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No. 2, 2026

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# The StarLight

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## EDITOR-IN-CHIEF'S NOTE

Welcome to No. 2, 2026 of The StarLight.

Across Africa, rapid advances in technology, shifting governance structures, evolving economic realities, and growing demands for justice are redefining the role of law in society. In this magazine, we bring together a collection of voices that refuse to see law as merely a system of rules, but as a powerful instrument for innovation, accountability and institutional reform.

The edition features an exclusive interview with Mokhali Shale, Founding President of the National University of Lesotho International Trade Club. Mikhail delivers a compelling meditation on leadership, challenging emerging African legal thinkers to resist the allure of fleeting visibility. Instead, he calls for a deeper commitment to building institutions, shaping policy, and advancing pan-African progress.



EZEKIEL ARCHIBONG

We also feature exciting articles from law students across Africa beginning with Teddy Munyao Mwaya. Teddy interrogates the emerging boundaries of accountability in the age of artificial intelligence, examining the regulatory and constitutional implications of criminal liability for corporate AI decisions under Kenya's proposed Artificial Intelligence Bill 2026. Linda Nyamweya turns our attention to the painful persistence of extrajudicial killings in Kenya, offering a powerful critique of the gap between constitutional promise and lived reality, and underscoring the continuing urgency of accountability and reform.

In the realm of economic governance and commercial law, Chidinma Rhoda Chijioke provides a nuanced appraisal of maritime arbitration within Nigeria's expanding blue economy, highlighting both its promise as a dispute resolution mechanism and the structural reforms required to strengthen investor confidence. Complementing this, Augustine Ugboma offers a careful analysis of Nigeria's recent tax reform framework, drawing attention to its potential to deepen fiscal transparency, improve revenue administration, and stimulate sustainable investment if effectively implemented.

Issues of justice sector reform are equally foregrounded. Ejuvwewwo Oghenerume confronts the systemic crisis of overcrowded correctional facilities and prolonged pre-trial detention, exposing the human and institutional costs of delay in the criminal justice process. Meanwhile, Oluwabusayomi Olabode evaluates the Administration of Criminal Justice Act, 2015, assessing its progress in practice and the persistent implementation gaps that continue to hinder the realization of a faster, fairer, and more rights-respecting justice system.

We wrap up the edition with Joe Onyango's article, "Beyond the Tenure: Constitutionalising Development in an Age of Political Flux to Bolster Kenya's First-World Dream". The work addresses the "discontinuity dilemma" in African governance, where long-term developmental goals are routinely derailed by short-term electoral cycles and the personalisation of megaprojects.

Special thanks to our editors, writers, and everyone who contributed to the success of this edition. Your collective contributions continue to shape The StarLight as a platform for rigorous, forward-looking legal discourse.

As you turn these pages, may you find not only knowledge, but also ideas that challenge assumptions, sharpen inquiry, and inspire a deeper commitment to the evolving law in Africa.

Cheers!

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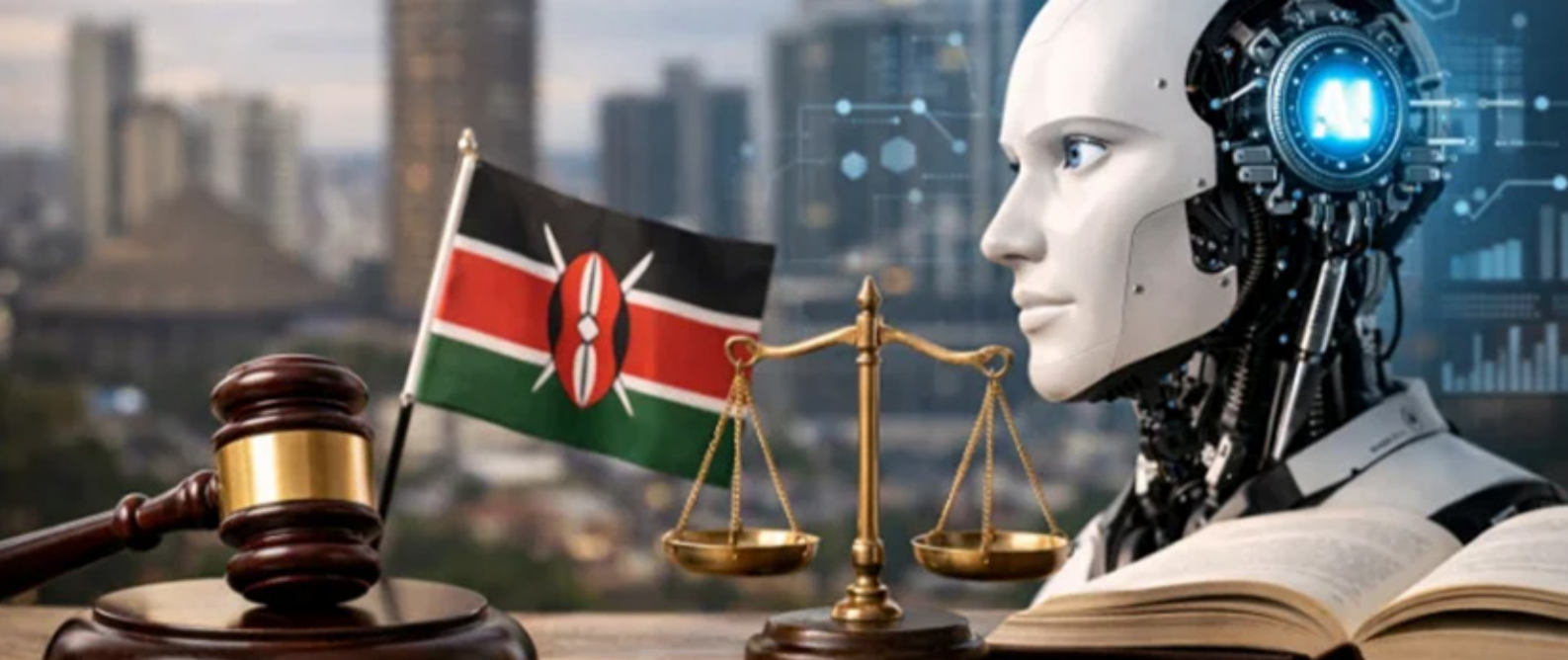
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## CRIMINALIZING CORPORATE AI DECISIONS UNDER KENYA'S ARTIFICIAL INTELLIGENCE BILL 2026.

TEDDY MUNYAO MWAYA

### INTRODUCTION

Kenya published the Artificial Intelligence Bill 2026 (hereinafter referred to as “the AI Bill”) in March 2026 which seeks to establish a regulatory framework for artificial intelligence within the country. This bill has been published as a senate bill and received its first reading in the senate in early April 2026 with subsequent invitations for public comment. One of its features is a provision that extends personal criminal liability to company directors for corporate AI violations. This article argues that this mechanism raises profound constitutional questions, unsettles established principles of corporate governance, and departs from best practices by leading AI regulatory jurisdictions. This article examines the director liability provisions of the AI bill against constitutional law, comparative AI regulation, and corporate governance. It argues that while the intent to ensure accountable AI deployment is significant, the provision of personal criminal liability for directors is constitutionally suspecting and it ought to be replaced with an accountability model drawn from the European Union’s Artificial Intelligence (AI) Act while considering Kenya’s legal and economic circumstances.

### THE ARTIFICIAL INTELLIGENCE BILL 2026

The AI bill adopts a risk-based classification model that loosely mirrors the EU AI Act, which categorises AI systems into: unacceptable risk, high risk, limited risk, and minimal risk. High risk systems are those operating in critical sectors such as healthcare, education, finance, security, and public administration. The bill also establishes the Office of the Artificial Intelligence Commissioner as an independent body with enforcement powers including the authority to enter premises, inspect AI systems, issue compliance orders, and impose administrative fines. The commissioner is empowered to update the ethical guidelines at any given time without returning to parliament and this feature has drawn constitutional scrutiny. It is in regards to enforcement that the bill departs from Kenyan legal norms. Under the proposed Section 35, once a company violates the Act, every director who knew about the AI system must prove that they exercised sufficient due diligence or face criminal conviction and subsequent imprisonment of up to 2 years. Additionally, the Bill provides for fines of up to Ksh. 5 million or prison sentences of up to 3 years for violations regarding deployment of prohibited AI systems, failure to conduct required risk assessments, or distributing harmful AI-generated content. Significant attention is drawn toward three key features: One, the bill imposes criminal liability on directors individually and not

simply on the company, which represents the concept of lifting of the corporate veil, a step that Kenyan courts approach with caution. Two, the liability mechanism operates in reverse; that the director must prove diligence rather than the prosecution proving the state of mind of the culpable director. Three, the scope of criminal liability is partially left on the commissioner who may develop guidelines and modify them such that violations of the same would constitute a criminal offence.

## THE CONSTITUTIONAL PROBLEM

The AI Bill lies in conflict with Article 50 of the Constitution of Kenya, which guarantees every accused person the right to a fair trial. It expressly provides that every accused person has the right to be presumed innocent until the contrary is proved. This presumption is a foundational principle of Kenyan criminal justice that places the burden of proving guilt on the prosecution. By requiring a director who knew about a particular AI system to prove that they exercised sufficient diligence or face criminal conviction, Section 35 of the proposed AI Bill inverts the constitutional presumption. The director is not proven guilty; rather, they must prove innocence. This creates a reverse onus clause, which is a statutory mechanism that compels the accused to prove their innocence regarding specific elements, often resulting in a conviction, if the defendant fails to persuade the court.

Reverse onus provisions have been subject to scrutiny in Kenyan constitutional jurisprudence. In the cases of *Senator Johnstone Muthama V Director of Public Prosecutions & 2 others* and *Japhet Muriira Muroko (Interested Party)*, the High Court deliberated on the Constitutionality of Section 96 (a) of the Penal Code that created a reverse onus in relation to charges of violence. The court considered whether such provisions were consistent with the right to fair trial entrenched in the Constitution. Drawing from jurisprudence from the South African Constitutional Court that had previously struck down analogous provisions as violating the South African Constitution, the court held that reverse onus provisions infringed

on the right of the accused person to be presumed innocent as envisaged in Article 50 of the Constitution. The High Court in this case did not hold all reverse onus provisions to be unconstitutional; the court subjected them to rigorous review to examine whether the limitation to the right of a fair trial was reasonable and justifiable in an open and democratic society. This provision in the AI would also face the same scrutiny; however, Section 35 of the AI bill appears to impose a full legal burden of proof, requiring the director to establish diligence on a balance of probabilities.

