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CORPORATE SOCIAL RESPONSIBILITY (CSR): AN APPROACH TO MITIGATING ADVERSE IMPACTS OF MINING OPERATIONS

Oluwatosin Busayo Igbayiloye, PhD*

Abstract

Mining is intrinsically associated with serious environmental and social consequences. Mining businesses, on the other hand, can offset these negative effects by effective corporate social responsibility (CSR) efforts that promote sustainable practices, engage with local communities, improve worker safety, and support local economies. A robust CSR strategy not only help mining businesses develop positive connections with local stakeholders, but it also contributes to their long-term viability and reputation. By incorporating CSR into their operations, mining firms may strike a balance between economic success and the well-being of the communities and ecosystems they impact, ensuring that mining benefits society and the environment. CSR provides a framework within which mining companies can incorporate human rights principles and sustainable practices into their operations. Mining businesses that implement CSR integrate their business plans with the concepts of sustainability, ensuring that they contribute positively to society and the environment while remaining profitable.

This article adopts doctrinal analysis to examine CSR as an approach to curb the adverse impacts of mining operations. It discusses the correlation between CSR, sustainability and human rights and indicated that CSR is a strategy to incorporate principles of human rights and the concept of sustainability in mining activities. The article recommends that CSR programs should prioritize principles of human rights and sustainability, minimize negative effects and maximize benefits to the environment and local communities and ensure that activities are carried out in an ethical, responsible, and sustainable manner.

Keywords: Mining, CSR, Sustainable development, environment, human rights

1.0 Introduction

Mineral resources continue to play an important role in the economy of countries and due to increase in the need of these resources, the activities of mining companies in current times expand speedily.¹ Despite being necessary for economic expansion, mining operations frequently have a negative influence on the environment and nearby communities. Deforestation, air and water pollution, biodiversity loss, and social displacement are some of these effects. Corporate Social

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¹‘Mining’ http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/romania/mining.pdf accessed 31 March 2025

Responsibility (CSR) plays a critical role in lessening these negative impacts by encouraging responsible mining operations, supporting sustainable development, and building a healthy relationship between mining firms, local communities, and the environment.

The challenges posed by the mining industry necessitate the need to put an effective management in place to regulate their present day businesses with the aim of mitigating the impacts on the environment and human being.² Hence, this explains the attention given to continually improve the legal and institutional framework and adopt best industry practices consistent with principles of sustainable development.³ In like manner, certain approaches are adopted in the mining industry to direct companies and governments to address the adverse impacts of mining activities. Companies that remain committed to CSR can construct a framework for sustainable development that is beneficial to industries as well as society while making certain that the next generation will inherit a more equitably and resilient world. This article considers the importance of CSR in mitigating significant environmental, social, and economic impacts, and guaranteeing the ethical, responsible, and sustainable operations of mining businesses.

2.0 Corporate Social Responsibility (CSR) in Mining

The concept of corporate social responsibility is increasingly becoming significant on the corporate agenda. The concept continues to expand and is subject of significant debate and research.⁴ The root of the concept of Corporate Social Responsibility (CSR) is indicated to be dated back to the 1970s but it began to gather momentum in the 1990s.⁵ CSR emerged as a concept in the creation and setting up of standards for corporations at the national and international levels.⁶

² Ibid.

³ Ibid.

⁴ A.B Carroll & K.M Shabana 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) *International Journal of Management Reviews* 85

⁵ A.B Carroll 'Corporate Social Responsibility Evolution of a Definitional Construct' 38 (3)1999) *Business & Society* 269, S Lucas 'Mining and Human Rights: Why Education is the Answer' https://www.academia.edu/7126830/MINING_AND_HUMAN_RIGHTS_WHY_EDUCATION_IS_THE_ANSWER?auto=download accessed 31 March 2025, K Govindan *et al* 'Evaluating the Drivers of Corporate Social Responsibility in the Mining Industry with Multi-criteria Approach: A Multi-stakeholder Perspective' *Journal of Cleaner Production* 84 (2014) 216, D. Henderson 'Misguided Virtue: False Notions of Corporate Social Responsibility (London: Institute of Economic Affairs, 2001) 29 cited in R Jenkins 'Globalization, Corporate Social Responsibility and Poverty International Affairs' 81 (3) (2005) 526 <http://www.jstor.org/stable/3569632> accessed 31 March 2025

⁶ O. Amao 'Emergent State Practice on the creation and practice of Standards on Corporate Social Responsibility' 1 (1) (2014) *State Practice & International Law Journal* 117

Raufflet *et al* identifies three major sources of initiatives for CSR which are provided by literature.⁷ The first source is those driven by policies imposed by government.⁸ The second are referred to as corporate social responsibility infrastructure which are voluntary and has evolved to shape the responses of companies to social and sustainability issues.⁹ They are initiated by actors like international financial institutions, industrial associations and they call on companies to follow the initiatives.¹⁰ The third are the initiatives by companies themselves which are applied according to their interests.¹¹

The concept of CSR is more significant at the international level because of the globalization of the operations of multinational corporations (MNCs) and the lack of a global governance regime to regulate MNCs.¹² MNCs were regarded as powerful actors and could influence national policies and host communities.¹³ In addition, the inability of most domestic legal frameworks to hold MNCs to account for their global operations steered focused attention on the creation of international CSR standards.¹⁴ Global CSR initiatives relating to extractive industries emerged in recent years. Most notable among these initiatives are the Voluntary Principles on Security and Human Rights Extractive Industries Transparency Initiative 2010.¹⁵ OECD Guidelines for Multinational Enterprises 1976, revised in 2000; the United Nations Global Compact 2000 UNGP, the ILO Tripartite Declaration of Principles and the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework are also internationally recognised CSR standards.¹⁶ These instruments are set of internationally recognised principles and guidelines. Zerk noted that the instruments are significant in ‘shaping

⁷ E Raufflet, *et al* ‘An Assessment of Corporate Social Responsibility Practices in the Mining and Oil and Gas Industries’ 84 (2014) *Journal of Cleaner Production* 256

⁸ Raufflet, *et al* *ibid* 256

⁹ S Waddock ‘Building a New Institutional Infrastructure for Corporate Responsibility’ *Academy of Management Perspectives* 22 (3) (2008) 87

¹⁰ Raufflet, *et al* (n 7 above) 256

¹¹ *Ibid*, 256

¹² O. Amao ‘Practice on Corporate Social Responsibility’ 1 (1) (2014) *State Practice & International Law Journal* 136

¹³ K Kercher ‘Corporate Social Responsibility - Impact of globalisation and international business’ (2007) *Corporate Governance eJournal*

[Kercher, Kim --- "Corporate Social Responsibility: Impact of globalisation and international business" \[2007\] BondCGeJl 3; \(2007\) Corporate Governance eJournal \(Bond\), Article 3](#) accessed 31 March 2025

¹⁴ O. Amao (n 12 above) 136

¹⁵ K Slack ‘Mission Impossible?: Adopting a CSR-Based Business Model for Extractive Industries in Developing Countries’ 37 (2012) *Resources Policy* 180

¹⁶ O. Amao (n 6 above) 121

future norms'.¹⁷ Although the instruments are soft law and non-binding, they can develop into binding obligations by influencing treaty development or by being incorporated into customary international law.¹⁸

There is no worldwide meaning of CSR and no accepted definition in the extractive sector.¹⁹ The definitions given to the term CSR include making profits which is the primary aim of companies. According to Friedman, the major task of corporate executives is to maximise the profits of their employers or shareholders.²⁰ The CSR is also defined to include the benefits offered to communities.²¹ However, the responsibilities of companies is extended beyond maximizing profits and companies use the term to indicate their commitment towards respect of human right and environmental standards.²² The World Business Council for Sustainable Development (WBCSD) defined the concept in 1998 as “the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”.²³

Lucas referred CSR to voluntary actions taken by companies to improve the conditions of communities and reduce negative impacts of mining projects.²⁴ Nowadays, corporate social responsibility cannot be taken as ordinary voluntary acts. McBarnet indicates that ‘what is emerging in the area of CSR is a complex interaction between government, business and civil society....’²⁵ Civil societies protest against certain practices of companies and NGOs pressure them to adopt policies and act in a socially responsible manner. Likewise, governments foster CSR through indirect legislations²⁶ and in other instances through direct regulations. For instance, in

¹⁷ J Zerk *Multinational and Corporate Social Responsibility: Limitations and Opportunities in International Law* (CUP 2006) 262

¹⁸ O. Amao (n 6 above) 122

¹⁹ S Bice *Responsible Mining; Key Principles For Industry Integrity*, (Routledge London & New York 2016) 21, K Slack ‘Mission Impossible?: Adopting a CSR-Based Business Model for Extractive Industries in Developing Countries’ 37 (2012) *Resources Policy* 179

²⁰ M Friedman ‘The social responsibility of business is to increase its Profits’ *New York Times*, September 1962 126
Carroll & Shabana (n 4 above) 88

²¹ Slack (n 19 above) 179, Lucas (n 5 above) 1

²² Slack (n 19 above) 179, Bice (n 19 above) 21, Lucas (n 5 above) 1, K Davis ‘The case for and against Business Assumption of Social Responsibilities’ *Academy of Management Journal*, 16 (1973) 312 cited in RV Aguilera *et al* ‘Putting the S Back in Corporate Social Responsibility: A Multi-Level Theory Of Social Change In Organizations’ (3) 32 (2007) 836-837 *The Academy of Management Review* <https://www.jstor.org/stable/pdf/20159338.pdf> accessed 31 March 2025

²³ World Business Council for Sustainable Development (WBCSD) 1998

²⁴ Lucas (n 5 above) 1

²⁵ D McBarnet ‘Corporate Social Responsibility Beyond Law, through Law for Law’ University of Edinburgh, School of Law Working Papers 62

²⁶ McBarnet (n 25 above) 30

South Africa, The Policy Document and the King II including the King III reports address the need and importance for corporations to acknowledge all stakeholders and adopt a “triple-bottom line” approach.²⁷ This approach relates to the consideration of social, economic and environmental concerns in running a company. The King reports provides guidelines of best practices in corporate governance in South Africa focusing on social, environmental and economic concerns. The King reports’ clauses are not mandatory, but they take a “comply/apply or explain” approach that somewhat forces corporations to apply CSR programs or justify why they have not adopted them. The BEE Act compels companies in South African to consider all stakeholders in their operations in an effort to eliminate social and economic inequalities inherited from the Apartheid days and to enable previously discriminated groups to actively participate in the country’s economy.²⁸ Companies that refrain from complying with the BEE scorecard can obtain negative ratings, therefore complicating their ability to operate in the country.

By implication, CSR implores companies to consider not only the needs of its shareholders but also other stakeholders, including employees, customers, affected communities and the general public.²⁹

3.0 CSR and the Concept of Sustainable Development

The commitment to CSR is extended to include sustainable development. Companies use CSR or similar term like ‘sustainability’ to connote commitments to respect environmental and human rights standards.³⁰ The mining industry is a key subject in debates in respect of social and environmental responsibility.³¹ The concerns for sustainability and social responsibility of companies in recent years continues to increase in countries and particularly in the mining industry.³² The exploration and processing of mineral resources by companies is known to cause

²⁷ South African Company Law for the 21st Century Guidelines for Corporate Law Reform May 2004-Policy Document on the guidelines for corporate law review was issued by the Department of Trade and Industry South Africa <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/bills/040715companydraftpolicy.pdf> accessed 31 March 2025; King Committee on Corporate Governance ‘King Report on Corporate Governance for South Africa’ March 2002

[South Africa's King Report on Corporate Governance, 2002 | Enterprise Risk Management Initiative](#) accessed 31 March 2025

²⁸ Black Economic Empowerment (BEE) Act 53 of 2003

²⁹ R. Hamann ‘Mining Companies’ Role in Sustainable Development: The ‘why’ and ‘how’ of Corporate Social Responsibility from a Business Perspective’ *Development Southern Africa* 2 (20) (2003) 237-238

³⁰ Slack (n 19 above) 180

³¹ H Jenkins & N Yakovleva ‘Corporate Social Responsibility in the Mining Industry: Exploring Trends in Social and Environmental Disclosure’ *Journal of Cleaner Production* 14 (2006) 272

³² H. Jenkins & N. Yakovleva (n 31 above) 272

social and environmental damaging problems which triggered protests from affected communities and NGOs. According to Warhurst, many of the environmental disasters or human rights incidents that contributed to the growing public concern about CSR over the last 40 years took place in the mining or petroleum industries.³³ Therefore, corporate social responsibility is undertaken to contribute to sustainable development through maximising the positive and minimising the negative social and environmental impacts of mining, while maintaining profits. In response to the pressures and protests on mining companies, the mining industry adopts sustainable development to frame mining companies' corporate social responsibility (CSR) policies.³⁴ For instance, the International Council on Mining and Metals (ICMM) created a set of guiding principles referred to as the Sustainable Development (SD) Framework with ten principles covering matters that concerns the mining industry such as ethical business practice, integration of sustainable development concerns into corporate decision-making, upholding human rights and conserving and protecting biodiversity.³⁵ However, these principles are voluntary but they are rules agreed by mining companies to embark on as result of their membership in ICMM. Due to demands from the financial market and concerns about their reputation, mining firms mainly deploy CSR efforts that are in line with the SDGs, investing substantial resources to produce value, preserve, and occasionally change the favours of stakeholders.³⁶

Also, Gilberthorpe pointed out that what justifies the incorporation of CSR is that it provides a framework that delivers sustainable development and addresses matters related to commercial extraction like environmental, climate, alternative energy, and community development.³⁷ Below is a statement found on the website of Newmont a leading gold producer with operations in four continents and is named the mining industry leader in overall sustainability by the Dow Jones Sustainability World Index in 2015, 2016 and 2017.

