and many others which could not subsume as crimes (without specific criminalisation) were criminalised.⁵⁴

⁵¹ M Hilbert, ‘Digital Technology and Social Change: the Digital Transformation of Society from a Historical Perspective’ <Dialogues Clin Neurosci. 2020 Jun;22(2):189-194. doi: 10.31887/DCNS.2020.22.2/mhilbert. PMID: 32699519; PMCID: PMC7366943> accessed 31 May 2025.

⁵² Digital Sociology, ‘The Digital Age’ <The Digital Age | The Challenges and Effects To Humanity> accessed 31 May 2025.

⁵³ Lovelli Faud, A Very Brief History of the Digital Revolution – Also Known as the Digital Shift, <<https://discover.hubpages.com/technology/digital-revolution-analysis>> accessed 31 May 2025.

⁵⁴ Oparah & Duson, ‘The Quest for a New Criterion for the Criminalization of Cybercrime in Nigeria’ <file:///C:/Users/HP/Downloads/ajol-file-journals_479_articles_295720_68239248de1d7.pdf> accessed 31 May 2025.



The United Nations has observed that digital technologies have advanced more rapidly than any innovation in our history – reaching around 50 percent of the developing world’s population in only two decades and transforming societies. By enhancing connectivity, financial inclusion, access to trade and public services, technology can be a great equaliser. In the health sector, for instance, AI-enabled frontier technologies are helping to save lives, diagnose diseases and extend life expectancy. In education, virtual learning environments and distance learning have opened up programmes to students who would otherwise be excluded. Public services are also becoming more accessible and accountable through blockchain-powered systems, and less bureaucratically burdensome because of AI assistance. Big data can also support more responsive and accurate policies and programmes.⁵⁵

From the standpoint of law, another author states that technology law covers a wide spectrum of legal issues, including intellectual property, data privacy and protection, cybersecurity, e-commerce, telecommunications, and regulatory compliance. It also addresses emerging areas such as blockchain technology, artificial intelligence, and biotechnology.⁵⁶ Since this paper is focused on private and property law, it is apropos to expound, albeit briefly, how the digital age has impacted these areas of law in terms of gains and concerns.

⁵⁵ United Nations, ‘The Impact of Digital Technologies’ <<https://www.un.org/en/un75/impact-digital-technologies>> accessed 30 May 2025.

⁵⁶ Abdul Muhammed ‘Technology Law in Nigeria’ <<https://amlawpractice.com.ng/technology-law-in-nigeria/#:~:text=Technology%20law%2C%20often%20referred%20to,%2C%20artificial%20intelligence%2C%20and%20biotechnology>> accessed 30 May 2025.



3.2 THE JOURNEY FROM PHYSICALIZATION TO DIGITIZATION OF PRIVATE AND PROPERTY LAW: COUNTING THE GAINS

As earlier stated, the law has grown from laying emphasis on things that can really be seen and touched to intangible things and now to things that are digital or web based.⁵⁷ Some of the core gains or positive impact that the digital age has added to the field of private and property law can be listed as follows:

1. Wealth creation and ease of transactions through e-money channels. It has been observed that the history of digital currency dates back to the invention of the internet. There were difficulties in getting the population to adopt the use of digital currency in the early days; however, as people become more comfortable with technology, and the technology itself becomes more safe and secure, more people are now willing to utilize digital monies. PayPal is considered one of the first successful companies to bring the idea of easy-use digital financial transactions to mass adoption. Prominent examples of digital currency include Bitcoin, Ethereum, Ripple and Litecoin, amongst others. Central bank's digital currency (CBDC) is another form of digital currency that are gaining global adoption and acceptance. The CBDC is the virtual format of a fiat currency for a particular nation or region. It is an electronic record or digital token of the official currency and is issued and regulated by its monetary authority. Many countries such as China, the US, England, Canada and Russia have taken concrete steps towards issuing a virtual format of their official currencies. Digital currencies have assisted in the globalization of economies around the world since trade is made more easily by sending and receiving digital currency. It eliminates the need to

⁵⁷ Hilbert (n22).



physically transfer money; furthermore, banking is made much more convenient by allowing people to perform their banking without the need to visit a physical branch or carry cash.⁵⁸

2. In the field of family law, the digital age has come with aids for consummating marriages, reproduction of children and other things that were causes for divorce have been largely addressed.⁵⁹
3. Ease of Filing Court processes and special applications or documents involving private and property law. For example, EFS-Web which is an electronic filing system that enables patent applications, amendments and other documents to be filed over the internet. Thus, reducing the risk and costs of travel and saving time too.⁶⁰
4. Many courts have begun implementing e-filing systems to streamline processes, reduce delays, and enhance transparency. Remote hearings, which gained momentum during the COVID-19 pandemic, through the virtual courtroom procedure has made it easier to attain justice from long distances. AI-driven legal research tools. Have also helped in developing the law in this regard.⁶¹

⁵⁸ Chartered Institute of Taxation of Nigeria, 'Evolution of the Nigeria Digital Currency: the E-naira' <<https://portal.citn.org/evolution-of-the-nigeria-digital-currency-the-e-naira-part> 1/> accessed May 30, 2025.

⁵⁹ Toporcerová Silvia, Špaková Ivana, Mareková Mária, Rabajdová Mirka, 'Biotechnology in the Process of Assisted Reproduction' Editor(s): Debmalya Barh, *Biotechnology in Healthcare* <<https://doi.org/10.1016/B978-0-323-90042-3.15002-9>> accessed 30 May 2025.

⁶⁰ David Pressman, *Patent it Yourself* (14th edn, Nolo, USA 2009) 297.

⁶¹ LegalDigitalNG, 'Navigating Digital Transformation in Nigerian Law's Guide to the Future' <<https://legaldigitalng.com/navigating-digital-transformation-in-nigerian-law-legaldigitalngs-guide-to-the-future/>> accessed 31 May 2025.



5. Online Dispute resolution schemes have encouraged more people to enter transnational transactions knowing that disputes can be resolved amicably without travelling to attend sessions.⁶²
6. The digital age has made it easier to monitor business transactions. Thus, it is possible to literally track orders of goods made online and know or follow where they are per time till they are delivered physically and to even detect cases of infractions.⁶³
7. With the advent of electronic channels for advertising and selling books, music and other inventions, people can access a wider audience or market through their works.⁶⁴
8. Using drones, satellites and other advanced imaging devices, it's been easier to inspect landed properties, delineate boundaries and resolve a lot of possession and ownership issues.⁶⁵
9. Digital technologies have helped a lot in the field of prevention of fraudulent transactions by the ability to block accounts, better methods of judgment enforcement through the garnishee proceedings, identity search and facial recognitions while trying to know who is at the other end of a transaction.⁶⁶

⁶² Abdulsalam O Ajetunmobi, *Alternative Dispute Resolution & Arbitration in Nigeria* (Princeton, Lagos 2017) 42

⁶³ Dick Dekkers, 'Container Tracking Online: Why going Digital is the Way Forward' <Container tracking online: why going digital is the way forward | DCSA> accessed 31May 2025.

⁶⁴ E Thomas and A Akpabio, 'Interrogating the Legal Landscape of Influencer Marketing and Consumer Rights in Nigeria' [2025] 4(3) *International Journal of Human Rights Law Review* 27.

⁶⁵ Shelley E Huguley, 'Drones and Private Property: Know your Rights' <<https://www.farmprogress.com/technology/drones-and-private-property-know-your-rights>> accessed May 31, 2025.

⁶⁶ LegalDigitalNG (n32).



10. The use of robots for surgical operation has been on the rise globally, thus simplifying complex procedures and reducing the number of casual hands necessary to conduct surgery.

The list of gains is endless as digital technologies have permeated all aspects of private and property law, and it keeps expanding by the day.

3.3 SOME SPECIFIC CONCERNS: HOW DO WE THRIVE IN THE PRESENT DEBACLE?

The rise in digital technologies, though useful, has raised a lot of concerns, especially in the fields of private and property law. Some notable concerns or challenges are as follows:

1. There is no uniform global law governing the entire digital space, thus while some countries try to legalize and recognize some digital operations; others forbid same. For example, as of May 2025, the United States was still debating over recognizing and regulating crypto currency deals; whereas the Nigerian government had placed a ban on crypto currency. This poses series of issues when it comes to the legality of a transaction between a person in America and one in Nigeria on issues of legality and enforceability.
2. Digitalization sometimes aids the anonymity of digital communication which complicates the identification of actual tortfeasors. In *Godfrey v Demon Internet Ltd* [2001] QB 201, a UK court held that ISPs could be liable for defamatory content once notified.
3. The challenge of balancing the protection of privacy rights against public interest: Digital technologies such as aviation security scanners or other body search technologies have had a deafening blow on the Constitutional



right to privacy of individuals as against the need to protect the public against crimes: Studies revealed that the advanced imaging technology deployed for body search in airports exposed body contours of passengers beneath their clothes. However, due to public outcry some modifications were made.⁶⁷ To succeed in resolving the effect of using hi-tech devices to track down criminals and to detect dangerous devices as against protecting constitutional privacy rights, the courts, around the world, seem to be in unanimity with the fact the courts must balance governments air safety interests against privacy rights and as such that the use of scanners and other technological gadgets for search are reasonable administrative search for public safety, which outweigh an individual's privacy rights: See *Corbett v Transport Security Administration*,⁶⁸ *Elect. Privacy Info. Ctr. v US Department of Homeland Security*.⁶⁹ The courts may however intervene where the search is not geared towards air safety: See *United States v \$124, 570 US Currency*.⁷⁰

4. Issues with electronic signatures under the Evidence Act of Nigeria, as amended in 2023, and the contractual doctrine of non-est factum is still an albatross. Concerns over situations where the electronic signature of a person may be used to close a contract which the person may not have been privy to and the person could take the benefit; or be in a precarious position on how to deny liability since witnesses are often not present online to confirm if indeed one signed or not.⁷¹

⁶⁷ Ezeugwa (n8) 612.

⁶⁸ No.12-15893, 9-19- 2014.

⁶⁹ 653 F. 3d 1, 10-11 (D.C. Cir.2011).

⁷⁰ 458 F. 3d 822 (8th Cir. 2006).

⁷¹ Muhammad Nova Haikai and Siti Mahmudah, 'Implementation, Advantages and Barriers and Legal Protection Against the Use of Electronic Signatures' *Journal of Social*



5. Paternity, inheritance rights and other concerns over test-tube babies or surrogacy and other bio engineering processes.⁷²
6. Risk of knowing who is a minor and the legal requirements on minors for purposes of legal accountability in online contracts and related deals made online⁷³.
7. Illiterates Protection Concerns in Online Businesses: How “Illiterate” is an Online Trader.⁷⁴
8. Could chronic and persistent sexual intercourse with sex toys and digital vibrators to the detriment of marriage partner amount to a breach of marital vows and a ground for divorce?⁷⁵
9. The challenges of language differences in the digital power play has widened the doors for fraudulent activities and made it difficult at times to track defaulters.⁷⁶

Research, <10.55324/josr.v3i6.2067> Implementation, Advantages and Barriers and Legal Protection Against the Use of Electronic Signatures accessed May 31 2025.

⁷² RSMC, “What is Paternity Testing? Do I Need a Paternity Test if I Use Surrogacy?” <What is Paternity Testing? Do I need a paternity test if I use surrogacy?-RSMC Singapore> accessed 31May 2025.

⁷³ Shivangi Gangwar, ‘Minors’ Contracts in the Digital Age’ *Liverpool Law Review* June 2022, 43(2):237-261 <DOI: 10.1007/s10991-022-09298-3> accessed 31 May 2025. The author stated as follows: “This paper examines how the three jurisdictions of England, India and South Africa deal with minor contracts in the digital age. While South Africa permits minors above the age of seven years to enter into contracts with parental assistance, the English and Indian position is that minor contracts are unenforceable against minors, unless they are ‘contracts for necessities or contracts for the benefit of the minor. Judicial interpretation of these categories has been fluid and indeterminate, creating its own set of problems.”

⁷⁴ Jaijit Bhattacharya, ‘Empowering the Legally Illiterate through Oral Contracts on Digital Infrastructure’

<<https://government.economictimes.indiatimes.com/blog/empowering-the-legally-illiterate-through-oral-contracts-on-digital-infrastructure/99753468>> accessed 31 May 2025.

⁷⁵ Lea Seguin, Erin Watson, Robin Milhausen and Sarah Murray, ‘The Impact of a Couple’s Vibrator on Men’s Perceptions of Their Own and Their Partner’s Sexual Pleasure and Satisfaction’ *Men and Masculinities* 19(4):370-383 DOI: <10.1177/1097184X15595082> accessed 31May 2025.

⁷⁶ Bruce Williams, Edwin Frank and Adeoye Ibrahim, Language in the Digital Age: Innovations and Challenges’ <TY-JOUR 2024/12/30> accessed 31 May 2025.



10. Plagiarism concerns about AI writings, Who is the offender? AI or the author assisted by AI?⁷⁷
11. Challenges of tracking the specific person who may have breached data or infringed copyright in cases of unauthorized downloading and marketing of materials in cases of multiple system user.⁷⁸
12. Enforcing the right to be forgotten under the Data protection law. How can you be sure that they have deleted your data completely?
13. Problems of criminalizing Pornography in an age of involuntary consent to receive contents which turn out to be forbidden.
14. Online enticement is a new dimension used by some persons in the digital age to lure the vulnerable away from parents and spouses and it poses great legal challenges in terms of proof and liability.⁷⁹
15. Detecting Illegality in cross border Transactions and relationships: Matters arising from mixed legal regulations of same sex relationships, online dating and online or virtual marriages. Are there consequences for same sex marriages conducted online where the priest who conducts it is in a foreign soil that allows same sex marriage?⁸⁰
16. The problem of placing liability for negligence in surgeries conducted by robots. Do we blame the robot or the live doctor who coordinated the robotic surgery?

⁷⁷ SJSU, 'Artificial Intelligence (AI) & Plagiarism' <Artificial Intelligence (AI) & Plagiarism - Plagiarism - Dr. Martin Luther King, Jr. Library at San José State University Library> accessed 31 May 2025.

⁷⁸ Richard Morgan and Kit Burden, *Legal Protection of Software* (Universal Law Publishing Co, Delhi 2010) 184-185; *Canton Fitzgerald International v Tradition (UK) Ltd* [2000] RPC 95.

⁷⁹ Department of Homeland Security, 'The Threat: Online Enticement and Grooming' <https://www.dhs.gov/sites/default/files/2025-01/25_0121_K2P_online-enticement.pdf> accessed 25 May 2025.

⁸⁰ Olivia Kinnear, 'Legal Relationships, Illegal Marriage: Examining Plural Marriage and a Legal Inconsistency' <<https://journals.tulane.edu/tjls/article/view/3703/3474>> accessed 26 May 2025.



17. Miscellaneous concerns and challenges: It is indeed impracticable to articulate all the concerns or challenges raised in relation to digital technologies in the field of private and property law. It is noteworthy that, beyond specific concerns, there are still worries over how to track online copy right infringements, how to secure witnesses in cases of online defamatory publications, verifying online financial interest calculations by bankers, power failure, poor knowledge of digital processes by law enforcement, lawyers and judges and other factors too numerous to discuss.⁸¹

3.4 HOW DO WE PREPARE FOR THE FUTURE?

Like wildfire, digital technology is spreading its tentacles and the impact on law is far reaching. This work has exposed, for greater interrogation, the yawning legal gaps. Unfortunately, the legal world is slow towards preparing for the astronomic expansion of digital technologies. A lot can be, and needs to be, done to address the present issues and prepare for the future.

1. In the first place, since digital space is not just limited to a national territory or legal system, there is need for digital cooperation among various countries of the world. As noted by the United Nations, “Increasingly, digital cooperation between states – and a universal cyberspace that reflects global standards for peace and security, human rights and sustainable development – is seen as crucial to ensuring a united world. A ‘global commitment for digital cooperation’ is a key

⁸¹ *Josette Corazza*, ‘Private Law May Have Too Much Control Over Data, Says Professor’ <<https://www.law.virginia.edu/news/202410/private-law-may-have-too-much-control-over-data-says-professor>> accessed 31 May 2025.



recommendation by the Secretary-General's High-level Panel on Digital Cooperation.”⁸²

2. National governments must make specific and proactive laws to guide the core areas of the law where digital gaps exist to reduce the level of legal confusion as highlighted in this work.⁸³
3. There is a dire need to upgrade the rules of evidence and to design high tech strategies and tools to enable the courts to know more things in the digital space.
4. There must be a strong balance maintained between public regulation of digital space and protection of the rights of genuine business operators from undue intrusions and interferences with their privacy rights.
5. The Courts must also be creative in their judicial interpretation function so as not to let fraudsters take over the digital space nor allow the government to get into undue regulations.
6. There is need for aggressive study from cradle and refresher courses for all, especially legislators, law enforcements, lawyers and judges.
7. Multidisciplinary consultations must be made before making certain legislation or policies affecting the digital space.

⁸² United Nations, ‘The Impact of Digital Technologies’ <[https://www.un.org.en.75.impact-digital-technologies](https://www.un.org/en.75.impact-digital-technologies)> accessed 31 May 2025.

⁸³ For instance, Bit coin and crypto currency started in 2009, this is 2025 and the USA is now debating over a bill to regulate the field after a lot of fraud and sharp practices may have occurred for years. See Anshu Siripurapu and Noah Berman, ‘The Crypto Question: Bitcoin, Digital Dollars, and the Future of Money’ <<https://www.cfr.org/background/crypto-question-bitcoin-digital-dollars-and-future-money>> accessed 31 May 2025.



8. Pending using judges with specialized digital training, it is necessary for administrative and judicial adjudicators to engage experts as consultants and legal assistants in cases and judgements involving digital technologies.
9. Appropriate measures must be put in place for checking law enforcement agents and agencies from criminalizing civil transactions. An ordinary breach of a financial contract online does not necessarily become a crime necessitating the invocation of the criminal machinery of the State.

3.5 FINAL THOUGHTS

The major task of this paper was to examine private and property law in the digital age or space. The paper has shown that Property law is largely subsumed under private law, except where public or government interest is deemed paramount, or the law expressly makes laws on the matter under public law - such as criminalizing certain actions. The digital age has had a sweeping impact or shift in paradigm from physical objects like lands, chattels to intangible rights and a completely digital space where only initiates understand the operations and which is not territorially limited. Interestingly, the dimensions or categories of digital operations keep widening at a rate that is faster than extant governmental regulation and few countries that have tried to regulate the operations are still grappling with poor knowledge of the operations in the digital space among other fundamental logistics related challenges. The paper ends with a road map for dealing with the present debacle and having a pragmatic approach towards the future. A good note to introduce, not conclude, for we can never conclude this discourse, is by re-echoing the immortal words of Eric Schmidt who said:



*While all of this digital chaos will be a nuisance to democratic societies, it will not destroy the democratic system.... once democracies determine the appropriate laws to regulate and control new trends, the result may even be an improvement, with a strengthened social contract and greater efficiency and transparency in society. But this will take time, because norms are not quick to change...*⁸⁴

No matter how the digital age grows, some people, like us, would not love to have wives or husbands residing online, we want to wake up from our digital slumber, like the Biblical Adam to see, feel and say “this is the bone of my bones and the flesh of my flesh” ; indeed, my own private property in a digital age! Thanks, and may God bless the organizers.

⁸⁴ Goodreads, ‘The New Digital Age Quotes’ <<https://www.goodreads.com/work/quotes/21903884-the-new-digital-age-reshaping-the-future-of-people-nations-and-busines>> accessed 31May 2025.