Another concern arises from the delegation of law making powers. The AI Bill empowers the AI commissioner to develop ethical guidelines and update them at will without returning to parliament and a violation of these guidelines constitutes a criminal offense. This arrangement offends the principle of *nullum crimen sine lege* meaning "no crime without law". It dictates that a person cannot be punished for an action unless that action was specifically defined and criminalised by law before it was committed. In the past decade, Kenyan courts have struck down provisions that attach criminal liability to rules that shift without approval from the parliament. On February 12 2026, the High Court of Kenya struck down Section 95 (1) (b) of the Penal Code as unconstitutional. The section made it a crime to 'create a disturbance in a manner likely to cause a breach of peace,' meaning a person could be arrested for causing public commotion, shouting loudly, or behaving in a way police believed might lead to disorder, even if no actual violence occurred. The court declared the offence unconstitutional, finding that the law lacked clarity since its wording was vague and overly broad. Moreover, the court held that the provision failed to meet constitutional standards of precision. Additionally, in 2024, the Court in the case of *Katiba Institute & 8 Others V DPP & 2 Others* held that, the provisions of section 77 of the Penal Code were over broad and vague, and that they limit the right to freedom of expression and there is lack of clarity as to the purpose and intent. Also, the limitation in section 77 is not provided by law.

## COMPARATIVE ANALYSIS FROM THE EUROPEAN UNION AND SINGAPORE

The AI bill was drafted to align with international best practices by referencing the EU's AI Act, yet a comparison reveals a significant divergence in the enforcement framework.

The EU AI Act relies on graduated administrative fines, with prohibited AI practices facing up to € 35 Million or 7% of an undertaking's total worldwide annual turnover, whichever is higher. For other violations, fines of up to € 15 Million or 3% of global turnover apply, and for supplying incorrect information, fines of up to € 7.5 Million or 1.5% of turnover. These administrative penalties are imposed on the undertaking, not criminal sanctions that are imposed on individual directors. Although the EU Act permits member states to lay down their own penalty rules that may include criminal sanctions, the Act itself establishes an administrative enforcement architecture and most of the member states have not introduced personal criminal liability.

Singapore has developed a pro-innovation regulatory model that relies on national strategies, governance frameworks, sector-specific guidance and implementation tools, rather than adopting a single binding AI statute. The model AI framework that was first issued in 2019 and updated provides cross-sector guidance on responsible AI use, emphasising transparency, fairness and human-in-the-loop requirement. In 2026, Singapore introduced the first comprehensive governance framework for AI systems that are capable of autonomous reasoning, planning and action, and while not legally binding, these guidelines provide governance framework benchmark for other companies and organisations that deploy such AI systems. Their approach of sector specific governance first, built from documented local evidence with binding legislation put on hold until this foundation is in place represents the correct regulatory pathway. Overall, Singapore's approach reflects a choice in policy to encourage responsible AI use while remaining flexible to accommodate the evolving nature of technology.

## CORPORATE GOVERNANCE DIMENSION

The director liability provisions in the AI Bill must be assessed against the duties of directors under the Companies Act No. 17 of 2015. Section 143 of the Act establishes that a director must act in good faith to promote the company's success for the benefit of its members as a whole. This duty requires considering long-term consequences, employees, business relationships, community and environment impact, and fair treatment

between directors and members. Additionally, Section 146 mandates that a company director must avoid situations where their direct or indirect interests conflict, or potentially conflict, with the company's interests. Historically, these duties have oriented directors towards the interests of the company and its shareholders, and personal liability arising in cases of fraud, misrepresentation, reckless trading or breach of fiduciary duty. The AI Bill introduces a different approach. A director considering whether to approve the deployment of an AI system must now weigh not only the commercial risks to the company but the prospect of personal criminal conviction and subsequent imprisonment. The uncertainty in definitions adds on this problem. The AI Bill requires that AI systems must enhance rather than replace human capabilities, a standard that is undefined to the point of meaninglessness. Until this standard is revised, criminal liability is theoretically possible.

A governance paradox is created by this uncertainty. The Companies Act mandates directors to take calculated commercial risks in pursuit of corporate success while the AI Bill threatens personal criminal sanctions for miscalculating regulatory risk, and this is likely to affect AI innovation within the formal corporate sector. Directors of Kenyan companies where AI adoption is more advanced e.g. in financial services, healthcare sectors and technology may come to a rational conclusion that the personal risk of approving and deploying AI outweighs any potential benefit. While the flat criminal penalty of Ksh. 5 million may be devastating for a local startup, it may

not even serve as an effective deterrent for large multinational technology corporations.

Furthermore, the AI Bill demonstrates a significant jurisdictional gap. There is no provision that explicitly governs foreign AI companies whose systems are already deployed in Kenya. For instance, OpenAI's clinical AI operates in 16 Nairobi Clinics, and a Dutch company's Tuberculosis screening tool has processed tens of thousands of X-ray across seven counties. These foreign entities lack a registered corporate presence in Kenya and in effect, they fall largely out of the AI Bill's enforcement ambit. The result of this is a system that holds Kenyan directors and startups to a criminal standard while leaving foreign AI giants effectively unregulated.

This asymmetry is not merely a drafting oversight; the bill was conceived against a background where nobody asked what harms Kenya experiences as a result of AI before the Bill was drafted. It appears that the bill was driven by fear of synthetic media and deep-fakes rather than a systematic assessment of AI risks in various sectors including agriculture, health and finance. The result of this is that the Bill resorted to maximum deterrence, which is prison.

## **RECOMMENDATIONS**

There is a legitimate concern that AI systems should be deployed responsibly and that those who approve high-risk deployments should be accountable. The only issue is in regards to the mechanisms to achieve this and proportionality. This article proposes reforms that seek to preserve the regulatory objectives of the Bill while addressing its clashes with fundamental rights under the Constitution and statutes.

First, the criminal director liability should be replaced with a more calibrated administrative penalty framework. The EU AI Act demonstrates that its approach of issuing administrative fines reaching 7% of global annual turnover for the most serious violations creates compliance incentives without the constitutional challenges surrounding personal criminal liability. Kenya should adopt a similar model that enforces penalties scaled to the size of the offending corporation and the severity of the violation. Second, the reverse onus provisions in the proposed Section 35 of the Bill should be removed. Should the parliament determine that individual accountability for directors is appropriate; the burden should rest with the prosecutor to prove that there was negligence or recklessness by the director to the criminal standard in accordance with Article 50 of the Constitution. Third, the Bill should require parliamentary approval for any regulations creating criminal offenses. The delegation of making binding guidelines and regulations to the AI Commissioner disregards the principle of legality and there is a chance it would not survive a constitutional challenge. Instead, the Bill should be amended to require that any ethical guidelines whose violation attracts criminal penalties should be promulgated as subsidiary legislation and is subject to parliamentary oversight. Fourth, the Bill should include express provisions that govern foreign AI providers operating in Kenya, whether through local registration requirements, obligations on local deplorers who use foreign AI systems or even mechanisms for cross-border enforcement cooperation.

Kenya cannot regulate global AI; it can, however, regulate the deployment of AI within its territory. Rather than rushing to enact a criminal statute before even the regulatory infrastructure exists, Kenya should prioritise developing sector-specific frameworks and only after this consider whether there is a need for binding legislation.

## **CONCLUSION**

The Artificial Intelligence Bill of 2026 is a significant legislative undertaking and its objectives deserve serious engagement. However, the provisions addressing personal criminal liability for company directors is vulnerable against the constitution and may repel the very innovation that Kenya actively seeks

to foster. The Bill constructs a formula for constitutional uncertainty according to commentators by placing a burden on directors that the constitution assigns to the prosecution, delegating to an administrative body the power to codify crimes, and imposing criminal sanctions that even its model act, the EU AI Act, did not go that far. Kenya stands at a digital crag; it can choose to follow the European Union towards binding comprehensive legislation but must comply with the constitution and tailor it to its economic circumstances, or it can choose to follow Singapore towards a more gradual framework driven approach that builds its regulatory capacity before imposing criminal sanctions. The Senate, having now received public comments in regards to this Bill, can have the chance to chart a more considered course.

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## WHEN THE LAW BECOMES THE WEAPON: UNMASKING EXTRA-JUDICIAL KILLINGS AND THE STRUGGLE FOR JUSTICE IN KENYA

LINDA NYAMWEYA

### Abstract

Extra-judicial killings in Kenya have long represented a grave contradiction between the constitutional promise of justice and the reality of impunity. This article not only examines the legal aspect but also the institutional and moral dimensions of state-sanctioned violence despite the government's commitments to end such practices. The Constitution, together with other enabling authorities such as the Independent Policing and Oversight Authority Act and the National Police Service Act, aims to act as tools for justice as well as to protect Kenyans from human rights violations. Yet, this article reveals how the misuse of law enforcement power continues to undermine these constitutional guarantees, eroding both the right to life and the rule of law in Kenya. The article further explores Kenya's statutory and institutional framework and evaluates gaps that allow impunity to persist. It also situates Kenya's obligation within International Law, referencing the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, which prohibit arbitrary deprivation of life. Ending extrajudicial killings requires accountability, transparency, and genuine political will. Kenya, through relevant stakeholders, needs to ensure that the law serves as a shield against injustice rather than a weapon of oppression. This echoes the words in the National Anthem, "Haki iwe Ngao na mlinzi," translated to mean "Justice be our shield and defender".

### INTRODUCTION

In recent years, Kenya has witnessed an alarming pattern of unlawful state killings, especially during the demonstrations of June 25, 2024, often disguised as security operations or responses to crime. According to Amnesty Kenya's 2023 annual report, Missing Voices recorded 118 cases of police killings and 10 enforced disappearances. This number keeps increasing daily, representing a direct assault on the Constitutional order and the rule of law itself. Kenya's supreme law guarantees the right to life and prohibits cruel treatment of human beings. Yet, despite this robust legal protection, reports show over 100 civilians lost their lives to circumstances linked to police action.

This overwhelming crisis has constantly bothered many concerned citizens, which prompted the president's public declaration to eradicate extrajudicial killings if voted as the fifth president under the Kenya Kwanza Manifesto of 2022. This signalled both political acknowledgment and the urgent need for systemic reform in the country. As illustrated in the judgment of the case of Kituo Cha Sheria and 2 others v Cabinet Secretary and others, intentional killings outside lawful sanction are termed unconstitutional. Kenya's oversight bodies, such as the Independent Policing Oversight Authority (IPOA), have been designed to investigate and deter such abuses, however, persistent political interference and limited institutional autonomy have rendered the IPOA largely ineffective.