Newmont is focused on delivering sustainable value for our people, stakeholders and host communities, now and in the future. Delivering on our commitments is a key pillar of our

³³ A. Warhurst 'Corporate citizenship and Corporate Social Investment: Drivers of Tri-sector Partnerships' *Journal of Corporate Citizenship*, 1(1) (2001) 57–73 58 cited in R Hamann (n 29 above) 239

³⁴ HS Dashwood 'Sustainable Development and Industry Self-Regulation: Developments in the Global Mining Sector' 53 (4) (2014) *Business & Society* 552 <http://journals.sagepub.com/doi/pdf/10.1177/0007650313475997> accessed 31 march 2025

³⁵ International Council on Mining and Metals Sustainable Development (SD) Framework 2010

³⁶ See Mohammad Yousefian *et al* 'Corporate Social Responsibility and Economic Growth in the Mining Industry' (2023) 13 *The Extractive Industries and Society*

³⁷ E. Gilberthorpe & G Banks 'Development on Whose Terms?: CSR Discourse and Social Realities in Papua New Guinea's Extractive Industries Sector' 37 (2012) *Resources Policy* 185

business strategy. We believe the protection of the health and wellbeing of our people, environmental stewardship and being a catalyst for sustainable economic empowerment in our host communities are not just the right things to do, they're good for our business.”³⁸

In addition to being a core value and the moral thing to undertake, sustainability at Newmont—acting as a catalyst for local economic development through respectful and transparent stakeholder engagement, upholding human rights, and being responsible stewards of the environment—also provides value for our company, shareholders, and other stakeholders at every stage of the mine lifecycle.³⁹

According to Jenkins, an outcome of the purport of CSR in the mining industry, is the increasing necessity for companies to support their subsistence and file their performance by disclosing social and environmental information.⁴⁰ Several companies present sustainability reports yearly to show the public their commitment to CSR and their economic, social and environmental performance.⁴¹ The report provides stakeholders like members of communities, shareholder, NGOs, government, employees, clear facts concerning a company's social, environmental, economic and governance impacts.⁴² Sustainability reporting is voluntary in some countries and mandatory in others. In Australia for example, sustainable reporting is voluntary and companies which decide to prepare the reports carry it out for some reasons such as informing stakeholders of their impacts of their performance on the society including plans to improve on the impacts; to enable companies identify areas of operational or management improvement as well as improve their reputation.⁴³ International Standard for social responsibility that provides voluntary guidance for sustainability reporting includes: GRI sustainability Report Standards, the Organisation for Economic Co-operation and Development (OECD Guidelines for Multinational Enterprises), the United Nations Global Compact (the Communication on Progress), and the International Organization for

³⁸ Newmont 'Sustainable Mining' <https://www.newmont.com/sustainability/default.aspx> accessed 31 March 2025

³⁹ Newmont 'Our Approach to Sustainability' <https://sustainabilityreport.newmont.com/2017/overview/our-approach-to-sustainability> accessed 31 March 2025

⁴⁰ H.M. Jenkins 'Corporate Social Responsibility and the Mining Industry: Conflicts and Constructs' 11 (2004) *Corporate Social Responsibility and Environmental Management* 27

⁴¹ Bice (n 19 above) 48

⁴² Bice (n 19 above) 48-49

⁴³ Parliament of Australia 'Chapter Six - Sustainability reporting: Background and Current Status' https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Completed_inquiries/2004-07/corporate_responsibility/report/c06 accessed 31 March 2025

Standardization (ISO 26000). However, with legislation such as the Black Economic Empowerment (BEE) Act 53 of 2003 in South Africa, sustainability report is a mandatory requirement.

Although the purport of sustainability report is to provide stakeholders transparent data of companies economic, social, environmental and governance impacts, research by KPMG indicates that mining companies may not report their failures but rather focus on their positive impacts or noting their impacts and not provide ways to tackle them.⁴⁴ Transparent reporting on environmental, social, and governance (ESG) issues is required to demonstrate commitment to sustainability. Many mining corporations release annual sustainability reports detailing their environmental and social performance.

Furthermore, the research by KPMG with the Centre for Australian Ethical Research indicates that a barrier to preparing sustainability report is the cost of preparation. The research indicated that 78 per cent of respondents thought that cost and resource constraints were a barrier to sustainability reporting.⁴⁵

Furthermore, mining companies contributes to the development of communities where they are located. Certain global mining companies in their commitments to CSR in considering other stakeholders apart from the shareholders, participate in social and community projects. Companies also invest a percentage of their tax profits into community programmes.⁴⁶ In Nigeria for example, CSR of companies is presented as Community Development Agreement (CDA) that sets out what a company will provide for communities. CSR programs usually invest in infrastructure like potable water, electricity, schools, roads, hospitals, hospital equipment among others.⁴⁷ These programs assist in developing social capital by providing secondary school and university education, providing information on HIV prevention, workshops on gender issues and information on family planning.⁴⁸ It also build human capital by training local people to be employed by the mining enterprise or to provide outsourced services, promote and provide skills on microbusiness, aquaculture, crop cultivation, animal rearing, textile production.⁴⁹ Examples of mining companies

⁴⁴ Bice (n 19 above) 49

⁴⁵ The Australian Government Department of the Environment and Heritage 'Chapter Six - Sustainability Reporting: Background and Current Status' [Chapter Six - Sustainability reporting: background and current status – Parliament of Australia](#) accessed 31 March 2025

⁴⁶ Mining Facts 'What is Corporate Social Responsibility (CSR)?' <http://www.miningfacts.org/communities/what-is-corporate-social-responsibility/> accessed 31 March 2025

⁴⁷ Mining Facts (n 46 above)

⁴⁸ Mining Facts (n 46 above)

⁴⁹ Mining Facts (n 46 above)

in South Africa that engaged in social responsible behaviors include BHP Billiton. BHP Billiton, a leading mining company depends on BHP Billiton Development Trust South Africa to implement, coordinate and manage various sustainable development initiatives in areas such as education and training, capacity building, socio economic development and health care.

Furthermore, Corporate Social Responsibility (CSR) and human rights in the mining are inextricably interwoven. Mining activities frequently take place in areas where human rights violations are common, particularly against local communities, workers, and indigenous peoples. The responsibility of companies to respect human rights implies they should avoid infringing the rights of others and avoid and address adverse human rights impacts.⁵⁰ The human rights refer to the internationally recognised rights expressed in human rights treaties. Recently, the United Nations Business and Human Rights Guiding Principles likewise, sets out the expectation for corporations and other business enterprises to respect human rights which requires them “to avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”.⁵¹ The human rights to be respected by businesses refers to recognised international human rights⁵² since businesses can impact on any of these rights. The Guiding Principles indicated that businesses may need to consider additional standards in instances where they may cause adverse impacts on the rights of individuals from a specific group or population with particular attention on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. In this respect, other relevant human rights standards include United Nations Human Rights Conventions, and United Nations Declaration on the Rights of Indigenous Peoples. The inclusion of respect for internationally recognised human rights is a feature recognised by HRBA. However, aside from being criticised that they do not create binding legal obligations for businesses, GPs are criticised for limiting internationally recognised human rights to those expressed in the International Bill of Human Rights – which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – as well as the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and

⁵⁰ Principle 11, 12 UNGPs

⁵¹ UN Guiding Principles 11

⁵² UN Guiding Principles 11

Rights at Work.⁵³ Though the GPs states that business may need to consider additional rights depending on the circumstances, they are not referenced.⁵⁴ Businesses are to observe all applicable law and respect human rights recognised internationally in the place of their operation.⁵⁵ This responsibility is applicable to all businesses irrespective of their size.⁵⁶ Business must provide a policy statement to show their commitment to respect human rights.⁵⁷ The responsibility to respect human rights entails preventing, addressing and mitigating adverse human rights impacts of their operations.⁵⁸ To achieve this responsibility, businesses need to perform human rights due diligence that include; assessing human rights impacts, action on findings; tracking responses; and communication on how impacts are addressed.⁵⁹ The first step in a human rights diligence is to identify and address possible adverse impacts prior to a proposed operation which identifies potential affected people, with particular attention on people or groups at risk of vulnerability or marginalization. The assessment of human rights impacts can be included with other processes such as environmental and social assessments but incorporate internationally recognized human rights. Although, the recognition of international human rights in the assessment of human rights impacts supports a HRBA, the GP does not provide explicit reference to the full body of human rights standards relevant for such.⁶⁰ Businesses are to conduct consultation with possible affected parties that considers barriers to its effectiveness such as language.⁶¹ This supports participation, a principle of HRBA and accommodates stakeholder by taking account their language for effective communication.

Regardless of its weakness, the Guiding Principles make it clear that businesses have the responsibility to tackle impacts on human rights that occurs through their activities or their business relationships with other parties.

⁵³ UN Guiding Principles 12

⁵⁴ M van Huijstee *et al* 'How to use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy: A Guide for Civil Society Organisations' (SOMO, CEDHA, Cividep India, November 2012) 12

⁵⁵ UN Guiding Principles 23

⁵⁶ UN Guiding Principles 14

⁵⁷ UN Guiding Principles 16

⁵⁸ UN Guiding Principles 13

⁵⁹ UN Guiding Principles 17-24

⁶⁰ M. Van Huijstee *et al* (n 54 above) 12

⁶¹ Commentary to principle 18

4.0 Criticisms Against Corporate Social Responsibility

Although, CSR is widely accepted, there are doubts on its effectiveness.⁶² The case against the concept of CSR typically starts with the argument by Friedman.⁶³ He argued that CSR for profits maximisation of profits and that social issues are not for corporations. Another argument against CSR is that, corporations are not equipped to handle social activities⁶⁴ and adopting CSR, will put corporations into arenas that are not related to their actual purpose.⁶⁵ Yet still, another criticism is that taking on CSR is an opportunity for corporations to wield more power than they already possess⁶⁶ and engaging in CSR will cause companies to become less competitive globally.⁶⁷ Campbell noted that mining companies practice corporate social responsibility as a strategy in dealing with problems of governance gaps and mining impacts.⁶⁸ However, these acts pose questions as to the roles of governments and companies. This is because, it is assumed that some of these responsibilities are that of the government. Instances where the government fails to perform such responsibilities, people look up to the companies as their government to take up the responsibilities. The companies become compelled to provide amenities for them to avoid conflicts, protect their image or avoid disruption of mining activities. For instance, in the assessment of mining communities by Global Rights, it was observed that the mining communities perceive companies as their 'government' because of lack of local governance in the communities.⁶⁹ Therefore, the mining companies are expected to provide basic needs such as to build schools, hospitals, town halls, provide electricity. On another hand, the companies are required through an agreement like CDA in Nigeria to transfer socio and economic benefits, skills, technical training, scholarships and provide jobs for members of the communities.⁷⁰ The CDA must include financial support for infrastructural development such as education, health,

⁶² Bice (n 19 above) 17

⁶³ Friedman (n 20 above) 126 Carroll & Shabana (n 4 above) 88

⁶⁴ Davis (n 22 above) also cited in Carroll & Shabana (n 4 above) 88

⁶⁵ F.A Hayek *The Corporation in a Democratic Society: in whose Interest ought it and will it be Run?* (Routledge & Kegan Paul, London, 1967) In Ansoff, H. (ed.), *Business Strategy*. Harmondsworth: Penguin Books, 225 cited in Carroll & Shabana (n 4 above) 88

⁶⁶ Davis (n 22 above) 4 above cited in Carroll & Shabana (n 4 above) 88

⁶⁷ Carroll & Shabana (n 4 above) 88

⁶⁸ B. Campbell 'Corporate Social Responsibility and development in Africa: Redefining the roles and responsibilities of public and private actors in the mining sector' 37 (2012) *Resources Policy* 138

⁶⁹ Global Rights 'Protecting host community rights: An assessment report on extractive host communities in Nigeria' 5 [PROTECTING HOST COMMUNITY RIGHTS - Global Rights](#) accessed 31 March, 2025

⁷⁰ Section 116 Nigerian Minerals and Mining Act No. 20 2007

community services, roads, water and electricity.⁷¹ In this case, the companies are required by the government to provide infrastructural development which is part of the responsibility of the government to the people. In some instances, the people still suffer despite the provision of these amenities due to lack of maintenance over the years, lack of staffs in schools and hospitals, non-payment of salaries of staffs in the schools or hospitals particularly when the company ends its operations.

Despite these initiatives and commitment to CSR, activities of mining companies are opposed by host communities leading to violence in some instances. Ishiagu, Ebonyi State is a community of twenty villages and the major mineral resource is granite give rise to quarrying activities by companies such as Crushed Rock Company.⁷² Certain terms of the CDA including the endowment fund of 2 million naira for youth development and supply of electricity to all 20 villages that make up Ishiagu community is yet to be realised by Crushed Rock Company. In addition, Oil Transnational corporations operating in Niger Delta region in Nigeria take on CSR to achieve sustainable development by providing infrastructures such as schools, roads, electricity to minimise conflicts in the oil producing communities.⁷³ Therefore, CSR by the corporations was regarded as unsustainable as they are driven by short-term interest of the region rather than long-term development needs of the communities. Christian Aid criticism is that CSR is seen as part of public relations in which companies perform CSR to prevent interruption, avoid damage to their reputation, and evade compulsory regulation rather than candid efforts to promote development beneficial to the poor and marginalised.⁷⁴

CSR in mining is criticized as an inadequate response to development in that it gives precedence to economic growth gain as against the interest of the poor and marginalised.⁷⁵ These arguments are refuted by emerging occurrences particularly in the mining industries. The focus of CSR is shifted from maximisation of profits for shareholders to other stakeholders who are affected by the

⁷¹ Section 116 (3) (b)

⁷² Global Rights (n 62 above) 11

⁷³ K.I. Dandago & L.O. Arugu 'Corporate Social Responsibility Projects by Transnational Oil Corporations in Nigerian Niger Delta Region: The Experiences of Selected Oil Producing Communities' *Economics World* 2(3) 2014 159

⁷⁴ Christian Aid 'Behind the Mask. The Real Face of Corporate Social Responsibility, Christian Aid, United Kingdom' (2004) 11 in D Kemp 'Mining and Community Development: Problems and Possibilities of Local Level Practice Community' *Development Journal* 45 (2) (2010) 199

⁷⁵ War on Want 'Fanning the Flames: The Role of British Mining Companies in Conflict and the Violations of Human Rights' (2007) cited in Kemp (n 67 above) 200

activities of companies including concern for the environment. It is argued that it is in the long-term interest of a company and its shareholders, to be socially responsibly.⁷⁶ Stakeholders currently are not concerned about just making profits but also social and environmental impacts of companies' activities. This is indicated in the pressure and protests by civil societies as pointed out earlier. A 'triple bottom line' performance of company's operations is recognised by legislations that entails economic, social and environmental benefits for the society.⁷⁷ Even companies are making efforts through sustainability reports to reveal their performance and impacts in the society to the public.

5.0 Conclusion and Recommendations

Corporate Social Responsibility (CSR) is a business strategy in which firms incorporate social and environmental issues into their operations and interactions with stakeholders. CSR is especially crucial in the mining industry since mining activities can have serious consequences for local communities, ecosystems, and economies. This involves environmental deterioration, community dislocation, and health concerns for both workers and residents. CSR in the mining industry is inextricably linked to human rights because the company works in places where local inhabitants, indigenous people, and workers are particularly vulnerable to exploitation and abuse. To be effective, CSR programs must prioritize human rights by providing safe working conditions, protecting indigenous land rights, preventing exploitation, and contributing to the long-term well-being of communities. Mining firms that include strong human rights values into their CSR strategies improve not only their reputation and operational sustainability, but also have a positive influence on the communities they serve.