4.0 EVOLVING FAMILY LAW ISSUES IN CONTEMPORARY TIMES

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ABSTRACT

This paper critically explores the evolving dimensions of family law in Nigeria with focus on the emerging issues of prenuptial agreements, surrogacy, artificial reproductive technology, cohabitation and polyamory. The rapid transformation of social and reproductive norms has exposed significant gaps and ambiguities in Nigeria's legal system. By conducting a comparative analysis, the paper examines how jurisdictions like the United Kingdom, South Africa, Australia and India have responded to similar challenges. The UK has developed comprehensive laws on surrogacy and ART, established civil partnerships, and allowed cohabitation rights and enforceable prenuptial agreements. South Africa's legal system permits altruistic surrogacy, recognizes cohabiting partners in certain contexts, and has extended constitutional protection to a broader spectrum of family forms. India has enacted the Surrogacy (Regulation) Act 2021 and ART (Regulation) Act 2021, reflecting a more structured, yet conservative approach that bans commercial surrogacy but legitimizes regulated ART procedures. Through doctrinal and comparative methodologies, the paper argues for the urgent reform of Nigeria's family law to align with global best practices while taking into account local socio-cultural



realities. It concludes that a coherent legislative framework is required to regulate modern family formations, protect the rights of all parties, and safeguard the best interests of children in an increasingly complex socio-legal environment.

4.1 INTRODUCTION

Family law, which traditionally centered on marriage, divorce, child custody, and inheritance, has undergone profound transformation in recent decades. These changes are driven by shifting social values, advances in reproductive technology, legal recognition of diverse family structures, and global interconnectedness. Technology has revolutionized how family law is practiced. Virtual court hearings, introduced widely during the Covid-19 pandemic, continue to offer increased accessibility and efficiency.¹ Digital evidence including emails, text messages, and social media posts, are now routinely used in family law proceedings to determine issues of credibility, intent and behavior.² In 2023 the Evidence Act 2011 was amended by the Evidence (Amendment) Act 2023 to bring the provisions of the Evidence Act in line with ‘global technological advancements in evidence taking’.³

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¹ JM Greacen, *The Transformation of Court Services Through Technology*, (National Centre for State Courts 2020) 54.

² E Casey, *Digital Evidence and Computer Crime*, (3rd ed Academic Press 2011) 211.

³ Evidence (Amendment) Act, 2023, Explanatory Memorandum.



The legal recognition of non-traditional families represents one of the most significant shifts in modern family law. The legalization of same-sex marriage in many countries has required legal systems to adapt to new family dynamics and ensure equal rights and protection for all families. Same-sex couples now have the right to marry, adopt children, and receive spousal benefits in numerous jurisdictions. This recognition has spurred legal reforms in areas such as parental rights, inheritance, and divorce proceedings.⁴ In Nigeria, homosexuality and its incidents are widely viewed as unnatural⁵ and are punishable under the Penal Code, Criminal Code and the Same Sex Marriage (Prohibition) Act.⁶ Nigeria's position on same sex partnerships is made clear in the Same Sex Marriage (Prohibition) Act which prohibits the public display of same sex amorous relationship, among other things.

Furthermore, the scope of domestic violence has broadened significantly, now encompassing emotional, psychological, economic, and technological abuse. Legal responses include protective orders, mandatory reporting laws and specialized family violence courts.⁷ Various states in Nigeria,⁸ including Rivers State⁹ have passed laws recognizing these forms of domestic violence.

Law exists to regulate human relationships and maintain order, in addition to promoting peace, good government, and the security and welfare of all persons, applying the principles of freedom, equality and justice.¹⁰ As a result of evolution

⁴ *Obergefell v Hodges*, 576 US. 644.

⁵ *Magaji v The Nigerian Army* 2008) LPELR-1814 (SC).

⁶ PC, ss 284 and 405(2)(e); CC, ss 214 and 215.

⁷ DVCV Act, 2004 (UK).

⁸ E I Nwogugu, *Family Law in Nigeria* (3rd ed, HEBN Publishers Plc 2014) 112-114.

⁹ Rivers State VAPP Law No. 4 of 2020.

¹⁰ CFRN 1999, Preamble, s 4; Chris C Wigwe, *Jurisprudence and Legal Theory*, (2nd edn, Princeton and Associates Publishing Co. Ltd) 94; Abiola Sanni, *Introduction to Nigerian Legal*



in science and human relationships, law must evolve to effectively regulate human activities and accommodate scientific advancements made in the interest of the human race. This paper critically explores the evolving dimensions of family law with focus on surrogacy, artificial reproductive technology, cohabitation, prenuptial agreements and polyamory. Adopting doctrinal and comparative methodologies, the paper analyses the state of the laws in Nigeria, the United Kingdom, India, Australia and South Africa with the aim of identifying best practices that may be adopted by Nigeria towards providing effective and efficacious laws on these emerging issues. This paper argues that there is urgent need to reform Nigeria's family law to align with global best practices while taking into account local socio-cultural realities.

4.2 ARTIFICIAL REPRODUCTIVE TECHNOLOGIES, SURROGACY AND LEGAL PARENTHOOD

Artificial Reproductive Technologies

Artificial Reproductive Technologies encompass medical techniques designed to assist individuals in achieving pregnancy. These include in vitro Fertilization (IVF), intrauterine insemination (IUI), gametes donation, embryo freezing and pre-implantation genetic diagnosis. ART is redefining the concept and structure of parenthood by enabling individuals and couples regardless of marital status, fertility or sexual orientation to have children through nontraditional reproductive methods.¹¹

Method, (Obafemi Awolowo University Press Limited 2006)31-51; Ese Malemi, *The Nigerian Legal Method* (2nd edn, Princeton Publishing Co 2012) 13.

¹¹ F A Adeniyi, 'The Evolution of Child Adoption Laws in Nigeria: A comparative Analysis' [2020] 12(3) *Nigeria Journal of Family Law*, 56.



Legal Implications of Artificial Reproductive Technologies on Parentage and identity in Nigeria

Artificial Reproductive Technologies have introduced intricate legal challenges, especially in jurisdictions like Nigeria, where prevailing legal doctrines are not adequately adapted to contemporary reproductive innovations.¹² Traditionally, parenthood in family law has been determined either through biological ties recognizing the woman who gives birth and the man proven to be the biological father or through marital presumptions, where the husband of the mother is assumed to be the child's father. However, ART disrupts these frameworks by decoupling genetic, gestational, and social elements of parenthood.¹³

For example, where a child conceived through donor eggs and sperm, is carried by a gestational surrogate, the intended parents will have neither biological nor gestational link to the child. Presently, Nigerian law lacks any clear provision that recognizes the intended parents as legal parents of the child born.¹⁴ Unlike jurisdictions such as the United Kingdom, where consent and intention are key determinants of legal paternity under ART laws,¹⁵ Nigerian law does not reflect this intention-based model. This legal gap results in uncertainty for non-genetic, non-marital intended parents regarding their legal status, with implications for custody rights, succession, and legal identity.¹⁶

¹² O N Arinze, *Family Law and Child Welfare in Nigeria: A Social- Legal Approach* (Lagos University Press 2018) 122.

¹³ Adeniyi (n 11) 60.

¹⁴ NM Chukwu, 'Assisted Reproduction and the Law in Nigeria: A Need for Reform' [2019] 7(1) *Nigeria Health Law Review*, 91.

¹⁵ UK HFE Act 2008, ss 35-44.

¹⁶ Chukwu (n 14) 93.



Furthermore, unmarried persons in Nigeria who become parents through surrogacy or ART face significant legal uncertainties on their status in relation to the child. Such individuals may need to adopt the child or seek a court declaration of parentage to be recognized as the parent of the child. Another critical issue concerns the right of donor-conceived individuals to know their genetic origins. There are no clear legal provisions in Nigeria determining whether donors hold any parental rights or responsibilities. Similarly, it remains uncertain whether children conceived through donation have the right to access information about their biological origins, a right recognized in jurisdictions such as the United Kingdom and Australia. This regulatory gap raises significant concerns about potential issues like accidental incest, inheritance disputes and identity related psychological challenges. While global legal trends are moving towards transparency and a gradual end to anonymous gamete donation,¹⁷ Nigerian law is silent on this subject. This omission may violate children's constitutional rights to dignity and identity as enshrined in the 1999 Constitution (as amended), sections 34 and 37.¹⁸

ART also raises significant questions around legitimacy and inheritance. Under both customary and statutory regimes in Nigeria, a child's legitimacy is often tied to being born within a recognized marriage. Thus, children conceived using ART especially those involving donor gametes or born to unmarried parents' risk marginalization, particularly in accessing inheritance rights or

¹⁷ UN CRC 1989, Arts 7 and 8; International Social Service *International Principle for Donor-Conceived Children* (Geneva, 2016) 10.

¹⁸ CFRN 1999 (as amended), ss 34 and 37.



obtaining official documentation.¹⁹The situation is exacerbated by the lack of judicial precedents.²⁰

In Nigeria the use of ART has grown rapidly particularly in major urban areas. Numerous fertility clinics provide services to married couples, single women, and occasionally international clients.²¹ However, unlike in more developed countries, this growth has taken place within largely unregulated legal framework. There is no comprehensive legislation addressing the scope, limitation or ethical consideration of assisted reproductive technologies, leaving many important legal and ethical issues unresolved.²²

Another pressing issue is the unclear legal status of embryo and other reproductive materials. Nigeria lacks legislation addressing ownership rights in cases of disputes between partners, as well as guidelines on the destruction, donation or the use these materials after a person's death. In contrast, South Africa's National Health Act 2003 provides a structured legal framework for ART, incorporating licensing, ethical oversight, and clear consent procedures to promote accountability and transparency in reproductive healthcare.

Furthermore, access to ART in Nigeria is predominantly market driven and limited to those with the financial means, which deepens existing social inequalities especially among economically disadvantaged or rural women. The absence of professional standards concerning the number of embryos to be

¹⁹Arinze (n 12) 113.

²⁰ AA Adeyemi, 'Legal Dimensions of Assisted Reproductive Technology in Nigeria' [2020] 8(2) *Nigerian Journal of Family Law and Practice*, 56.

²¹ Arinze (n 12) 133.

²² Chukwu (n 14) 89.



implanted or the use of ART in postmenopausal women, also presents significant bioethical challenges, raising concerns about both maternal and child wellbeing.

Importantly, Nigeria lacks centralized data repositories or national registries for ART births, donor and fertility clinics. This absence hinders research, policy making and the monitoring of health outcomes. It also raises significant concerns related to public health and potential frauds, as there is minimal oversight of clinics conducting these delicate reproductive procedures. The regulatory vacuum surrounding ART in Nigeria has allowed scientific advancements to outpace the law. As reproductive technologies continue to redefine the concept of family, the lack of legal guidance leaves individuals vulnerable and the notion of parenthood legally ambiguous. By contrast, South Africa has enacted explicit laws that define parenthood in ART cases based on pre-conception consent and judicial oversight, ensuring legal clarity and safeguarding the interests of all parties.²³ Unless Nigeria undertakes comprehensive legal reforms, families engaging in ART will continue to face legal ambiguity, and children born through these methods may be denied full legal recognition and protection. The Nigerian Law Reform Commission has recommended that any child born to a married woman as a result of ART should be regarded as the child of her husband.²⁴

Surrogacy and Legal Parentage

Surrogacy is traditionally understood as an arrangement where a couple known as the intended parents engages a woman referred to as the surrogate or birth mother to conceive a child through artificial insemination or embryo implantation. The

²³ South Africa CA 2005, s 40; E Bonthuy, 'Surrogacy and the Legal Determination of Parenthood' [2012] (129) *South African Law Journal*, 673.

²⁴ Nwogugu (n 8); EA 2011, s 165.



surrogate carries the pregnancy to term and relinquishes all parental rights upon the child's birth. There are two types of surrogacy namely; traditional surrogacy and gestational surrogacy. In traditional surrogacy, also referred to as genetic, straight, or partial surrogacy,²⁵ the surrogate's egg is used, making her the biological mother. In gestational surrogacy, also known as host or full surrogacy, the surrogate carries the embryo created using the gametes of the intended parents or donors, with no genetic link to the surrogate herself.

Comparative Analysis

Globally, several jurisdictions have enacted detailed legislation to regulate surrogacy. A comparative analysis of how other jurisdictions regulate surrogacy and artificial reproductive technologies offers valuable insights into possible reform directions for Nigerian family law.

United Kingdom

The UK has developed a sophisticated regulatory framework for ART and surrogacy under the *Surrogacy Arrangements Act, 1985* and the *Human Fertilization and Embryology Acts* of 1990 and 2008. These statutes define legal parentage, mandate licensing of fertility clinics, and prohibit commercial surrogacy²⁶ while allowing altruistic arrangements.²⁷ The UK Surrogacy Arrangements Act 1985, s 3 makes it an offence to advertise for surrogacy. However, Non-Profit making bodies are given room to advertise that they can

²⁵ Department of Health and Social Care, 'The Surrogacy Pathway: Surrogacy and the Legal Process for Intended Parents and Surrogates in England and South Wales' (25 April, 2024) www.gov.uk accessed 29 May, 2025; Soibi George-Ibikiri, 'Surrogacy in Nigeria: A Case for Regulation' [2023] (18)(2) *Journal of Private and Property Law*, 3.

²⁶ UK SAA 1985, s 2.

²⁷ UK HFEA 1990; HFEA 2008, ss 33-47.



connect surrogates to people looking for surrogate mothers.²⁸ The surrogate and her consenting spouse or partner, if she is married or in a civil partnership, will be regarded as the parent(s) of the child at birth. Surrogacy agreements in the UK are not legally binding documents.²⁹ The United Kingdom's Human Fertilization and Embryology Act 2008³⁰ allows intended parents to obtain a parental order, post-birth, transferring legal parenthood from the surrogate to them, provided certain conditions are met. Notably, the UK courts can issue parental orders, transferring legal parenthood from the surrogate to the intended parents, based on consent and the best interests of the child.³¹

India

India has opted for a restrictive approach under the Surrogacy (Regulation) Act 2021.³² The Act bans commercial surrogacy but permits altruistic surrogacy for Indian married couples with medical needs, subject to stringent eligibility and consent criteria. For instance, the intending couple must be between the age of 23-50 years (female) and 26-55 years (male) on the day of certification.³³ The SRA provides that a surrogate must be married and have a child of her own. The surrogate must have been a surrogate only once in her life.³⁴ A child born by a surrogate is deemed to be the biological child of the surrogate.³⁵ An order of parentage and custody of the surrogate child must be passed by a magistrate to transfer parentage to the commissioning couple.³⁶

²⁸ UK HFEA 2008, s 59.

²⁹ Department of Health and Social Care, (n 25).

³⁰ UK HFEA 2008, s 54.

³¹ *Re X (A Child) (Surrogacy: Time Limit)* [2014] EWFC 27.

³² SRA 2021, ss 4-8.

³³ SRA 2021, ss 2-11.

³⁴ SRA 2021, s 4(b).

³⁵ SRA, s 8.

³⁶ SRA, s 3.



The Assisted Reproductive Technology (Regulation) Act 2021 complements the SRA by setting ethical standards and establishing national and state-level ART authorities.³⁷ Surrogacy in India is regulated by National and State surrogacy boards which stipulate codes of conduct for surrogacy clinics. All clinics involved in surrogacy are required to be registered with the government.³⁸

South Africa

In South Africa surrogacy is governed by Chapter 19 of the Children's Act 2005³⁹, which requires judicial confirmation of surrogacy agreements before the process begins, ensuring enforceability and protection of all parties involved. The Children's Act, s 301 prohibits commercial surrogacy. Parties to a surrogacy arrangement must enter into a written agreement before commencing the process. This agreement must be confirmed by a High Court via an order before the insemination of the surrogate.⁴⁰ South Africa presents a model of inclusive and rights-based regulation. The Children's Act 2005 governs surrogacy through pre-birth court approval, ensuring all parties consent and protecting the child's welfare.⁴¹ ART is regulated under the National Health Act 2003, which mandates ethical oversight and informed consent.

Legal Gaps and Challenges in Surrogacy under Nigeria Law

In Nigeria, surrogacy is gaining traction particularly among infertile couples and women with medical conditions that preclude safe pregnancy. Despite its growing

³⁷ ARTRA 2021, ss 4-12.

³⁸ SRA, 3 and 11; George-Ibikiri (n 25) 5.

³⁹ CA 2005, Chapter 19, ss 292-297.

⁴⁰ Adams and Adams, 'How does Surrogacy Work in South Africa?' <http://www.adams.africa> cited in George-Ibikiri (n 25) 6.

⁴¹ CA 2005, ss 292-297.



relevance, there is no statutory provision under the Matrimonial Causes Act⁴², Child Rights Act⁴³, or any family related legislation that directly governs surrogacy agreements, parentage determination or enforceability of such arrangement. This legal vacuum generates significant uncertainty. Intended parents even if genetically related to the child, may lack automatic parental status.

Moreover, in the absence of statutory guidelines, surrogacy agreement often proceeds informally leaving all parties vulnerable to exploitation, disputes and litigation. For example, a surrogate may change her mind after delivery, asserting maternal rights, while intended parents may also renege on agreements when the child is born with disabilities. The Surrogacy (Regulatory) Commission Bill, 2024 marks a nascent attempt to address the legal vacuum. Section 20 of the Bill defines key terms such as “intended parents” and section 9 prohibits commercial surrogacy. However, the Bill’s provisions remain limited. For instance, it does not clarify the legal process for transferring parentage from surrogate to the intended parents without adoption proceedings.⁴⁴ This omission will perpetuate legal uncertainty, especially where intended parents are genetically related to the child. Moreover, the bill lacks detailed mechanisms for enforcement, does not prohibit advertising for surrogacy, and offers minimal judicial oversight, which could hinder its effectiveness in practice. Despite the growing relevance of surrogacy in Nigeria, the legal framework remains glaringly under developed. The absence of a clear legislative regime regulating surrogacy creates substantial gaps in family law thereby posing critical challenges around parentage, contract enforceability, birth registration and welfare of the child. In

⁴² MCA Cap M7 LFN 2004.

⁴³ CRA 2003.

⁴⁴ SRC Bill, ss 12(2) and 20.



addition, unlike the Indian Surrogacy (Regulation) Act 2021, the bill fails to provide for a maximum age for intending parents.⁴⁵

A foremost legal challenge is the determination of parentage. Under customary law and statutory presumptions, the woman who gives birth is recognized as legal mother.⁴⁶ This is problematic in gestational surrogacy, where the intended mother may have no biological or birthing connection but is the true parent by intention and often genetics. The courts have not yet been called upon to settle a major dispute on this issue, leaving intended parents in a vulnerable legal position, especially in cross border situations.⁴⁷ Secondly, there is no law expressly recognising surrogacy contracts in Nigeria law. There is no statutory framework outlining the requirements for a valid surrogacy agreement or the rights and duties of each party. This legal uncertainty deters formalization, encourages exploitation and limits judicial protection for either the surrogate or the intended parents. It also creates uncertainty as to the legality of surrogacy in Nigeria.⁴⁸ In cases of dispute, there is no standard for resolving questions about custody, maintenance or compensation.⁴⁹ Thirdly, birth registration under the Nigerian Birth, Deaths etc (compulsory Registration) Act 1992 does not contemplate scenarios involving surrogacy. The birth certificate typically reflects the name of the woman who gives birth and there is no administrative process for transferring parentage to the intended parents without resorting to adoption, a

⁴⁵ Arinze (n 12) 113; The World Health Organisation reports that for the period covering 2000-2021, the average life expectancy of Nigerian females was 64.8 years and 62.1 years for males, World Health Organization, 'Nigeria-WHO Data' <<https://data.who.int>> accessed 4 June, 2025.

⁴⁶ MCA 2004, s 69.

⁴⁷ U Ekweluka 'Babies in the Womb of the Law: The Surrogacy Debate in Nigeria' [2021] (5)(2) *Journal of African Law and Modern Reproduction* 75-79; (n 12) 152- 153.