How has the law been weaponized against the very citizens it should protect, despite being conceived as a tool of justice? Through the intersection between constitutional ideals, state power, and human rights, Kenya should be willing and ready to transform legal guarantees into tangible protection for every citizen.

## THE LEGAL PARADOX

The law is conceived to be humanity's greatest shield- a moral institutional barrier between power and violence. In Kenya, this noble shield often doubles as a sword. The same legal frameworks meant to uphold human dignity and sanctity of life are often manipulated to justify the taking of it. This is the tragic system where the law itself becomes a weapon. Extra-judicial killings represent one of the most egregious violations of our supreme law as a country, which unequivocally guarantees the right to life. The contradiction deepens when these acts are performed by officers sworn to protect life and property. The rhetoric of "crime control", "public order", and "national security" becomes a convenient veil for impunity, transforming instruments of justice into tools of oppression.

In theory, the legal architecture is watertight yet impractical in practice. The law's promise is

hollowed out by selective enforcement and political convenience. The Firearms Act is meant to be a tool for public safety, but its potential for being misused in law enforcement and increasing discussion about the role of firearms in private security raise questions about how it is being used in practice. Police killings during protests, anti-terror operations, and even routine arrests occur under the investiture of legal authority, yet with little accountability. As demonstrated in the compelling case of Willie Kimani, the police officers responsible for his murder and that of his companions were only convicted after more than six years. This prolonged delay reflects systemic weaknesses and reluctance within investigative and prosecutorial processes, revealing how such inefficiencies undermine the rule of law and deny victims timely access to justice. Justice delayed then becomes justice denied.

When law is weaponized, justice becomes selective, depending on social status, political leverage, or sheer luck. It is no longer enough to have laws written; what matters is whether they are enforced justly and consistently.

## THE CONSTITUTIONAL ILLUSION

When Kenya promulgated the constitution in 2010, it was celebrated as a turning point in the nation's human rights journey. Despite several independent constitutional bodies, policy and legal reforms initiatives, and institutional and administrative frameworks intended to ensure the security sector adopts a human rights-based approach to policing, the government has failed to sufficiently address enforced disappearances or extrajudicial killings.

The Bill of Rights advocates for human rights such as the right to life and dignity and protects against torture and cruel, inhuman treatment. At the heart of this illusion is the failure of enforcement. In practice, these provisions are undermined by state officers who act in near total impunity. Reports by Kenya Human Rights Commission (KHRC) and the IPOA reveal a persistent pattern of unlawful police killings, particularly during law enforcement operations and protests. Despite repeated investigations, only a handful of

officers have ever faced trial, and even fewer have been convicted. The law speaks clearly, but the system whispers back in silence.

In the case of *John Ngugi v Attorney General*, the high court awarded damages to a victim who was shot by police, resulting in amputation of his leg. The court condemned excessive use of force and found the State guilty of violating the petitioner's constitutional rights. However, such rulings, though symbolically significant, rarely produce structural change. Individual court victories do not translate to systemic reform.

This constitutional mirage reveals a darker truth; Kenya's constitutional framework protects life in writing but not in reality especially in the subject of extrajudicial killings. The gap between rights and remedies widens each time a mother buries a son with no answers, each time a file disappears from an investigator's desk, and each time an officer goes unpunished for denying a citizen their fundamental rights. The constitution may have redefined Kenya's legal landscape, but without moral enforcement, it remains a monument to broken promises.

## **INSTITUTIONAL FAILURE: WHEN OVERSIGHT BECOMES COMPLICIT**

Several state organs, established under the Constitution, have been tasked with the noble duty of preventing and responding to extrajudicial killings. They include the Independent Policing and Oversight Authority, the Office of the Director of Public Prosecution, the National Police Service, and the Judiciary, among others. On paper, their framework for accountability appears robust; however, despite their active engagements in investigations, prosecutions, and policy reforms, justice for victims of police brutality remains largely elusive.

The IPOA, established under the IPOA Act is mandated to investigate police misconduct and recommend prosecutions. Despite its commendable efforts, its impact remains limited, its investigations seldom culminating convictions, thus undermining the very justice it should uphold. According to its annual report 2021/2022, the authority has received over 20979 complaints but only 18 convictions have been successful as of June 2022. This illustrates that while IPOA actively performs its investigative duties, its institutional impact remains negligible, primarily due to resistance by some officers who view IPOA as antagonistic, inadequate staff strength hence delays in conclusion of cases, on cooperation of witnesses and complainants among other issues.

Similarly, the Office of the Director of Public Prosecutions (ODPP) has been established under Kenya's supreme law to investigate any information or allegation of criminal conduct. Unlike in the 1963 independence constitution where such issues were handled by the Attorney General, this reform was put in place to ensure prosecutorial independence especially in politically sensitive or human rights related cases, given that, as part of the executive, the Attorney General compromised the independence of prosecutions especially in cases involving state agents such as police officers. This constitutional provision prompted parliament to enact the ODPP Act of 2013 which outlined the structure, powers and functions of this important body.

However, its functions have been greatly undermined due to prevailing factors such as poor coordination between the ODPP, police and other justice institutions, overreliance on the executive particularly on police investigations, public perception and trust deficit among other prevailing factors. Justice John Mativo noted in the case of *Maganjo v ODPP* that "Public interest demands that the criminal cases especially those related to serious crimes, corruption, abuse of office and public funds be concluded within a reasonable time so that those guilty are punished. Further, from the point of view of the

accused persons, the right to speedy trial is a fundamental right. The public get frustrated in the system if at every stage there is delay and the process of justice is not allowed to take its normal course, more so, when deliberate attempts are made to subvert and delay the process.” This judgement emphasized the vital principle that public perception and fairness are essential to maintaining trust in prosecutorial institutions.

The judiciary, established under the Constitution, is vested with the authority of upholding justice, safeguarding the Constitution, and protecting fundamental rights and freedoms of citizens. The Constitution guarantees judicial independence and empowers courts to enforce the Bill of Rights. The Judiciary is the most reliable bulwark against state excesses, including extrajudicial killings. An example of this was seen in the case of *Legal Advice Centre at Kituo cha sharia v Cabinet Secretary*, where accountability and access to justice by Kenyan citizens was upheld. However, its independence has not translated to tangible protection for victims of state violence since it still faces challenges such as case backlog and delays, implementation gap, and political pressure and interference.

Over the past decade, courts have made significant pronouncements affirming the right to life and human dignity. In *Law Society of Kenya v Attorney General*, the High Court

condemned the disappearance and killing of human rights lawyer Willie Kimani, his client, and their driver, calling it a “blatant assault on the rule of law and human rights.” The court reaffirmed that no organ of the state has the power to take life arbitrarily. This case was cited in the International Justice Mission Report (2022), which noted that after nearly six years of delayed trial proceedings against the police officers, justice was finally served. Similarly, the petitioner in the case of *Apollo Mboya v Attorney General* filed a petition “...informed by many cases of unresolved murders and enforced disappearance.”

Kenyan courts play a pivotal role in navigating the tension between deference to State organs and safeguarding individual rights. This role is critical in promoting constitutionalism and ensuring that systemic inequalities are not perpetuated. The courts have issued judgments requiring action, but these have not been met with the same level of compliance or urgency as in other cases, highlighting the limitations of the Judiciary when political branches resist enforcement.

#### THE INTERNATIONAL LAW PERSPECTIVE

Kenya’s approach to extrajudicial killings cannot be examined in isolation from its international legal obligations. As a member of the United Nations and a state party to key human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and

the Convention Against Torture (CAT), Kenya is legally bound to uphold the right to life, human dignity, and freedom from torture and arbitrary deprivation of life. ICCPR obligates the state to enforce the rights to liberty and security of individuals, explicitly prohibiting arbitrary arrest and detention. The African Charter on Human and Peoples’ Rights (ACHPR) similarly emphasizes the right to liberty and security while condemning arbitrary detention. This imposes a duty on the state to prevent, investigate, and punish such violations.

Kenyan courts play a pivotal role in navigating the tension between deference to State organs and safeguarding individual rights. This role is critical in promoting constitutionalism and ensuring that systemic inequalities are not perpetuated. The courts have issued judgments requiring action, but these have not been met with the same level of compliance or urgency as in other cases, highlighting the limitations of the Judiciary when political branches resist enforcement.

Despite these international commitments, the effectiveness of these treaties in Kenya is severely undermined by several factors. There is often a serious disconnect between Kenya’s international obligations and their domestic implementation; many treaty provisions remain unenforced due to inadequate legal frameworks or insufficient political will. Kenya’s failure to ratify additional protocols related to the International Covenant on Civil and Political



Rights (ICCPR) restricts victims' ability to hold the state accountable through international mechanisms. Consequently, many victims find themselves without effective means for seeking justice or compensation. While the ICCPR represents a significant commitment to upholding civil and political rights, its effectiveness in Kenya is severely limited by the absence of ratification of the Optional Protocol. This protocol allows individuals to submit complaints about violations directly to the UN Human Rights Committee after exhausting domestic remedies. Without this crucial mechanism, citizens are left with few avenues for recourse when their rights are violated, such as in cases of arbitrary arrest, torture, extrajudicial killings, or enforced disappearances.

The lack of ratification also undermines international oversight and accountability, allowing many human rights abuses to go unaddressed. Victims often find themselves trapped within a domestic legal system that may not adequately protect their rights or provide justice. This gap highlights a critical deficiency in Kenya's human rights framework and emphasizes the urgent need for the government to ratify relevant protocols to enhance accountability and ensure that citizens can effectively seek redress for violations.

## RECOMMENDATIONS

### ● **Adopting and implementing the recommendations made by International law and protocols**

Kenya should prioritize the full domestication of international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). These include: ratifying the International Convention for the Protection of all Persons from Enforced Disappearances, ensuring the police officers bear tags with their names and service numbers whenever discharging police operations, and developing a national policy on policing oversight. Parliament should enact and enforce enabling legislation to ensure these treaties have direct legal effect within domestic law, as envisioned under the Constitution of Kenya, 2010.

### ● **Independent Policing and Oversight Authority**

One of the challenges the IPOA faces, as seen in their submissions, is that their recommendations to prosecute and discipline police officers whom their investigations find culpable are never implemented in time. This makes the Oversight Authority toothless, as its investigations lead to nothing. For more efficacy, they should be given the power to prosecute those officers whom they find guilty. Also, the IPOA should receive increased financial and political support to enable it to conduct investigations into extrajudicial killings that meet international standards of transparency and independence.