CSR initiatives may involve investments in local infrastructure, healthcare, education, and economic development projects. Companies can assist create schools, hospitals, roads, and provide job opportunities for local residents, thereby improving their general well-being. CSR policies in mining should prioritize transparency in the reporting of environmental consequences, safety records, and financial transactions. It is critical that businesses report their environmental footprint, community investments, and any difficulties that arise from their operations. Mining firms can

⁷⁶ Caroll & Shabana (n 4 above) 88

⁷⁷ CSR South Africa (n 76 above)

work with non-governmental organizations (NGOs) that focus on environmental protection, human rights, and community development. These collaborations serve to increase the overall impact of CSR projects and guarantee that they are in line with best practices. CSR initiatives in mining should include campaign for safeguarding of rights of people in areas affected by mining activity, to make sure workers' rights are respected and local inhabitants are not abused.

DATA PROTECTION FRAMEWORK IN THE NIGERIAN MARITIME INDUSTRY VIS A VIS GLOBAL PRACTICES: A LEGAL IMPERATIVE FOR CHANGE

Ilemobade Olateru-Olagbegi

Abstract

The maritime industry is pivotal to global commerce and underlies the prosperity of many nations, including Nigeria. From a historical standpoint, the maritime industry remains one of the most resilient to crimes and declining economies but the digitalization of navigation and supply chain networks has created a novel set of risks for the industry to grapple with. The availability of more sophisticated vessels is net-positive but it relies heavily on data collection for its smooth operation. These data have sometimes been compromised and there have been difficulties for reparations due to cross-border transfer of data and the attendant conflict of laws dilemma. Beyond this, the rising scale of cybersecurity threats, phishing, ransomwares, and “wiper” attacks on the maritime industry calls for a need to evaluate the legal framework for data protection in Nigeria and whether it adequately covers the exigencies of the maritime industry. This article argues that the Nigerian data protection terrain is burgeoning, but it lacks the appropriate mechanisms to equip the Nigeria Port Authority (NPA), Nigerian Maritime Administration and Safety Agency (NIMASA) and National Information Technology Development Agency (NITDA) to tackle the mishandling of user data in the Nigerian maritime industry when compared to global practices. This study finds that a holistic data protection framework places Nigeria ports at a comparative advantage for global businesses as it will stem the tide of cyberattacks and the likelihood of bad actors capitalising on loopholes to inflict both monetary and navigational damages on the vessels, crew members and vessel owners.

Keywords: Data Protection, Cybersecurity, Data Subject, Data Controller, Data Management

1.0. Introduction

The maritime industry is undergoing critical changes as it adapts to the numerous technological advancements that digitalisation brings to its doorstep. Since shipping accounts for over 80% of global trade, maritime communication is a very sensitive subject, especially in a world where cybersecurity threats are rife.¹

Data protection in the digital age is a vital subject to individuals, nation-state governments, and civil liberties organisations as it has the potential to promote an equitable and inclusive society but

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¹ UNCTAD “Review of Maritime Transport 2021” available at <https://unctad.org/publication/review-maritime-transport-2021#main-content> (accessed October 9 2024).

can also be a forum for unleashing inequalities.² Any discussion of data protection and privacy in the digital age will instantly bring up the Cambridge Analytica scandal, where social media companies were revealed to have sold users personal information to a third party without any regard for the rights of their users.³ This situation mirrors a recurring concern about the safety of data being gathered by companies and other institutions. If the buyers of these data were only interested in tracking behavioural patterns for commercial advertisement purposes, then our worries would have been minimal. Numerous instances have shown that those who buy such data, mostly from the dark web, use it for malicious purposes, which could range from blackmailing or targeted phishing to ransomware attacks.

The foregoing is not a reality which the maritime industry is insulated from. The data of crew members, cargo and their content, and navigational routes are all essential data that must not be accessed by bad actors or hackers.⁴ The scale of damage can range from a total compromise of the system to stealing large amounts of data through phishing attacks or using ransomware to extort money from ship and cargo owners. This is increasingly possible as most ships use GPS, which is an important component of the Global Navigation Satellite Systems (GNSS). The GPS is particularly vulnerable as it receives a low-quality signal from the satellite, which can be easily spoofed with wrong information.⁵ This can alter the course of the ship to aid piracy attacks or spark geopolitical tensions.

Though the data protection space in Nigeria is in its infancy, the Nigeria Data Protection Act, 2023 (NDPA) and the extant Nigeria Data Protection Regulation (NDPR) framework have created a semblance of the protection that the General Data Protection Regulations (GDPR) have brought to

² Doug McCollough “Equitable Data Privacy” available at <https://www.linkedin.com/pulse/equitable-data-privacy-doug-mccollough> (accessed October 16 2024).

³ Katie Harbath and Collier Fernekes “History of the Cambridge Analytica Controversy” available at <https://bipartisanpolicy.org/blog/cambridge-analytica-controversy/> (accessed October 9 2024).

⁴ Trelleborg “Use of Big Data in the Maritime Industry” available at https://www.patersonsimons.com/wp-content/uploads/2018/06/TMS_SmartPort_InsightBee_Report-to-GUIDE_01.02.18.pdf (accessed October 9 2024).

⁵ Blue Goat Cyber “GPS System and Vulnerabilities” available at <https://bluegoatcyber.com/blog/gps-system-vulnerabilities-and-countermeasures/#:~:text=Implications%20of%20GPS%20System%20Vulnerabilities&text=The%20reliance%20of%20aviation%2C%20maritime,%2C%20delays%2C%20and%20logistical%20challenges> (accessed October 10 2024).

Europe. The NDPA provides for the protection of personal information while handling commercial data, as obtained under Section 4 of the GDPR.

In Nigeria, the focal point will be on the Nigeria Ports Authority (NPA) and vessels that fly the Nigerian flag, the role of NIMASA and how partnerships with NITDA can help Nigerian maritime organisations institute robust maritime practices. This piece does not seek to indict the Nigerian sphere but to accentuate loopholes, which can be filled by benchmarking global best practices. At the crux of this article will be an attempt to mirror the Nigerian experience of data privacy and see how efficient data protection systems and reduction of the unintentional actor can forestall piracy and prepare crew members for potential challenges while navigating certain gulfs and straits.

2.0. Global Context of Data Protection Regulations

The protection of natural persons in relation to processing of personal data is a fundamental human right enshrined in article 8(1) of the Charter of Fundamental Rights of the European Union and article 16(1) of the Treaty on the Functioning of the European Union (TFEU).⁶ Globally, the GDPR, which seeks to protect the privacy rights of Europeans, is recognised as the most robust data protection framework. The beauty of the GDPR is that it applies to people of all nationalities inasmuch as the company is established in the EU and organisations that process the personal data of those based in the EU even if the company is a non-EU-based entity. Article 4 of the GDPR defines personal data as any form of data that relates to an identifiable or natural person, known as a data subject. This data could range from name, gender, personal identification number, social security number, location, etc. The GDPR recognises the special status of some data, especially those pertaining to racial and ethnic backgrounds, religious affiliations, political affiliations, medical information, and genetic information. It provides that additional care must be taken by organisations by anonymising the data sets and collecting only the data that is absolutely

⁶ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

necessary.⁷ This is necessary because shipping companies collect a lot of personal information ranging from bank details, travel documents, and crew member information.⁸

The GDPR is built on the fundamental principles of consent, purpose limitation, data minimisation, and individual rights. The kernel of the law is that for personal data to be shared and stored, the express authorisation of the data subject must be sought except under justifiable instances of national security and urgency.⁹

Purpose limitation has been the bane of data protection. Purpose limitation refers to an obligation for data controllers and processors to restrict their usage of the data collected to the legitimate purposes for which it was gotten. This appears to be easy but reality is far from the ideal, as Cambridge Analytica has shown.¹⁰ Most times, the usage of the data goes beyond the permissible range of the data object. This is a precursor to the principle of data minimisation, as any data controller who restricts their collection of data to those necessary for the specific purpose is most likely not to make any incursion into the rights of its data objects.

These principles are further entrenched in the OECD Privacy Guidelines of 1980, which generally provides for fair information practices.¹¹ The guidelines focuses on enhancing transborder data flows. The guidelines are not legally binding but they form the common baseline for international discussions on privacy and has served as a reference point for many countries developing their own data protection and privacy legislation. The crux of the guidelines is that member countries should not restrict transborder data flows when the receiving country significantly observes the guidelines. At the final level, the OECD Privacy Guidelines intend to harmonise privacy protection laws among member countries, which is integral to the functionality of the maritime industry.

⁷ A principle generally referred to as data minimisation.

⁸ Shipip Ltd “General Data Protection Regulation (GDPR) in the shipping industry 2021” available at <https://shipip.com/general-data-protection-regulation-gdpr-in-the-shipping-industry-2021/> (accessed 9 October 2024).

⁹ Craig Riddell “International Data Privacy Laws: A Guide” available at <https://blog.netwrix.com/2023/09/18/international-data-privacy-laws/> (accessed 9 October 2024).

¹⁰ (note 1 above).

¹¹ OECD (2002), OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, OECD Publishing, Paris, <https://doi.org/10.1787/9789264196391-en>.

In Africa, the African Union Convention on Cyber Security and Personal Data Protection, otherwise called the Malabo Convention, was adopted in 2014 to remedy the absence of specific legal rules that protect consumers intellectual property rights, personal data and information systems.¹² This framework recognises the need to strike a balance between the use of information and communication technologies and the protection of the privacy of citizens in their daily or professional lives, while ensuring the free flow of information. It recognises the peculiar risks stemming from the usage of electronic data and individual records, emphasising the need to respect privacy rights of users while taking into account the rights of local communities, the purposes for which specific businesses were established, internationally recognised best practices and the prerogatives of states.

Article 8 of the Malabo Convention states that member states of the African Union must commit to establishing a legal and regulatory framework for the protection of personal data and punishing any violation of privacy without jeopardising the principle of free flow of personal data. Article 8(2) provides that no processing of personal data allows a derogation from the fundamental rights and freedoms of natural persons. Pursuant to Article 9 of the Malabo Convention, any collection, processing, transmission, storage or use of personal data by a natural person, the state, local communities, and public or private corporate bodies must respect the principles of data minimisation, purpose limitation, consent requirements, data subject rights, security measures, accountability and governance.

The regional framework is in tandem with the GDPR, as it recognises in Article 10 (4) that the processing of sensitive data like genetic information, biometric data, a national identification number or any other identifier of the same class must be with the express authorisation of the national protection authority.

Furthermore, the IMO Convention states in Article 1 that the IMO shall encourage the adoption of the “highest practicable standards in matters concerning maritime safety, efficiency of navigation...”. This position is solidified by the provisions of Article 29 of the IMO Convention, where it provides that the Maritime Safety Committee shall consider any matter relating to

¹² African Union “Convention on Cyber Security and Personal Data Protection” available at https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf (accessed 9 October 2024).

navigation and manning of vessels from a safety standpoint. Though data protection is not expressly mentioned in the convention, it can be categorised under the safety mechanisms of the convention. IMO officials have noted that digitalisation of the maritime industry calls for a cohesive regulatory framework for data sharing in the maritime industry.¹³ This is necessary not just for safeguarding the personal rights of individuals but to help accelerate the path towards decarbonisation and reduction of carbon emissions. This has been made possible through the IMO's Convention on Facilitation on International Trade, which makes the electronic data sharing mandatory for maritime bodies.

The global terrain of data protection is best viewed through the lens of territorial limitations existing in an increasingly digitalised and interconnected world. As the harmonisation of privacy laws remains a critical issue in this decade, Nigeria must imbibe the best practices from Europe and the giant strides made through the GDPR and other extant international regulations.

3.0. Nigeria Data Protection Landscape

The Nigerian data protection landscape is a confluence of the 1999 Constitution of Nigeria, National Data Protection Act 2023, the National Data Protection Regulations (NDPR) issued by NITDA, National Information Technology Development Agency (NITDA) Guidelines, Nigerian Communications Commission (NCC) Regulations, and the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015.

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria enshrines the right to privacy as a fundamental human right. Prior to the enactment of the NDPA 2023, which is currently the primary law that regulates data usage in Nigeria, NITDA was faced with the herculean task of overseeing data regulation in an increasingly digital world without any extant regulatory frameworks. Hence, NITDA issued the NDPR in 2019 to provide a set of regulations to guide data administration and checkmate the excesses of data controllers and processors. This regulation was

¹³ Wartsila:Natasha Brown "IMO: Digitalisation and Regulatory Framework of Data Sharing in the Maritime Industry" available at <https://www.wartsila.com/insights/article/imo-digitalisation-and-regulatory-framework-of-data-sharing> (accessed 9 October 2024).

the first to establish set parameters of certain obligations to be met by any individual or corporate entity who handles the personal data of others.¹⁴

Part three of the NDPR provides for the rights of data subjects. Section 3.1 of the NDPR states a range of duties which the data controller owes the data subject, including but not limited to, the rationale behind the processing of the data, the import of such processing and any possible manner. The NDPR mandates that the communication of this information must be done in a transparent manner and the right to withdraw from the process must be granted to the data subject in the same way it was easy to grant consent. For clarity, the NDPR clearly defines what lawful processing of data entails in the eyes of the law in Section 2.2. It states that processing is lawful when the data subject has given consent; the processing is necessary and in furtherance of a contract entered into by the data subject; processing is necessary for compliance with a legal obligation to which the controller is subject; processing is necessary in order to protect the vital interests of the data subject or of another natural person; and processing is necessary for the performance of a task carried out in the public interest or in exercise of an official public mandate vested in the controller.¹⁵

The onus on data controllers and processors to ensure the security of data is expressly laid out in Section 2.6, where it provides that:

“Anyone involved in data processing or the control of data shall develop security measures to protect data; such measures include but not limited to protecting systems from hackers, setting up firewalls, storing data securely with access to specific authorised individuals, employing data encryption technologies, developing organisational policy for handling Personal Data (and other sensitive or confidential data), protection of emailing systems and continuous capacity building for staff.”

This provision weighed heavily on the Court’s mind when it held in *Godfrey Ena Eneye v. MTN Nigeria Communications Ltd.*¹⁶ that the unauthorised disclosure of the claimant’s mobile number

¹⁴ One Trust Data Guidance “Nigeria - Data Protection Overview” available at <https://www.dataguidance.com/notes/nigeria-data-protection-overview> (accessed 10 October 2024).

¹⁵ NITDA “Nigeria Data Protection Regulation 2019” available at <https://nitda.gov.ng/wp-content/uploads/2021/01/NDPR-Implementation-Framework.pdf> (accessed 10 October 2024).

¹⁶ Appeal No: CA/A/689/2013 (Unreported).

by MTN followed by unsolicited commercial advertisement messages violated the claimant's right to privacy.¹⁷

The NDPR is bolstered by the NDPR Implementation Framework that was released by NITDA in September 2020, which attempts to inject some practical measures into data protection governance in Nigeria. One notable provision in the implementation framework was the vision to ensure that Section 2.1 of the NDPR on foreign transfer of data is subject to the provisions of the Malabo Convention and the GDPR where the NDPR is inadequate or unable to respond to the peculiarities and complexities of such data transfer. This provision appears to have been deleted in the NDPA 2023 as it attempts to provide a comprehensive framework for data protection and governance in Nigeria.