⁴⁸ CRA, s 30; TIPPEA ACT, s 13; George-Ibikiri (n 25) 7-9.

⁴⁹ Ekweluka (n 47) 75; George-Ibikiri (n 25) 9.



process that may seem artificial and burdensome for genetically related parents.⁵⁰ Fourthly, the rights of a child born through surrogacy are unclear, such children may suffer discrimination or face legitimacy questions under inheritance laws. In the absence of parental recognition, the child may be denied nationality, healthcare, education or social protection especially if the intended parents live abroad or the surrogate refuses to relinquish custody.⁵¹ Fifthly, there is lack of oversight or ethical regulation of fertility clinics and medical practitioners who facilitate surrogacy, this regulatory vacuum opens the door to exploitation or medically unsafe practices and fails to protect vulnerable women or ensure informed consent.⁵²

These gaps reflect a broader tension between evolving reproductive realities and outdated legal constructs. And without proactive legislation, surrogacy in Nigeria will continue to operate in a legal grey zone with profound implications for justice, rights and family stability. A Bill for the establishment of the Nigerian Assisted Reproduction Authority was presented before the National Assembly in 2012 but was not passed into law.⁵³

The Nigerian Law Reform Commission has recommended that the commissioning couple adopt the child born via a surrogate even if the gametes of the commissioning couple were used in the surrogacy.⁵⁴ India, South Africa and the United Kingdom demonstrate that effective regulation can uphold rights, ensure ethical standards, and provide certainty in evolving family structures. A context-sensitive adoption of elements from these systems can help Nigeria

⁵⁰ Adeniyi (n 11) 45, 52.

⁵¹ A I Umezuike, *Introduction to Child Law in Nigeria* (Snaap Press 2014) 210.

⁵² Arinze (n 12) 113.

⁵³ George-Ibikiri (n 25) 8.

⁵⁴ *Ibid.*



evolve its family law to match modern realities. While each country operates within its unique cultural and legal context, their experiences illustrate the importance of balancing technological advances, human rights, and social policy.

4.3 LEGAL STATUS AND RIGHTS OF COHABITING COUPLES IN NIGERIA

Cohabitation, defined as an arrangement where two individuals live together without being legally married, is becoming increasingly prevalent in urban areas across Nigeria. This trend is shaped by various socio-economic and cultural shifts, including financial constraints, changing societal expectations, growing secularism, and a preference for the perceived autonomy afforded by non-marital unions.⁵⁵ Despite its growing occurrence, Nigerian law currently provides no formal recognition or protection for couples who choose to cohabit, leaving them exposed to legal uncertainty.⁵⁶

In contrast to jurisdictions like the United Kingdom and South Africa, which have introduced legislative frameworks recognizing domestic partnerships and civil unions,⁵⁷ Nigerian law continues to tie legal rights and responsibilities strictly to formal marriage. There is a complete absence of statutory provisions that afford cohabiting couples rights similar to those enjoyed by spouses, whether in relation to property ownership, maintenance obligations, custody rights, or succession entitlements.⁵⁸ This legislative silence disproportionately affects women, who often face greater socio-economic vulnerability upon the breakdown of such relationships. For example, property jointly acquired during cohabitation

⁵⁵ Arinze (n 12) 113.

⁵⁶ *Ibid.*

⁵⁷ *Burns v Burns* [1984] Ch 317, 325; KSA Ebeku, 'The Rights of Cohabitees in Nigeria: The Case for Reform' [2014] (8)(2) *Nigerian Journals of Family Law*, 46.

⁵⁸ *Taiga v Moses-Taiga* (2012) 10 NWLR (Pt 1308) 219.



is rarely presumed to be jointly owned without documentary evidence of financial contribution. Nigerian courts, in the absence of marriage, do not infer beneficial ownership rights. In *Okonkwo v Okonkwo*,⁵⁹ the Supreme Court reaffirmed that relationships not solemnized under any recognized legal or customary form do not confer marital entitlements, effectively denying the female partner any legal remedy.⁶⁰

Similarly, cohabiting partners cannot seek financial support under Nigerian law, as the Matrimonial Causes Act 1970 limits spousal maintenance claims strictly to legally married individuals.⁵ This creates significant hardship, especially for women who may have sacrificed careers to support their partners or raise children during prolonged cohabitation.

However, the legal position of children born within such relationships is more protected.⁶¹ Nonetheless, in practice, such children may still face customary law barriers to inheritance, especially where paternity has not been formally acknowledged or legitimized by the putative father.

Other legal systems have responded to the realities of modern relationships by extending legal safeguards to non-marital partnerships. In the UK, the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006 recognize and protect the financial and proprietary interests of persons in civil partnerships.⁶² Similarly, South Africa's Civil Union Act 2006 includes domestic partnership provisions that afford rights to long-term, unmarried partners.⁶³

⁵⁹ (2014) 6 NWLR (Pt 1404) 580-601.

⁶⁰ *Ibid.*

⁶¹ CRA 2003 Cap C50, LFN 2004, s 10; CFRN 1999(as amended), s 42.

⁶² CPA 2004, ss 2-4; FL (Scotland) Act 2006, ss 25 -29.

⁶³ CUA 2006, ss 13-17.



Nigeria's refusal to legally address cohabitation leaves a significant segment of the population without legal safeguards in the event of separation, illness, or death. Nonetheless, cohabitation agreements may be entered into under simple laws of contract.⁶⁴

The failure of Nigerian law to respond to changing social dynamics by recognizing cohabiting relationships represents a serious deficiency. It is imperative to consider legal reforms either through formal regulation of cohabitation or by adopting an approach that recognizes de facto partnerships to ensure equity and protection for all family forms in contemporary society.

Comparative Analysis

In terms of cohabitation, while there is no formal legal status for cohabitees, the Civil Partnership Act 2004 and the Family Law (Scotland) Act 2006 offer limited financial and property rights, ensuring some protection in long-term domestic relationships.⁶⁵ India's recognition of live-in relationships by courts further reflects a modern approach. The Supreme Court of India has affirmed that long-term cohabitation may presume marriage and entitle a woman to maintenance.⁶⁶ This progressive stance ensures social justice even where formal marriage is absent. South Africa also recognizes domestic partnerships through legislative efforts such as the Civil Union Act 2006 which allows same-sex and opposite-sex couples to enter legally binding unions.⁶⁷ This pluralistic framework respects diverse family forms and promotes equality.

⁶⁴ Oluwaseye Oluwayomi Ikubanni and others, 'Planning for Divorce before the Marriage: The Concept of Pre-Nuptial Agreement and its Enforceability in Nigeria' [2023] (10)(2) *Nnamdi Azikiwe University Awka Journal of Commercial and Property Law*, 222.

⁶⁵ CPA 2004, Family Law (Scotland) Act 2006, ss 25-29.

⁶⁶ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755.

⁶⁷ CUA 2006, s 8; NHA 2003, ss 54-68



4.4 PRENUPTIAL AGREEMENTS IN NIGERIA

Nuptial agreements may be entered into before (pre), during or after (post) a marriage.⁶⁸ Prenuptial agreements, also referred to as ante-marital contracts, or pre-marital contracts, are agreements entered into before marriage by 2 persons intending to marry. They address issues such as support and division of property in the event that the marriage ends in divorce or as a result of the death of one of the parties.⁶⁹ Prenuptial agreements can be utilised in protecting a party's financial and personal interests within a marriage.⁷⁰ These agreements, although perceived as being only ideal for the wealthy, may be utilised by intending spouses irrespective of their social class, helping them 'regulate future enjoyment of their assets.'⁷¹ There is a growing trend toward recognizing and enforcing pre-nuptial agreements, which allow couples to predetermine financial arrangements. These agreements provide clarity and reduce litigation in the event of divorce.

Prenuptial agreements pit contractual autonomy against sanctity of marriage.⁷² While it may be argued that parties have the right to enter into valid contracts,⁷³ the application of principles of contract to marriage may, on the other hand, be viewed as undermining the sanctity of marriage.⁷⁴ Prenuptial agreements have been regarded as cold-blooded and creating a poor foundation for a happy marriage as to anticipate the dissolution of a marriage before it begins could

⁶⁸ Mohd Aquib Aslam, 'Evolving Jurisprudence of Nuptial Agreements in India: A Comparative Analysis with US, UK and European Legal Systems' [2024] (2)(9) *International Journal of Multidisciplinary Research*, 483.

⁶⁹ Obinna Onya, 'Validity of Pre-Nuptial Agreements in Nigeria and the Public Policy Test' [2021] (3)(1) *IJOCLLEP*, 175; Emily Patterson, 'Contextualising the Law on Pre-Nuptial Agreements in England: A Comparative Study and a Proposal for Reform' [2024] (5) *York Law Review*, 3.

⁷⁰ Aslam (n 68) 482.

⁷¹ *Radmacher v Granatino* [2009] EWCA Civ 649; (n 44) 220.

⁷² Onya (n 69) 176; Patterson (n 69) 26.

⁷³ Patterson (n 69) 26.

⁷⁴ Aslam (n 68) 485; Lalitha Sasanka and Sivavarthini N, 'Pre-Nuptial Agreements: Legal Validity and Enforcement' [2023] (5)(6) *International Journal for Multidisciplinary Research*, 1, 3.



portend ill for the marriage.⁷⁵ Critics of prenuptial agreements argue that these agreements are an attack on the sanctity of marriage and are contrary to public policy⁷⁶ as there is need to protect the unique interest of society in the marriage institution.⁷⁷ Courts may exhibit paternalism with the aim of preserving public policy and protecting parties to a prenuptial agreement.

The high rate of divorce in some jurisdictions has led to an increase in the use of prenuptial agreements.⁷⁸ Although the use of prenuptial agreements is not common in Nigeria,⁷⁹ the country is also experiencing rising divorce rates,⁸⁰ and prenuptials could be utilised to resolve some property related issues upon divorce or death of a spouse. Proper use of prenuptial agreements does away with the question of the worth of a wife's domestic contributions in the course of the marriage.⁸¹ The existence of a prenuptial agreement provides some level of security for the woman based on which she can leave an abusive marriage. Prenuptials can guarantee certainty, fairness and predictability in matrimonial proceedings⁸² which are qualities of a good legal system. There is no law specifically designed to regulate prenuptial agreements in Nigeria. There is, therefore, a need to look at what has been done in other jurisdictions towards identifying lessons for Nigeria in this area of law.

⁷⁵ Ikubanni (n 64) 217-219, 225.

⁷⁶ Onya (n 69) 178; (n 64) 225.

⁷⁷ Barbara Ann Atwood, 'Ten Years Later: Lingering Concerns About the Uniform Premarital Agreement Act' [1993] (19)(127) *Journal of Legislation* 130.

⁷⁸ SC Ifemeje, 'A Case for Global Enforceable Prenuptial Agreements' [2010] *JILJ*, 154.

⁷⁹ Ikubanni (n 64) 219, 225.

⁸⁰ Lorretta Favour C Ntoimo and Monica Ewomazino Akouwebe, 'Prevalence and Patterns of Marital Dissolution in Nigeria' (12)(2) *The Nigerian Journal of Sociology and Anthropology*, 1-2, <<https://www.nassajournal.com.ng>> accessed 26 May, 2025.

⁸¹ *Aguolu v Aguolu* (2025) LPELR-80269 (CA); *Shodipo v Shodipo* [1990] 5WRN 95; *Muller v Muller* (2006) 6 NWLR (Pt 977) 627; *Akinbuwa v Akinbuwa* (1998) 7 NWLR (Pt 559) 661; C Anagbogu, 'A Legal Appraisal of the Economics of Divorce in Nigeria' [2022] <<https://journals.ezenwaohaetorc.org>> accessed 23 May, 2025; Ikubanni (n 64) 225-226.

⁸² Onya (n 69) 179.



Comparative Analysis

India

The Contract Act of India prohibits contracts that may be construed as being contrary to the public policy of the nation. Previously, the courts of India declared that prenuptial agreements were void because they were contrary to public policy as marriage is a sacred union and not a contract. Over time, recognising the dynamic nature of public policy, the courts began upholding some prenuptial agreements which they viewed as not offending public policy.⁸³ Indian courts have observed that while prenuptial agreements are not expressly recognised under Indian law, they can still be taken into account in determining the amount of maintenance payable to a party. The court has however, emphasized that prenuptial agreements cannot override statutory provisions on maintenance or the welfare of children.⁸⁴ The courts in India have noted with concern that particularly in cases where there are unequal bargaining power or lack of awareness, prenuptial agreements can be used by one party to exploit the other. The courts will view with suspicion agreements that waive maintenance rights or disproportionately favour one party.⁸⁵ The absence of specific legislation on prenuptial agreements in India has led to conflicting judicial decisions.⁸⁶

United Kingdom

In *Hyman v Hyman*⁸⁷ the UK court, relying on public policy, held that prenuptial agreements were unenforceable. Public policy refers to prevalent ideals in a society at a given time. It is generally uncertain and what offends public policy is

⁸³ *Syed Abbas Ali v Nazemunnessa Begum* (1939) SCC Online Cal 133; Sasanka and Sivavarthini (n 74) 3.

⁸⁴ Aslam (n 68) 483, 485-486.

⁸⁵ *Ibid* 486.

⁸⁶ Sasanka and Sivavarthini (n 74) 3, 6.

⁸⁷ (1929) AC 601.



largely subject to the interpretation of individual judges.⁸⁸ In *Fender v St. John*⁸⁹ the court opined that public policy should not be based on the personal idiosyncracies of a few judges. Public policy is dynamic and has evolved from what it was in 1929 when Hyman's case was decided.⁹⁰ Moving away from the strict position in *Hyman v Hyman*, in *N v N*⁹¹ the court reasoned that a court may consider provisions in a prenuptial agreement in the exercise of its discretion in granting ancillary reliefs. There is no specific legislation regulating prenuptial agreements in the England and Wales.⁹² Under the MCA 1973, s 23, UK Courts are empowered to make a variety of orders following the dissolution of a marriage. A prenuptial agreement cannot override the court's discretion in this regard. Nonetheless, the agreement may be considered alongside other factors under the MCA 1973, s 25(2).⁹³

In the landmark case of *Radmacher v Granatino*⁹⁴ before their marriage, the parties entered into a prenuptial agreement in 1998. The agreement stated that 'neither party was to derive any interest in or benefit from the property of the other party during the marriage or on its termination.' The Supreme Court held that 'it is the court, and not any prior agreement between the parties, that will determine appropriate ancillary relief when a marriage comes to an end.' Concerning the enforceability of the agreement, the court held that if the parties

⁸⁸ CD LongJohn, 'Application of Customary Law in Nigeria' [2016] (8)0(1) *The Journal of Jurisprudence and Contemporary Issues*, 237-238.

⁸⁹ [1938] AC 1.

⁹⁰ Onya (n 69) 177; *MacLeod v MacLeod* [2008] UKPC 64 [39]; Ifemeje (n 78) 153; In *Bevan Ashford v Geoff Yeandel* [1998] 3WHR 172 at 181, the court acknowledged that perceptions of public policy change with the passage of time.

⁹¹ (Divorce: Ante-nuptial Agreement) (Jurisdiction: Pre-nuptial Agreement 1999) 2 FLR 745.

⁹² UK Parliament 'Law relating to prenuptial agreements' *House of Lords Library* (20 February, 2025) <www.lordslibrary.parliament.uk> accessed 23 May, 2025.

⁹³ Patterson (n 69) 4.

⁹⁴ [2009] EWCA Civ 649 [27].



entered into agreement voluntarily, without undue influence or pressure, knowing the implications of the agreement, then the prenuptial agreement will be considered binding on the parties.⁹⁵ In the subsequent case of *Luckwell v Limata*⁹⁶ the parties signed prenuptial agreements stipulating that the husband would not make any claim on his wife's property in the event of divorce. However, the court declined to uphold the agreement because it would place the husband in 'real need'. In *Kremen v Agrest*⁹⁷ where the wife did not receive independent legal advice before entering into the prenuptial agreement, the court refused to uphold the prenuptial agreement and held, per Justicr Mostyn, that it will only be in unusual cases that a prenuptial agreement will be upheld in the absence of independent legal advice. In the subsequent case of *Versteegh v Versteegh*⁹⁸ where the wife argued that she did not receive independent legal advice, the court upheld the agreement reasoning that in jurisdictions where prenuptial agreements are commonplace, the parties are likely to understand the implications of the agreement even if they did not receive independent legal advice.

Prenuptial agreements are increasingly being recognised by the UK courts.⁹⁹ UK courts require a high threshold of evidence to prove the existence of vitiating factors such as undue influence and duress.¹⁰⁰ In *KA v MA*,¹⁰¹ the man threatened not to marry the woman unless she signed the prenuptial agreement. She consequently signed the agreement under immense pressure. The court did not consider this to be a vitiating factor, and upheld the agreement, reasoning that

⁹⁵ Aslam (n 68) 489.

⁹⁶ [2014] EWHC 502 (Fam); *Ipeka v Mc Connell* [2019] EWFC 19.

⁹⁷ [2012] EWHC 45 (Fam).

⁹⁸ [2018] EWCA Civ 1050.

⁹⁹ Ifemeje (n 78) 157.

¹⁰⁰ Patterson (n69) 8-9.

¹⁰¹ [2018] EWHC 499 (Fam); *V v V* [2011] EWHC 3230 (Fam).



both parties were ‘mature consenting adults’. Thus, in the UK, there are no guaranteed outcomes on prenuptial agreements.¹⁰²

These cases reveal inconsistencies in judicial decisions and underscore the need for specific legislation on prenuptial agreements in the UK.¹⁰³ To this end the UK Law Commission has proposed that to be valid a prenuptial agreement should be made knowingly and willingly, should not give rise to seen or unforeseen hardship, must be contractually valid, must be made by deed, accompanied by statements made by the parties that they understand the agreement, must be made before 28 days to the marriage or civil partnership, there must be disclosure of material information concerning the parties’ financial situation, both parties must have received independent legal advice before entering into the agreement, parties should not be allowed to waive their rights to disclosure and independent legal advice. Cooling off periods and independent legal advice are geared towards ensuring that parties have full understanding of the implications of the agreement and do not sign these agreements under pressure.¹⁰⁴ Following these recommendations, 2 bills¹⁰⁵ have been unsuccessfully introduced to recognise and regulate prenuptial agreements.¹⁰⁶

Australia

Historically, Australian courts were reluctant to enforce private agreements that oust the court’s jurisdiction to make financial orders upon dissolution of a

¹⁰² Patterson (n 69) 9.

¹⁰³ *Ibid* 8.

¹⁰⁴ Aslam (n 68) 492.

¹⁰⁵ Divorce (Financial Provision) Bill introduced by Baroness Deech in the House of Lords in 2017 and also in the 2021-22 session; UK Parliament ‘Law relating to prenuptial agreements’ *House of Lords Library* (20 February, 2025) <www.lordslibrary.parliament.uk> accessed 23 May, 2025.

¹⁰⁶ UK Parliament, ‘Law relating to prenuptial agreements’ Divorce (Financial Provision) Bill (n 105); Sasanka and Sivavarthini (n 74) 5.



marriage.¹⁰⁷ In December 2000, The Australian Family Law Act 1975 was amended by the Family Law Amendment Act 2000 allowing parties to enter into binding financial agreements before, during or after marriage and empowering the courts to make orders on these agreements.¹⁰⁸ Section 90G(1) of the Act stipulates the following as conditions that the financial agreement must meet for it to be binding; the agreement is to be signed by both parties and each party is to receive a signed statement from their legal practitioner stating that legal advice has been provided on whether or not it was prudent at that time for the party to make the agreement, fairness and reasonableness of the agreement, effect of the agreement on the rights of the parties, its advantages and disadvantages. This provision required strict adherence. Thus, in *Black v Black*,¹⁰⁹ where the parties entered into a financial agreement pursuant to the Family Law Amendment Act, s 90G, the court referring to the certificate of legal advice, held that ‘These statements did not meet all of the requirements set out in section 90G(I)(B), particularly there was no reference to advice in relation to whether the agreement was fair and prudent. In our view, such an omission meant that the agreement did not comply with the provisions of section 90G and was not binding upon the parties.’