## ● y Building for Law Enforcement and Judicial Officers

The government, in collaboration with international partners, should conduct continuous training on human rights law, the use of force, and accountability for police officers, prosecutors, and judges. Such training would foster a rights-based culture in law enforcement and ensure adherence to international standards. In addition, establishing an independent internal affairs division in the NPS would assist in strengthening and empowering the police. The division should be independent and autonomous, and should consist of fellow police officers who are tasked with the investigation of complaints lodged against other police officers.

## CONCLUSION

In conclusion, extrajudicial killings can only be eradicated if the rule of law is upheld in its totality. The rule of law must be sustained at all costs in every case across the country. It is the duty of the state government to adhere to the rule of law and work in accordance with the rule of law. In addition, the law must cease to serve as a weapon of oppression and reclaim its purpose as a shield of justice. This can only be made possible when the government takes action to fully enforce the various laws it has come up with. Oversight bodies like IPOA and KNCHR must be empowered, the Judiciary must enforce its decisions without fear, and law enforcement officers must operate within constitutional limits. Ultimately, Kenya must reawaken the spirit of its national anthem, “Haki iwe ngao na mlinzi”. Only when the law protects the vulnerable rather than oppressing or persecuting them, and when accountability outweighs impunity, will Kenya fulfil the promise of its Constitution and restore faith in the rule of law.

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# MARITIME ARBITRATION IN NIGERIA: EXAMINING THE CHALLENGES AND FUTURE PROSPECTS OF ALTERNATIVE DISPUTE RESOLUTION IN THE MARITIME SECTOR.

CHIDINMA RHODA CHIJOKE

## ABSTRACT

From time immemorial, Nigeria has increasingly suffered from a lack of awareness and understanding of the sea's importance in tackling the country's economic and environmental challenges. Despite the potential the sea offers, it has been neglected in favour of other sectors that are perceived as more lucrative, such as the oil and gas industry. Evidently, the maritime sector is very crucial in a nation's growth, especially in the aspect of trade, both domestic and international. Not all goods can be transported by air or land; in fact, the bulk of export and import activities are conducted through maritime shipping. As maritime transactions continue to expand within and beyond Nigeria, disputes also become inevitable. It therefore, becomes imperative to strengthen the country's arbitration framework, particularly in relation to shipping and trade-related disputes. This study provides insights into the framework of maritime arbitration and its evolution in Nigeria over the years. It also suggests workable recommendations on how to maximally harness the potential of the blue economy, particularly as it relates to arbitration.

**Keywords:** Maritime, Arbitration, Dispute Resolution, Shipping.

## INTRODUCTION

Nigeria, with a coastline of approximately 853 kilometers along the Atlantic Ocean in the Gulf of Guinea and a maritime area spanning 46,000 square kilometers, possesses abundant and diverse marine resources. This extensive coastal expanse underscores the potential for a robust maritime sector, which, if managed effectively, could yield substantial economic benefits. Historically, the maritime industry has played a pivotal role in the growth of Nigeria's economy, particularly in generating foreign exchange through the import and export of goods that are impractical to transport by land or air. Statistics report that over 95 percent of Nigerian trade, by volume, and more than 70 percent of its value are moved around aboard ships and handled by ports nationwide. Recognizing the imperative to harness these maritime opportunities and advance the blue economy, which is the sustainable use of water and its resources, the Nigerian government established the Ministry of Marine and Blue Economy in

2023 and tasked it with overseeing marine resources and fostering economic growth through resourceful initiatives such as port operations and environmental protection.

However, given the inherently international and transactional nature of maritime activities, disputes are bound to occur. These may stem from issues such as damaged cargo, allocation of liability for

However, given the inherently international and transactional nature of maritime activities, disputes are bound to occur. These may stem from issues such as damaged cargo, allocation of liability for casualties at sea, or contractual breaches. Traditionally, parties have resorted to litigation for resolution; however, alternative dispute resolution (ADR) mechanisms have gained prominence internationally as efficient alternatives. ADR is often perceived as more time-efficient and cost-effective than traditional court proceedings.

In the context of maritime disputes, which are predominantly commercial in character, ADR enables aggrieved parties, who frequently suffer significant loss, to settle matters without worsening business disruptions. Yet, the efficacy of ADR in

addressing maritime conflicts has been a topic of ongoing debate, with proponents highlighting its adaptability and critics pointing to potential enforcement challenges.



## CONCEPTUAL FRAMEWORK OF MARITIME ARBITRATION

To fully grasp the content of this article, it is paramount to define the key concepts:

The term “maritime” refers to anything related to the ocean, sea, and rivers. It also includes the ships, ports, companies, and individuals that are involved in the industry. It covers a broad spectrum of endeavours from commercial shipping routes to offshore exploration. Conversely, arbitration is a consensual dispute resolution process based on the parties’ agreement to submit their disputes for resolution to an arbitral tribunal usually composed of one or three independent arbitrators appointed by or on behalf of the parties.

Maritime Arbitration, is a well-established dispute resolution system utilized principally for settling commercial maritime disputes. Such disputes may involve charterparties (contracts for leasing vessels), bills of lading (legal documents issued by carriers to shippers, serving as receipts), collisions (unintentional impacts between vessels or with fixed objects at sea), maritime insurance (coverage against risks), and offshore contracts (agreements related to oil and gas exploration, drilling rigs, or subsea infrastructure). Arbitration is regarded as the traditional method of resolving maritime disputes, dating as far back as the voyages of ships owned by ancient Phoenicians carrying the cargoes of Greek traders. In this context, maritime Arbitration is a preferred method for dispute resolution, not just because of its flexibility but also because arbitral awards are binding on parties.

## THE ROLE OF THE NEW YORK CONVENTION IN MARITIME ARBITRATION

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which was adopted in 1958 and entered into force in 1959, has been ratified by over 172 countries, including Nigeria. This international treaty revolutionized dispute resolution by recognizing the enforceability of arbitral awards across borders, thereby providing a framework for mutual recognition and execution.

Article III of the Convention – Recognition and Enforcement of Awards specified that: “Each Contracting

State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles.”

In the maritime sector, where most transactions involve cross-border elements, this convention has been transformative. It instills confidence among parties in international commercial and maritime contracts, assuring them that arbitration agreements and resulting awards will be upheld in signatory jurisdictions. This mitigates the risks associated with jurisdictional uncertainties and fosters smoother global trade.

## THE INFLUENCE OF THE LONDON MARITIME ARBITRATION ASSOCIATION

While the Convention establishes the legal foundation for maritime arbitration, international associations have further contributed to its evolution and global practice. In 1960, London pioneered the establishment of a dedicated Maritime Arbitration Association, known as the London Maritime Arbitrators Association (LMAA). This institution was created to offer a structured and specialized forum for arbitrating maritime disputes, drawing on the expertise of professionals versed in shipping law and practices. The LMAA's model has since influenced similar bodies worldwide, emphasizing efficiency and expertise. To date, London is by far the most popular seat for maritime arbitration, handling over 85% of the world's maritime arbitration.

Maritime arbitration has progressively garnered international recognition owing to its binding outcomes, which typically satisfy parties by providing equitable and enforceable resolutions. This acceptance has extended to various jurisdictions, including Nigeria, where it has evolved as a viable alternative to litigation, supported by legislative frameworks that integrate arbitration into the maritime landscape.

## MARITIME ARBITRATION IN THE NIGERIAN CONTEXT.

Generally, arbitration is not a new phenomenon in Nigeria and can be traced to our traditional method of resolving disputes even before the advent of colonialism. In *Okpuruwu v Okpokam*, the Honorable Justice Oguntade JCA (as he then was) observed thus:

***“In the pre-colonial times and before the advent of the regular courts, our people [Nigerians] certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to the elders or a body set up for that purpose. The practice has, over the years, become strongly embedded in the system that it survives today as custom”.***

However, with the introduction of the common law system, courts were established to adjudicate disputes in a manner considered more formal than precolonial methods. For issues relating to maritime, the 1999 Constitution of the Federal Republic of Nigeria vests power in the Federal High Court to have exclusive jurisdiction over admiralty matters, "including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports (including the constitution and powers of the Ports Authorities for Federal Ports) and carriage by sea.

Notwithstanding this legislative position, arbitration is increasingly being advocated as a swifter and more confidential alternative for maritime disputes, bolstered by institutional frameworks that facilitate ADR. In Nigeria, the evolution of maritime arbitration has been shaped by pivotal legislations and institutions, which shall be discussed below.

## ACTS AND INSTITUTIONS THAT HAVE SHAPED MARITIME ARBITRATION IN NIGERIA

### 1. Admiralty Jurisdiction Act (AJA) 1991:

Nigeria's Admiralty Jurisdiction Act (AJA) codified, for the first time in domestic legislation, the subjects of admiralty jurisdiction and the types of claims that are secured by maritime liens. This foundational Act vests exclusive admiralty jurisdiction in the Federal High Court for maritime claims. Section 3 provides that: "Subject to the provisions of this Act, the admiralty jurisdiction of the Court shall apply to:

- (a) all ships, irrespective of the places of residence or domicile of their owners;
- (b) all maritime claims, wherever arising.

Furthermore, Section 20 declares agreements ousting Nigerian court jurisdiction null and void under certain conditions. The AJA enables ship arrests for security in pending arbitrations, either domestic or foreign, and supports the enforcement of arbitral awards in maritime matters.

### 2. Arbitration and Mediation Act (AMA) 2023

AMA replaced the 1988 Arbitration and Conciliation Act, and was instrumental in modernizing Nigeria's arbitration framework, aligning it with the UNCITRAL Model Law (2006 amendments). A Section 91 of the AMA, is particularly relevant, as it defines "arbitration" to include commercial arbitration and explicitly encompasses maritime-related matters within the scope of "commercial". For maritime arbitration, this Act enhances the enforceability of awards and strengthens pro-arbitration policies. This boosts institutional and ad hoc maritime arbitrations, making Nigeria more attractive for regional disputes.

### 3. Coastal and Inland Shipping (Cabotage) Act 2003

This Act restricts coastal and inland shipping to Nigerian-owned, built, and crewed vessels to promote local capacity. While it is primarily regulatory, disputes under cabotage contracts (e.g., compliance, waivers) often involve commercial issues amenable to arbitration. It indirectly fosters maritime arbitration by encouraging Nigerian-flagged vessels and local contracts that may include domestic arbitration clauses.