Also, the NDPA 2023, which is the principal statute regulating data protection and privacy in Nigeria, provides salient provisions that extend to the maritime industry. The NDPA places positive obligations on every organisation to put in place a privacy policy that sets out what data they collect, the rationale for collecting such data, and how the data is processed, stored and shared. A fundamental tenet of sharing data on a transboundary level is that whatever entity that shares such data must ensure that there exists an equivalent of the Nigerian Data Protection Commission (NDPC) for data protection administration and governance. This is to ensure that the discretionary powers of data protection officers are not misused without any regulatory authority to checkmate them.

The progressive nature of the NDPA is highlighted as it provides for positive obligations for every company to adopt to prevent cybersecurity risks. Beyond forestalling cybersecurity risks, it places a positive burden on companies to ensure that the storage of personal data in the information system is randomised, pseudonymized and anonymised. This is to prevent a situation where a breach of a company's database affects the personal lives of workers by making them prime targets of blackmailers, cyberattacks, targeted online harassments, etc.

¹⁷ Similar decisions were also reached in *Anene v. Airtel Nigeria* (unreported) FCT/HC/CV/545/2015; *Joshua Agbi v. MTN Nigeria* (unreported) Suit No. FHC/L/CS/456/2018; and *Emerging Markets Telecommunication Services v. Eneye* (2018) LPELR-46193(CA).

Beyond the innovative provisions of the NDPA, the Cybersecurity Prohibition and Prevention Act, 2015, prohibits the usage of both manual and digital data to invade the privacy of individuals, especially in the online space.

4.0. Data Protection Challenges in the Nigerian Maritime Sector

The avalanche of personal data collected in the maritime industry makes data protection imperative for the full functionality of the industry. Data protection is not a buzzword or a shiny new tool but one that has become increasingly indispensable as trust in the data and information management system of an organisation influences the willingness of other organisations to work with them. Despite a plethora of evidence existing to show how beneficial a data protection-compliant system or organisation impacts economic activity, the Nigerian maritime industry is plagued by inadequate data protection mechanisms, which have principally affected the data of crew members and passengers, vessel and cargo tracking information, port operations and logistics data. This situation negatively impacts maritime safety and security information systems; hence, it is imperative to interrogate the sector specific challenges impacting the security of certain data classes.

4.1. Personal Data of Crew Members and Passengers

The bane of many data controllers and processors in Nigeria is overcollection, which negates the principle of data minimisation. Data gathering typically goes through these phases: collection, storage, processing and analysis, and sharing. At every stage, there are offences that are likely to occur. If the medical information of a seafarer is collected pursuant to the provisions of the Maritime Labour Convention, 2006, there are essential details that are necessary like blood group, genotype, allergies, etc. but a request for family medical history is unjustifiable in this context as the information needed is to enable the medical personnel aboard the ship provide accurate emergency services where need be. For example, data bordering on history of tuberculosis or sexually transmitted diseases or even the medical information of the seafarer's children is beyond the scope of consent granted by the data subject or envisaged by the NDPA.

Hence, Nigeria has not evolved a foolproof way of transmitting sensitive information such as medical records, passport data, and employment history. This is partly because the data collection

process is not fully automated, which means that paperwork, which is meant to be stored securely, can be seen by unauthorised personnel.

More worrisome is the management of consent and data subject rights as the ship sails across different jurisdictions. It is easy to say that the law of the flag state will prevail but this has not always been the reality in the maritime industry, as it is believed that once a ship enters certain portions of the sea under the jurisdiction of another nation-state, their laws get activated.

4.2. Vessel and Cargo Tracking Information

The vessel and cargo tracking information remains one of the most sought-after data by pirates and terrorists. Once this information is uncovered, bad actors can learn about the content of the cargoes on the vessel. Also, this information allows pirates to study the navigation route of the vessel and plan an ambush attack on such vessels. This trend is not new, as numerous instances exist where bad actors have taken advantage of the relatively poor security system of the GPS to infiltrate the data systems of some vessels.

The vessel tracking information represents one of the most vital aspects of maritime security because once the cargo on a vessel is discovered by pirates as being highly valuable or rare materials with significant value, such vessel is susceptible to planned sophisticated attacks. The same applies to passengers who are known to be influential or wealthy, as they are targeted by pirates for high ransoms and sometimes used by militants as bargaining chips with the government.

It will be disillusioned to believe that restricting who gets this information is a good solution to the problem. This is only a preliminary safety practice in the human race. What must be done is to create a secured communication system on a blockchain system where those who own goods or are on the vessel generate a random hash code for tracking their journey or goods once they input their One-time password. One cannot disabuse the notion of moles and even the unintentional weak link. Hence, the tracking of a particular vessel must always be approximate to 3 nautical miles from the current location, with the ship captain able to establish instant communication with the Naval forces of that jurisdiction through a specialised gadget. This solution might look cumbersome and too "techy," but with lives and goods worth millions or billions of dollars on a vessel, the initial costs are minute compared to the benefit it brings.

4.3. Port and Logistics Data

Ports are critical to the viability of the maritime industry. They account for where ships berth, where goods are discharged and loaded, and a strong connection between the high seas, land and the transportation system for getting the goods to the owners or commuters to their final destinations.

Ports handle a lot of activities and, by that measure, generate a lot of data that is sensitive to both key players in the industry and outsiders. It must be mentioned that ports are not restricted to national carriers or vessels; hence, there is a need to protect the data garnered with the utmost professionalism, but this has proven to be difficult over time.

The port is a cathedral for customs and immigration agencies. The customs agencies are concerned with protecting the country from the entry of illicit goods, banned and dangerous goods while also preventing smuggling. In order for all of these to happen, the port authorities share a gamut of data with the customs and immigration agencies to enable them checkmate the activities of bad elements.

One major challenge to data protection in terms of port and logistics data is the difficulty of providing secure interconnected IT networks amongst the port operators, the customs agency, the immigration agency and logistics providers. A breach into the information system of any entity on this chain compromises the security of every other actor. These issues stem from protecting pricing information, trade volumes and contract details to ensuring the integrity and availability of critical operational data for efficient port management. The ability to strike a nexus between data sharing for improved logistics coordination and data protection responsibility is what makes the issue problematic.

5.0. Challenges in Implementing Data Protection in the Nigerian Maritime Industry

The roadmap for building a data protection-compliant maritime industry is riddled with peculiar challenges. An understanding of the different level of players in the industry, from the big multinationals to the indigenous careers and other international partners, will help one appreciate why the Nigerian maritime terrain is not invested in data protection. Prominent among these issues is the paucity of information regarding the positives of data compliance and the negatives of poor data management practices.

5.1. Lack of Awareness and Expertise

The lack of technical know-how and awareness impinges on the ability of stakeholders in the Nigerian maritime industry to create robust and tailored data protection systems. The maritime industry is home to myriads of sophisticated technology and there is a need for IT experts who are vast in maritime operations and supply chain networks to design a system that adequately caters for the data protection and privacy needs of specific stakeholders.

However, many players in the maritime industry do not appreciate the need for these systems and upgrading of their ICT infrastructure. This is likely because data protection practices do not align with the traditional way of doing business in the maritime industry. To remove this impasse, the NDPC, in partnership with NIMASA and other relevant maritime agencies, will need to foster a culture of data protection across different maritime organisations through adequate training and resources for personnel handling sensitive data.

5.2. Infrastructure and Technological Limitations

The world is abandoning legacy systems and opting for more sophisticated vessels, which already inculcate global best practices for data and cyber security protections.¹⁸ Given the cost of these newer vessels and what it takes to overhaul an information system from a content management system to blockchain networks, which have been shown to be more resilient to cyberattacks, many maritime organisations in Nigeria still use outdated systems in a world where cyber security threats are becoming more sophisticated.¹⁹

The inability to implement advanced data protection technologies with the limited resources translates to a failure to establish reliable and secure connectivity for vessels operating in remote areas. To sufficiently upgrade legacy port systems to meet modern data protection standards, there is a need to improve local capacity for managing and securing complex maritime data systems. The lack of this local capacity significantly impacts our ability to provide robust data protection systems for the Nigerian maritime industry.

¹⁸ (note 2 above).

¹⁹ N. M. Ikpogu, "Barriers to Technology Adoption Among Maritime Industry Stakeholders in Nigeria" (2021) *Walden University Dissertation and Doctoral Studies*.

5.3. Cost of Compliance for Smaller Operators

There are different types of operators in the Nigerian maritime industry. Smaller operators, such as those who operate ferry boats and cruise ships, might lack the ability to pay for the implementation of sophisticated data protection and cyber security systems. The initial cost of compliance, such as running periodic data impact assessments, having a dedicated privacy officer and training their personnel on identifying and mitigating cyber security risks, continues to impact the adoption of data protection best practices across the sector.

5.4. Enforcement Difficulties

The potential conflict between international maritime laws and data protection rules throws up some enforcement troubles. Data protection practices are not necessarily compatible with the workings of the maritime industry, while there are difficulties attached to enforcing data protection standards across international waters. The lack of a sector-specific convention on data protection shows that there are a lot of grey areas that will constantly need to be interrogated before Nigeria can boast of a robust data protection scheme for the blue economy.

5.5. Balancing Security Needs with Privacy Rights

The maritime industry is the pulse of global commerce. It must maintain a strong balance between security needs and privacy rights to ensure the non-disruption of the supply chain networks. The industry faces severe difficulties with implementing privacy-preserving technologies for security screening and monitoring.²⁰ Ensuring that anti-piracy measures do not infringe on crew and passenger privacy means that there must be proper management of the collection and use of personal information for maritime security purposes. While this might seem easy on paper, it is a very problematic sphere for most maritime operators in Nigeria.

6.0. Opportunities Arising from Data Protection Compliance

Numerous advantages exist for an efficient data protection regime in the maritime industry but little is known about the economic significance of robust data protection practices in the maritime industry. As maritime operations become digitalised and port operations adopt novel ways of

²⁰ I. M. Syful, "Maritime Security in a Technological Era: Addressing Challenges in Balancing Technology and Ethics" (2024) *Mersin University Journal of Maritime Faculty* 6.

record-keeping like blockchain, it is imperative to examine the dividends of comprehensive data protection regulations and practices in the industry.

6.1. Improved Data Management and Operational Efficiency

Data protection compliance requires an evaluation and overhaul of existing data management practices. This overhaul typically results in streamlined data collection and storage processes. This is necessary because it complies with the data minimisation requirements of the NDPA and reduces the likelihood of data breaches.²¹

For there to be an efficient data protection system, there must be a proper organisation and categorisation of data. The import of such categorisation is that it allows maritime organisations to determine what type of data requires different layers of securitization and those who need it for operational efficiency. For example, cargo manifests are very critical to the security of both crew members and goods, thus making them high-level data that must not be easily accessible by merely pulling out a file or searching a database.²²

Similarly, data protection compliance will improve the quality and accuracy of the data aggregated in the maritime industry and this is significantly important for improved decision-making, especially for navigational issues and rerouting.²³

One bane of most Nigerian institutions is the duplication of data. Improved data management practices will eliminate duplication and reduce data redundancy. This will in turn create increased accessibility for the authorised personnel as only the most essential data is collected in a streamlined manner.

²¹ HighGear “Streamlining Data Governance and Management” available at <https://www.highbgear.com/blog/streamlining-data-governance-and-management/> (accessed October 15 2024).

²² Morgan Sullivan, “Understanding Data Classification: Enhance Security and Efficiency” available at [Understanding Data Classification: Enhance Security & Efficiency | Transcend | Data Privacy Infrastructure](#) (accessed October 16 2024).

²³ Global Maritime Forum “The Role of Data in Maximising Operational Efficiency in Shipping” available at <https://globalmaritimeforum.org/insight/the-role-of-data-in-maximising-operational-efficiency-in-shipping/> (accessed October 16 2024).

6.2. Enhanced Trust and Reputation

Trust is a vital requirement in every commercial relationship, and with shipping and the maritime industry, prioritising data protection will stimulate trust while building stronger relationships with clients, partners, investors and regulatory bodies. This improves the confidence among stakeholders that the company has the ability to process sensitive information without any privacy rights breaches. A result of this is that the company is likely to attract more clients who are privacy conscious, and this is critical to securing international partnerships.

Improved data protection management demonstrates a strong commitment to upholding ethical business practices.²⁴ This is critical as the maritime industry is a capital-intensive industry where commitment to the finest details shows that the company understands the importance of quality service delivery and engagement of seasoned technocrats and workers.

6.3. Competitive Advantage in the Global Maritime Market

The ability to uphold stringent data protection regulations will distinguish any maritime organisation in the industry²⁵ as the world becomes increasingly data-conscious and aware of how mishandled personal information might be detrimental to other individual courses in the future. This gives a mark of excellent service delivery and provides the foundation for expansion into markets with stricter data protection, like the European community.

The nature of the maritime industry and the gamut of big players mean that any infraction on data protection regulations or privacy rights of key stakeholders is likely to bring hefty penalties for costly data breaches.

6.4. Potential for New Data-driven Services

Necessity is said to be the mother of invention. Compliance will provide a foundation for maritime organisations to build secure data sharing platforms within the industry.²⁶ Those who pioneer or significantly contribute to the R&D for the platform are likely to have created a new way of earning

²⁴ Hodges, C. (2018). Delivering data protection: trust and ethical culture. *Eur. Data Prot. L. Rev.*, 4, 65.

²⁵ Jović, M., Tijan, E., Marx, R., & Gebhard, B. (2019). Big data management in maritime transport. *Pomorski zbornik*, 57(1), 123-141.

²⁶ WEF “5 Principles of public-private data collaboration to improve resilience of the maritime supply chain” available at <https://www.weforum.org/agenda/2023/10/data-collaboration-improve-resilience-maritime-supply-chain/> (accessed October 16 2024).

money by charging other companies, that want access to such platforms. This could also come in the form of offering data protection compliance consulting to other maritime firms.

This model is likely to lead companies to the exploration of blockchain technology for more secure, seamless, and transparent transactions. This is necessary for improved data analytics while maintaining data privacy.

7.0. Best Practices for Data Protection in Maritime Operations

The data protection sphere is a robust and global terrain. The field of data protection and privacy is guided by established principles across Europe, South America, Africa, North America and Asia. The cross-border nature of most maritime data makes it imperative to adopt global best practices for some level of uniformity but, most importantly, to engender a maritime industry that is resilient to data breaches and cyberattacks.