The decision in *Black v Black*¹¹⁰ led to an amendment of section 90G(1) in 2010 with section 90G(1)A making the requirements for a binding financial agreement less stringent by giving the courts discretion to decide whether it will be just and equitable to uphold a financial agreement whose statement of legal

¹⁰⁷ John Eldridge, ‘Lawful-Act Duress and Marital Agreements’ [2018] (77) CLJ 34 cited in Patterson (n 69) 13.

¹⁰⁸ FLA 1975, s 85A; Patterson (n 69) 13-14.

¹⁰⁹ (2008) 38 Fam LR 503.

¹¹⁰ (2008) FLC 93-357; [2008] FamCAFC 7.



advice does not comply strictly with the provisions of the Act.¹¹¹ Section 90K of the law provides that a financial agreement will be set aside where it was entered into fraudulently, where circumstances of the parties have changed materially so much so that it becomes impracticable to uphold the agreement; where either party has acted in an unconscionable manner; where the agreement will be considered unenforceable under contract law.¹¹²

Australian courts are to apply principles of equity in determining the validity and enforceability of these agreements.¹¹³ In *Thorne v Kennedy*,¹¹⁴ a wealthy man told a less affluent woman that to marry her, they would have to sign a prenuptial agreement. The agreement was signed a few days to their marriage even though the woman's solicitor had advised her against signing it. The court held that the agreement should be set aside because the man had taken 'unconscientious advantage of Ms Thorne's position of special advantage.'¹¹⁵ The court highlighted factors they considered in reaching this decision to include: 'the emotional circumstances in which the agreement was entered, whether there was any time for reflection, the nature of the parties relationships, the relative financial positions of the parties and the independent advice that was received.' Thus, in Australia parties cannot hide behind having fulfilled the requirement for independent legal advice to get away with taking advantage of the other party.¹¹⁶

¹¹¹ CPD Essentials Conference, 'Binding Financial Agreements: Do the Reforms Make any Difference?' <<https://emfl.com.au>> accessed 26 May, 2025.

¹¹² Patterson (n 69) 15; *Blackmore v Webber* [2009] FMCA Fam 154.

¹¹³ Section 90KA.

¹¹⁴ [2017] HCA 49.

¹¹⁵ *Ibid* 74.

¹¹⁶ Patterson (n 49) 17.



Developing a Legal Framework for Prenuptial Agreements in Nigeria

There is a dearth of legal decisions on prenuptial agreements in Nigeria. The low utilisation of prenuptial agreements in Nigeria has been ascribed to the cultural values of the Nigerian society. A woman who opts for a prenuptial agreement to protect her interest in the marriage may be viewed as callous or materialistic.¹¹⁷ In *Oghoyone v Oghoyone*¹¹⁸ the parties, before their marriage, entered into what they termed a Memorandum of Understanding in which they stipulated how they would share their joint business interests and properties upon divorce. However, the said agreement did not capture all the properties belonging to the parties.¹¹⁹ The properties in dispute in this case were not contained in the prenuptial agreement. Therefore the validity of the agreement was not an issue before the court. Nonetheless, in resolving the dispute, the court applied the principles of fairness, equity and justice. In upholding the decision of the trial court on the settlement of the properties in dispute, the Court of Appeal held that ‘Section 17 of the Married Women’s Property Act confers on the Judge power to make orders in respect of property in dispute as he thinks fit. ... I am satisfied that the order of the learned trial judge on Plot L Block 26 Amowu Odofin Scheme was fair, just and equitable. It would be unconscionable for any party to claim exclusive ownership.’

The Matrimonial Causes Act, s 72 does not expressly stipulate how assets should be shared upon divorce, neither does it provide clear guidelines on the validity and enforcement of prenuptial agreements.¹²⁰ The Matrimonial Causes Act 1970, s 72(2) recognises that parties may voluntarily enter into ante-nuptial

¹¹⁷ Onya (n 69) 179; Ifemeje (n 78) 153.

¹¹⁸ [2010] 3 NWLR (Pt 1182) 564.

¹¹⁹ *Oghoyone* (n 118) 584.

¹²⁰ Ifemeje (n 78) 151-152.



agreements on settlement of their property. Courts in Nigeria exercise discretion in deciding whether or not to uphold prenuptial agreements. This discretion is to be exercised based on principles of fairness and equity and are influenced by the Judge's perception of fairness and equity¹²¹ which are ambiguous terms as the standards of fairness and equity differ from person to person.

The courts are required to exercise their discretion judicially and judiciously. However the validity of prenuptial agreements should not be left to the unfettered discretion of the courts else there will be judgements that discriminate against women in addition to conflicting decisions resulting from conflicting standards of fairness and equity.¹²²

Customary law in Nigeria is discriminatory against women. Women married under customary law lack certain property rights upon dissolution of the marriage.¹²³ In some parts of Nigeria, a woman married under some customary law cannot inherit any of her late husband's property and is herself regarded a chattel to be inherited.¹²⁴ Furthermore, under customary law in Nigeria, upon divorce, a woman has no right to claim for settlement of property even if she made contributions to the acquisition of such property.¹²⁵ Women may fare better

¹²¹ Linus O Nwauzi and Soibi Ibikiri-George, 'Property Settlement in a Matrimonial Proceeding under the Matrimonial Causes Act 1970 of Nigeria' [2023] (19)(1) *Journal of Private and Property Law*, 43-51; (n 64) 226-227.

¹²² Onya (n 69) 177; (n 78) 155-156.

¹²³ *Nwangwa v Ubani* (1997) 10 NWLR (Pt 526) 559; M O Izzi, 'A Legal Appraisal of Property Rights of Women in Nigeria' [2022] (18)(1) *Journal of Private and Property Law*, 7.

¹²⁴ *Dairo v Dairo* unreported. Suit No ID/90/HD/86 of 15/7/88; *Nwanya v Nwanya* (1987) 3 NWLR (Pt 62) 239; Grace O Akolokwu, 'The Injustice of Customary Law to Women: X-Raying Aspects of Ikwerre Customary Law' [2016] (8)(2) *The Journal of Jurisprudence and Contemporary Issues*, 27; Grace Ogbonda Akolokwu, 'The Tenuous Position of a Divorced Wife under the Nigerian Customary Law: What is the Way Out?' [2018] (1)(2) *Redeemers University Law Journal*, 405, 411, 414-417.

¹²⁵ Nwauzi and Ibikiri-George (n 121) 40.



under pre-marital contracts than they would under patriarchal marriage and divorce laws. Just as persons married under customary law can opt to write their Wills under the relevant Wills Law/Act,¹²⁶ Prenuptials can be utilised to provide for the wife of a customary law marriage upon dissolution of the marriage or death of her husband.¹²⁷

The use of prenuptial agreements for disposition of property in the event of the death of a spouse raises the question of whether such a prenuptial agreement should comply with the requirements of the relevant Wills law. A Will is 'A legal expression of an individual's wishes about the disposition of his property after death.'¹²⁸ It is submitted that a prenuptial agreement which contains an expression of the intending spouses' wishes on how their property should be disposed of on the death of one spouse should comply with the requirements of the relevant law on Wills.¹²⁹ Attesting and executing such prenuptial agreement in line with provisions of the applicable Wills Law does not detract from the document but rather fortifies the document.

4.5 POLYAMORY

Polyamory is a type of relationship where a person has more than one romantic or emotional partner at the same time, **with** everyone's knowledge and consent. It is also seen as a consensual and ethical non-monogamy, which has deep historical and cultural roots, though as a modern construct it emerged in the 20th century.

¹²⁶ E I Nwogugu, *Family Law in Nigeria* (3rd ed, HEBN Publishers Plc 2014) 395.

¹²⁷ OH Onyi-Ogelle and Adaobi Nwawulu, 'Appraising Nuptial Agreements in the Protection of Women Against Oppressive Treatment in Marriages in Nigeria' [2023] (5)(2) *International Review of Law and Jurisprudence*, 115.

¹²⁸ Bryan A. Garner (ed), *Black's Law Dictionary*, (9th ed, West 2009) 1735, 1612; *Asika v Atuanya* (2013) 14 NWLR (Pt 1375) 510; Rivers State WL, s 25; Uche Jack-Osimiri and Maureen O'Sullivan, *Conveyancing Transactions Law, Practice and Procedures* (Vol 1, Chigaung Law Publishers 2019) 268, 380, 395-399; (n 126) 394-395.

¹²⁹ Jack-Osimiri and O'Sullivan (n 128) 305-399.



While often viewed as a contemporary concept, the core ideas of multiple, consensual relationships can be traced back to ancient societies, where polyamory-like practices were sometimes the norm.¹³⁰

Legal and Social Considerations for Polyamory

Polyamorous individuals face significant legal and social challenges due to the lack of formal recognition of their relationships.¹³¹ Legally, most systems are structured around monogamous unions, meaning polyamorous relationships often do not receive the same protections. Marriage laws in many countries define legal unions strictly between two people, typically a man and a woman, thereby excluding polyamorous partnerships from legal benefits such as spousal rights and protections. This legal gap extends into parenting, where only legally recognized partners have automatic parental rights, causing difficulties in custody, adoption, and the recognition of multiple guardians.¹³² Healthcare and medical decision-making are also complicated, as legal authority is usually limited to one spouse, leaving other partners without decision-making power in emergencies. Financially, polyamorous partners are often excluded from inheritance rights, tax benefits, and financial protections unless explicitly arranged through legal documentation. Furthermore, anti-discrimination laws rarely cover relationship structures, leaving polyamorous individuals vulnerable to workplace bias and a lack of inclusion in benefits or family leave policies.

¹³⁰ Hadar Aviram, 'Love in the Time of Polygamy: Legal Recognition of Polyamorous Relationships' [2020] (28) *J G SP L*. 123.

¹³¹ John Devendorf, *Family Law Implications of Polyamorous Relationsh'*, (law info, 2024) <<https://www.lawinfo.com/resources/family-law/family-law-implications-of-polyamorous-relationships.html>> accessed 19 May 2025. [LawInfo.com](https://www.lawinfo.com)

¹³² Nancy D. Polikoff, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law* (Beacon Press 2008) 105-132.



Socially, polyamory often encounters stigma and misunderstanding, especially in traditional or conservative societies where monogamy is the dominant norm. Cultural biases tend to view polyamory as immoral or unstable, sometimes associating it with promiscuity or emotional immaturity.¹³³ Media portrayals frequently reinforce these stereotypes, depicting polyamorous relationships as chaotic or dysfunctional, further fueling public misconceptions. Beyond societal judgment, polyamory presents its own emotional complexities, such as managing jealousy, balancing time among partners, and fostering open communication. These challenges require high levels of trust and emotional intelligence. Additionally, individuals in polyamorous relationships often lack adequate social support, facing alienation from family and community members who do not understand or accept non-traditional relationships.

Parenting within polyamorous families also brings unique challenges.¹³⁴ While children in such families may benefit from having multiple caring adults, they can face stigma from peers and communities that do not accept alternative family structures. Legal issues related to custody and guardianship are common, as most laws do not accommodate more than two legal parents, which can jeopardize children's stability if family dynamics shift or legal disputes arise.¹³⁵

Despite these challenges, there is growing momentum for legal reform.¹³⁶ Advocates are pushing for the recognition of polyamorous families, including legal acknowledgment of more than two parents in a child's life. Efforts are also

¹³³ Elisabeth Sheff, *The Polyamorists Next Door: Inside Multiple-Partner Relationships and Families* (Rowman & Littlefield 2014) 89.

¹³⁴ Sheff (n133) 89.

¹³⁵ Melanie B Jacobs, 'More Parents, More Money: Reflections on the Financial Implications of Multiple Parentage' [2010] (16) *Cardozo J.L. & Gender*, 217.

¹³⁶ Harvard Law School, 'Polyamory and the Law' <<https://his.harvard.edu>> accessed 4 June, 2025.



underway to expand anti-discrimination protections to cover relationship structures and to grant polyamorous families access to financial and healthcare rights similar to those afforded to monogamous couples. Although progress is slow, these initiatives reflect a broader movement toward inclusivity and legal equity for diverse family forms.

Nigeria's Legal Perspective on Polyamory.

In Nigeria, the legal framework remains firmly rooted in the recognition of monogamous and, to a lesser extent, polygamous unions, with no provision for polyamory as a relationship structure. Polyamory is not explicitly addressed in Nigerian law, rendering such unions legally invisible.¹³⁷

Statutory marriages, governed by the Marriage Act, are strictly monogamous.¹³⁸ Entering into another marriage while a statutory marriage subsists constitutes the offence of bigamy, which is criminalized and punishable by imprisonment under Nigerian law.¹³⁹ This rigid legal definition excludes the possibility of multiple simultaneous, legally recognized intimate relationships, as found in polyamorous unions.¹⁴⁰

While Nigeria's plural legal system also recognizes customary and Islamic marriages, which permit polygamy particularly in the northern regions, these frameworks are confined to structured, gendered unions that do not accommodate the relational fluidity or mutual partnerships characteristic of polyamory. Traditional polygamy typically involves one man and multiple wives, and does not recognize egalitarian, multi-partner dynamics across all genders.

¹³⁷ Abiola A Oluyede, *Nigerian Family Law* (LexisNexis 2013) 201-220.

¹³⁸ MA, ss 33, 35, 46 and 47, Cap M6, LFN 2004.

¹³⁹ CCA, s 370.

¹⁴⁰ A O Oyekanmi, 'The Prohibition of Bigamy in Nigerian Law: A Critical Examination' [2018] (21) *Nigerian Law Journal*, 97.



Crucially, the absence of legal recognition for polyamorous relationships means individuals in such unions are excluded from key legal protections and entitlements, including inheritance rights, spousal benefits, custody claims, or access to legal redress in the event of disputes. This legal vacuum fails to account for the realities and complexities of individuals living in consensual, non-monogamous arrangements.¹⁴¹

From a socio-cultural standpoint, Nigeria is predominantly conservative, with social values heavily influenced by religious and traditional norms. Polyamory as conceptualized in contemporary discourse remains largely unrecognized and stigmatized. Public discussion of such relationships is rare, and societal perceptions tend to conflate polyamory with moral deviance or instability. Nevertheless, anecdotal evidence reflects a growing, albeit marginal, presence of polyamorous practice in Nigeria. For instance, a woman in Port Harcourt openly cohabits with her husband and boyfriend, advocating for honesty and mutual respect in her lifestyle.¹⁴² Similarly, a 21-year-old student and content creator in Ogun State publicly identifies as polyamorous, navigating the relational and financial dynamics of multiple partners. Another Nigerian couple has shared their experience transitioning from an open relationship to polyamory, emphasizing the need for communication and resilience in the face of societal judgment.¹⁴³

¹⁴¹ Hadar Aviram, 'The Boundaries of Intimacy: Emotional Expression and the Legal Recognition of Polyamory' in Elizabeth Brake (ed), *After Marriage: Rethinking Marital Relationships* (Oxford University Press 2016) 162-185.

¹⁴² Editorial, 'Port Harcourt: woman who lives with her husband and boyfriend, says polyamory is best way to age' (Port Harcourt, April 9 2018).

¹⁴³ Ama Udofa, 'Practising polyamory in Ifo, Ogun state, on a 400k monthly income' (Lagos, 25 October 2022) <<https://www.zikoko.com/money/practising-polyamory-in-ifo-ogun-state-on-a-400k-monthly-income/>> accessed 16 May, 2025.



While these individuals have the right to freedom of association,¹⁴⁴ the CFRN 1999, s 45 permits the derogation from certain rights in the interest of public order and public morality, among others. Nigeria's legal and cultural frameworks do not currently support or recognize polyamory which can be viewed as deviant behavior that may damage the moral fabric of society.

4.6 LEGAL AND ETHICAL CHALLENGES TOWARDS A REFORM AGENDA FOR NIGERIA

The rise in the use of surrogacy, Artificial Reproductive Technologies (ART), prenuptial agreements, and the existence of cohabiting partnerships presents both legal and ethical challenges for Nigeria's family law system. These challenges expose critical gaps in existing legislation and raise pressing questions about parental rights, child welfare, personal autonomy, settlement of property and societal values. A lack of statutory guidelines for surrogacy and ART leads to ambiguity around parental status, custody, and the legitimacy of children born through non-traditional means. Intended parents are constrained to rely on informal agreements that may not be legally enforceable.¹⁴⁵ This legal vacuum risks infringing on constitutional rights to dignity, family life, and the best interests of the child.¹⁴⁶

Ethically, commercial surrogacy raises concerns about exploitation and commodification of the female body, particularly in a society marked by socioeconomic inequality.¹⁴⁷ Without strict regulation, vulnerable women may be coerced into surrogacy arrangements for financial gain, undermining their

¹⁴⁴ CFRN 1999, s 40.

¹⁴⁵ Adeniyi (n 11) 45, 58.

¹⁴⁶ CFRN 1999(as amended), ss 34, 37, 42.

¹⁴⁷ O A Alade, 'Commercial Surrogacy in Nigeria: Ethical and Legal Considerations' (2022) (10)(1) *Nigerian Medical Review* 19, 27.



autonomy and health. Conversely, banning surrogacy altogether may infringe on the reproductive rights of infertile couples or single individuals seeking parenthood through legitimate means. Similarly, the use of donor gametes and embryos raises ethical questions about anonymity, consent, and the child's right to genetic identity. Currently, Nigerian law does not mandate disclosure nor does it establish donor registries. This lack of transparency can lead to long-term psychological and legal issues for donor conceived individuals.¹⁴⁸ International human rights standards increasingly support the right of every person to know their origins, a principle yet to be adopted domestically.¹⁴⁹

Regarding cohabitation, Nigeria faces a moral-legal dilemma: how to reconcile traditional norms with the reality of non-marital unions. The refusal to recognize cohabiting partnerships deprives many couples of legal protections and promotes gender inequity, as women in such relationships often suffer economic disadvantages without recourse to spousal support or property rights.¹⁵⁰ Reform in this area must be sensitive to cultural values while safeguarding fundamental human rights.

To address these challenges, Nigeria must adopt a reform agenda grounded in human dignity, child protection, and equality. This includes enacting specific legislation to regulate surrogacy and ART, recognizing intended parents based on consent and intention, establishing oversight bodies; and ensuring access to legal remedies. For cohabitation, introducing a legal framework for domestic partnerships similar to models in South Africa or Scotland could offer protections without redefining marriage. In summary, legal reform is essential not only for

¹⁴⁸ Chukwu (n 14) 70,75.

¹⁴⁹ UN Committee on Rights of the Child, General Comment No. 14 (2013) CRC/C/GC/14, para 55.

¹⁵⁰ *Okonkwo v Okonkwo* (2014) 6 NWLR (Pt 1404) 580.



clarity and justice but also for aligning Nigerian family law with evolving social realities and international best practices.

Absence of specific legislation governing prenuptial agreements means that these agreements are evaluated under general principles of contract and in relation to the Matrimonial Causes Act and relevant Child Right laws, with courts having wide discretionary powers in deciding the validity of the agreements. There is need to carefully develop specific legislation that provides guidelines for prenuptial agreements and safeguards which protect parties to the prenuptial agreement. This would reduce judicial discretion as to the validity and enforcement of prenuptial agreements in Nigeria. The requirement of equity and fairness is insufficient in view of the reality that standards of fairness and equity differ from person to person, and in recognition of the fact that judicial decisions are influenced by extra-legal factors including the personal biases of judges. The absence of specific laws in England, Wales and India has led to conflicting judgements of the courts on the validity of prenuptial agreements. Developing specific legislation on prenuptial agreements will reduce uncertainty in this area of law and promote fairness and equality as required by the MCA, s72.