### 4. Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007

This Act created NIMASA as the apex regulator for maritime safety, security, pollution prevention, ship registration, and labour. While focused on administration rather than disputes, NIMASA enforces laws like the Cabotage Act and handles related violations, some resolved via ADR. It supports maritime arbitration initiatives, including partnerships with the Maritime Arbitrators Association of Nigeria for dispute resolution centres and promoting arbitration in sector agreements.



## 5. Maritime Arbitrators Association of Nigeria (MAAN)

Established in 2005 as a non-profit body, MAAN is a dedicated institution for maritime arbitration. It promotes ADR in the maritime sector and maintains a panel of specialist arbitrators and experts. This association also administers arbitrations under its rules, and advocates for "MAAN Arbitration" clauses in contracts. The Maritime Arbitrators Association of Nigeria (MAAN) was founded by professionals who have developed expertise in commercial and maritime arbitration and were deeply aware of the need to position Nigeria as an appropriate venue for maritime arbitration. MAAN collaborates with stakeholders to educate on arbitration benefits and position Nigeria as an arbitration hub, including plans for a dedicated Maritime Arbitration and Dispute Resolution Centre.

## ADVANTAGES OF MARITIME ARBITRATION IN NIGERIA

Since its integration into Nigeria's legal framework through enabling acts and institutions, maritime arbitration has emerged as the preferred method over litigation for resolving disputes in this sector. This preference stems from several key advantages, which address the unique demands of maritime commerce. They include:

### 1. Time Efficiency:

The Nigerian judicial system is beset by systemic inefficiencies, including overcrowded courtrooms, delay tactics employed by legal practitioners, and instances of judicial impropriety. At the Special Legal Year court session of the Federal High Court, the Chief Judge of the Federal High Court, Justice John Terhemba Tsoho revealed that at the end of the 2023/2024 legal year, a total of 161,999 cases were pending and carried over to the 2024/2025 legal year. Consequently, litigation can extend over decades, impeding timely justice. In contrast, maritime arbitration promotes swift resolutions, minimizing vessel downtime, which is critical in an industry where delays can result in substantial financial losses. Given the commercial essence of maritime transactions, this swiftness ensures that disputes are addressed promptly, preserving operational continuity and averting economic detriment.

### 2. Binding Nature:

While arbitration is one of several ADR methods, it is particularly favored for maritime disputes due to the enforceable character of its awards. Unlike mediation or negotiation, which yield non-binding recommendations, arbitral decisions carry legal weight, providing parties with assured finality and reducing the likelihood of protracted appeals. In *NNPC v Fung Tai*



*Engineering Co Ltd*, the Court emphasized that arbitral awards are final and binding and should be enforced with only minimal judicial intervention.

### 3. Specialized Expertise of arbitrators:

Arbitration panels often comprise arbitrators with profound maritime knowledge, such as those appointed by the Maritime Arbitrators Association of Nigeria (MAAN). This expertise enables informed adjudication of technically complex cases, surpassing the generalist approach of judges who may lack domain-specific understanding. Judicial performance in Nigeria is occasionally hampered by insufficient familiarity with maritime intricacies, making

specialized arbitrators a superior choice for equitable outcomes.

#### **4. Confidentiality and Flexibility:**

Arbitration safeguards sensitive commercial information inherent in maritime disputes. This is promoted by conducting private proceedings, in a bid to prevent public disclosure that could harm reputations or competitive advantages. Procedures are adaptable, allowing parties to tailor processes to their needs. For instance, charterparty disputes can be resolved discreetly, preserving business relationships and fostering a “no victor, no vanquished” situation, unlike the adversarial nature of litigation. This confidentiality is vital in the maritime sector, where maintaining partnerships supports economic stability.

#### **5. Cross-Border Enforceability:**

Ratification of the New York Convention, reinforced by the AMA, enhances the international validity of Nigerian arbitral awards. Unlike domestic laws such as the Coastal and Inland Shipping (Cabotage) Act, which may lack cross-border reach, arbitration awards are enforceable globally. This is essential for maritime operations, predominantly involving international elements, ensuring that resolutions transcend national boundaries without jurisdictional hurdles.

## **CHALLENGES OF MARITIME ARBITRATION IN NIGERIA**

Despite its advantages, maritime arbitration in Nigeria faces several impediments that hinder its full potential. Some of the common challenges include:

### **1. Absence of a Dedicated Maritime Arbitration Center**

Unlike established hubs in London or Singapore, Nigeria lacks a prominent maritime arbitration centre, and this poses a setback. Worse still, Nigeria’s domestic ship-owning rate is relatively low. This leads foreign ship owners, who dominate the sector, to opt for foreign venues of arbitration with more standardized systems. This ultimately results in diminished local expertise development. In *Owners of MV Lupex v Nigerian Overseas Chartering & Shipping Ltd*, the Supreme Court underscored the tendency for maritime disputes to be resolved outside Nigeria. The dispute arose from a charterparty containing a London arbitration clause, but proceedings commenced in the Federal High Court, and the vessel was arrested. On application, the Supreme Court stayed the action and referred the dispute to arbitration in London, affirming that Nigerian courts have a prima facie duty to enforce arbitration agreements chosen by the parties. The decision illustrates the strong preference for foreign arbitral forums in maritime transactions involving Nigeria.

### **2. Institutional Limitations:**

There is a scarcity of specialized maritime arbitration centres and institutional infrastructure. Despite the presence of bodies like the Lagos Court of Arbitration and the Maritime Arbitrators Association of Nigeria, Nigeria’s arbitral landscape remains weak when measured against leading arbitration hubs across the globe. This lack of established arbitration institutions leads to heavy reliance on foreign seats. This dependency in turn undermines local capacity and exposes parties to unfamiliar procedural norms.

### **3. High Costs and Prohibitive Expenses:**

Although maritime arbitration is often preferred over traditional litigation for its relative speed and confidentiality, the associated expenses are overly high, particularly for local Nigerian parties. This challenge is intensified by the structure of the widely used standard form of maritime contracts. Agreements such as shipbuilding contracts, bills of lading, and charterparties are commonly drafted on forms developed by international organisations, which often contain arbitration clauses in favour of London, Singapore, or New York. For Nigerians, this leads to additional burdens including international travels and currency conversions. These prohibitive costs often deter smaller businesses from initiating claims, thereby perpetuating unequal access to justice.

#### **4. Enforcement Hurdles:**

Although arbitral awards are binding, judicial delays or inconsistencies in recognition persist. Some stakeholders remain resistant to out-of-court settlements, viewing them as less authoritative. This attitude towards arbitration can lead to disregard and further postponements in implementation. The Nigerian Federal High Court, Lagos Judicial Division, recently delivered a judgment in an application brought by Armada Ship Management (S) PTE Limited for the recognition and enforcement of a London Maritime Arbitration Association (LMAA) Award against Schiste Oil & Gas Nigeria Limited (“The Award Debtor”). The Award Debtor resisted the enforcement of the award on the grounds that it was under some incapacity and could not participate in the arbitration proceedings due to the COVID-19 containment measures that were in place in Nigeria at the time the notice of arbitration was issued. This indicates that arbitral awards, though binding, still face resistance when it comes to enforcement.

### **RECOMMENDATIONS**

To surmount existing challenges and fully achieve potential, the following measures are proposed:

#### **1. Establishment of an Internationally Recognized ADR Centre:**

Mere reformation of Acts would have little or no effect if there is no location to enforce it. Hence, the importance of establishing a dedicated International Maritime Arbitration Centre cannot be overemphasized. Having a specialized centre will enhance credibility and attract global cases, instilling confidence in foreign parties. This can be achieved with the joint efforts of the government and agencies like the Nigerian Maritime Administration and Safety Agency (NIMASA) and MAAN.

#### **2. Capacity Development:**

Implementing training programs for arbitrators, alongside expanding the MAAN panel with internationally experienced experts, would elevate professional standards. Maritime arbitration in Nigeria can be enhanced by adopting methods used internationally, such as the Chartered Institute of Arbitrator’s International Maritime Arbitration Diploma and the International Maritime Law Arbitration Moot (IMLAM), which have been organized in Asia, Europe, and Australia over the years. Nigeria should introduce specialized maritime arbitration training programmes and encourage academic–industry collaboration.

#### **3. International Partnerships and Digitalization:**

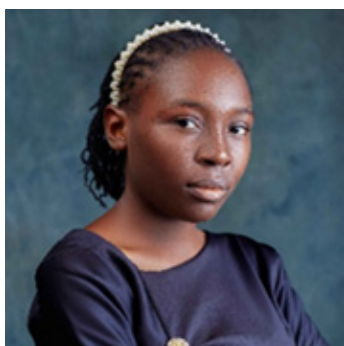
To strengthen maritime arbitration in Nigeria, collaboration with countries that are leaders in the field is essential. For example, partnerships with institutions in London can provide expertise and best practices. Furthermore, leveraging digital platforms for virtual hearings can remove logistical barriers, thereby increasing foreign participation. The use of these platforms will ultimately enhance the efficiency and credibility of Nigeria’s maritime arbitration framework.

### **CONCLUSION**

In conclusion, maritime arbitration remains a cornerstone of effective dispute resolution in Nigeria’s maritime sector, due to its proven effectiveness. Despite persistent challenges, it holds immense potential to bolster the nation’s alternative dispute resolution framework and support the sustainable development of the blue economy. By addressing the obstacles that bedevil it through collaborative efforts involving the government, maritime institutions such as MAAN, and key stakeholders, Nigeria can fully harness the benefits of maritime arbitration and foster a thriving maritime industry in the foreseeable future.

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# THE NIGERIAN TAX REFORM ACTS: HIGHLIGHTS OF THE KEY PROVISIONS

AUGUSTINE UGBOMA

## INTRODUCTION

The Nigeria tax system has long been riddled with complexity, and thus has crawled in the face of effective revenue generation, investment attraction, modernization of tax administration as well as engagement with the international business community. Over the years, the government's relatively low tax revenue, investors' lack of confidence in Nigeria's tax policies and limited alignment with the international best practices made visible the urgent need for comprehensive tax reform in Nigeria. As a legislative response, the Nigerian government enacted four key tax reform laws (the Nigeria Revenue Service Act 2025, the Joint Revenue Board Establishment Act 2025, Nigeria Tax Administration Act 2025 and the Nigeria Tax Act 2025) aimed at simplifying the tax system, improving revenue generation efficiency, promoting investment, encouraging voluntary compliance and modernizing the country's tax administration framework. This article discusses the major provisions and key policy changes introduced by each of these four laws.