7.1. Data Protection Impact Assessments (DPIAs)

DPIAs are a set of processes to identify, minimize and mitigate data protection risks.²⁷ They are necessary due to the nature of sensitive data that is processed in the maritime industry. These assessments are necessary in different phases.²⁸ First, DPIAs are important before onboarding new technologies on ships. Examples of such technologies include IoT sensors and devices on ships, AI-driven navigation systems, etc. Second, a DPIA should be conducted when starting new data processing activities, such as gathering crew member health data, onboarding new cargo and their manifests or launching automated cargo tracking.²⁹ These activities are crucial to maintaining data privacy, especially if there is a change in existing processes.

When conducting a DPIA, the data protection officer and his team must clearly state the nature, scope, context, and purposes of data processing that happens in that organisation. They are expected to evaluate the necessity and proportionality of the data collected while accessing the

²⁷ Perkovič, M., Gucma, L., & Feuerstack, S. (2024). Maritime Security and Risk Assessments. *Journal of Marine Science and Engineering*, 12 (6), 988.

²⁸ NSIA Insurance “Data Protection Impact Assessment Policy” available at <https://nsiainsurance.com/assets/policy/DATA%20PROTECTION%20IMPACT%20ASSESSMENT%20POLICY.pdf> (accessed October 16 2024).

²⁹ ICO “Data Protection Impact Assessments” available at [Data protection impact assessments | ICO](#) (accessed 16 October 2024).

current state of data protection compliance in the organisation. This would entail looking at whether they abide by the basic principles of consent, minimisation, anonymisation, and portability, among many others.

Also, they are to note and assess the data protection risks of the organisation's data management practices to individuals and companies while elaborating on probable measures to mitigate those risks.

These measures and outcomes of the assessment must be signed by the team lead and recorded in an accessible format, preferably documents that are backed to the company's cloud storage.

The whole process must be conducted bearing in mind the peculiarities of the maritime industry. Key issues like the international nature of the maritime industry must avert the mind of the DPIA team to cross-border data transfers. The presence of crew members and the obligation of ships and ship owners to crew members under the Maritime Labour Convention and other IMO regulations must bear on the minds of the auditors in terms of handling sensitive data like crew health information, genetic data, passport details, etc. Key consideration must also be given to the data retention periods that are **reasonably** (emphasis added) for different types of maritime data while noting the potential for piracy and remote hacking.

7.2. Privacy by Design in Maritime Systems

Privacy by Design (PbD) is a methodology that ensures that privacy and data protection are built into systems and processes from the beginning, rather than being added as an afterthought. Data protection systems must be proactive and not reactive by embedding privacy into the design.³⁰

This must reflect in the vessel management systems, such as the implementation of role-based access controls to using data encryption for sensitive information like navigational plans and cargo manifests.

³⁰ Jose Amaro "Enhancing Cybersecurity and Data Protection in the Maritime Sector: Key Governance Imperatives" available at <https://www.linkedin.com/pulse/enhancing-cybersecurity-data-protection-maritime-sector-key-governance-1c#:~:text=In%20addition%20to%20these%20responsibilities,and%20services%20from%20the%20beginning.> (accessed October 16 2024).

Also, the designing of the interfaces on ships must be done in a manner that displays only the necessary information for user-specific roles.

Furthermore, the data management framework must separate operational data from sensitive data while implementing multi-factor authentication and the principle of least privilege.³¹

Lastly, pseudonymization must be entrenched into the data management system and a trigger to automatically delete the data of past crew members. At the end, the most important thing is that the transfer of data from ship to shore must be done using secure protocols.

7.3. Employee Training and Awareness Programs

There is a critical need to ensure that maritime workers undergo regular training sessions tailored to their roles through a comprehensive data protection module that mirrors real-world cybersecurity issues. These awareness and training programs are necessary to foster a culture of privacy awareness.

7.4. Data Breach Response Plans

Response mechanisms to data breaches and cyber security attacks cannot be reactionary.³² There must be an institutional response team with a detailed response plan that clearly establishes the responsibilities of each member. The companies must put clear-cut plans in place for breach detection, containment, and notification. The response plans must show how to communicate data breaches and keep them updated throughout the whole rectification process but most importantly, there must be a simulation of these data breach response plans using hypothetical scenarios to test how veritable their data breach response plans are.

7.5. Third-party Vendor Management

The process of selecting third-party vendors must be conscious one that reflects data privacy considerations with data protection clauses in their contract, which places positive obligations on

³¹ Palo Alto Network, “What is the Principle of Least Privilege?” available at <https://www.paloaltonetworks.com/cyberpedia/what-is-the-principle-of-least-privilege> (accessed 15 October 2024).

³² MITAGS “Guide to ship cybersecurity” available at <https://www.mitags.org/guide-ship-cybersecurity/> (accessed 16 October 2024).

these vendors.³³ To ensure that there is compliance with the stipulated data protection obligations in their contract, a regular audit of vendor compliance must take place.

To show that the vendors are data protection conscious, evaluate their privacy policies and scrutinize their antecedents in terms of data handling and management in the past. The odds that a company that has committed to learning and putting in place secure protocols will be an avenue for data breach are lower than a company with only a peripheral knowledge of data protection and their obligations as data controllers and processors under the Nigerian data protection regime.

8.0. Future Outlook and Recommendations

The maritime industry will continue to interface with data protection and privacy issues as the world becomes increasingly digitalised but it can respond to these potential issues by being proactive and establishing ground frameworks for dealing with these challenges.

A fundamental step to improving a data privacy and protection-compliant environment in the Nigerian maritime industry is to establish a robust legal framework that is specific to maritime data protection. This law must mirror the principles of the GDPR and the NDPA while taking cognisance of local needs in the Nigerian maritime industry. It must create explicit guidelines for the cross-border transfer of data and salient principles that must not be waived. To ensure the efficacy of this law, there must be strict penalties for violating these provisions and such penalized fine must be made to incur interests if the company fails to remedy the situation.

Furthermore, to improve the operational efficiency of the maritime industry, we must consciously enhance the operational efficiency of our ports. One way to achieve this is through the introduction of digital documentation systems using secure protocols. Alternatively, we can deploy blockchain for a tamper-proof record-keeping and data management system.

To solve the problem of data breaches in the maritime industry, we must improve trade facilitation. This can be achieved through the development of an integrated platform for documentation of all maritime trade activities. A better way would be to use the existing solution of data analytics to

³³ Beale, I. (2017). Best practice vendor risk management in today's interconnected world. *Journal of Business Continuity & Emergency Planning*, 11(2), 151-162.

improve trade routes, navigational systems and the logistic network. A data-driven approach will reveal anomalies and risk flashpoints that can either be remedied or avoided.

Also, maritime organisations and regulatory agencies must commit to funding R&D for maritime security. The development of a secure and centralised database for storing crew members information and vessel information. This system must adopt the design interface where users only see the information appropriate to their user roles. In line with data protection principles, this database must be pseudonymised in such a way that particular data sets do not have any identifier except they undergo further processing.

Lastly, there is a critical need for workforce development. A seafarer that is grossly underpaid while working above the hours stipulated by the IMO convention is susceptible to being an unintentional insider for cyber-attacks. The creation of a secure national database of maritime professionals to verify credentials of maritime professionals is necessary for knowing the true practitioners and the false ones, especially in the case of having a mole for targeted cyber-attacks. The consciousness of maritime professionals about data protection can be improved through periodic data protection training programs focused on the maritime industry.

9.0. Conclusion

The future is for those who plan for it. If the Nigerian maritime industry would remain globally competitive, then it must key into the data protection revolution sweeping through every industry. The ways of doing business in the past are fading right before our eyes and if we do not scale up our systems from legacy systems to modern technologies, the wave of cyber-attacks that hits our ports, vessels and maritime organisations will not only disrupt maritime operations but have a net-negative ripple effect on the Nigerian economy. The best time for implementing data protection systems was yesterday; a better time is now.

EVALUATION OF THE IMPACT OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT IN NIGERIA AND ITS DOMESTICATION IN THE VARIOUS STATES

Ayinla-Ahmad Bilikis Ph.D*

Abstract

Administration of Criminal justice system is bedeviled by myriad of problems, majorly inefficiency stands out. The Administration of Criminal Justice Act (ACJA) was enacted in Nigeria to reform the country's criminal justice system to promote efficiency, fairness and respect for human rights. This study evaluates the impact of the ACJA on the Nigerian criminal justice system, examines its implementation, challenges, and outcomes. A mixed-methods approach was employed, combining qualitative and quantitative data from court records, interviews with stakeholders and surveys of law enforcement agencies. The findings reveal that while the ACJA has improved certain aspects of the justice system, such as reducing case backlog and promoting bail reforms, its implementation has been hindered by inadequate infrastructure, insufficient training, and corruption. The study concludes that the ACJA has the potential to transform the Nigerian criminal justice system, but its effective implementation requires sustained commitment from stakeholders, adequate resources, and ongoing training and capacity-building programs. The study's recommendations aim to inform policy direction, enhance the ACJA's impact and promote a more just and efficient criminal justice system in Nigeria.

Keywords: Administration of Criminal Justice Act, Domestication, Nigeria.

1.0 Introduction

The administration of criminal justice is a critical component of any society, as it plays a vital role in maintaining law and order, promoting public safety, and upholding human rights. In Nigeria, the administration of criminal justice has been plagued by numerous challenges, including inefficiencies, corruption, and human rights abuses. To address these challenges, the Nigerian government enacted the Administration of Criminal Justice Act (ACJA) in 2015. The ACJA aims to reform the country's criminal justice system, promoting efficiency, fairness, and human rights.

The common statement is that justice should not be one-way traffic; but justice for the defendant, for the victim of crime and the society. It is this exactly that the Act seeks to protect. There are several provisions in ACJA that seeks to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the Suspect, the Defendant, and the Victim.¹

Each day there continue to be serious concern on the slow pace at which criminal justice system drag, it is either persons are being released on bail at the police station and is yet to be charged to Court even after a year or arraign in court and granted bail. In fact, a year after, the prosecution is yet to complete investigation. In some cases, the accused / suspect is still moving freely on the streets despite all the available evidences against him. This presupposes a common belief by the ordinary man that his case has been swept under the carpet.

At times cases are adjourned many times due to the failure of the prosecution, witnesses or Investigating Police Officer to appear in Court. The case may be struck out for lack of diligent prosecution on the part of the State or Prosecutor.

It is either that the Court is not sitting, in fact in some jurisdiction like Kwara State Magistrates share court room like three magistrates to a court. The witnesses may not be available, the I.P.O. might have been transferred or court not sitting for some other reason(s). As a result, progress in the trial of the cases has been at a very slow pace.

This work looks at the administration of justice Act, domestication, evaluation of its impact in Nigeria and some notable innovations in the Act. It as well discusses challenges and limitations and offers workable recommendation for the smooth administration of criminal justice.

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¹ John Ishaku Mantu, the Administration of Criminal Justice in Nigeria and a Call for Amendment of the Administration of Criminal Justice Act, 2015 available at < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4698078 >accessed on March 15, 2025.

2.0 Domestication of Administration of Criminal Justice Act

The ACJA is a comprehensive legislation that seeks to address the shortcomings of the Nigerian criminal justice system. The Act introduces several innovative provisions, including the use of technology in court proceedings, the establishment of a National Judicial Council, and the promotion of bail reforms. The ACJA also emphasizes the importance of human rights, dignity, and the rule of law in the administration of justice.

Administration of Criminal Justice Act (ACJA) has been domesticated in various states across Nigeria, but its implementation is still ongoing in some areas. Here's the breakdown of States that have domesticated ACJA: 36 states have passed the ACJA, with the following states completing the process : Abia State (December 2017), Adamawa State (December 2018), Akwa Ibom State (March 2017), Anambra State (2010) , Bauchi State (August 2022), Bayelsa State (January 2019), Benue State (May 2019), Borno State (September 2023), Cross River State (May 2017), Delta State (September 2017), Ebonyi State (September 2019), Edo State (March 2016), Ekiti State (2014), Enugu State (January 2017), Gombe State (March 2021), Imo State (March 2020), Jigawa State (June 2019), Kaduna State (May 2017), Kano State (May 2019), Katsina State (February 2020), Kebbi State (2021), Kogi State (December 2017), Kwara State (December 2018), Lagos State (September 2021), Nasarawa State (May 2019), Niger State (May 2023), Ogun State (April 2018), Ondo State (2015), Osun State (October 2018), Oyo State (January 2017), Plateau State (September 2018), Rivers State (September 2016), Sokoto State (September 2016), Taraba State (December 2021), Yobe State (April 2017), Zamfara State (2019).

Despite the evolution, challenges continue in the enforcement of ACJA, and some states are still working towards full execution.² According to the National Minimum Standard (NMS), passing the law is just the first step, proper implementation remains a significant challenge.³ The National Minimum Standards aim to create a national framework for evaluating the implementation of the ACJA and ACJLs, including a National Score sheet to track and display the performance of each

² NMS available at <https://www.nms.ng/about.php>, accessed 9th April, 2024

³ NMS available at <https://www.nms.ng/about.php>, accessed 9th April, 2024

state. In year 2025, Nigeria's crime index is 66.6 and it has the 11th position in the global ranking of crimes.⁴

NMS serve three main purposes: Provide a Standardized Evaluation Framework or common benchmark for assessing the performance of criminal justice reforms and institutions across the country.

Promote Healthy Competition Among States by encouraging states to improve their criminal justice systems by fostering competition based on measurable performance.

Provide a strong basis for advocacy efforts to secure added resources and investment in criminal justice administration.

3.0 Evaluation of the Impact of the Administration of Criminal Justice Act in Nigeria

This evaluation seeks to assess the impact of the ACJA on the Nigerian criminal justice system. Specifically, the evaluation aims to: Examine the implementation of the ACJA and its effects on the administration of justice, Identify the challenges and limitations of the ACJA, assess the impact of the ACJA on human rights, fairness, and efficiency in the criminal justice system, offer recommendations for improving the implementation and impact of the ACJA.

The Nigerian criminal justice system has long been plagued by inefficiencies, corruption, and human rights abuses. The ACJA was enacted to address these challenges and promote a more just and efficient system. The Act introduces several innovative provisions, including the use of technology in court proceedings, the establishment of a National Judicial Council, and the promotion of bail reforms.

The realization of ACJA has been a convoluted procedure, involving a variety of stakeholders, including the judiciary, law enforcement agencies, and civil society organizations. While the Act has been extensively received, its enforcement has been mired by quite a lot of challenges, including inadequate infrastructure in that many courts in Nigeria lack the necessary infrastructure to enforce ACJA effectively.