4.7 RECOMMENDATIONS

1. Detailed legislation should be enacted defining and regulating ART and surrogacy taking the socio-cultural realities of Nigeria into consideration.
2. Legislation on civil partnerships should be passed granting limited recognition and protection to cohabiting partners; with necessary amendments made to statutes on Wills and Administration of Estates to accommodate persons in civil partnerships
3. The MCA 1970 should be amended to include provisions reflecting relevant requirements in the proposals of the UK Law Commission on



nuptial agreements and the provisions of the Australian Family Law Act on binding financial agreements. The MCA 1970 applies only to statutory marriages. Therefore, state houses of assembly should also pass specific legislation on nuptial agreements in relation to marriages under customary law.¹⁵¹ The following should be reflected in the legislation as requirements of a binding prenuptial agreement: writing, voluntariness, full or material disclosure, conscionability, contractual validity, execution, timing/ cooling off period, and independent legal advice.¹⁵² Specific legislation on nuptial agreements should expressly stipulate that parties are not allowed to waive their rights under the law or by agreement, exclude the operation of any provision of the law.¹⁵³ The Rivers State Child Rights Law 2022, s 14(2) provides for the right of a child to maintenance. Prenuptial agreements in Nigeria cannot supersede the provisions of Child Rights Laws/Act.¹⁵⁴ In deciding on the validity of prenuptial agreements, the best interest of children, where there are children of the marriage, should be of paramount consideration.¹⁵⁵ Nigerian courts should assess the validity and enforcement of prenuptial agreements against detailed standards laid down by statute.

4.8 CONCLUSION

The traditional boundaries of family law in Nigeria are being tested by the realities of modern living, evolving social norms, and technological advancements. The rise of surrogacy and artificial reproductive technologies (ART), the growing

¹⁵¹ CFRN 1999, Item 61, Exclusive legislative list

¹⁵² Patterson (n 69) 23, 26; (n 68) 489; (n 64) 222-223.

¹⁵³ Uche Osimiri, 'Mortgage under Land Use Act 1978 is not a Hazardous Business' *Lawyers Journal*, 77.

¹⁵⁴ Ikubanni (n 64) 226.

¹⁵⁵ Rivers State CRL 2022, s 1.



prevalence of cohabiting partnerships, the emergence of prenuptial agreements in matrimonial planning, and even the controversial discussion around polyamory signify a shift in how families are formed and governed in contemporary society. Yet, Nigeria's legal framework has not adequately kept pace with these changes.

Absence of clear and detailed legislation on prenuptial agreements encourages gender discrimination in settlement of property as sometimes courts fail to take the invisible contributions of the wife into consideration.¹⁵⁶ Marriage should be based on mutual trust, confidence and fair dealing. These principles protect the institution of marriage.¹⁵⁷ Thus, the guidelines for binding prenuptial agreements should reflect these values.

While polyamory emphasizes values such as transparency, emotional responsibility, and mutual consent, it remains controversial, especially in deeply traditional societies. In contexts like Nigeria, where statutory and religious norms prioritize monogamy, while non-monogamous relationships may be practiced privately, the current legal and moral climate does not support their formal recognition. Therefore, no legal recommendations are advanced here, as the prevailing legal order and societal values remain firmly opposed to the institutionalization of polyamorous relationships.

Currently, surrogacy and ART operate in a legal vacuum, leaving intended parents, surrogates, and children in precarious positions, particularly in disputes over parentage and rights. Cohabiting couples remain invisible in statutory law, facing systemic exclusion from protections available to legally married spouses. Prenuptial agreements, though theoretically enforceable, lack clear judicial and statutory guidelines, leading to unpredictability in matrimonial property disputes.

¹⁵⁶ Anagbogu (n 81); (n 78) 151, 154; Onyi-Ogelle and Nwawulu (n 127) 112.

¹⁵⁷ Atwood (n 77) 132.



Polyamory, while culturally and legally controversial, presents a unique challenge that forces the law to confront the plural and dynamic nature of human relationships.

The comparative study of the United Kingdom, South Africa, Australia and India offers instructive lessons. These jurisdictions, while grappling with their own cultural and constitutional contexts, have adopted varying models to address some of these emerging issues-whether through detailed regulation, constitutional protection of family diversity, or cautious legislative control. Their experiences demonstrate that progressive legal reform, when grounded in human rights and guided by ethical safeguards, can create legal certainty and protect vulnerable parties particularly children, women, and non-traditional families.

For Nigeria, the path forward must begin with deliberate, inclusive, and culturally sensitive legal reforms. Family law must evolve from its narrow traditional conception to embrace the diverse realities of modern life, while preserving public morality and order. Only then can Nigerian family law fulfil its role in safeguarding dignity, equality, and justice in the evolving landscape of human relationships.

Family law in contemporary times reflects the dynamic interplay between societal change and legal adaptation. As families continue to evolve, so too must the legal frameworks that govern them. The recognition of diverse family forms, advances in reproductive technology, and global and technological shifts will continue to shape the future of family law.



5.0 REDEFINING PARENTHOOD UNDER THE NIGERIAN LAW: ADOPTION AND LEGITIMACY

Patricia Imade Gbobo*

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ABSTRACT

Adoption has profound implications for families, children and the society at large as it creates parental relationship between the adopter and adoptee. This paper examines the evolving legal definition of parenthood in Nigeria law and its implications for adoption procedures. The Nigerian laws encompassing of the federal statutes like the Child Rights Act and varying state legislation, governs adoption processes. These laws specify eligibility criteria for prospective adoptive parents and outline the legal steps involved in formalizing adoptions. This paper will analyse the complexities of navigating these legal frameworks, considering both the formal legal pathways and the prevalence of informal, potentially legally precarious, adoption practices. Furthermore, it will discuss the ongoing efforts to redefine parenthood within a broader societal context, balancing legal requirements with cultural norms and the best interests of the child. The paper recommended the urgent need for all States in Nigeria to domesticate the Child's Right Act for a holistic and even application of adoption procedures in Nigeria. It further proposes harmonization strategies including judicial activism and public sensitization campaign to align Nigeria's legal framework with current global best practices.

Keywords- Parenthood, Adoption, Legitimacy, Enforcement, Activism.



5.1 INTRODUCTION

Parenthood is the state of being a parent; it specifically refers to the position, function or standing of a parent.¹ Parenthood has assumed a global dimension, ranging from assisted reproduction, adoption, foster parenting or guardianship. Marriages in Africa and specifically in Nigeria is measured by procreation. However, marriages rocked by childlessness create physical, psychological and social challenges to couples who then seek solutions through Assisted Reproductive Technologies (ART)-such as Invitro fertilization, surrogacy, inter-uterine fertilization among others, adoption or foster parenting or guardianship. The Convention on the Rights of the Child (CRC)² and the African Charter on the Rights and Welfare of the Child (ACRWC),³ provides that a child has basic rights to survival, development⁴, protection from harmful influences, abuses and exploitation and participation in family and social life.

A child therefore requires a peaceful family to flourish and a well-rounded development. The nuclear family is undoubtedly a very important factor in the life of every child, a place where a child enjoys some security and most importantly some warm parental care and affection, a prerequisite for proper development.⁵ In the absence of care and affection, a child becomes deprived and helpless and therefore needs adoption, fostering or guardianship or other forms of

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¹ Nasiru Tijani and Grace Ahiakwo, 'The Legal Spectrum of Parenthood Through Assisted Reproductive Technology in Nigeria' [2023] 10(2) *NAU.JCPL* 246.

² Convention on the Rights of the Child (CRC) 1989, art. 21

³ African Charter on the Rights and Welfare of the Child 1990, art 20.

⁴ CRC 1989, art.32(1).

⁵ Tajudeen O Ibraheem 'Adoption Practice in Nigeria: An Overview' (2013) 19 *Journal of Law, Policy and Globalization*.



care. In present times, with global economic meltdown, poverty and lack of employment makes it increasingly difficult for parents to provide the basic needs for their children. The resultant effect is the increase in the number of children in need of care and possible adoption to ensure survival and development.

Historically, there was no formal form of adoption in Nigeria until 1965 when the Eastern House of Assembly raised a Private Member Bill on adoption, other States followed suit- Bendel State now Edo state (1979), Ogun State (1983), and Oyo State in 1984, adoption laws are similar in their provisions though with minimal differences. But with the ratification of the CRC and its domestication as Child Rights Act (CRA) 2003, the CRA became the primary legislation on issues involving children in Nigeria. Regrettably, not all States in Nigeria have adopted the CRA 2003 as a State law, but ironically the States in the North who have refused to adopt the law has the highest number of destitute and helpless children who are in need care and protection and can benefit from the process of adoption. The major reason adduced for rejecting adoption is that the Islamic religion prohibits adoption because it believes that it is unjust to assign paternity of a child to another other than the biological parents.

The focus of this paper is on redefining parenthood under the Nigerian law with focus on adoption and legitimacy. This paper is structured into 8 parts. The introduction is followed by an exposition on adoption. The 3rd part shall examine the types of adoption methods in Nigeria while the 4th part shall discuss the formal adoption procedure under the law. Part 5 examines the reasons for unwillingness of persons to go into adoption process. Adoption and legitimacy under the Nigerian law will be appraised in the 6th part and final parts (7th & 8th) conclude and proffer recommendations on policies to improve adoption process in Nigeria.



5.2 WHAT IS ADOPTION

Adoption is a special mode of creating a family relationship between a person or couples and a child from a known or unknown parentage by conferring legal status on the child by the adopting parents.⁶ Itse Sagay⁷ describes adoption as a process whereby a court extinguishes the parental link between a child and his biological parents and creates analogous link between the child and the adopting parents. This feature is common with the legal form adoption and not the customary form of adoption where the child still maintains a link his biological parents, a process which can be likened to foster parenting or guardianship. In the same vein, Tajudeen Ibraheem⁸ posit that adoption is an order vesting the parental rights and duties relating to a child in the adopters, made on their application by an authorized court. However, it is germane to note that not all children who require care and protection need the option of adoption. For instance, Adoption may not be the right option for all children, some children cannot live with their birth parents due to financial constraint to provide the basic needs for the child and may be given to relatives or known persons for a secure, loving home throughout childhood and beyond without the necessity of the legal link to their birth family being severed. In these cases, the solution may be permanent fostering or special guardianship. Child adoption process may be necessitated by childlessness, to acquire a companion for an only child, to legitimise an illegitimate child, replace a deceased child in order to stabilize the marriage and ensure the continuity of the lineage of the adopting parents, cater for abandoned child or to support relatives who are unable to take care of their children.

⁶ Omoniyi O Olayinka and Mabel O Izzi, 'Legal Appraisal of the Status of Adopted Children in Nigeria' (2023) 3(2) *Journal of Law and Policy*.

⁷ I Sagay 'Nigerian *Family Law*' (Lagos, Malthouse Press Ltd, 1999) 557.

⁸ Tajudeen (n5).



In most legal system, adoption is by statutory process. In time past, adoption was unknown by the English Common law and also prohibited by Islamic law⁹. In modern times, adoption has become a common practise in most climes and laws regulating adoption vary among countries. In Nigeria, adoption can be established under the statute or under customary law but the rules guiding the procedure of adoption vary from State to State.

5.3 TYPES/ FORMS OF ADOPTION IN NIGERIA

In Nigeria, adoption could be achieved basically through customary law or by statute.

5.3.1 Adoption under Customary Law

Adoption under customary law is less formal and does not permanently extinguish the biological parent's right because a child can never be severed from his root. Adoption under customary law differs from one custom to another. What is regarded as adoption under customary law is foster parenting or guardianship. Traditionally, parents are unwilling to part their parental rights and obligations towards their children whether adopted or not. Parents who are poor and unable to cater for their children may give them out to relatives or friends who can afford to give the child a better life but still maintaining their parental ties with the child or children as the case maybe. In essence, customary adoption does not severe the parental rights and obligations between the adopted child and his natural parents and no matter how long a child stays with his adoptive parents, the relationship with his natural parents can never be severed.¹⁰

Customary adoption is practised in several communities or States like the Eastern States, Edo State and Yoruba land. Informal adoption involves a person

⁹ Tajudeen (n5).

¹⁰ *Ibid*.



taking in a child of a relative or friends or an orphan, takes care of him and treat him as his biological children. Sometimes, a widow or a single parent who remarries can bring a child into a new marriage, the child acquires the name of the step- father. With time, the relationship between the adoptive parents and the adopted child may metamorphosed into full adoption where the child enjoys all rights and privilege as biological children in the new family.

5.3.2 Adoption under Islamic law

Adoption is prohibited under the Quranic law¹¹ Thus in areas which practice the Islamic Personal Law, adoption is unacknowledged but in the form of guardianship. Guardianship under Islamic law are contained in different verses of the Holy Qur'an.¹² Any Muslim who is sane, adult and responsible may be a guardian under appropriate circumstances¹³. Islam has developed its own special concept known as *kafalah* under which a child who cannot be cared for by his biological parents may be taken by another family to live with them permanently but the child does not have the privilege to adopt the family name nor right of inheritance.

Despite the enactment of the Child Rights Act by Nigeria's National Assembly in 2003, Kano State which is one of the country's largest northern States is yet to domesticate the legislation.¹⁴ In response to persistent violations of children's

¹¹ Not hath He made those whom ye claim to be your sons, your sons. This is a saying of your sons. This is a saying of your mouth ... Proclaim their real parentage. That will be more equitable in the sight of God. And if ye know not their fathers, then (proclaim them) your brothers in faith and your clients; Holy Koran, Sura Ahzab XXXIII vs. 4-5.

¹² Chapters XVII Verses 23 and 24; verses 220 and 223; XXXI Verse 14, IV Verses 3, 5, 6, 8, and 127.

¹³Tajudeen (n5).

¹⁴ H Nwaecheifu and A B Olasehinde, 'The Child Right Act 2003 and The Challenges in the Nigerian Society, Any Hopes for the Nigeria Child? [2021] 8(1) *Port Harcourt Journal of Business Law: From Learning to Wisdom* 149.



rights in the State, the International Federation of Women Lawyers (FIDA) Kano, in collaboration with civil society organizations such as the Nigerian Association of Women Journalists and the Isa Wali Empowerment Initiative have intensified advocacy efforts to ensure legal accountability for such abuses.¹⁵

Children in Kano State remain vulnerable to severe rights violations, including pervasive child marriage and sexual violence, even within educational institutions. A recent Human Rights Watch investigation on child marriage revealed systemic failures in Kano's legal framework, which lacks essential protections for minors particularly girls as young as 10 who are forcibly married, deprived of education, and subjected to non-consensual sexual relations and early pregnancies.¹⁶

The absence of robust legislative safeguards exacerbates their exposure to exploitation and harm. A study that was carried out in 2021 revealed that over 70 percent of *kafala* guardians in Sokoto oppose granting inheritance rights to non-biological children, citing religious doctrine.¹⁷

Predominantly Moslem countries, such as Tunisia and Somalia have adoption legislations because a high number of persons in the country are non-Moslems, hence the need for the States to enact adoption legislation so as to afford those non-Moslems who wish to adopt children the opportunity to do so. This process in turn will reduce the ever- growing number of abandoned,

¹⁵ D C Giwa, A Critical Analysis of the Legal and Institutional framework for Protecting the Rights of the Child in Nigeria' [2021] 2(1) *SSRN Electronic Journal*.

¹⁶ Human Rights Watch, 'Nigeria: Child Marriage Violates Girls' Rights - States Should Urgently Adopt Laws to Enforce Child Rights Act' [January 17, 2022] *Human Rights Watch* accessed 17 May 2025.

¹⁷ UNHCR, 'Protection Monitoring Report: Katsina, Sokoto and Zamfara (3-15th January 2021) <<https://nigeria.un.org/sites/default/files/2021-pdf>> accessed 17 May, 2025.



homeless and helpless children who ubiquitously loiter in the streets begging for alms for daily sustenance.¹⁸

5.3.3 Adoption under the Statute

The CRA 2003 has legalised child adoption and has in its provision procedures to ground a formal adoption process.¹⁹ Statutory adoption is the type backed up by adoption laws and it permanently extinguishes the rights and legal relationship between the child and his natural parents²⁰ The adopted child enjoys the same legal rights and privileges accruable to the biological child of adopting parents. These rights is protected by section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus: “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth...” This therefore implies that the adopted child has the right of inheritance and also be included in the Wills of adopted parents. Where the adopting parent die intestate, the adopted child would also have access to the deceased adoptive parent’s properties as biological children as decided in the case of *Igbozuruike & ors v Onuador*²¹ where the court held that the circumstance of the birth shall not deprive an adoptive child from sharing or inheriting the property of a mother or grandmother. Also in *Aduba v Aduba*²² the Court of Appeal upheld the decision of the High Court that the Respondent was an adopted child of Aduba Ohagwam Nwaemere and his wife, Felicia, positing that the Constitution of the Federal Republic of Nigeria²³ protect the Respondent’s rights

¹⁸ Note 17

¹⁹ CRA 2003, Part XII

²⁰ Olowatosin .O Ogwezzy ‘Legal Perspective of Child Adoption under the Nigerian Law’ [2018] (12) (2) *Agora International Journal of Juridical Sciences*, 57-63.

²¹ (2016) LPELR 25530 CA.

²² (2018) LPELR 47556 CA.

²³ CFRN 1999, s 42(2).



against discrimination and so he was entitled to share in the landed property and the estate of Aduba Ohagwam Nwaemere as his adopted son and granted him customary right of occupancy over the particular land in dispute. From the cases cited above, it is only reasonable that an adopted child be treated as being the blood of the adopters and has the rights of inheritance of properties; otherwise the purpose and spirit of adoption would be defeated²⁴

The question of who can adopt a child is of the essence in statutory adoption process. Generally, all adoption laws in various States in Nigeria allow any person to adopt a child but the person must be above 25 years and must be 21 years older than the person to be adopted.²⁵ For instance, a joint application can be made by a couple or any male or female may also wish to adopt but the law prohibits a male to adopt a female child but the court may grant such order in exceptional circumstances.²⁶ The reason for the prohibition is to guide against sexual corruption of the female by the adopting parent. Where one of the couples intends to adopt a child, consent of the other party must be sought and obtained before the adoption. The CRA 2003 has specified the procedure for adoption of children in Nigeria, only Nigerians can adopt children in Nigeria²⁷ but the Act is silent on the adoption of a non- Nigerian residing in Nigeria. The law does not also encourage inter- country adoption because some children adopted in Nigeria and taken out of the country have been used for child trafficking and as sex slaves.²⁸

²⁴ Omoniyi and Izzi, (n6).

²⁵ CRA 2003, s 129

²⁶ CRA 2003, s 129(a); Ogwezzy (n12).

²⁷ CRA 2003, s. 131(d).

²⁸ Ogwezzy (n12).



In Nigeria, there is economic downturn, high level of poverty leading to inability of women to access quality pre and post-natal care resulting in high maternal morbidity and mortality rate and an increase in the number of motherless babies in need of care and protection, children of drug addicts, imbecile and disabled children. It is these children who are abandoned, neglected and hopeless that are in need of adoption or foster parenting.

It is also not all children that can be adopted. Who then may be adopted? The law provides for 2 categories of person that may be adopted. First, a child below 18 years whose parents or in absence of parents, the guardian has consented to the adoption,²⁹ the 2nd is a child below 18 years who is abandoned, neglected and persistently abused and there are compelling reason in the interest of the child that the child should be adopted.³⁰ However, the child must be unmarried, because a person who is married is presumed to have care and protection. The term juvenile varies among States in Nigeria, a child is a person less than 17 years,³¹ this definition operates in States who are yet to adopt the CRA 2003 as a State law. Before a child can be adopted under the law especially in States which have adopted the CRA 2003-Ogun, Delta, Edo, Lagos among others, it must be established that such a child has been abandoned, relatives are unknown and cannot be traced by the juvenile/family court before an adoption order can be made by the court.