### NIGERIA REVENUE SERVICE ACT 2025

The Nigeria Revenue Service Act 2025 (the "NRSA") replaces the Federal Inland Revenue Service (FIRS) with a new tax

body known as the Nigeria Revenue Service (the "Service"). The objective of the NRSA as set out in section 1 is to provide for a legal, institutional and regulatory framework for the administration of taxes and revenues accruable to the government of the Federation.

Section 3 of the NRSA establishes the Service. The Nigeria Revenue Service is a body corporate with perpetual succession, it may sue and be sued in its corporate name and it may acquire or dispose of any property for the purpose of carrying out its functions under the NRSA.

### Functions of the Service

Section 4 of the NRSA sets out the function of the Nigeria Revenue Service to include the assessment of persons including corporations, companies, partnerships, enterprises and individuals chargeable with tax. Notably, the scope of the functions of the Nigeria Revenue Service has been broadened to expressly include partnerships, corporations and individual's chargeable with tax which were not included in the Federal Inland Revenue Service Act.

### Power to Assist in Collection of Tax

Another dimension provided by the NRSA, is the express authorization for the Nigeria Revenue Service to assist in the collection of taxes that are chargeable or

collectible by state tax authorities. This provision promotes efficiency in payment and collection as well as ensures all taxes are collected from chargeable persons.

Furthermore, section 5(5) of the NRSA empowers the Service to assist international tax authorities in collecting taxes for a fee as may be agreed upon. This provision encourages international collaboration and strengthens Nigeria's participation in global tax administration.

### Establishment of the Governing Board for the Service

The NRSA in section 6 establishes for the Nigeria Revenue Service a governing board which is responsible for the overall supervision of the Service as specified under the NRSA. Amongst other duties, the governing board provides



general policy guidelines relating to the functions of the Service and reviews and approves its strategic plans.

### **Establishment of Technical Committee for the Service**

Section 14 of the NRSA establishes for the Service a Technical Committee to consider all tax matters that require professional or technical expertise, and make recommendations to the Board and advise the Board on any aspect of the functions and powers of the Service under the NRSA.

The Technical Committee may co-opt, from the Service, such director or officer as it may be necessary for the effective performance and competency in tax administration.

### **Funding of the Service**

Section 22 of the Act establishes a fund for the Service. The fund shall comprise four per cent (4%) of the total revenue collected by the Service, excluding petroleum royalties, as may be appropriated by the National Assembly for the Service's capital and recurrent expenditures, as well as any other monies lawfully accruing to the Service from other sources.

In addition, the Service by section 27 of the Act may receive gifts provided that conditions attached to such gifts are not inconsistent with the functions of the service under the NRSA.

The Service is also empowered by section 28 of the NRSA to borrow by way of loan, overdraft or otherwise from any source, such sums as it may require for the performance of its functions and meeting of its obligations under the NRSA.

### **Exemption of the Service from Tax**

Section 29 of the NRSA exempts the Service from all income taxes imposed under any law in Nigeria, provided that the exemption shall not relieve the Service from the statutory obligation to deduct and remit taxes as may be required by the relevant tax laws.

Generally, these provisions are designed to ensure tax administration efficiency and to enhance revenue generation for the Government of the Federation. In addition, the NRSA further

strengthens tax collection in both local and international level as well as compliance mechanisms.

## **JOINT REVENUE BOARD ESTABLISHMENT ACT 2025**

The objectives of the Joint Revenue Board Establishment Act ("JRBEA"), as provided in section 1 of the JRBEA, are to provide a legal and institutional framework for the harmonization and coordination of revenue administration in Nigeria, to establish a mechanism for efficient dispute resolution, and to promote the rights of the taxpayers.

The JRBEA establishes the following three major bodies for the smooth and effective administration of administration in Nigeria;

- a. The Joint Revenue Board (the Board),
- b. The Tax Appeal Tribunal (TAT),
- c. The Office of the Tax Ombud.

### **Joint Revenue Board (the Board)**

Section 3 of the JRBEA established the Joint Revenue Board as a body corporate with perpetual succession which may sue or be sued in its corporate name and may acquire, hold or dispose of its property.

### **Functions and Powers of the Board**

The functions of the Board under section 5 of the JRBEA includes;

- i.** integrating and maintaining a database of Taxpayer Identification Numbers for every taxable person in Nigeria;
- ii.** resolving disputes between different tax authorities;
- iii.** advising the Federal and State Governments on introduction of new taxes and changes to existing ones; and
- iv.** advising the government on double taxation matters within Nigeria, and in respect of double taxation arrangements concluded or under consideration with any other country, including other taxation matters having effect throughout Nigeria.

The function of the Board is a crucial one as it acts as a link between Federal, State and local tax authorities in Nigeria for effective administration of tax in Nigeria.

The powers of the Board as set out in section 6 of the JRBEA include provision of general policy guidelines relating to its functions, management and superintendence of the policies of the Board on matters relating to the administration of its functions under the JRBEA or any other law, as well as review and approval of the strategic plans of the Board.

### **Funds of the Board**

Under section 14 of the JRBEA, the Board is allowed to maintain a fund which shall be for the purpose of administration of the Board.

Section 19 of the Act authorizes the Board to accept gifts of land, money, aids or other assets, provided that the terms and conditions of the acceptance are consistent with the functions of the Board under the JRBEA.

In addition, under section 20 of the JRBEA, the Board may, with the approval of the National Economic Council, borrow by way of loan, overdraft or otherwise from any source, such sums as it may require for the performance of its functions and meeting of its obligations under the JRBEA. The Board is exempted from all taxes on income imposed under any law in Nigeria, except with respect to its obligations to deduct and remit taxes under any of the laws.

### **Tax Appeal Tribunal (the Tribunal)**

Section 23 of the JRBEA established the Tax Appeal Tribunal to exercise the jurisdiction and powers to settle any tax dispute and controversy arising from the



administration of the JRBEA or any other tax laws made by the National Assembly.

Section 24 provides that the Tribunal shall consist of five members which shall be referred to as Tax Appeal Commissioners.

In addition to the jurisdiction conferred on the Tribunal by section 23 of the JRBEA, section 29 expressly conferred additional jurisdiction on the Tribunal which extends to adjudication of tax disputes and controversies arising from Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 or any other tax law made by the House of Assembly of a State.

Section 30 of the JRBEA establishes the fund of the Tribunal which shall be through appropriation by the National Assembly.

### **The Office of Tax Ombud**

Section 36 of the JRBEA establishes a body to be known as the Office of the Tax Ombud. It shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name and may own or dispose of property whether movable or immovable.

### **Functions and Powers of the Tax Ombud**

Under section 41 of the JRBEA, the powers and functions of the Office of the Tax Ombud includes;

- i.** Power to serve as an independent and impartial arbiter to review and resolve complaints relating to tax, levy, regulatory fee and charges, customs duty or excise matters.

ii. Review complaints lodged by taxpayers against tax officials and authorities and resolve them through mediation or conciliation,

iii. enter and inspect any premises or place where any tax authority, agency or official performs any function or duty under any law as well as institute legal proceedings on behalf of taxpayers.

### **Limitations to the power of the tax ombuds**

Section 43 provides limitations on the actions of the Office of the Tax Ombud, as follows:

i. The Office of the Tax Ombud shall not have power to interpret tax legislation other than to the extent that it relates to operational, procedural or administrative issues arising from the application of the provisions of the relevant tax law.

ii. The Office of the Tax Ombud shall not have power to review or determine issues that are sub judice before a court of competent jurisdiction or tribunal on the date of the receipt of a complaint.

iii. The Office of the Tax Ombud shall not have power to determine any tax liability or duty or issue tax assessment, review any complaint by or on behalf of a tax official concerning matters relating to the relevant tax authority in respect of any personal grievance relating to the office.

### **Funding of the Tax Ombud**

Under section 44 of the JRBEA, the Office of the Tax Ombud shall be funded through appropriation by the National Assembly.

### **Role and Potential Impact of the Tax Ombud**

The Office of the Tax Ombud acts as a watchdog unto tax authorities ensuring that tax authorities perform their duties according to the law. This inevitably cuts down on any potential arbitrariness by tax authorities. Beyond that, the Office of the Tax Ombud safeguards the rights of taxpayers, ensuring that the rights of taxpayers are upheld by the tax authorities. In addition, they act as mediator between tax authorities and taxpayers ensuring that disputes are resolved amicably and expeditiously.

## **THE NIGERIA TAX ADMINISTRATION ACT 2025**

The Nigeria Tax Administration Act 2025 (“NTAA”) seeks to enhance tax compliance and modernize the Nigerian tax system to ultimately increase tax

revenue.

The principal objective of the NTAA as provided in section 1 of the NTAA is to provide uniform procedures for a consistent and efficient administration of tax laws in order to facilitate tax compliance by taxpayers and optimize tax revenue.

Section 3 of the NTAA clearly defines the jurisdiction of tax authorities namely the Nigeria Revenue Service and the Federal Capital Territory and State Inland Revenue Authorities.

The Nigeria Revenue Service has the exclusive responsibility to administer taxes on companies, individuals employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigeria Police Force, other than in a civilian capacity, on officers of the Nigerian Foreign Service, on non-resident persons who derive profit or income from Nigeria or any income derived from employment in Nigeria by a person, not being a resident of any State in Nigeria. This power also extends to income taxes, stamp duties and tax incentives.

The relevant tax authority in a State or the Federal Capital Territory is responsible for the administration of taxes for resident individuals in respect of the imposition of tax on their income, profits or gains; the ascertainment of profits and income, and the determination of applicable tax rates.

Furthermore, section 3 (3) of the NTAA allows for collaboration of tax authorities in collection of tax in Nigeria. This underscores a unified approach of the tax authorities envisaged by the NTAA in administration of tax in Nigeria.

Under Section 4 of the NTAA, every taxable person must register with the relevant tax authorities and obtain a Taxpayer Identification (Tax ID) for the purpose of compliance with their tax obligations, while section 5 of the NTAA extends the same duty to every ministry, department or agency of the Federal or a State government, and every Local Government.

Section 6 of the NTAA, mandates that a non-resident person who supplies taxable goods or services to any person in Nigeria, or derives income from Nigeria shall register for tax purposes.

es and obtain a Tax ID. A non-resident person who derives only passive income from investment in Nigeria may not be required to register for tax but shall provide relevant information as may be prescribed by the Service.

## SOME KEY PROVISIONS OF THE ACT

### (i) Returns for Companies

Section 11 of the NTAA mandates every company, including a company granted exemption from incorporation, whether or not it is liable to pay tax under the NTAA or any other tax law, for a year of assessment, with or without notice from the Service, to file a self-assessment return with the Service in the prescribed form at least once a year.