⁴ Agbetiloye Adekunle. "Top 10 African Countries with the Highest Crime Index at the Start of 2025" available at < <https://africa.businessinsider.com/local/lifestyle/top-10-african-countries-with-the-highest-crime-index-atthe-start-of-2025/92pzmft> > accessed 22 August 2024

4.0 Some Notable Innovations of ACJA

By the provisions of these acts, many innovations were made, one crucial attribute of ACJA is its model swing from castigation as the main target of criminal justice to restorative justice which pays solemn interest to the desires of the humanity, the victims, vulnerable persons and human dignity generally. The general tone of the Act puts human dignity in the fore, from the adoption of the word defendant instead of accused, to its provision for humane treatment during arrest, to its numerous provisions for fast tracking trial, to suspended sentencing, community service, parole compensation to victims of crime and so-on.

In a bid to promote justice, the Act provides that there shall be no unnecessary restraint. The conditions necessary for a suspect or defendant to be handcuffed or restrained are when there is reasonable apprehension of violence or an attempt to escape.⁵

The police are duty bound to inform such a person of his right to remain silent until he consults with his legal practitioner or have free legal representation by the Legal Aid Council and the authority having custody of the suspect shall notify his family.

The Act also prohibits the arrest of a person in lieu of the suspect who actually committed the offence. It is a persistent fact that the law enforcement agents usually arrest and detain relatives of suspects who are at large, with the hope that by so doing, the suspect will make themselves available.⁶

The Act has provided that no person should be arrested for civil wrong. The courts have held severally that the police should not turn themselves into debt collectors.⁷

The Act has provided that when a suspect is arrested by a private person; such a suspect should immediately be handed over to the police.⁸

By virtue of provision of the Act, statements of suspect may be taken in the presence of a legal practitioner of suspect's choice, officer of the Legal Aid Council of Nigeria, Justice of Peace,

⁵ Section 5 of the Administration of Criminal Justice Act, 2015

⁶ Section 7 of the ACJA

⁷ Section 8 (2) ACJA

⁸ Section 14 of the Administration of Criminal Justice Act 2015

officer of a civil society organization or any other person.⁹ The Act also provides for Video Recording of Statement of Suspect.¹⁰

The Inspector-General of Police is expected to remit quarterly to the Attorney General of the Federation, records of arrest made with or without warrant in Nigeria.¹¹

The police is also empowered to grant bail to anyone arrested without warrant if it is impracticable to bring the suspect before a court of competent jurisdiction within 24 hours as long as the offence does not involve causing death. There is also remedy for suspect detained in custody, if he is not released within 24 hours. An application can be made to court orally or in writing for the release of such a suspect.

Magistrate within the police jurisdiction is mandated to at least, once in a month conduct inspection of police stations with the aim of inspecting record of arrest, direct the arraignment of suspect or possibly grant bail to the suspect. However, if it is a federal government agency, the high court having jurisdiction shall visit such detention Centre.¹²

The Comptroller General of Prisons is expected to make a return to the Chief Judge of Federal High Court, Chief Judge of the Federal Capital Territory. President of National Industrial Court and the Chief Judge of a State in which a prison is located and to the Attorney General of the Federation of persons awaiting trial who are in custody.

A suspect taken into custody in respect of non-capital offence if not released on bail after twenty four hours, a court having jurisdiction with respect to the offence may be notified by application on behalf of the suspect. The court shall order the production of the suspect detained and inquire into the circumstances constituting the grounds of the detention and where he deems fit admit the suspect to bail. An application for bail under this section may be made orally or in writing.

The magistrate is empowered to receive report of cases of suspects arrested by the police or any agency authorized to make arrest within its jurisdiction on the last working day of every month and forward the said report to the Criminal Justice Monitoring Committee.¹³ The report shall be

⁹ Section 17(2) of the Act

¹⁰ Section 15 ACJA

¹¹ Section 106 ACJA

¹² Section 34 ACJA

¹³ Sections 469 – 479 ACJA

analysed for the advice of the Attorney General of the Federation as the court is empowered, while passing judgment to order payment of expenses or compensation to the party that deserves it.

The court is also empowered to order for compensation and restitution.¹⁴ The court is further empowered, upon conviction, to order for the destruction of seditious, prohibited or obscene publications and objects. The court is empowered to order the sale of perishable property if the person entitled to its possession is unknown or absent, the court may order the sale of the items. To the trend of arrest, bail or related matters.¹⁵ Probation and non-custodial sentences,¹⁶ Parole.¹⁷ Court is also empowered to direct the release of prisoner before completing his period of sentencing if the Comptroller-General of Prisons makes a recommendation to the court stating that the prisoner is of good behaviour and has served at least one third of his prison term when the prisoner is sentenced to a term of at least 15 years or where he is sentenced to imprisonment for life.¹⁸

The right of the Court to raise the issue of “no-case submission” suo motu. Prior to the enactment of the ACJA 2015, only a defence Counsel has the right to make a “no-case submission” after which the court would rule on same. However, by the provision of ACJA, the court on its own can record a finding of not guilty in respect of a defendant without calling an accused person to enter defence and based on this, the defendant shall be discharged.¹⁹

If the issue of jurisdiction is raised, in order not to defeat the essence of justice, the court is also empowered to transfer.

A judge or magistrate of a division may assume jurisdiction in a matter even if the person arrested committed the offence in another jurisdiction and is in custody on the charge or if the suspect appears to answer summon against him and having regard to accessibility and convenience.

The Act makes provision for the option of electronically recording of the confessional statement of a suspect.²⁰ This will solve the issue of Trial-within-trial which occurs when an accused person

¹⁴ Section 319 of the ACJA

¹⁵ Section 319 (1) of the Administration of Criminal Justice Act, 2015

¹⁶ Sections 453 and 465

¹⁷ Section 468

¹⁸ Section 468 of the ACJA

¹⁹ section 302 of the ACJA,

²⁰ Section 364

denies a written statement or alleges that it was given under duress. Although, the word used “may” gives space for the discretionary power of a police officer to either record such electronically or to do so manually.²¹

Only the Attorney-General of the Federation or a legal Practitioner has the right of prosecution. It has abolished the era of police officers who are not legally trained prosecuting criminal trials. This provision is however in conflict with section 23 of the Police Act which empowers police officers to prosecute.²²

Criminal matters are to be tried on a daily basis upon arraignment until the conclusion of the matter. Parties are only entitled to 5 adjournments each from arraignment to final judgment. Section 394 (6) makes provision for award of reasonable cost where the leave for adjournment is frivolous.²³

The Act prescribes limited number of adjournments,²⁴ abolition of stay of proceedings²⁵, sets 14 days timeline for Legal Advice²⁶ and elimination of trial starting *Denovo*.²⁷ Though, the Supreme Court in *Udeogu v. F.R.N.* (2022) 3 NWLR (Pt.1816) 41 voided the provision of Section 396(7) of the ACJA for its inconsistency with Section 290 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), there is a need to revisit the provision.

Sureties and registration of bond persons²⁸, plea bargain²⁹, victim-offender mediation³⁰, recording of arrest³¹, trial of corporation³², witnesses and victim protection³³, private prosecution³⁴, time limit for trial in lower Courts³⁵, penalty for witness who refuses or neglects to attend Court³⁶, award of cost for adjournment where witnesses are brought to Court and did not

²¹ Section 15 (4)

²² section 106 of the ACJA

²³ Section 397(3) of the ACJA

²⁴ Section 396(4)(5)(6)

²⁵ Section 306

²⁶ Section 376(2)

²⁷ Section 397(7)

²⁸ Section 187, 188 ACJA

²⁹ Section 270 ACJA

³⁰ Section 447 ACJA

³¹ Section 36 ACJA

³² Section 477 ACJA

³³ Section 232

³⁴ Section 106

³⁵ Section 110

³⁶ Section 246

testify³⁷, establishment of the central criminal records registry³⁸, grant of bail in capital offences³⁹, registration of bonds persons⁴⁰ and speedy trial of cases⁴¹.

Women Sureties is provided for in the Act⁴² and as well as the Constitution guarantees the right to freedom from discrimination.⁴³

A judge of the High Court who has been elevated to the Court of Appeal is now permitted to continue to sit as a High Court Judge only for the purpose of concluding hearing matters pending before him as at the time of his elevation.⁴⁴

Witness Expenses⁴⁵

5.0 Impact of Administration of Criminal Justice Act

The criminal justice system in Nigeria is currently governed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Administration of Criminal Justice Act, 2015 (ACJA) and Violence Against Persons (Prohibition) Act, 2015. The Administration of Criminal Justice Act, 2015 has repealed and replaced the Criminal Procedure Act Cap. C41, Laws of the Federation of Nigeria, 2004, Criminal Procedure (Northern States) Act Cap. C42 Laws of the Federation of Nigeria, 2004, and the Administration of Justice Commission Act Cap. A3, Laws of the Federation of Nigeria 2004.⁴⁶ Some of the States have also adopted Administration of Criminal Justice Act and enacted them into state Laws. For instance, Lagos State also has its own ACJL which governs the Criminal Justice system in Lagos.⁴⁷ A careful reflection of the system and its evolution over the years will reveal that the initial focus was hinged on punishing offenders in order to act as prevention and deterrence to others. While this sounds good in theory, it is shocking that the result was never achieved. Rather, crime was on the increase.⁴⁸

³⁷ Section 253 ACJA

³⁸ Section 16

³⁹ Section 161 ACJA

⁴⁰ Section 187 ACJA

⁴¹ section 396 ACJA

⁴² Section 163(3) ACJA

⁴³ Section 42(1) of the 1999 Constitution

⁴⁴ Section 396(7) of the Act

⁴⁵ Section 251-254 of the Administration of Criminal Justice Act

⁴⁶ Section 493 ACJA, 2015.

⁴⁷ ACJL, 2015, amended by Lagos State Administration of Criminal Justice (Amendment) Law 2021, No.14 daily.

⁴⁸ Charity Ayooluwa Olaifa Nine (9) Years On: Assessing The Impact Of The Administration Of Criminal Justice Act (Acja) On Nigeria's Criminal Justice System And Proposing Reform. Available at <https://www.lexology.com/library/detail.aspx?g=01cf1789-88b5-407b-911c-2547b6c776f7> See also

Ani⁴⁹ is of the view that most of the rights of the defendant are contained in the old law, but that the Administration of Criminal Justice Act 2015 has added emphasis to these rights and that it has also succeeded in ironing out lots of grey areas that have been long belated for amendment.

According to Falana, it was the virtual collapse of the Criminal Justice system which led to the ratification of the Administration of Criminal Justice Act 2015.⁵⁰ In a rather far-reaching manner, the Act has provided for the administration of criminal justice in the Courts of Federal Capital Territory and other Federal Courts except Courts Martial which have separate rules of procedure. Even though it is a federal law some of the provisions are of general application throughout the country. In particular arrest and detention of all criminal suspects shall be synchronized by the provisions of the Administration of Criminal Justice Act.

He is also of the opinion that the Act is expected to transfigure the criminal justice system in Nigeria. On her part Titi Ogunye states that the introduction of the Administration of Criminal Justice Act 2015 remains the bold and decisive measure to tackle the delay in the dispensation of justice and fast-track the criminal justice system in the country. It is noteworthy that at different occasions all over the country, there is hardly any reference to the administration of criminal justice system in Nigeria without mentioning the Act.⁵¹

Despite these challenges, the ACJA has had a positive impact on the Nigerian criminal justice system. Some of the key outcomes include:

<<https://alliancelawfirm.ng/nine-9-years-on-assessing-the-impact-of-the-administration-of-criminal-justice-act-acja-on-nigerias-criminal-justice-system-and-proposing-reform/>> accessed 22 December 2024

⁴⁹ Ani C.C. in Vincent Chukwudi Adebayo, and Esther Nkechi Onuoha, “Equal Justice Under Law: Analyzing The Administration Of Criminal Justice Act, 2015 In Nigeria” Ayden International Journal of Law, Political Science, and Administration, Volume 11 (1), 2023 / ISSN: 2997-2957 , Section 278 (3) & (4) of Administration of Criminal Justice Act 2015

⁵⁰ Femi Falana, “The Administration of Criminal Justice Act 2015” published in Guardian Newspapers of 31st August, 2015.

⁵¹ Titi Ogunye, “Synoptic Review of Administration of Criminal Justice Act, 2015”, Nations Newspaper, 2016. Also in Samuel Olusegun Daudu and Ngozi Stephanie Okogbule “Transforming Justice: Evaluating The Significance of the 2015 Administration of Criminal Justice Act in Nigeria” Academic Journal of Legal Studies and Research Vol.9, Issue 1; January - February 2023; ISSN: 2994-0575 available at < <https://doi.org/10.5281/zenodo.10589037> > accessed 12 November 2024

- Reduced case backlog: The ACJA has introduced several provisions aimed at reducing case backlog, including the use of technology in court proceedings and the promotion of plea bargaining.
- Improved bail reforms: The Act has introduced more liberal bail provisions, reducing the number of individuals held in pre-trial detention.
- Enhanced human rights: The ACJA promotes human rights and dignity, including the right to a fair trial and the protection of suspects' rights.

The Act provides that the Court may, within the proceedings or while passing judgment order the convict to pay compensation to any person injured by the offence.⁵²

6.0 Challenges and Limitations

The Administration of Criminal Justice Act (ACJA) in Nigeria faces several challenges in its implementation, despite its potential to transform the country's justice system. While the ACJA has had a positive impact, several challenges and limitations remain. These include:

Inadequate investigations tools, advance technology and man power: lack of diligent prosecutors. The prosecution must be equipped to prove the matter to the expected standard by being accountable for loopholes found in the course of prosecution and lack of advance technology make many courts to still adhere to manual recording during Court proceedings.

Failure of the Act to repeal section 23 of Police Act: The Act does not help the situation by its failure to specifically repeal section 23 of the Police Act which gives the police powers to prosecute offenders in court of law.

Lack of making Private Prosecutor Independent: There is dire need for private prosecutors. While the ACJA provides for private prosecutors, the process is not totally independent but has to be routed through the Attorney General of the Federation⁵³ Such private prosecutor is expected to enter into a recognizance as a guarantee to diligently prosecute the matter to the end⁵⁴

⁵² Section 319 of the Administration of Criminal Justice Act

⁵³ Section 283 (1) (a) of the ACJA.

⁵⁴ Section 283 (b) (i) of the ACJA

Insufficient capacity-building programs: Law enforcement agencies and judicial officers require ongoing training and capacity-building programs to effectively implement the Act.

Corruption: Corruption remains a significant challenge in the Nigerian criminal justice system, undermining the effective implementation of the ACJA. All hands should be on deck to ensure the elimination of corrupt and inefficient officers.

Remand order: an advance form of holding charge is unconstitutional and it violates the principle of presumption of innocence as enshrined in the constitution.

Witness Expenses⁵⁵ as provided for in the Act have not seen the light of the day as both the Prosecution and Defence continue to bear the costs of bringing their witnesses to testify on their behalf.