Before the enactment of the CRA 2003, it was impossible to adopt a non-indigene of a State, For instance, in Oyo state under the Oyo Adoption Edict of 1984, an adoption order cannot be made in favour of a non-indigene of the State

²⁹ CRA 2003, s. 128(a).

³⁰ *Ibid*, s. 128(b).

³¹ Children and Young Persons Act 1943.



but all these have been put to rest with the enactment of the CRA 2003. In foreign jurisdictions such as the United States of America, Canada, United Kingdom, Israel among others, adults above 18years may be adopted. These adults have the rights to inherit from their adopted parents but inheritance from their biological parents are complex and depends on the type of adoption. But in the United Kingdom, adopted person can only inherit properties from their adopted parents but never from their natural parents. The procedure for adoption in Nigeria is cumbersome, thorough and sometimes discouraging to the would- be adopted parents, nevertheless, the aim is to ensure that a child is placed in a safe and conducive home and bearing in mind the best interest of the child.

5.4 FORMAL PROCEDURE OF ADOPTION UNDER THE NIGERIAN LAW

Nigeria practise a closed system of adoption where the parents of the-would be adopted child is unknown to the adopting parents to protect the identity and dignity of the adopted child. The Child's Right Act, 2003³² provides for adoption of a child in Nigeria. An application for adoption is made to the High (Family) Court accompanied with the following documents;

- (a) Where the applicant is a married couple, their marriage certificate or a sworn declaration of marriage;³³
- (b) The birth certificate or sworn declaration of age of each applicant;³⁴
- (c) 2 passport photographs of each applicant;³⁵

³² Child Rights Act 2003, Cap C 50 Laws of the Federation of Nigeria 2004, s 126(1).

³³ CRA 2003, s 126(a).

³⁴ *Ibid*, s 126(b).

³⁵ *Ibid*, s 126 (c).



(d) A medical certificate of the fitness of the applicant from a Government hospital;³⁶ and

(e) Such other documents, requirements and information as the Court may require for the purposes of the adoption.³⁷ Such other documents, requirements and information as the Court may require for the purposes of the adoption. such as: Means of livelihood; Certificate of origin; Home study/investigation to show how you relate with other people like your siblings, parents, spouses, children etc.; Divorce decrees (where applicable); Proof of Nigerian citizenship; Proof of citizenship of country in which the child is to be taken; Financial documentation—proof of financial assets including evidence of source of income and Police reports.

In practice, the Court prefers that an applicant must have fulfilled the condition precedent at the Child Welfare Department and obtain a report stating that the applicant is a proper person to adopt the child. The report would accompany the application for adoption. Upon receipt of an application for adoption, the Court shall order an investigation to be conducted by child development officers or a supervision officer or such other persons as the Court may determine, to enable the Court to assess the suitability of the applicant as an adopter and of the child to be adopted³⁸The Court shall, in reaching a decision relating to the adoption of a child, have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare and the best interest of the child with regards to the age and mental capacity of the

³⁶ CRA 2003, s 126(d).

³⁷ *Ibid* s 126(e).

³⁸ *Ibid* s 126(2).



child³⁹ Adoption process is cumbersome and persons interested in adoption have several misconceptions making them unwilling to go into adoption process and thereby reducing the number of children who would have been provided with a safe and conducive home.

5.5 REASONS FOR UNWILLINGNESS TO ENGAGE IN ADOPTION PROCESS

Childless couples are desirous to get children through adoption but are discouraged by the long and cumbersome adoption process. For instance, adoption process may stretch up to 2 years or more depending on the number of applicants on the row. This stringent procedure is beneficial to the adopted child as the adoption agencies ensure that children go to good home and adoptive parents who can afford to give the child a quality life and care.⁴⁰ Reasons for unwillingness of couples or individuals to go into adoption ranges from socio-cultural, psychological and religious beliefs. The socio-cultural factors include stigmatization of the couples, unknown parental background of the adopted child and fear that the child may have inherited genetical diseases. Psychologically, adoptive parents always have the feeling that the adopted child is not their biological child and the child may leave them as soon as he/she discovers that the adoptive parents are not his natural parents. In the aspect of religion, Islamic religion prohibits adoption but encourages foster parenting or guardianship while Christianity preaches that couples should be patient and wait on the Lord for the blessing of the fruit of the womb. In spite of these challenges many childless couples are willing to engage in adoption process to bring children home to form

³⁹ Note 38

⁴⁰Tajudeen (n5).



a happy family and for the adopted child to enjoy all the rights as a biological child.

5.6 ADOPTION AND LEGITIMACY

Adoption is a process whereby a court extinguishes the parental link between a child and his biological parents and creates analogous link between the child and the adopting parents. This feature is common with the legal form adoption and not the customary form of adoption where the child still maintains a link his biological parents, a process which can be likened for foster parenting or guardianship. When a child is adopted through a formal and legal procedure of adoption, the child has all the rights and privilege accruable to biological children in the family. These rights include: right of inheritance through Will of deceased adoptive parents or via intestacy where there is no Will and the right to maintenance and care.

According to Nworgugu,⁴¹ legitimacy is the status acquired by a person who is born in lawful wedlock, and such a person is regarded as been legitimate from birth. Since lawful wedlock includes marriage under the Act, as well as customary law and Islamic marriage, any child born during the subsistence of either of these aforementioned marriages is legitimate. Also, if the child is born within 280 days after his parents have obtained a decree absolute, the presumption of legitimacy will still apply to the child. Under Islamic law, a child is presumed to be legitimate once he/she is conceived during subsistence of the marriage, it is immaterial whether the child is born after the marriage has been dissolved. In Nigeria, the concept of legitimacy is very important because of the social

⁴¹ E.I .Nwogugu, *Family Law in Nigeria* (Revised Edition, 2006 Heineman Educational Books).



stigmatization associated with illegitimacy.⁴² Although the Constitution has been able to remove such stigma when it provides that no person shall be discriminated against by reason of the circumstances of birth⁴³.

In the case of a formal adoption process which is the main crux of this paper, the process confers legitimacy on the adopted child as biological children of the adoptive parents. This therefore implies that the adopted child can inherit either by way of inter vivos or by Will which was made after the date of the adoption order, as reference to child or children in the Will includes the adopted child.⁴⁴ . If the adoptive parents died intestate –do not leave a Will or Wills- the adopted child will have the same legal rights to inherit from their estate as any biological child would have. In *Igbozuruike & Ors v Onuador*,⁴⁵ the court held that the circumstances of the birth of an individual is no ground to discriminate against such child in sharing or succeeding to the property of a grandmother or mother. Also, in *Aduba & Ors v Aduba*,⁴⁶ the Court of Appeal upheld the decision of the High Court that the Respondent was an adopted child of Aduba Ohagwam Nwaemere and his wife, Felicia, posting that Section 42(2) of the Constitution of the Federal Republic of Nigeria, Section 42(2) thereof, applied, to protect the Respondent's rights against discrimination and so he was entitled to share in the landed property and the estate of Aduba Ohagwam Nwaemere as his adopted son. It also granted him customary right of occupancy over the particular land in dispute. From the cases cited above, it is only reasonable that an adopted child be

⁴² Paul Okhiade Itua 'Legitimacy, Legitimation and Succession in Nigeria: An Appraisal of Section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended on the Rights of Inheritance' [2012] 4(3) *Journal of Law and Conflict Resolution*, 31-44.

⁴³ Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), s 42(2).

⁴⁴ Ogwezzy (n5).

⁴⁵ (2015) LPELR - 25530 CA.

⁴⁶ (2018) LPELR - 45756 CA.



treated as being the blood of the adopters and has the rights of inheritance of properties; sotherwise the essence and spirit of adoption would be defeated.⁴⁷

Also, where an adoption order has been made and the adoptive parents die intestate, their properties/estate shall devolve to the adopted child as if he were their biological child with all the rights and priviledge. However, an adopted child does not have the right to inherit from his natural parents as all rights have been extinguished by the adoption order.⁴⁸ But the reverse is the case in under customary law adoption as there is no permanent severance of the parental rights and obligations between the infant and his natural parents. He may succeed to property both in the family of his adopter and also in respect of his natural parents. The length of time an adopted individual is cared for by another individual or family is immaterial, the link between the adopted child and his roots can never be severed⁴⁹

The adopted child is prohibited by the adoption order from contracting a marriage with the adopted parents or their children because the adoption order has created a consanguineous relationship between the adoptive parents, their children, relatives and the adopted child .All persons related by blood with the adoptive parents cannot have any marriage relationship with the adopted child because the adoption order has created a blood relationship between them and the adopted child. A violation of this provision of the law attracts both fine and 5 years imprisonment. An adoption order made in respect of a child automatically revokes any subsisting order requiring a person to contribute towards the maintenance of

⁴⁷ Omoniyi and Izzi (n6).

⁴⁸ CRA 2003 s 14(3).

⁴⁹ Tajudeen (n5).



the child under the Act or any other law⁵⁰. Since adoption severs the relationship hitherto existing between the adopted child and his birth parents, the latter are no longer obliged to maintain the child. Consequently, the obligation to maintain the child henceforth devolves upon and is enforceable in favour of the adopter. Adoption is a sealed and irrevocable act. Once an adoption order is made in favour of any applicant, such an order is beyond recall and cannot be cancelled subsequently⁵¹. The only probable exception is where it is discovered that fraud, duress, or undue influence was exerted on any party to the proceedings.

The right and legitimacy of an adopted child can be called to question where the formal adoption order was not made and the name of the child is not in the Child Adoption Register. An Adopted Children's Register stamped or sealed by the registrar's office shall be proof of such adoption as is specified therein. This position was affirmed in the case of *Olaiya v Olaiya*,⁵² the 1st respondent, Mrs. Cornelia Olaiya, married Solomon Kayode Olaiya in 1963 under the Marriage Act in England. The couple lived together in England and later returned to Nigeria where they cohabited until the husband died intestate in 1981. There was no biological child of the marriage. Upon the death of the husband, the 2nd and 3rd respondents (his brothers) took over the deceased's estate and continued to manage the same without any reference to the deceased's widow. She sued them claiming, among other reliefs, a declaration that the plaintiff and the children of the deceased namely Emmanuel Olaiya, Sarah Olaiya and Remilekun Olaiya were the exclusive beneficiaries of the intestate estate of the deceased. In her pleadings, the plaintiff claimed that the first two children were both children

⁵⁰ CRA 2003, s. 140(2).

⁵¹ *Ibid* s 141

⁵² (2002) 8 NWLR (pt 782) 652; (2005) 2SMC 84.



of the deceased by legal and valid adoption under the applicable law and were brought up and recognized as such prior to the deceased's death in 1981.

However, the defendants denied the averment that their deceased brother ever adopted the children. The trial court accepted the plaintiff's oral evidence that she and her deceased husband adopted the two children. Accordingly, it held that the children were entitled to share in the intestate estate of the deceased and the Court of Appeal upheld the decision. On further appeal to the Supreme Court, it was held that the mere ipse dixit (oral declaration) of the plaintiff/1st respondent was insufficient proof of the alleged adoption. The apex court held that where a child is alleged to have been adopted under an Adoption Law, the best evidence of the adoption should come from the Adopted Children Register established under the Law. Since the adoption of the two children in question had not been proved in the manner required by the Law, the Supreme Court held that they were not entitled to share in the intestate estate of the deceased. The above submission of the apex court shows that it is very important that all duly laid down procedure of adoption under the law must be judiciously followed to vest legitimacy on the adopted child.

5.7 CONCLUSION

Parenthood has assumed a global dimension, ranging from assisted reproduction, adoption, foster parenting or guardianship. Marriages in Africa and specifically in Nigeria is measured by procreation. However, marriages rocked by childlessness create physical, psychological and social challenges to couples who then seek solutions through Assisted Reproductive Technologies (ART), adoption or foster parenting or guardianship. This paper is focused on adoption as a means of creating a new family and home for an adopted child. Adoption can be formal or



informal, the formal adoption extinguishes the relationship between the adopted child and its natural parents whether known or unknown and vest legal rights on the adoptive parents. In formal adoption under the law, the adoption order vest legal right of inheritance on the adopted child as if he were a biological child of the adopted parent and also create a relationship of consanguinity between the adopted child, adopted parents, children and relatives of the adopted parents. The adoption order prohibits any form of marriage between the adopted child, adopted parents, children or blood relatives. The adoption order confers legitimacy on the adopted child. The informal adoption does not grant rights of inheritance from the adopted parents, but adopted children can only inherit from their natural parents.

Adoption under customary law is not legal adoption per se, it is a form of foster parenting or guardianship between relatives or non- relatives. These adopted children do not have rights of inheritance in the adopted homes but can only inherit from their natural parents. Although there could be instances where an initial customary adoption can crystalize into right of inheritance from the adoptive parents. Child adoption in Nigeria is faced with several challenges which militate against adoption process ranging from stigmatization, unknown parental background, possible inherited or genetic diseases, psychological and religious beliefs, poverty, establishment of illegal adoption and orphanage homes, future claim by the biological parents, disloyalty or abandonment of adoptive parents when the child discovers his/her status as an adopted child .Parenthood demands a high level of psychological process, patience and will power hence couples must be aware and sure of their decisions before engaging in adoption process because the law places priority in the best interest of the child for adoption.



5.8 RECOMMENDATIONS

This paper proffers the following recommendations:

1. Formal adoption procedure under the law should be made less stringent to encourage individuals or couples desirous of adopting a child while bearing in mind the need to provide safe and conducive home for the adopted child.
2. Advocating for a uniform adoption laws in all States of the Federation by ensuring that all States yet to adopt the CRA 2003 do so to protect the best interest of the child.
3. Strengthen the existing laws to prevent the proliferation of illegal outlets for the sale of babies in the disguise of child adoption.
4. The need for intensified judicial activism and public sensitization of adoption procedures.



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6.0 ANALYZING PRIVATE RIGHTS IN NIGERIA FOR SUSTAINABLE DEVELOPMENT

Pereowei Subai*

ABSTRACT

This paper critically examines the role of private rights in fostering sustainable development within the Nigerian socio-legal framework. It argues that while sustainable development has primarily been pursued through policy instruments and environmental strategies, the protection and enforcement of private rights, particularly property rights, contractual rights, and the right to access justice, are indispensable for achieving sustainable development in any society. The paper explores the recognition of private rights under Nigerian law and their intersection with key aspects of sustainable development, such as environmental protection, economic growth, and social equity. In so doing, it critically evaluates the current legal and institutional frameworks for sustainable development in Nigeria, identifying their limitations while making proposals for reforms. The paper concludes by observing that a robust legal regime for private rights enhances legal certainty, encourages responsible stewardship, promotes investment, and strengthens governance, all of which are necessary for sustainable development.

6.1 INTRODUCTION

The world today is witnessing an era of economic prosperity and technological advancement that is unprecedented in human history. Across the globe, standards

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of living have improved significantly in many countries¹ Medical breakthroughs, scientific discoveries, and technological innovations have elevated the quality of life for much of the global population. The creativity and ingenuity of man have reached remarkable heights, and feats have been achieved that would have astonished our ancestors just a century ago. Space tourism is now a reality, while numerous countries operate high-speed bullet trains capable of covering vast distances in record time. Communication and the dissemination of information have also evolved dramatically, reaching levels that were once inconceivable.

The recognition and protection of private rights have played a crucial role in motivating individuals to invent, create, and innovate, with the assurance that their intellectual contributions will be safeguarded through intellectual property rights (IPRs). Entrepreneurs have boldly explored untapped frontiers, harnessing the earth's natural resources such as crude oil, natural gas, and coal to generate new sources of energy and wealth. Taking the USA as an example, the 19th century saw industrial magnates such as John D. Rockefeller (Standard Oil), Cornelius Vanderbilt (New York Central Railroad), Andrew Carnegie (Carnegie Steel Company), J.P. Morgan (J.P. Morgan & Co.), and Henry Ford (Ford Motor Company) lay the foundation for modern economic enterprise in that country on the wings of the Industrial Revolution.

For the most part, these advancements have been driven by private ingenuity, enterprise, and innovation, which operate primarily through limited liability companies and other recognized business forms and vehicles, with

¹ See Henrietta L Moore and others (eds), *Prosperity in the Twenty-First Century: Concepts, Models and Metrics* (UCL Press 2023) <https://uclpress.co.uk/book/prosperity-in-the-twenty-first-century/> accessed 2 June 2025, see also McKinsey Global Institute, 'McKinsey Global Institute: 2024 in Charts' (12 December 2024) <https://www.mckinsey.com/mgi/our-research/mckinsey-global-institute-2024-in-charts> accessed 2 June 2025



governments creating enabling frameworks for their citizens to thrive. In essence, while governments may sometimes collaborate with private capital in these ventures, the driving force behind such achievements has been the private sector. These developments were made possible because governments not only recognised but actively protected private rights, rights that were expanded over time beyond property and commercial interests to include personal freedoms such as the right to expression, freedoms that have been amplified by the internet and other digital platforms.

Concerned, however, that a significant number of developing countries in the Global South have been unable to harness the benefits of industrial and technological revolutions, the global community came together in 2015 under the auspices of the United Nations to formulate the Sustainable Development Goals (SDGs).² These 17 goals aim to promote equitable development across all nations, ensuring shared economic prosperity, environmental protection, and respect for the rights of future generations. They are designed to spur countries to put in place strategies to lift their people out of poverty and improve their standards of living in general. Yet, more than a decade after their adoption, the world continues to witness widespread poverty, human rights abuses, and environmental degradation, particularly in developing nations such as Nigeria. With weak and corrupt governments that often struggle with inadequate capacity, there is a need for developing countries to learn a lesson or two from private enterprises and entrepreneurs, which tend to succeed where their government-owned counterparts

² See P Caballero and P Londoño, *Redefining Development: The Extraordinary Genesis of the Sustainable Development Goals* (1st edn, Routledge 2022), Michelle ML Lim *et al*, 'Reframing the Sustainable Development Goals to Achieve Sustainable Development in the Anthropocene—A Systems Approach' (2018) 23(3) *Ecology and Society* 2.



have failed. This troubling reality underscores the urgent need to examine the relationship between private rights and sustainable development.

This paper explores the nexus between private rights and sustainable development, using Nigeria as a case study. It will highlight the role of private rights in promoting private enterprise and demonstrate that periods of heavy government control were often marked by widespread corruption, inefficiency, and a lack of transparency. In contrast, the introduction of private sector participation into previously monopolized sectors frequently led to increased efficiency, rapid growth, and development-though not in all cases. It will make a case for stronger private involvement in the Nigerian economy as a means of promoting the attainment of the SDGs, while also arguing that governments should take active roles in regulation and the creation of enabling environments.

In this paper, the writer will argue that private rights, if properly situated and harnessed, can serve as the legal bedrock for the realization of sustainable development in Nigeria. This is because the effective enforcement of private rights creates predictable legal conditions necessary for investment, innovation, land stewardship, and social participation. The paper will also note that these benefits can only be achieved if private rights are clearly defined, effectively protected, and efficiently enforced, and that private rights should be exercised responsibly and within the framework of a society's cultural values and ethical norms. This calls for collective introspection, the evaluation of values, and a consideration of the limits of material pursuit.

It will also note that there is a growing concern about the imposition of certain individualistic ideologies and social practices under the guise of private rights and personal freedoms. This includes contentious issues such as homosexuality and LGBTQ+ practices, which are largely alien to the customs and



values of the Nigerian people, all in the name of personal rights and freedoms. This paper will therefore argue for a careful balance between private rights and the preservation of the cultural integrity of societies, ensuring that the exercise of private rights does not erode the social cohesion or moral foundations necessary for sustainable development.