### (ii) Sector- specific returns

**a.** Section 12 of the NTAA provides for filing of estimated income tax returns for companies engaged in Liquefied Natural Gas (LNG). These returns include estimated profits or losses for the accounting period for income tax purposes.

**b.** Section 16 provides for Estimated returns for companies involved in Upstream Petroleum Operations.

**c.** Section 17 requires companies engaged in Upstream Petroleum Operations to file actual and audited accounts of their revenues and profits or losses.

**d.** Sections 18 and 19 of the NTAA require monthly and annual filing of petroleum royalty returns by licensees and lessees.

**e.** Non-resident companies operating in transport services by sea or air into Nigeria must file monthly returns with evidence of payment for carriage of passengers, mail, livestock or goods loaded in Nigeria.

**f.** Taxable persons enjoying incentives administered by the relevant tax authorities must submit, in addition to annual tax returns, annual tax incentives return in the form prescribed by the service.

**g.** Section 28 requires persons obligated to deduct and remit tax to file monthly withholding returns with the appropriate tax authority.

### (iii) Returns for Individuals

Section 13 of the NTAA mandates all taxable persons whether or not liable to pay tax to file a tax return. In furtherance to the above, section 14 provides that a relevant tax authority may issue



guidelines for the filing of a simplified income tax return by low-income earners or persons operating in the informal sector.

### (iv) Disclosure of Tax Planning/Prohibition of Tax Avoidance Arrangements

Section 30 of the NTAA mandates any person who enters or intends to enter into any disclosable transaction or agreement for the purpose of obtaining tax benefits, to provide information relating to the disclosable transaction or agreement, to the relevant tax authority.

Section 46 empowers the relevant tax authority to direct such adjustment as it deems fit or disregard any transaction or any disposition if it is of the opinion that the amount of any tax payable in such transaction or disposition is artificial or fictitious, so as to counteract the reduction of liability to tax affected.

Furthermore, section 47 empowers the relevant tax authority to counteract a prohibited tax avoidance arrangement by disregarding the arrangement or making adjustments thereto, whether in whole or in part, through an assessment, unless the taxable person proves to the satisfaction of the relevant tax authority that the granting of such tax benefit, in the circumstances, would be

in accordance with the object and purpose of the relevant provisions of the Act or any other tax law.

This approach would provide the relevant tax authority with the opportunity to scrutinize aggressive tax strategies and loopholes that may undercut revenue generation.

### **Tax Liability of a Company being Wound up**

Section 53 of the NTAA makes a liquidator responsible for ensuring tax liabilities are paid or provided for before distributing company assets to shareholders. The liquidator shall be personally liable if tax obligations are not satisfied.

### **Power of the President to Exempt Companies from Payment of Tax**

Section 73 empowers the President with the approval of the National Assembly to exempt any company or class of companies or profit of any company from tax on any grounds which appears to be sufficient, provided the order is published in the official gazette.

### **Sharing Formula of VAT Revenue**

Section 81 of the NTAA introduced a new sharing formula for value added tax ("VAT") revenues, as follows;

- a.** 10% to the Federal Government;
- b.** 55% to the State Governments and the Federal Capital Territory;
- c.** 35% to the Local Governments.

The amount of VAT revenue standing to the credit of states and local governments shall be distributed among them on the following basis

- a.** Equally - 50%
- b.** Population - 20%
- c.** Consumption - 30%.

This framework is intended to ensure that states are rewarded in accordance with consumption-based VAT generation.

### **Establishment of State Internal Revenue**

Section 87 of the NTAA establishes the State Internal Revenue Service (State Service) for each state of the Federation. The State Service shall be autonomous in the day-to-day running of its financial, technical, professional and administrative affairs.

Section 88 of the NTAA provides for the functions of the State Service to include assessment of individuals, estates, trusts and settlements, communities and families as well as assess, collect, account and enforce payment of taxes as may be due to the State Government or any of its agencies.

### **Establishment of Local Government Revenue Committee**

Section 93 of the NTAA equally establishes for each local government in a State, a committee to be known as the Local Government Revenue Committee.

According to section 94 of the NTAA, the Revenue Committee is responsible for the assessment and collection of all taxes,

finances and rates under its jurisdiction and shall account for the amounts collected, in a manner to be prescribed by the Local Government.

### **Currency for Assessment and Payment of Tax**

Section 39 of the NTAA provides for the currency in which tax assessment and payment are to be made. It provides that tax shall be assessed in the currency of transaction.

Tax, including royalty, assessed in a currency other than the Nigerian Naira shall be paid in that currency.

In the case of any return relating to petroleum operations, all computations relating to tax shall be in US Dollars.

### **Penalty and Punishment under the Act**

Generally, the NTAA under chapter 4 provides for strict penalty and punishment in the event of breach of any of its provision and this punishment includes heavy fines and imprisonment terms. For licensee or lessee, penalty and punishment include revocation of licenses and leases. This will make for strict and effective compliance of the NTAA if it is properly implemented. High and Lows of the Act

#### **Highs**

**a.** The NTAA provides for a solid, clear and uniform framework for tax administration which will improve compliance and revenue collection.

**b.** Sector-Specific Returns

requirements increase transparency in high-risk revenue sectors.

**c.** Disclosure and anti-avoidance provisions give the tax authorities increased capacity to tackle aggressive tax planning.

### **Lows/Concerns**

**a.** The Act exposes companies, especially those involved in oil and gas operations, to multiple and overlapping compliance. This in turn will occasion compliance costs.

**b.** Implementation risk remains significant which may be occasioned by inconsistent enforcement.

The NTAA is designed to achieve coordinated effective tax administration in Nigeria. If the NTAA is well implemented, it can effectively and substantially modernize and harmonize tax administration in Nigeria. The legislation undoubtedly strikes a balance between strengthening enforcement and broadening tax transparency. However, the critical determinant of success will be practical implementation. In addition, capacity building at Federal, State and Local levels, efficient coordination among authorities and clear administrative rules will be essential in realizing the objective of the NTAA.

## **NIGERIA TAX ACT 2025**

### **General Provisions and Objectives**

The Nigeria Tax Act 2025 ("NTA") consolidates and harmonizes tax legislation, ensuring clarity,

efficiency and consistency in Nigeria tax regime. Section 1 of the NTA sets out the principal objective of the NTA, namely, to provide a unified fiscal legislation governing taxation in Nigeria.

Under section 3 of the NTA, tax is imposed on the profits or gains of any company or enterprise, income of any individual or family, and income arising, accruing or due to a trustee, or an estate.

While section 4 of the NTA enumerates taxable items, such as royalties, interest, winnings, charges, and dividends, the list is not exhaustive; other items may be construed as falling within the scope of taxable items under the provision.

The NTA expands on key definitions, such as;

**a.** The definition of interest now includes penal interest, foreign exchange difference arising in relation to securities, payment in relation to derivatives or similar payment.

**b.** The definition of dividend for a liquidating company has been expanded to include distributions of a capital nature.

**c.** A small company is now defined as a company that earns gross turnover of N50,000,000 or less per annum with total fixed assets not exceeding N250,000,000, provided that any business providing professional services shall not be classified as a small company.

### **Taxation of Companies and Individuals**

Section 5 of the NTA provides flexibility on how tax may be charged for both company and individual.

**a.** A company may be assessed in its own name or in the name of its principal officer, agent, representative, receiver, administrator or liquidator.

**b.** An individual may be assessed in their own name, in the name of a family, trustee, estate, administrator, attorney or agent in Nigeria. Profits Deemed to Accrue in Nigeria

Under section 6 of the NTA, the profits of a Nigerian companies are now deemed to accrue in Nigeria irrespective of where such profits arise and whether or not such income was brought into or received in Nigeria.

Section 6(2) of the NTA introduces a major anti-tax avoidance rule. By this provision, undistributed profits held in a foreign company that is attributable to a Nigerian company will be deemed distributed if such distribution would not harm the company's business, **and such profit will be taxed accordingly.**

Similarly, where a Nigerian company controlled by not more than five individuals fails to distribute profits that could be distributed without detriment to the company's business, the service will deem such profit distributed and taxable.

### **Taxation of Non-Resident**

Under section 17(1) of the NTA, income, profits or gains of a non-resident person accruing in, or derived from Nigeria are chargeable to tax in accordance with the provisions of the NTA.

Gains derived by a non-resident person from disposal of chargeable assets are taxable in Nigeria where the gains relate to

- a.** a trade, business, profession or vocation carried on by the non-resident person in Nigeria,
- b.** any asset located in Nigeria or;
- c.** any asset deemed to be located in Nigeria under the NTA.

### **Allowable Deductions**

The NTA introduces a streamlined rule for deductible expenses. Notably, deductions are now limited to expenses incurred wholly and exclusively in the production of the profit. This provision removes the previous "wholly, reasonably, necessarily exclusively" rule, thereby eliminating the longstanding disputes over what qualifies as "reasonable and necessary."

### **Rate of Taxes**

Section 51 of the NTA restructures classification of companies for tax purposes.

- a.** Small companies are taxed at 0%
- b.** Any other company is taxed at 30%.

This replaces the previous three-tier system of small, medium and large companies.



### **Value Added Tax**

Under the NTA, VAT is to be charged on all taxable supplies. Section 148 of the NTA provides that VAT is to be charged at 7.5%.

Section 152 provides that a taxable person shall pay input VAT to a supplier on any taxable supply made to the person, while section 154 stipulates that a taxable person shall, on making taxable supplies, collect output VAT at the rate specified in section 148.

In addition, section 155 stipulates that the VAT collection may be carried out by Federal, State, Local Government and their respective Ministries, Departments or Agencies. These provisions are aimed at promoting a broader tax administrative structure.

Furthermore, according to section 187, essential items are tax exempt while basic food items are at 0%.

### **Surcharge**

Under section 159 of the NTA, surcharge is imposed at 5% rate on fossil fuel products provided or produced in Nigeria.

However, according to section 162 of the NTA, some fossil fuel products are exempted from surcharge, such as clean or renewable energy products, household kerosene, cooking gas and compressed natural gas (CNG).

### **Stamp Duties**

According to section 124 of the NTA, stamp duty is imposed on instruments that are executed in or outside Nigeria, and it relates to any property situated or to things done in Nigeria. Under the NTA, stamp duty is charged at a fixed ad valorem rate.