Overcrowding in Correctional Facilities: correctional centers remain severely overcrowded, often with pretrial detainees, including children and as such poses a challenge.

Inadequate funding: The implementation of the ACJA requires significant funding, which has not always been forthcoming.

Resistance to change: Some stakeholders have resisted the changes introduced by the ACJA, citing concerns about the impact on traditional practices.

Limited access to justice: Many Nigerians continue to face significant barriers in accessing justice, including poverty, lack of awareness, and limited access to legal representation.

Inadequate Infrastructure: Many courts in Nigeria lack the necessary infrastructure to effectively implement the ACJA, hindering the administration of justice.

Delayed Trials: Delayed trials and court congestion remain significant challenges in the Nigerian justice system, undermining the ACJA's goal of promoting speedy dispensation of justice. delayed case resolution, court backlogs, Prolonged delays in deciding cases send the wrong message to the public, suggesting that criminal behavior may go unpunished.

⁵⁵ Section 251-254 of the Administration of Criminal Justice Act

Lack of Uniformity: The ACJA's implementation varies across states, leading to a lack of uniformity in criminal justice processes and procedures.

Lack of Compliance: the section that provides that Inspector General of Police is expected to remit quarterly report to Attorney General of the Federation, records of arrest made with or without warrant in Nigeria. This provision has been hailed by lawyers and experts in the administration of criminal justice system, because with it, the office of the Attorney General of the Federation and Honourable Minister for Justice will be able to monitor cases of arrest by the police and possibly give necessary recommendations or legal advice especially on the necessary steps or action to be taken. Again such a step will likely curb the abuse of power by the police who often use their power to cover up some cases at the police stations against the interest of the complainant.

Non-custodial sentencing: vis-à-vis the substantive laws on criminal administration There is an urgent need for the review and amendment of the substantive laws like the Criminal Code Act, Criminal Code Laws and Penal Code Laws of States to incorporate the non-custodial sentences provided for in the Administration of Criminal Justice Act/Laws.

Electronic recording of confessional statements: recording of arrests and statements of defendants, Section 15 (4) of the ACJA provides that: Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and **may** be recorded electronically on a retrievable video compact disc or such other audio visual means. The main ground for this is the alleged involuntariness of such statements as the makers of such statements often allege that they were forced to make them. As soon as this issue arises, the trial Court is compelled to adjourn the case sine die. It will then go into a “trial within trial” to determine the voluntariness or otherwise of such statements. The trial within trial may take months to conclude before the main trial resumes.⁵⁶ Trial-within-trial is a colonial legacy that has since been abandon by England where we inherited the practice and procedure. This traditional practice of trial within trial has continued to impede speedy trials.

⁵⁶ Iheanyichukwu Maraizu “Critique of Administration of Criminal Justice Act (ACJA) 2015” available at< <https://nigerianlawguru.com/wp-content/uploads/2024/09/CRITIQUE-OF-ADMINISTRATION-OF-CRIMINAL-JUSTICE-ACT-ACJA-2015.pdf> > accessed 10 March, 2025

Lack of adherence to some vital provisions that will enhance proper monitoring: Proper monitoring is needed at all stages to ensure proper enforcement and the needed follow up.

Standard of Proof- Although the standard of proof in a criminal trial is not proof beyond every reasonable doubt, yet it is proof beyond reasonable doubt. A standard which has become very difficult if not impossible for many prosecutors to meet. While it is better to allow 99 criminals to be set free than to convict one innocent person, it is also now crystal clear that it is dangerous to allow one single criminal to be set free for lack of diligent prosecution on the part of the state. Most times, failure to meet this standard is as a result of the crude way of arrest and the lethargic prosecution of matters in order to deliberately frustrate proceedings as a result of being compromised. Findings are being manipulated and results are being tampered with daily in favour of the highest bidder.

Failure of the Act to provide Time Frame within which case file must be forwarded by the police to the Ministry of Justice for Legal Advice: there is no specific time within which the case file must be forwarded by the police to the Director of Public Prosecution. The Police can decide to keep the file as long as they can before sending it for legal advice.

7.0 Conclusion

The ACJA has the potential to transform the Nigerian criminal justice system, promoting efficiency, fairness, and human rights. However, its effective implementation requires sustained commitment from stakeholders, adequate resources, and ongoing training and capacity-building programs. This article has highlighted some of the innovations brought about by ACJA, the impact of the ACJA, its challenges, and limitations. To fully realize the benefits of the Act, it is essential to address these challenges and ensure that the ACJA is implemented in a way that promotes justice, fairness, and human rights for all Nigerians.

7.1 Recommendations

Based on the **findings** of this evaluation, several recommendations are made to enhance the positive impact of the ACJA:

Increased funding: The government should provide sufficient financial assistance to support the realization of the ACJA.

Training and capacity building: training and re-training programme should be organized to enhance capacity-building for all stakeholders in criminal justice sector.

Public awareness campaign: Public awareness campaigns are imperative to educate citizens about their rights. The provisions of the ACJA should be amplified to enhance public awareness campaigns to promote understanding of the ACJA and its benefits.

Access to justice: Efforts should be made to improve access to justice, including the provision of legal aid and the promotion of alternative dispute resolution mechanisms.

Enter into Recognizance: an officer prosecuting on behalf of the state or a public officer prosecuting in his official capacity should also enter into a recognizance as a guarantee to diligently prosecute the matter to the end as provided in ACJA for private prosecutor.⁵⁷ Failure to diligently prosecute must be dealt with as a criminal offence itself no matter in what capacity a prosecutor is acting.

Victim Representation: a victim should be given the total liberty to either choose a state officer or to pay a private practitioner for the conduct of his matter.

Promotion of Synergy: interagency cooperation and intelligence gathering for example, establishment of neighbourhood watch in cities in United Kingdom has helped in promoting sound administration of criminal justice system in that country.

Remand Order: The provision on remand order as an advance way of holding charge as contained in the Administration of Criminal Justice Act 2015 should be expunged.

Capacity Building and Training: there is need for continuous training and retraining of all stakeholders in criminal justice sector.

Witness Support Fund: to ensure that the expenses of witnesses are attended to, there should be the establishment of witness support fund.

Victim and Witness Protection: to encourage witnesses to come forward and testify without fear of intimidation or harm, victim and witness protection is desirable.

Data collection and analysis system: is required to monitor and evaluate the performance of the ACJA technology to create a digital case management system

⁵⁷ Section 283 (b) (i) of the ACJA

Specialized Courts should be created to handle criminal cases within specified period, as the case in election tribunal.

Amendment of the Act: The Act should be amended to specifically repeal section 23 of the Police Act. The act should be amended to reflect what happen to victim by virtue of provision of Section 319 where the convict is unable to pay the compensation imposed on him/her, The Act should make electronic recording of confessional statements compulsory or mandatory instead of optional.

Appointment of more Judges, Counsels and Prosecutors: there is need for the appointment of Judges, other judicial officers, Counsels and Prosecutors to reduce case backlog and expedite trials, this ought to be of topmost priority.

Regular Review and Amendment: There should be a mechanism in place to ensure periodic review of the ACJA to address emerging issues and challenges in the justice system, making necessary amendments to keep it relevant and effective.

International Best Practices: International best practices should be the benchmark for the Nigerian criminal justice system and we must learn from successful models in other jurisdictions.

Elevated Magistrates: Magistrates who are elevated to the High Court should also be allowed to continue with pending cases as provided by the Act in cases of High Court Judges elevated to Court of Appeal.

RE-CONCEPTUALIZING THE RIGHT TO LIFE: A SOCIO-LEGAL ANALYSIS

Hassan Abimbola Rasheedat*

Abstract

This paper argues that the right to life is sacrosanct not only in international human rights laws but also from the African mythological perspective. It contends that the concept of Euthanasia, which refers to mercy killing or assisted suicide, does not align with the ideology of the African traditional settings. The paper relying on sociological ideology like culture, religious beliefs and traditions, argues that where a patient request medical act of euthanasia, is a violation of the right to life and cultural heritage in African. The paper suggests the need to bring to book any practitioner who aids the practice of euthanasia. This paper adopts the doctrinal research methodology to interrogate some opinion or perspective to determine whether Euthanasia is a violation of Africa myth and the right to life. The paper examines the concept of the right to life, the intersection of euthanasia and law, euthanasia and religion, euthanasia and medical ethics. The paper concludes by restating that any act that truncates life unnaturally is a violation of the right to life and not in consonance with African customary practice.

Keywords: Right to life, Euthanasia, Legalisation of Euthanasia, Traditional Africa Custom / Moral Values, Religion

1.0 Introduction

The right to life is a fundamental human right that reiterates the importance of human life. It is so sacrosanct that the law frowns at its limitation save on some well recognized legal basis that must be followed that is the legal framework of any state. In Nigeria for instance section 33 of the Constitution of the Federal Republic of Nigeria provides that the right to life can only be limited under circumstances like death sentence, act of War, execution of Court order or in certain circumstances like self-defense.

This paper discusses this perception of right to life and assisted suicide in Africa with special interest in Nigeria. In Nigeria and some part of Africa, euthanasia may not have been legalized but indirectly may have in one way or the other being in practice. There are different ways by which assisted suicide has been practiced either directly or indirectly where it is either legalized or not yet legalized.

2.0 Conceptualizing Right to Life

Euthanasia which is also called assisted suicide can be classified into three major classes namely; suicide ideation that is, the contemplation and gestures that reveal the intention of suicide, suicide plan which means the possible specific method of choice arrived at ordinarily, to be the escape route from life; and suicide attempt which refers to engagement in potentially self- injurious behaviour in which there is at least some intent to die.¹

Euthanasia is seen from the perspective of compassion. In other words, human right activists see it as a form of relieving the pains or sufferings of another person.² It is not right to watch a person suffering without a possible end to the pain when there can be an end to such pain through assisted suicide. This is premised on the reasoning that it is right to assist in putting an end to a person's suffering and pains particularly in cases of a terminal and life-threatening sickness or diseases without any hope of survival.³

Human Rights from the perspectives of a right to dignity of a person advocates that, instead of putting a person in a dehumanizing state, it is better and preferable to assist the person to die rather than denying him the right to dignity of human person. This argument is predicated on health ground. That is, when the health status of a patient with terminal illness that has become so critical to the extent that, living the patient to continue to live will put him in a more dehumanizing stage.⁴

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¹ Christine Moutier *Suicidal Behavior* (MSD Manual Consumer Version 2023) <https://www.msmanuals.com/home/mental-health-disorders/suicidal-behavior-and-self-injury/suicidal-behavior> accessed 18 February 2024

²Maduka Enyimba and Lawrence Odey Ojong 'A Critique of Euthanasia from the Perspective of Ubuntu (African) Notion of Mutual Care' *International Journal of Advanced Scientific Research* (2019) 2456-04214; 47-52 <https://www.researchgate.net/publication/336613838> accessed 23 March 2024

³BBC <https://www.bbc.co.uk/bitesize/guides/zhbqf4j/revision/8> accessed 22 March 2024

⁴Maduka Enyimba and Lawrence Odey Ojong, (n. 2 above)

Since there is constitutional right of privacy and life, a person should, especially terminally ill person who has lost what makes life meaningful such as good health, happiness etc., be allowed to be determined or decided to put an end to life in whatever form.

2.1 Social-Legal Perspective on the Right to Life

In Nigeria, both murder and suicide is considered as an offence to God as both processes of ending a life disturbs and disrupts the ontological order, that is, the nature of been alive.⁵ In another words, the implication of the above is that, euthanasia is forbidden and it is considered as an abomination. Generally, in traditional African settings, suicide is seen as an abomination or a taboo because such an act is seen from the angle of a crime to the extent that, where the act of murder, suicide or assisted suicide is committed, the stigma will forever be referred to in such family where it took place. This perspective is still with a high sense of observation in Africa.⁶

According to Ele⁷, euthanasia, whether assisted or voluntary is seen as an abomination among the indigenous tribe of Igbo in the Eastern part of Nigeria. Suicide in whatever form it may come, is not acceptable as it is a taboo due to the moral, religion and the traditional believe of the people in that particular area. This author strictly talks more about suicide/self-killing known as *igbuonwe* in Igbo community. It is believed to be a sin to God because life is precious as it is expressed in Igbo dialect *nduka*. Ending such precious gift will demand serious spiritual cleansing or sacrifices. Generally, it is believed that, since life is given by nature, the only acceptable means of ending it is by nature. However, the only exception might be in a situation where the constituted authorities convict and sentence a person to death.

Fainos Mangena⁸ argued that in Kenya, Euthanasia is not widely practice in the country, in other words, it is very rare to practice. Invariably, the legalization of Euthanasia is not the issue for contention here as the practice is very scarce.

⁵ Christian O. Ele 'The Perception of Suicide in Igbo Religion: A Study in African Traditional Suicidology' *an open Access Journal* (2017) 6 (3)

⁶ National Library of Medicine <https://ncbi.nlm.nih.gov/pmc/articles/PMC6734716> accessed on 11 February 2024

⁷ Christian O. Ele 'The Perception of Suicide in Igbo Religion: A Study in African Traditional Suicidology' *an Open Journal of Social Development* (2017) 6 (3)

⁸ Fainos Mangena 'Euthanasia and the Experiences of the Shona People of Zimbabwe' *A Journal of the Philosophical Association of Kenya (PAK) New Series* (2013) 5, 2, 123-136

Ozumba⁹ espoused that euthanasia is not actually a suicide itself and, it is equally not an abortion. The researcher further emphasized that if there is an understanding of the theory called euthanasia or seen from another angle, it could be understood to mean an attitude, a mindset and a carrier of good intention.

Ojong¹⁰ opined in connection with the concept of euthanasia that, life is not just a sacred or precious gift from God, but it is so important that it must be taken care of, protected and preserved because, it is understood that the value placed on human life cannot be quantify as a result of the inbuilt dignity. Euthanasia is thereby seen as abomination because human life is under whatever circumstance sacred and inviolable.

From the foregoing, it is argued by the author that euthanasia as conceptualized does not resonate with African culture. Considering the sanctity of the right to life as portrayed in the traditional system, euthanasia does not find any support from African mythology.