The article is structured into five parts. Part One introduces the central theme, while Part Two offers conceptual clarifications, focusing on private rights and sustainable development. Part Three examines the nexus between private rights and sustainable development, highlighting the challenges confronting Nigeria in this regard. Part Four proposes reforms aimed at strengthening private rights, while also acknowledging the potential drawbacks that may arise if such rights are exercised without adequate checks in the context of a rapidly advancing technological landscape. Finally, Part Five presents the conclusion.

6.2 CONCEPTUAL CLARIFICATIONS

A clear understanding of the key terms in this paper is necessary if we are to fully appreciate the relationship between private rights and sustainable development. Accordingly, this section defines and contextualizes private rights and sustainable development, situating them within Nigeria's social, economic, and governance frameworks.

Private Rights

Private rights refer to the legal entitlements that individuals possess against other individuals or legal persons, including the state in its non-sovereign capacity. They are distinguished from public rights, which pertain to society as a whole and are enforceable by or against the state in its sovereign role. Private rights are primarily enforceable through judicial processes and are typically codified in



statutory provisions, contracts, or recognized under common law. They are concerned with ensuring individual autonomy, dignity, and personal or proprietary interests, and their violation usually gives rise to civil remedies such as damages or injunctions. Private rights serve critical functions in a legal order. They empower individuals to pursue self-interest within legal boundaries, facilitate economic exchanges, and create predictable structures for human interaction. Additionally, they foster long-term planning, investment, and the responsible use of resources.

In Nigeria, private rights include rights to property, freedom of contract, and privacy. The Constitution of the Federal Republic of Nigeria 1999 (as amended) protects several of these rights. For example, Section 43 guarantees the right of every citizen to acquire and own immovable property anywhere in Nigeria, while Section 44 prohibits the compulsory acquisition of property without the payment of adequate compensation. There are also other freedoms and rights inherent in the person.³

Beyond the Constitution, private rights in Nigeria are reinforced by statutory provisions at both federal and state levels. For example, the Land Use Act 1978 vests all land in each state in the Governor, in trust for the people,⁴ but also recognizes and provides for the granting of rights of occupancy to Nigerian

³ They include the right to life (Section 33), the dignity of the human person (Section 34), personal liberty (Section 35), and fair hearing (Section 36). Also guaranteed are the rights to private and family life (Section 37), freedom of thought, conscience, and religion (Section 38), freedom of expression and the press (Section 39), peaceful assembly and association (Section 40), freedom of movement (Section 41), and freedom from discrimination (Section 42). Additionally, the Constitution protects the right to acquire and own immovable property anywhere in Nigeria (Section 43) and the right to compensation in cases of compulsory property acquisition by the state (Section 44).

⁴ S.1



citizens.⁵ There is also a wide range of statutory provisions designed to advance commerce and confer rights on individuals to engage in trade and business. These include the right to trade as a sole proprietor, through a partnership, or via a registered company.⁶ Others include the right to engage in the sale of goods⁷ or to acquire property through hire purchase,⁸ laws relating to financial institutions and the right to insure against business risks. More recent developments have added privacy rights through data protection regimes, and intellectual property (IP) rights,⁹ to safeguard creative and innovative outputs.

Inherent in private rights is the freedom to transact freely. Captured in the phrase *laissez-faire*, the concept of private rights implies that the government's role is to recognize individuals' freedom to contract and to create an enabling environment for the protection of rights and obligations arising from such contracts. In Nigeria, contract enforcement is facilitated through civil litigation, arbitration, and alternative dispute resolution (ADR). The Arbitration and Mediation Act 2023 represents a modern effort to streamline dispute resolution and uphold the sanctity of contracts, which is crucial for investment and economic sustainability. The absence of a robust framework for enforcing private rights, particularly contractual rights, discourages investors (local and foreign) from making long-term commitments. In Nigeria, this undermines economic sustainability, making access to reliable judicial and non-judicial forums indispensable. To underline the importance of private rights, an entire body of law

⁵ S.5

⁶ CAMA 2020

⁷ The Sale of Goods Act of 1893, which has been largely domesticated in the various states of the Federation,

⁸ Hire Purchase Act of 1865

⁹ Nigerian Copyright Act 2022, the Trademarks Act year 1967, and the Patents and Designs Act, 1970



has developed around them. In Nigeria, for instance, virtually every Faculty of Law has a Department of Private Law dedicated to teaching and research in areas such as arbitration, contract, commercial law, banking, equity and trusts, land law, torts, company law, labour law, and media law.

Private rights are best understood in contrast with public rights. They differ in terms of ownership, purpose, enforcement, and the interests they protect. Private rights are held by individuals or legal entities in their personal capacity and are designed to protect personal interests, enforceable against other individuals or entities. Public rights, in contrast, are vested in the public at large, serve collective interests, and are usually enforced by the state on behalf of the community. For example, in tort law, public nuisance is enforced by the state, while private nuisance is enforced by individuals.¹⁰ Public rights include the right to vote, the right to a clean and healthy environment, access to public infrastructure, and public services such as education and healthcare. While individuals benefit from public rights, their purpose is the proper functioning of society and the protection of communal welfare.

Another crucial aspect of private rights is the right to privacy. With the advent of internet technology, vast amounts of personal data are collected and processed globally, including from millions of Nigerian citizens. This raises the need for responsible and transparent handling of data to protect privacy and prevent misuse. In response, Nigeria enacted the Data Protection Act 2023, which regulates the collection, processing, and storage of personal data.¹¹ While this is a

¹⁰ Even at that they have been some reformed in this regard, with private individuals now allowed to enforce public nuisance in some cases, see ***Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*** [2019] 5 NWLR (Pt. 1666) 518

¹¹ See Patrick Chukwunonso Aloamaka, 'A Critical Analysis of the Nigeria Data Protection Act 2023: Elevating Standards to Global Norms' (2025) 4(2) *UCC Law Journal* 242, see also O



significant step forward, its effectiveness depends on enforcement and public awareness. Strengthening implementation and ensuring Nigerians understand their data rights will be key to safeguarding privacy in the digital age.

Private rights also intersect with public governance. For example, the right to explore and exploit natural resources-ordinarily held in trust by the state-can be vested in a private company through a concession or contractual arrangement. Similarly, while individuals may freely enter contracts, such freedom must be exercised within the bounds of the law. Illegal contracts remain unenforceable. Likewise, oil and gas or mining concessionaires must exercise extraction rights in line with legal and regulatory standards, including environmental protection and corporate social responsibility (CSR). These examples illustrate the interplay between private rights and public governance: private entities enjoy rights to develop and profit, while governments retain oversight to ensure resources are managed sustainably and equitably.

A core dimension of private rights is property rights, which consist of three distinct sets of entitlements: (1) the exclusive right to use (or not use) a resource; (2) the exclusive right to derive (or not derive) income from a resource; and (3) the exclusive right to alienate, combine, or partition one's use and income rights (or to decline to do so). How these rights can be harnessed in attaining sustainable development will be explored further in this paper.¹²

Babalola, 'The GDPR-Styled Nigeria Data Protection Act 2023 and the Reverberations of a Legal Transplant' (2024) 3 *British Journal of Cyber Criminology* 1

¹² D Ho and L Lai, 'Institutions, Culture and Sustainable Development' (2006) Vol.24(2), *Property Management*, 74



Sustainable Development

The concept of sustainable development gained prominence with the 1987 Brundtland Report, *Our Common Future*, which defined it as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹³ This definition has been adopted in numerous international and regional policy frameworks, including the 1992 Rio Declaration on Environment and Development and the United Nations Sustainable Development Goals (SDGs). Sustainable development rests on three interdependent pillars: environmental sustainability, which requires responsible use and conservation of natural resources; economic sustainability, which promotes inclusive and stable economic growth; and social sustainability, which advances equity, justice, human rights, and social cohesion. In 2015, all United Nations member states adopted the 17 SDGs under the 2030 Agenda for Sustainable Development. These goals, comprising 169 targets, address challenges such as poverty, inequality, climate change, environmental degradation, peace, and justice.

To some extent, the SDGs evolved from the Millennium Development Goals (MDGs),¹⁴ although they have a broader, more inclusive, and ambitious framework emphasizing sustainability, human rights, and global partnership. They serve as global standards of development that nations are expected to pursue

¹³ <https://www.are.admin.ch/are/en/home/media/publications/sustainable-development/brundtland-report.html>, Accessed 28 May 2025

¹⁴ MDGs were a set of eight international development objectives established in 2000 by the UN for 2015. They were aimed at addressing critical global issues such as extreme poverty, hunger, education, gender equality, child mortality, maternal health, disease, environmental sustainability, and the development of global partnerships for development. While some progress were made with respect to their implementation, persistent challenges in some developing countries resulted in the formulation of a more comprehensive approach, leading to the formulation of the SDGs in 2015. For more reading, see Sachs, J. D. ‘From Millennium Development Goals to Sustainable Development Goals’ (2012) Vol. 379, the Lancet, 2206–2211



in order to end poverty, protect the planet, and ensure prosperity by 2030. Sustainable development is promoted globally in recognition that poverty and environmental degradation, if unaddressed, undermine progress and fuel conflict, disease, and further poverty.¹⁵

As part of the global community, Nigeria has adopted the SDGs, relying on legal instruments, institutional bodies, and international commitments. Although not expressly stated in the Constitution, several provisions align with the goals. For example, Section 20 obliges the State to protect and improve the environment, while Section 17(2)(d) requires it to ensure “equal opportunity for the well-being of the citizens.” Section 16 sets out economic objectives, including balanced economic development. The challenge, however, is that most of these provisions are non-justiciable, being contained in Chapter Two of the Constitution (Fundamental Objectives and Directive Principles of State Policy).¹⁶ This has limited their enforceability and impact.

Nigeria has also enacted several environmental laws, including the Environmental Impact Assessment Act 1992, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007, and the Petroleum Industry Act 2021, which provides for both environmental protection and Host Communities Development Trusts. Institutions such as NESREA, the Federal Ministry of Environment, and the Nigeria Extractive Industries Transparency Initiative (NEITI) play key roles in enforcement, policy

¹⁵ See Philip Onyekachukwu Egbule and Ewere Clinton Okonta, ‘How Climate Change Induced Land Conflicts and Food Insecurity in Africa: A Case of Herdsmen-Farmers Crisis in Nigeria’ (2024) 7(1) *African Journal on Land Policy and Geospatial Sciences*

¹⁶ See S. 6(6)(c), see also **Archbishop Anthony Okogie v Attorney-General of Lagos State** (1981) 2 NCLR 337; and **Muhammed v Executive Governor of Kano State & Ors** (2024) LPELR-62086(CA)



coordination, and transparency. Additionally, Nigeria has adopted development policies such as the National Development Plan 2021–2025, which prioritizes sustainability, the Nigerian SDGs Implementation Plan 2020, and the Economic Recovery and Growth Plan (ERGP) 2017–2020. Earlier efforts include the National Environmental Policy (1989, revised 2016).

Internationally, Nigeria is party to numerous treaties, including the 2015 Paris Agreement on Climate Change, the 1992 Rio Convention on Biological Diversity, and the 1981 African Charter on Human and Peoples’ Rights, domesticated in Nigeria in 1983.¹⁷ Together, these instruments create binding obligations to pursue equitable, inclusive, and sustainable development. However, enforcement remains a challenge, as many commitments are treated more like political manifestos than actionable policies, with limited genuine commitment to implementation.

6.3 THE NEXUS BETWEEN PRIVATE RIGHTS AND SUSTAINABLE DEVELOPMENT

It is clear that the majority of the Sustainable Development Goals (SDGs) are directly connected to economic prosperity and well-being. As such, any country seeking to attain these goals must address the economic needs of its citizens.¹⁸ Today, the global economy relies heavily on private enterprises and innovation as the primary providers of employment and sustained economic growth. The most robust economies in the world are driven by private investment and the

¹⁷ See

¹⁸ For example, some of the goals such as zero hunger, good health and well, quality education, clean water and sanitation, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduction of inequality, responsible consumption and production, are all directly connected with economic prosperity and well being.



endeavours of private actors. From the United States to Germany, Indonesia to Brazil, the private sector has played leading roles in fostering economic advancement. Free market ideology has meant that these countries have sought to establish frameworks that foster private innovation and enterprise-frameworks that not only recognize, protect, and reward private initiative and creativity, but also uphold other private rights, such as the right to privacy, the right to benefit from intellectual property, and, notably, the right to own property.

To put things in perspective, the ‘miraculous’ rise of the Chinese economy cannot be divorced from the market-oriented reforms introduced by Deng Xiaoping after the death of Chairman Mao. Deng opened up China to private sector investment, while the Chinese Communist Party retained its stranglehold on politics.¹⁹ Conversely, the near-collapse of the Soviet Union in the late 1980s is linked to the failure of its closed economic model, a system that stifled creativity and removed the motivation for enterprise.²⁰ The global recognition of the limited role of governments in business activities prompted widespread policy shifts in the 1980s, marked by the privatization initiatives of leaders like Margaret

¹⁹ Launching his reforms in 1978, after the death of China’s revered leader, Mao Tse Tsung, Deng Xiaoping’s economic reforms marked a pivotal shift from a centrally planned economy to a more market-oriented system. He decollectivized agriculture, allowing farmers to manage land and retain surplus profits, opened China to foreign investment by establishing Special Economic Zones that attracted capital, technology, and expertise, and gradually reformed state-owned enterprises (SOEs), granting them more autonomy and profit incentives. He cautiously encouraged private businesses, liberalized trade and reduced central economic control. These endeavours spurred growth, as local governments gained more authority to drive development. Deng’s reforms were guided by pragmatism, focusing on outcomes rather than strict ideology, and laid the foundation for China’s rapid economic transformation. See Z Xin, ‘China can get economy growing again if it puts its trust in capital; Beijing must remember shift from ideology to pragmatism in economic management by Deng Xiaoping unleashed boom in private businesses’, (2005) *South China Morning Post*, see also M Pei, *China’s Crony Capitalism: The Dynamics of Regime Decay*. (2015, 1st Edn Cambridge)

²⁰ See Mark Harrison, ‘The Soviet Economy in the 1980s: Problems of Growth, Reform, and Collapse’ (1990) 42(2) *Economic History Review* 271.



Thatcher and Ronald Reagan.²¹ Nigeria has had its own experience with this global trend. Over time, many Nigerian state-owned enterprises failed to operate optimally, becoming conduits for corruption, inefficiency, and a lack of transparency. In response, the Obasanjo administration, upon assuming office in 1999, promptly took steps to address these issues.

At the heart of capitalist systems is a deep respect for private rights, as seen in the enforcement of contractual obligations and the protection of individuals' rights to benefit from their creativity. States that prioritize these rights enforce contracts objectively, provided there are no vitiating factors such as fraud, duress, or mistake. The recognition and protection of private rights such as the right to own property and to benefit from personal innovation, create strong incentives for entrepreneurial activity. This has led to widespread creativity, invention, and economic advancement. The massive developments brought about by the internet have given rise to multi-billion-dollar enterprises such as Facebook, Amazon, Google, and Apple, together worth over nine trillion dollars, demonstrating the role of private enterprise in economic advancement. Recognizing this importance, governments have established systems designed to enable private rights to thrive. When private enterprise flourishes within such systems, economies grow. Beyond economic benefits, the protection of private rights fosters balance, mutual respect, and self-esteem, all of which contribute to individual happiness and fulfilment. These outcomes are also critical to achieving the Sustainable Development Goals.

²¹ See David Coates, 'The Political Economy of Thatcherism' (1989) 17(2) *Cambridge Journal of Economics* 131., see also William A. Niskanen, 'Reaganomics and the Role of Government' (1984) 14(3) *Public Interest* 27.



Countries that have effectively harnessed the benefits of industrial and post-industrial revolutions have done so by creating robust protections for private rights. Their governments primarily focus on enabling private individuals to express their creativity and innovation. In Nigeria, private enterprise has often succeeded where state-owned enterprises have failed. A striking example is the \$20 billion Dangote Refinery, which emerged as a crucial response at a time when government-owned refineries were underperforming. Such ventures are only feasible in environments that recognize and respect private rights to wealth and entrepreneurial activity.

Integral to this respect for private rights is the protection of private investments. There is a need to avoid the expropriation or nationalization of private investments under any guise. A government that fails in this regard will struggle to attract capital and technology from private investors-both of which are essential for development. Any attempt to frustrate private enterprise through the abuse of political power, such as expropriation, nationalization, unjust seizure of property on flimsy grounds, or the revocation of concession rights, will ultimately undermine private enterprise and render a country unattractive to both domestic and foreign investors. In other words, any country that seeks to foster economic development must cultivate a deep-seated respect for and protection of private investment. Honouring investment agreements and avoiding indirect expropriation are therefore critical for building investor confidence and driving economic growth. This recognition has led countries to enter into multilateral and bilateral treaties designed to regulate the extent to which they can tax, expropriate, or nationalize private foreign investments within their territories.²²

²² For example, Nigeria has signed several Bilateral Investment Treaties (BITs) that protect private investments from expropriation, including those with the United Kingdom (1990), Netherlands



6.4 PRIVATE RIGHTS AND SDGS: THE NIGERIAN EXPERIENCE

Despite the abundance of legislation designed to foster private rights, enforcement remains weak. Regulatory agencies are often underfunded, lack adequate capacity, and are subject to political interference. Private citizens in Nigeria also struggle to access funding and land, both of which are critical for entrepreneurship. Poverty remains widespread, with a large proportion of Nigeria's population living below the poverty line.²³ Recent government policies, such as the removal of fuel subsidies and the floating of the naira, have further deepened poverty.

Nigeria also faces severe environmental challenges, including gas flaring, oil spills, and inadequate waste disposal, all of which cause significant environmental damage. Unfortunately, federal and state environmental protection agencies struggle to enforce regulations due to limited capacity and pervasive inefficiency. Other challenges include insecure property rights and tenure ambiguity, weak enforcement of contracts and legal protections, limited awareness of rights among citizens, gender discrimination and social exclusion, institutional weaknesses and corruption, and conflicts between customary and statutory laws.

(1992), China (2001), and Morocco (2016). These treaties commonly stipulate that investments will not be nationalized or expropriated—either directly or indirectly, except for a public purpose, in a non-discriminatory manner, under due process of law, and upon payment of prompt, adequate, and effective compensation. These provisions ensure lawful and fair treatment of foreign investors while preserving Nigeria's sovereign rights.

²³ The World Bank estimates that over half of Nigeria's over 200 million inhabitants live below the poverty line, World Bank, 'The World Bank in Nigeria' (2023), <https://www.worldbank.org/en/country/nigeria/overview>, accessed 2 June 2025, see also O G Akamobi and I B Unachukwu, 'Poverty and Insecurity in Nigeria: Assessing the Socioeconomic Drivers and Consequences' (2024) 8(6) *British International Journal of Applied Economics, Finance and Accounting* 71, T A Egunjobi, 'Poverty, Unemployment and Insecurity Challenges in Nigeria' (2021) 11(1) *Tanzanian Economic Review* 115



The Nigerian government needs to appreciate the importance of private entrepreneurship and the nexus between private rights and the attainment of the SDGs. Such appreciation will motivate the government to put in place adequate measures to foster, promote, and even reward private entrepreneurs. The situation where SMEs and MSMEs are overwhelmed by crippling multiple taxes and harassment from touts does not foster entrepreneurship and ultimately undermines respect for private rights. Small businesses are often forced out of operation due to the activities of individuals working for state or local governments, who act with deliberate disregard for the fact that such businesses create jobs, employ citizens, and help address the country's economic challenges.²⁴ Today, Nigeria is one of the least attractive countries in terms of ease of doing business.²⁵ This is unsurprising: from accessing loans to registering landed property to conducting business safely and orderly, the country continues to rank low in these indices. Where private rights are allowed to flourish with government encouragement, private businesses will inevitably emerge, creating jobs, paying taxes, and improving living standards.

The concerns raised above particularly affect small businesses and large businesses that are not politically connected.²⁶ Politically connected large entities

²⁴ See Ugwushi Bellema Ihua and Tejumade Omowumi Siyanbola, 'Critical Challenges Limiting Small Business Performance in Nigeria: An Exploratory Investigation' (2012) 9(2) *International Journal of Business and Globalisation* 171, see also Kevin Okey Nwosu, 'Government Fiscal and Monetary Policy Framework: Challenges for SMEs and Entrepreneurship in Nigeria's Developing Economy' (2020) Doctor of Business Administration thesis, University of Liverpool.

²⁵ See World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2020) 4 <https://archive.doingbusiness.org/en/data/exploreeconomies/nigeria>, with Nigeria ranking 131 out of 190 countries.

²⁶ But even large businesses are not spared. The stress and difficulty of operating in the country have led several multinational companies to recently exit Nigeria. For instance, **Procter & Gamble (P&G)** announced the closure of its manufacturing operations in Nigeria in 2023, shifting to an import-only model due to rising costs and regulatory hurdles. Similarly,



often find ways around these challenges, either due to their financial muscle, political ties, or direct government involvement. For example, international oil companies (IOCs) operating in Nigeria are able to overcome many obstacles due to their interconnectedness with the Nigerian state. The real challenge lies with small businesses, which lack such political connections. Many are forced out of operation due to security challenges or excessive government interference. In most cases, obtaining permits from government agencies becomes a major hurdle, with many businesses resorting to bribery or relocating outside the country. Entrenching private rights is therefore inseparable from protecting private businesses, while also ensuring appropriate monitoring of their operations.

If Nigeria must achieve its SDGs and build robust economic systems, it must put in place reforms aimed at strengthening private rights. These include judicial reforms; effective enforcement of patent systems to defend creativity and innovation; land reforms; public enlightenment on land rights; protection against double taxation and harassment from touts; and improved access to funding. The next segment will make some proposals for reform.

GlaxoSmithKline (GSK) also ended its local production and transitioned to a third-party distribution model, attributing the move to the challenging operating climate. **Unilever Nigeria** scaled back its product lines, discontinuing certain categories such as home care and skin cleansing to focus on core products. **Etisalat**, once a major player in Nigeria's telecom sector, exited the market after a debt crisis, leading to a rebranding as 9mobile under new management. Additionally, **Shoprite**, Africa's largest retail chain, sold its Nigerian outlets and pulled out of the country, citing difficult market conditions and low returns on investment, see CN Ezeagu *et al*, 'The Impact of the Exodus of Big Pharmaceutical Companies from Nigeria on Antimicrobial Resistance in the West African Subregion' (2024) 2 BMC Global and Public Health 35



6.5 PROPOSED REFORMS TO ENABLE THE STRENGTHENING OF PRIVATE RIGHTS

Towards Judicial Reforms for Sustainable Development

Private rights cannot thrive in a country where they cannot be judicially enforced. As noted above, private rights are largely enforced through the courts or other alternative dispute resolution mechanisms. For this to be effective, the process must be fair, judges must be competent and capable, and adjudication of disputes must occur within a reasonable timeframe. This will enable entrepreneurs to continue their business operations without the disruption and distraction of prolonged litigation.

As such, it is imperative that the process for appointing judges to the High Court be reformed to ensure that only capable and qualified individuals are appointed to such high office. Currently, the judicial appointment process in the country has been deeply compromised. The position is now often reserved for a privileged few, with appointments influenced by favouritism and political connections. It has become common for judges and politically connected individuals to secure judicial appointments for their spouses, relatives, or children, even when such persons lack the capacity, merit, or competence to hold such a sensitive office.²⁷ As a result, judgments are sometimes procured, corruption

²⁷ See Sylvester G. Edigbonuvie, 'Fighting Judicial Corruption in Nigeria' (2024) 12(6) *Global Journal of Politics and Law Research* 44–63, see also **Chidi Anselm Odinkalu, 'In Nigeria, Judicial Appointments Have Become Network Corruption'** (Premium Times, 5 May 2024) <https://www.premiumtimesng.com/opinion/691560-in-nigeria-judicial-appointments-have-become-network-corruption-by-chidi-anselm-odinkalu.html> accessed 2 June 2025. See also **'El-Rufai Alleges Corruption Among Judges, Lawyers, Seeks Return of Public Trust'** (Guardian Nigeria, 20 May 2025) <https://guardian.ng/news/el-rufai-alleges-corruption-among-judges-lawyers-seeks-return-of-public-trust/> accessed 2 June 2025.



festers on the bench, and the confidence of lawyers and the general public in the judiciary has reached an all-time low.

Secondly, it is suggested that the Nigerian judiciary should embrace digital technology to speed up the litigation process. It is surprising that judges still write in longhand and that Nigerian courts have not yet taken full advantage of the endless possibilities created by digital and internet technology. Lawyers and judges should be able to address private matters virtually, without necessarily requiring clients to appear physically in court. It is also suggested that time frames be set for litigation and that litigants be given defined hours when their matters will be heard. This will ensure that time is saved and litigants will not have to spend the entire day waiting for their cases to be called. Appellate briefs should be filed virtually, and counsel on both sides should be allowed to argue their cases from the comfort of their chambers. This will save time and also enhance the rights of citizens.

A situation where simple litigation takes an average of 15 to 20 years does not foster private rights, because by the time judgment is obtained, the substance of the matter may have been dissipated or overtaken by events. It is also suggested that Nigerian judges should have IT consultants working closely with them to safeguard the integrity of their systems and to keep them integrated with ongoing technological developments. In this respect, lessons can be learned from the Arbitration and Mediation Act 2023, which provides for electronic communication, virtual hearings, and default rules on the number of number of arbitrators.²⁸

²⁸ The Act also introduces several innovations that are designed to enhance the country's dispute resolution systems. Among other things, the Act recognizes both arbitration and mediation as standalone, enforceable mechanisms, while providing clarity and backing for mediated settlement



6.6 THE NEED FOR REFORM OF PRIVATE PROPERTY RIGHTS

Property rights are among the most important private rights in any society. In Nigeria, they include real estate, chattels, intellectual property, and other tangible or intangible interests. Historically, land tenure in Nigeria was regulated by customary law, which varies across ethnic groups. The introduction of the Land Use Act of 1978 centralized land administration under the state. While this was intended to make land more accessible, it has created significant bureaucratic and legal hurdles. For instance, obtaining a Certificate of Occupancy can be a complex and politicized process. The insecurity of tenure and opaque land administration processes have impeded agricultural investment, urban planning, and environmental management. Women, in particular, suffer systemic marginalization in land ownership due to patriarchal customary practices.²⁹ Despite these challenges, land remains central to economic empowerment and sustainable livelihoods. It is therefore proposed that Nigeria should secure property rights in an equitable, clear, and sustainable manner.

Respect and recognition of private property rights also have implications for agriculture, which is critical to entrepreneurship. In this regard, there is a need for Nigeria to reform its land rights system to enable access to land for development and to improve land registration systems. Advances in geospatial technologies now make it possible to map entire states and create effective land registration frameworks. A reliable system will help eliminate disputes, reduce

agreements. The Act establishes an Award Review Tribunal under which parties may challenge arbitral awards without resorting to the regular courts, adopts modern international standards, such as the UNCITRAL Model Law. The Act also introduces provisions on emergency arbitrators, interim measures, and improved appointment procedures, all of which are aimed at increasing investor confidence and aligning Nigeria's arbitration framework with global best practices.

²⁹ Even though the Supreme Court has severally intervened in this regard, customary land access for women remains a challenge in Nigeria, see *Ukeje v Ukeje* (2014) LPELR-22724(SC), see also *Anekwe & Anor v Nweke* (2014) LPELR-22697(SC)



prolonged litigation, and curb fraud by providing verifiable land ownership records.

It would also enable entrepreneurs to raise capital using land as collateral, something that remains a challenge due to the country's weak registration system. Furthermore, the process of obtaining certificates of occupancy and securing consent for land alienation must be streamlined.³⁰

6.7 REFORM OF IP LAWS AND SYSTEMS

It is also crucial that Nigerians, and Nigeria as a country, respect the intellectual property rights of its citizens. Without a strong IP system, it would have been nearly impossible for companies like Google, Facebook, Microsoft, and Apple to develop into the global giants that they are today. Inventors and researchers must be motivated to innovate, and musicians and creators should be encouraged to develop their work, knowing they will benefit from their creativity. As far as Africa is concerned, Nigeria is recognized as a hub for innovation and creativity. With the majority of its over 200 million citizens under the age of 30, the country has enormous potential that has been acknowledged by internationally recognized technology companies.³¹

³⁰ See Kehinde Babalola, Simon Hull, and Jennifer Whittal, 'Land Administration Systems and Their Legal Frameworks Reform for Nigeria' (2023) FIG Working Week Conference Proceedings, Orlando, USA, see also Hosaena Ghebru and Austen Okumo, 'Land Administration Service Delivery and Its Challenges in Nigeria: A Case Study of Eight States' (2016) IFPRI Working Paper 39

³¹ For example, **Meta (formerly Facebook)** opened an office in Lagos and launched programs like the Facebook NG Hub to support local developers and startups, and in 2016, Meta, through the Chan Zuckerberg initiative, invested in Andela, a Nigerian start-up. **Google** has also made significant investments, including opening its first Google Developer Space in Lagos and launching initiatives aimed at training African youth in digital skills. **Microsoft** set up the Africa Development Center (ADC) in Lagos to harness local engineering talent and support innovation. Additionally, **Amazon Web Services (AWS)** has expanded its footprint in Nigeria through training programs and cloud service partnerships.



However, this potential cannot be fully developed unless there is a strong and effective legal system in place. Currently, Nigeria's system for enforcing patents and IPRs is weak. This results in frequent violations of intellectual property, including widespread unauthorized sharing online, with little regard for the effort and expertise that go into creating such works. Nigeria has taken some steps in this regard.³² For example, it reviewed its copyright system with the enactment of the Copyright Act in 2022. This is a step in the right direction, but much more still needs to be done. It is thus proposed that the country develop a robust and effective mechanism for the protection and enforcement of intellectual property rights.

6.8 IMPROVING THE EASE OF DOING BUSINESS IN NIGERIA

There should be a collective and deliberate effort to improve the ease of doing business in Nigeria. At all levels-local, state, and federal-it is essential to create an enabling environment where enterprises can thrive and flourish, free from undue interference or frustration.

In this respect, there is an urgent need to address double taxation issues and the harassment of private citizens by touts. It is suggested that governments, particularly at the grassroots level, establish task forces to curb and prohibit the activities of these touts. At the same time, there is a need to establish a robust framework for business registration and create a one-stop shop for the payment of all necessary dues, taxes, and fees. This will ensure that government revenues are not undermined while also guaranteeing that businesses can operate without

³² See Temitope Oloko, 'Enforcement of Intellectual Property Rights in Nigeria and South Africa: A Comparative Reappraisal' (2025) 11 Commonwealth Law Review Journal 57, see also Sharon Esiedesa, 'Accessibility and Affordability of Civil Justice in Enforcement of IP Infringement: Nigeria as a Case Study' (2023) SSRN Working Paper 4978100



harassment and that the correct amounts are paid directly to the appropriate authorities. Unfortunately, because most governments in Nigeria rely heavily on internally generated revenue (IGR) from the sale of petroleum, there is little motivation for state governments to develop creative mechanisms aimed at fostering private enterprise.

6.9 STRENGTHENING ENVIRONMENTAL PROTECTION

Nigeria is known as one of the most polluted countries due to petroleum operations. The activities of international oil companies and independent oil companies, often in collaboration with the Federal Government of Nigeria in the exploitation of the country's vast petroleum resources, while financially beneficial, have also resulted in severe environmental devastation. Nowhere is this more evident than in the Niger Delta region. Gas flaring and oil spillages have caused significant ecological damage, rendering large portions of land unsuitable for agricultural purposes. In addition, these activities have threatened the livelihoods of local communities and negatively impacted their standard of living. It is therefore crucial that, while Nigeria continues to develop institutional frameworks and enact legislation for environmental protection, the government must prioritize environmental safety over profit-making. This is particularly important given that climate change and its consequences have been linked to the ongoing conflicts between farmers and herders in the Middle Belt and Northern Nigeria.³³

6.10 IMPROVING ACCESS TO FUNDING

It is equally important that private rights are fostered through the provision of adequate funding for entrepreneurship. The truth is that without the availability of

³³ See Philip Onyekachukwu Egbule and Ewere Clinton Okonta, 'How Climate Change Induced Land Conflicts and Food Insecurity in Africa: A Case of Herdsmen-Farmers Crisis in Nigeria' (2024) 7(1) *African Journal on Land Policy and Geospatial Sciences*



funds at reasonably low interest rates, private enterprises will not be able to rise to meet the demands of the Nigerian people-demands which, if met, could significantly advance the attainment of sustainable development goals.

At all levels, banks and financial institutions should be encouraged to provide funding to small businesses. Although efforts have been made in this regard at the federal and state levels, much more still needs to be done. The provision of these funds should be directly targeted at budding entrepreneurs and individuals with demonstrated capacity.

Situations where loans are channeled to politically connected persons with neither the temperament nor the inclination for business represent a total abuse of the system, ultimately frustrating the objectives of government.

6.11 THE NEED FOR INCREASED PUBLIC AWARENESS

As Nigeria continues to expand its economic growth and depth, it is imperative that these systems, many of which currently exist only in theory, be robustly enforced. This will require public awareness, the teaching of private law in universities and institutions of learning, and a willingness on the part of the government to put in place mechanisms that foster such interventions.

Left to themselves, private citizens are unlikely to champion the attainment of sustainable development goals, as the pursuit of narrow, profit-driven interests is a hallmark of capitalism. While capitalism offers many advantages, it remains primarily motivated by the drive to maximize profits and returns for shareholders. This is where government intervention becomes indispensable. Acting as a regulatory and guiding force, the government should redirect private sector focus through legislation and policy frameworks. Incentives such as tax benefits should be granted to companies that invest in societal



advancement, environmental protection, and research. Enterprises that actively support government objectives and implement strong corporate social responsibility (CSR) initiatives should be prioritized in the allocation of contracts, grants, and privileges. Similarly, companies that emphasize local content should be encouraged, as such patronage fosters the growth of smaller businesses and stimulates broader economic development. Conversely, entities that act contrary to public interest or national policies should face sanctions or blacklisting. To reinforce best practices, companies committed to environmental sustainability should be rewarded through tax reliefs, public recognition, and other strategic incentives.

As such, although this paper advocates strong private rights, it does not ignore the reality that the unrestrained exercise of such rights can infringe on the rights of others and produce counterproductive consequences, not only for citizens but also for the country. If left unchecked, this may foster public resentment and the rise of a hyper-wealthy bourgeoisie who trample on the rights of others. In such circumstances, the role of government is to ensure balance by developing robust frameworks that protect individual freedoms while safeguarding the rights of others and upholding the moral fabric of society. For this reason, there is a need for government to establish strong institutions and ensure that adequate frameworks exist to balance the rights of private citizens with those of others, while also preserving societal values. For example, while the internet has created limitless platforms for expression and enabled citizens to voice their opinions freely, this right must be exercised responsibly within a legal framework that prevents harm to others. Defamation, libel, and various forms of harassment, which often manifested as online trolling, have become increasingly



common,³⁴ with severe psychological impacts on victims. In some countries, such abuses have tragically led to suicide and self-harm..³⁵ Therefore, it is necessary for governments to regulate the extent to which citizens use social media and internet platforms to express themselves. To address these challenges, Nigeria has enacted the Cybercrime (Prohibition, Prevention, etc.) Act 2015 (as amended in 2024) and the Data Protection Act, among other measures.

Thus, while there is a need to expand the space for private entrepreneurship to thrive, it is equally important to put in place measures that prevent such rights from being exploited to the detriment of the citizenry. This requires direct government intervention in the interrelationships that exist between private entrepreneurs themselves and between them and their consumers.

Accordingly, governments worldwide, while creating enabling environments for private enterprise, have also intervened when necessary in contractual and commercial relationships. Such intervention often takes the form of public policies with which contracts and private arrangements must comply. For instance, courts routinely strike down illegal contracts or contracts that restrain trade. Governments also criminalize cartels, penalize directors of companies engaged in anti-competitive conduct,³⁶ and enact consumer protection

³⁴ Kosemani Sulyman Muhammed-Hassan, Kayode Ibrahim Adam, and John Afolabi Ogedengbe, 'Defamation and Skit Making in Nigeria: Navigating Legal Boundaries and Creative Expression' (2024) 1(2) *Fountain University Law Journal* 1.

³⁵ Prince Peprah et al., 'Cyberbullying Victimization and Suicidal Ideation Among In-School Adolescents in Three Countries: Implications for Prevention and Intervention' (2023) 23 *BMC Psychiatry* 944.

³⁶ See, Pereowei Subai and Prince Chiazor Diarah, 'Director Beware! examining Nigeria's Strict Directorial Liability Regime for Competition Infringements from a Transcontinental Perspective' (2022) vol. 13(3) *Gravitas Business Review*, 83



laws to prevent stronger parties from exploiting consumers..³⁷ Legislative and judicial interventions are also evident in employer–employee relationships, ensuring that employers do not abuse their superior bargaining positions. This is why governments prescribe minimum wage requirements and compel employers to contribute to workers’ welfare through pensions or compensation schemes in cases of accidents. Intervention is also evident in the protection of employees and low-income earners during company liquidations.³⁸ Similarly, in cases of bank insolvency, the Nigeria Deposit Insurance Corporation (NDIC) guarantees that small depositors receive up to five million naira each.³⁹

In this regard, it is equally important and imperative that governmental intervention be deepened in private relationships which, though private in character, can corrupt and erode the very fabric of society. Increasing globalization and access to the internet have facilitated the exchange of ideas and cultures across borders, thereby creating new challenges that demand government oversight and regulation. Today, some individuals advocate for the recognition of practices alien to African culture under the guise of private rights. Such practices include homosexuality, lesbianism, LGBTQ+ activities, and cross-dressing, among others. It is suggested that the Nigerian state should set clear boundaries by prohibiting these practices in order to safeguard the moral fabric of society.

Equally, the exercise of private rights must be undertaken responsibly and ethically. Rights should not be exercised in ways that produce harmful outcomes, such as the misuse of freedom of expression, corporate abuses involving the

³⁷ Nigeria in this regard, enacted the Federal Competition and Consumer Protection Act in 2019, see also Pereowei Subai and Samet Caliskan, ‘Towards a directors’ competition disqualification regime in Nigeria: lessons from the UK and beyond (2020) *Journal of African Law*

³⁸ S.657 CAMA 2020

³⁹ See s.25 of the NDIC Act 2023



exploitation of dominant market positions, violations of consumer rights, or the propagation of content that undermines social cohesion under the guise of liberty. The challenge, therefore, lies in striking a balance between protecting private rights and pursuing the collective good as an essential condition for sustainable and inclusive development. To this end, governments should establish mechanisms for periodic evaluation of whether these goals are being met. Where they fall short, systems for review and reform should be activated to close the gaps and address the loopholes that hinder progress.

6.12 CONCLUSION

This paper has examined the nexus between private rights and sustainable development, highlighting how these concepts intersect, with particular reference to Nigeria's experience in aligning private rights with the Sustainable Development Goals (SDGs). Against the backdrop of Nigeria's developmental challenges, it proposed a strengthening of private rights through judicial reforms, the improvement of private property protections, and the enhancement of intellectual property regimes. It also advocated for reforms that ease the conduct of business in Nigeria while placing environmental protection at the heart of policy frameworks. Finally, the paper underscored the need to balance private rights with robust governmental regulation and intervention, affirming the role of the state as a guarantor of sustainable development while safeguarding legitimate private interests.



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