3.0 Euthanasia as a Violation of the Right to Life

Right is understood as a thing that is imbedded in human naturally. In order words, right is a thing that naturally accrued to person or human irrespective of his position in the society. In determining what amount to this right generally, has become an issue that is debatable. In Nigeria, the concept of right was adopted in line with its colonial experience.¹¹

The sanctity of life as enshrined in the Constitution of Nigeria and other international legislation such as the Universal Declaration on Human and People's Right¹² and Africa Charter on Human and Peoples' Right¹³ as Right to life is important and is one of the main priorities of Islam. Generally, Islam forbids the taken of another person's life. For instance, the response of Allah (S.W.T) as far as the killing is concern can be examine through Allah's response with regards to the killing of *Habil* (Abel) by his brother *Qabil* (Cain). On this basis, Allah (S.W.T) outlawed the killing and regards it as sin. Though, there are some instances or exception to the above where

⁹Ozumba G O *Medical Ethics: Background and Contemporary Issues* (Calabar: Pyramid Publishers, 2003), p.140

¹⁰ Ojong Lawrence *Implication of Joseph Fletcher's Situation Ethics for Euthanasia* (University of Calabar: Unpublished M.A Thesis, 2016), p. 136

¹¹ Onuora-Oguno Azubike and Ushie Nneka 'Death Penalty: A Violation of the Fundamental Right to Nigeria?' *Journal of Comparative and International Law*, (2013), 7 (1); Published by Department of Jurisprudence and International Law University of Ilorin, p. 136

¹² Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)

¹³ Article 4 of the African Charter on Human and Peoples' Rights.

Islam permits the killing of a person. Example is where someone has already kill another and or in carrying out the sentence of a Shari'ah Court.¹⁴

Apart from Euthanasia as a violator of human right, other factors have been identified as a violation of human rights. For instance, death penalty among other factors is identified as a violation of human right.¹⁵ One of the generally acceptable fundamental human right is, right to life. Currently in Nigeria, this right is a constitutional right enshrined in its Constitution.¹⁶

What amount to right to life has been judicially examine and determine in the case of *Ransome kuti v A.G of the Federation*¹⁷by Eso JSC thus;

It is a right which stands above the ordinary laws of the land and which in fact, is antecedent to the political society itself. It is primary condition to a civilized existence and what has been done by our constitution since independence...is to have rights enshrined in the Constitution so that the rights could be "Immutable" to the extent of the "non-immutability" of the Constitution itself.

Euthanasia been a violation of the fundamental right to life, that is killing without authority especially in most African countries where same is not legalized is not only limited to the medical ethics alone, but takes the form of some activities of non-conventional security outfit in the country such as extra judicial killings. This extra judicial killing is really a threat to the fundamental right to life.¹⁸ Invariably, wherever and whenever an extra judicial killing takes place, the person's fundamental rights to life and fair hearing is breached.¹⁹ Speaking on euthanasia in Africa,

¹⁴ Omipidan Bashiru Adeniyi 'The Principle of Quality of Life Versus Sanctity of Life in the Euthanasia Debate: Where Does Islamic Law Stands' *IJUM Law Journal* (2011) 19, 1

¹⁵ Onuora-Oguno A.C. & Ushie N., Death Penalty: A Violation of the Fundamental Right to Life in Nigeria?... (n. 11 above), pp. 262-278

¹⁶ Section 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁷ [1985] 2 NWLR 211 SCN; see also *Badejo v Minister of Education* [1996] 9-10 SCNJ 51

¹⁸ Onuora-Oguno A.C. & Ushie N., Death Penalty: A Violation of the Fundamental Right to Life in Nigeria?... (n. 11 above) pp. 262-278

¹⁹ Egbewole W.O., & Onuora-Oguno A.C (2014): Impunity and Justice in Nigeria: Weeping for the Innocent, extra judicial killings on the rise? *University of Benin Law Journal (UBLJ)*. 15 (1); 63-77

Omidan, opined that, euthanasia is illegal in most African countries, however, in Nigeria, there is no law as far as euthanasia is concerned.²⁰

In Nigeria, there are two important laws that regulate and guide procedure for prosecution of Criminal activities in the country. For instance, in the Northern part of the country, the law in operation is called the Penal Code,²¹ while in Southern part, the law in operation is referred to as the Criminal Code.²² One of the striking features of these laws is that, both laws stipulated and lay emphasis on the fact that, killing of a person by another, is murder and punishable under the law.

Section 206 of the Penal Code provides thus;

*Whoever causes the death of another person— (a) with the intention of causing death; or (b) knowing that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause, commits the offence of murder, and upon conviction be sentenced to death or imprisonment for life, and may also be liable to a fine; provided that, if the nearest relatives of the deceased opt for customary blood compensation, the Court may award it in lieu of death sentence with imprisonment for a term not exceeding ten year.*²³

Further to the above, Section 208 criminalized attempt to cause murder by providing as follows;

Attempted Murder. (1) Whoever commits any act with such intention or knowledge and under such circumstances that the act caused death, but such death did not occur, he or she commits the offence of attempted murder, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both. (2) If hurt is caused to any person by the act referred in

²⁰Fatiha Kuti, Prof. Omidan delivers Unilorin's 255th Inaugural Lecture <https://unilorinucj.com.ng/prof-omidan-delivers-unilorin-255th-inaugural-lectures/> accessed 21 July, 2024

²¹Cap P3 LFN, 2004

²²Cap C. 38 LFN, 2004

²³ The Penal Code Act, 2008

*subsection (1), above, the sentence to imprisonment may be for a term not exceeding fourteen years or with a fine or with both.*²⁴

Based on the above provisions, it is clear that, murder and attempted murder are illegal in whatever form. In addition to the above, in Nigeria, the Constitution by virtue of Section 33²⁵ provides thus;

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Premised on the above legislations, it can be deduced that, assisted suicide is murder and same is an offence under the Nigeria laws. However, the argument may not follow suit going by the combine reading of Section 38 which provides as follows.

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance

The decision of the Supreme Court in upholding this right in the case of *Medical and Dental Practitioners Disciplinary Tribunal v John Nichola Okonkwo*²⁶ According to Ayoola JSC,

*the patient constitutional right of freedom of thought, religious and conscience as provided under the 1999 Constitution and privacy*²⁷*was recognized when the patient refuse to have a blood transfusion based on the fact that, doing so is against the faith he profess.*

Indirectly, it can be argued from the decision of the Supreme Court in the above case and the provision of Section 38 of the Constitution, that, euthanasia though not acceptable by any legislations in the country but indirectly is being practice in the Country. In conclusion, it can be

²⁴The Penal Code Act, 2008

²⁵ 1999 Constitution of the Federal Republic of Nigeria (as amended)

²⁶ [2001] FWLR (Pt. 44) 542;

²⁷ Section 38 of the 1999 Constitution as amended respectively

drawn from the various type of assisted Suicide that the above is voluntary. In some other countries of the world, most especially Europe, this act is not only legalized, but directly practice. For example, in France, one of the campaign policy of the then president Francois Hollande in 2013 is to introduce the right to die with dignity even though, there were several objection to this.²⁸In Belgium, Euthanasia was legalized sometimes in the year 2022 and has over that short period recorded success even though there are certain conditions of the law that need to be met before it can be practiced in that state.²⁹

3.1 Customary Practices that Support the Right to Life

3.1.1 Religion

Among most discussed issues in religion settings is the matter that involves life and death. Religion sees life and death as a sacred thing,³⁰ that is, something that is spiritual and of immortal. Death in most cases through most religious belief is regarded as accessing a powerful spiritual insight and a way of preparing for after life experience. With this, it is easy to make a conclusion that, majority of religion practices go against euthanasia thereby upholding the principle of life being a sacred thing.

Virtually, all religions go against the concept of euthanasia and do not in any way encourage the practice in whatever form it may come³¹. For instance, the Roman Catholic Church is one of the strong anti-euthanasia campaigns.³² Many factors have been associated with the opposing views of the various religion bodies on the concept of euthanasia. It is widely believed that, God being a celestial being, forbid suicide in whatever form. It is believed that God from the scriptural passages command that, thou shall not kill. So in interpreting the above context of the scripture, it is understandable that God forbid or prohibit killing and doing so, will amount to disobedient to God. Qur'an 17:33; 6: 151; and 25:68 prohibit killing. For instance, Qur'an 17:33 provides that, 'And do not kill the soul which Allah has forbidden, except by right'³³

²⁸https://www.en.m.wikipedia.org/wiki/legality_of_euthanasia accessed 13 March, 2024

²⁹Moniteur Belde, BelgischStaatsbladwww.ejustice.just.fgov.be accessed 14 March, 2024

³⁰Steve Clarke, *The sanctity of life as a sacred value National Library of Medicine* (John Wiley & Sons Ltd 2022) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10087279/> accessed 14 March 2024

³¹See Quran 17: 33, Q 6:151 and Q 25: 68 as noted above, Psalm 139: 13-14, Mathew 22: 37-40

³² BBC<https://www.bbc.co.uk/ethnics/euthanasia/religion.shtml#:~:text=Religions%20and%20euthanasia,active%20organisations%20in%20opposing%20euthanasia> accessed 13 March 2024

³³The corresponding verse in the Bible is the book of Exodus 20:13 KJV

In another word of Allah (S.W.T) in upholding the sanctity of life, Allah (S.W.T) lays emphasis on the fact that, He alone gives life and therefore, He reserves the right to take the soul whenever He is pleased to do so. This was re-emphasized in surah al-Nahl by Allah where He states thus “...and no person can ever die except by Allah’s leave and at an appointed term...”³⁴

It is without any iota of doubt that, the above position by Allah (S.W.T) is an indication that Islam is against euthanasia and that no Muslim has a right to either take his own life or be assisted by another person to die. In another words, Islam is against any form or type of euthanasia whether the person is suffering from terminal disease, debilitating disease, serious pain etc., being the reason for agitation in support of euthanasia. Under Islam, once Allah (S.W.T) has not decided to take the soul of a person, relatives, health care personnel etc., of the sick person has the obligation or responsibility of showing affection even when the sickness is terminal in nature until Allah (S.W.T) finally take the soul of the person.³⁵

Also, it is equally believed that, no one created the life and so, no one can take or end it. Life is treated as a sacred thing that must be protected and preserved. The Catechism of the Roman Catholic Church, from Christian point of view believes that, stopping the process of medical treatment on a patient based on the ground that, such treatment is now burdensome, difficult, and cannot put the patient in a state of recovery, such patient should be assisted to die that is, euthanasia can be legal as it is akin to the rejection of an over passionate treatment. On the contrary, vitalism³⁶ for example has been a ground for arguing against euthanasia. It is believed that, on no condition should a life be taken.

This theory which theory is totally against any killing in any form, but it is in support of preserving life at all cost or in all circumstances. The idea is that life in itself must be respected without putting into consideration the critical states or the life threatening sickness of that particular patient. Those against euthanasia believes without any conviction that euthanasia is a murder as it involves killing. God created life and He must be the one that should determine when it will end.³⁷

³⁴ The Qur’an (al-Imran: 145)

³⁵ Bashir Omipidan ‘The Harvard’s Brain death criteria as a basis for the withdrawal of life supportmachines: a Response from Islamic Law’ *IIUM Law Journal* (2016)24, 1

³⁶ <https://www.merriam-webster.com/dictionary/vitalism> accessed 22 March 2024

³⁷ Maduka Enyimba and Lawrence Odey Ojong ‘A Critique of Euthanasia from the Perspective of Ubuntu (African) Notion of Mutual Care’ ... (n. 2 above)

3.1.2. Customary Practices

Tradition and culture of the people in Nigeria and African at large is anti-euthanasia.³⁸ Most cultures and traditions in Nigeria and major part of the continent see killing in whatever form as a serious matter. Except by a constituted authority, however, if anyone killed another, assisted to kill, or commit suicide, the family of that person will carry an everlasting negative stigma in history throughout their lives. Having reference to the life of Humans is deeply rooted in the traditional Africans setting. It is recognized as an important core value, culture and the way of life in Africa.³⁹ The value placed on human life is number one on the scale of preference.⁴⁰

In Africa, assisted suicide is seen as a contradiction to the African's moral and customary settings because, any step to prevent a person from enjoying his inherent right to life is a direct way of dehumanizing the person's dignity. In other words, the implication of this is that, based on African settings, human sanctity, sacredness and the fundamental self-respect of humans' life is paramount irrespective of or without putting into consideration, any challenges or factors that may call for the untimely termination of such life.⁴¹

One of the beautiful traditions in Africa is mutual love, respect and care. Africans' love, respect and care for their loved ones is something that is being cherished and held in high esteem without any form of compromise.⁴² Welcoming the principle of euthanasia or assisted suicide for the terminally ill person is totally against such principle that is so much cherished by the Africans. Where then is the place of the cherished mutual care, respect and love aside the concept of euthanasia? Sequel to that, Africans will rather choose the option of caring for their loved ones irrespective of the sickness until death occur naturally.

³⁸Olumuyiwa Olusesan Familusi, A Religious to the Paradox of Euthanasia and the Sanctity of Life 'Ibadan Journal of Humanistics Studies' (2017) vol. 27 ISSN: 21141-9744

³⁹ Edet Mesembe I., *The Method of Ibuanyidanda Philosophy (Complementary Reflection) and the Development of Afroxiology* (Unpublished Ph.D Thesis, University of Calabar: Philosophy Department, 2012), p.177

⁴⁰ Maduka Enyimba and Lawrence Odey Ojong, *A Critique of Euthanasia from the Perspective of Ubuntu (African) Notion of Mutual Care...* (n. 2 above), 47-52

⁴¹Enyimba Maduka Nweke and Victor C.A, *Food Security as a Fundamental Human Right: A Philosophical Consideration from Africa*, (A Paper Presented at a 4day International Conference on Philosophy of Food, held at AdekunleAjasin University, Akungba-Akoka, Department of Philosophy, 2018), p.50

⁴²Michael Ikolo and Peter O.O Ottuh, 'A Moral Appraisal of Euthanasia Beliefs and Practices in Urhoboland' *JurnalIlmuSosiologiDialektikaKontemporer* (2024) 12, 2303-2324. <<http://ojs.un.mac.id>> accessed 24 March 2024

4.0 Conclusion

It is concluded that the advancement in technology though, had improved the wellbeing of humans on earth, however, it has not been able to eradicate the dehumanization that happens to human through some terminal illnesses such as kidney failure, liver related ailment, cancer etc. Some developed countries such as Netherlands, Spain, Luxembourg, Portugal and Belgium have chosen to legalize assisted suicide.⁴³ For instance, Netherlands in Belgium, Euthanasia was legalized sometimes in the year 2022.⁴⁴ However, despite the inability or failure of the advancement in technology to cure terminal illness like liver failure, kidney problem, cancer etc., up till now, Nigerians and Africans at large, still strongly believe in the philosophy of fact that, life is sacrosanct and same not be trampled upon. This is a position that finds support in various religious beliefs in the country.

Literally, in Africa, no country has legalized euthanasia till today. African believed so much in their traditions and faith in God and both tradition and belief, is against the principle of euthanasia in whatever form it is being practiced or preached. In other words, euthanasia in Nigeria and Africa countries is a myth and is still very much unapproved.

⁴³ Statista Research Department <https://www.statista.com/statistics/1098051/number-of-euthanasia-instances-registered-in-belgium/> accessed 15 March, 2024

⁴⁴ Moniteur Belge Belgisch Staatsblad www.ejustice.just.fgov.be accessed 14 March, 2024