Duties are to be denoted by way of tax stamps, a die, electronic or digital tagging, electronic receipt, issuance of certificate, or any other means as may be determined by the relevant tax.

### **Conclusion**

The NTA is a comprehensive legislation on taxation in Nigeria. Its broadened definition, clearer administrative provisions and anti-tax avoidance rules position it as a powerful tool to promote increase in revenue generation and tax transparency. On the one hand, it has sparked public concern due to uncertainties about its economic impact. Effective implementation, accountability and tax administrative consistency will determine whether the NTA will deliver its intended positive outcomes.



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# INTERVIEW WITH MOKHALI SHALE

Founding President National University of  
Lesotho International Trade Club"

**Q Please tell us about yourself and your academic journey.**

**Answer:** I am Mokhali Shale, a final year law student at the National University of Lesotho (NUL). I am a hardworking and perseverant person. Above all else I am curious. My academic journey has been shaped by this curiosity, particularly into pan – Africanism and how the law can guide mother Africa into a promising, self-sufficient future for its people.

I began my academic journey in pursuit of my LLB (Hons.) in 2021 and the first thing that caught my attention was what could be learnt beyond the classroom. I quickly joined moot court competitions within the school and by my second year, I had been selected by the faculty to represent the NUL faculty of law in the 21st edition of the John H. Jackson International Trade Law moot court competition in Accra, Ghana. Although we did not progress to the finals in the competition, having such an experience at that early stage in my academic career lit an inextinguishable fire in me to continuously be curious.

As soon as we returned from the competition I frantically searched for my next challenge. I knew that my heart belonged to international economic law, and as such, it was only right that my next challenge be the Foreign Direct Investment (FDI) International Moot Court Competition. I am proud to say that with the guidance of my seniors in the FDI moot, I came in 17th place globally across all regions in the preliminary rounds with a total score of 87.5/100.

By the second year of my undergraduate degree, I was already mooted in areas of law considered so complex that they were only taught in the fifth year.

In my third year I was tasked with leading the coaching staff in the 22nd edition of the John H. Jackson moot court competition held in Nakuru Kenya. Alongside this task, I had been working on founding the first ever international trade association in the university, in collaboration with the World Trade Organisation (WTO) Research Chair. As the founding President, the mandate of the

association spanned beyond just the law, but across all faculties, understanding that international trade is an interdisciplinary tool that can be used to guide Africa into a prosperous socio-economic future.

This passion is not lost in my academic studies. As I reach the end of my academic journey, the fire still burns bright, as I have completed my dissertation titled 'Tourism as a Tool for Development: A Critical Analysis of Lesotho's Potential to Leverage the AfCFTA to promote Foreign Direct Investment in the Tourism Sector'. This piece of work is a combination of my two primary areas of interests and is an investigation into the application of the AfCFTA Framework as a means of providing practical African solutions for African economic dilemmas.

**Q Outside of academic settings, which experiences, interests, or influences have most significantly shaped the way you think, lead, and engage with complex issues?**

**Answer:** Beyond the classroom, my mindset has been profoundly shaped by growing up in Lesotho and witnessing first-hand the daily realities of a small, landlocked nation navigating bigger regional and global forces. Conversations with elders in my community, many of whom lived through the transition from colonial legacies to independence and the challenges that followed, instilled in me a deep appreciation for resilience and collective problem-solving. These weren't abstract; they were stories of people using limited resources creatively to build the future.

International Travel has also been transformative. Representing NUL in Ghana and Kenya exposed me not just to competition, but to peers across Africa grappling with similar questions of sovereignty, economic dependence, and integration. Those interactions reinforced my belief that leadership isn't about charisma alone, but about the ability to listen across differences and connect dots between local realities and continental ambitions. Reading widely, particularly Pan-African thinkers like Nkrumah, Nyerere, and more contemporary voices on developmental state theory, has sharpened how I engage complexity. I've learned that issues like trade, investment, or

governance are rarely purely legal or economic; they're intertwined with history, culture, and power dynamics. This holistic lens pushes me to lead by building bridges rather than silos.

**Q What specific strategies or habits did you adopt to achieve academic excellence?**

**Answer:** A key habit has been active recall and teaching others. After lectures, I'd summarise concepts in my own words and explain them to classmates, especially in group study sessions I organised. This exposed gaps quickly. I also kept a "curiosity journal" where I noted real-world questions arising from class material (e.g., how AfCFTA provisions might apply to Lesotho's tourism sector) and revisited them during research. Time-blocking was essential, I protected focused blocks for assignments while allocating specific slots for moots and the Trade Association to avoid burn-out. Finally, I embraced feedback. After every moot, test or assignment, I dissect critiques and iterate. Excellence, for me, came from compounding small, deliberate improvements rather than last-minute heroics.

**Q In your view, what is the most common misconception young Africans hold about leadership, and how can this mindset be reframed?**

**Answer:** Many young Africans equate leadership with visibility, e.g. holding office, having a large following, or being the loudest voice in the room. This creates a performative understanding where the title or platform matters more than the substance of impact. It leads to frustration when "leaders" deliver speeches but little change, or to cynicism when personal ambition overshadows collective progress.

Africans, in particular young African leaders, should centre leadership on stewardship and capability. It's about building systems, institutions, and teams that outlast you. True leadership often happens quietly: designing better policies, mentoring others, or creating mechanisms for accountability. We can shift this by celebrating "invisible" leaders, entrepreneurs solving local problems, civil servants improving service delivery, or researchers generating Afro-centric knowledge. Mentorship programmes and education should emphasise execution, adaptability, over charisma, understanding that, leadership is less about being chosen and more about choosing to solve problems consistently, even without

applause. It is all about the mindset.

**Q Beyond titles, accolades, or public recognition, what does success mean to you personally, and how has that definition evolved over time?**

**Answer:** Success, for me, is the quiet confidence that my work contributes meaningfully to Africa's self-determination, whether through ideas, institutions, or people I've influenced. It's knowing that my efforts, however small, move us closer to an Africa that solves its own problems with its own tools.

Earlier in my journey, success looked like external validation: winning moots, good grades, or founding the NUL International Trade Association. The evolution happened through reflection after those experiences. I realised accolades can be fleeting and sometimes disconnected from real impact. Today, it's more internal and relational; for instance, seeing a junior student I mentored develop their own voice, or producing research that could inform policy, or simply maintaining intellectual honesty in a complex world. It's about legacy through contribution, not monuments to self. This shift in thinking has kept me grounded and motivated for what is to come in my career.

**Q How do you see the legal landscape in your jurisdiction evolving over the next five years, particularly in response to technological, economic, and political changes?**

**Answer:** In Lesotho and the broader SADC region, I expect accelerated digitalisation of legal processes to improve efficiency and reduce corruption risks. Economically, the AfCFTA's implementation will drive harmonisation of trade rules, investment codes, and dispute resolution, pushing Lesotho to strengthen its domestic frameworks to attract FDI, especially in tourism, agriculture, and renewables.

Politically, youth's demands for accountability and climate justice will likely amplify calls for constitutional and governance reforms. We may see greater integration of international obligations (climate, trade, human rights) into national law, alongside efforts to address judicial independence and capacity. Challenges like skills gaps and infrastructure lag will persist, but opportunities exist in leveraging technology for legal aid

and cross-border collaboration. The solution will be proactive, adaptive law-making that treats law as an enabler of development rather than a barrier.

**Q** **If you had the opportunity to redesign legal education in Africa, what elements would you remove, and what new approaches or components would you introduce to better prepare students for contemporary challenges?**

**Answer:** I would remove the heavy over-reliance on rote memorisation and colonial-era curricula that prioritise black-letter law in isolation. Too much focus on outdated cases and theoretical exams without practical application creates graduates strong in doctrine but weak in problem-solving.

I would introduce mandatory interdisciplinary modules (law + economics, technology, data analytics, and African political economy), clinical legal education with real community impact projects, and simulation-based learning like mandatory moots, policy drafting, and negotiation exercises. Greater emphasis on research methods, ethics, and leadership development would be essential. Finally, assessment should value innovation, collaboration, and demonstrated impact alongside exams. The goal: produce lawyers who are not just technicians, but architects of African futures.

**Q** **From your participation in programmes engaging governance, and youth focused initiatives, what practical strategies can ensure that such contributions move beyond documentation and translate into tangible implementation?**

**Answer:** I would remove the heavy over-reliance on rote memorisation and colonial-era curricula that Accountability mechanisms are crucial: build clear follow-up frameworks with timelines, assigned responsibilities, and measurable KPIs from the outset. Involve implementing agents (such as government officials, community leaders) in the design phase so ownership is shared. Pilot small-scale projects to demonstrate

proof-of-concept, then use evidence to advocate for scaling.

Sustained advocacy through multi-stakeholder platforms helps maintain momentum. Digital tracking tools for recommendations can increase transparency. Most importantly, cultivate relationships across sectors- because youth initiatives succeed when they position young people as partners, not just critics. Follow-through often depends on persistent, respectful engagement rather than one-off events.

**Q** **For a law student in Africa who aspires to move beyond traditional legal practice into policy, governance, or leadership, what concrete steps should they begin taking now?**

**Answer:** Start by building expertise in one niche area, whether trade, climate, digital governance, etc, through dissertations, articles, or blogs. Gain practical exposure-join or found policy-focused student societies, volunteer with think tanks, or intern at ministries and NGOs. People and institutions are always eager to take in eager young students looking to improve themselves and their careers.

Develop a public voice, present at conferences, and use social media thoughtfully to share analysis. Cultivate networks intentionally: reach out to mentors, attend and contribute to governance forums.

Additionally, learn adjacent skills such as data analysis, public speaking, project management, and a second language if possible. Most vitally, work on real problems in your community; tangible impact builds credibility faster than theory. Document your journey and reflections, it clarifies thinking and becomes a portfolio.

## **Q** What final words do you have for law students seeking to achieve excellence?

**Answer:** Excellence is not a destination but a habit of curious, disciplined pursuit. Stay relentlessly curious about how law intersects with Africa's realities. Embrace discomfort, seek challenges that stretch you, learn from failures as much as successes, and remember that your perspective as a young African is a strength, not a limitation. Build with others; isolated brilliance rarely transforms systems. Above all, ground your ambition in service. The Africa we want will be shaped by those who combine sharp minds with steadfast hearts. Take this with you, 'It's all about the mindset'.

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# DECONGESTING NIGERIAN CORRECTIONAL CENTRES: A CRITICAL ANALYSIS OF PRE-TRIAL DETENTION AND SYSTEMIC INEFFICIENCIES

EJUVWEVWO OGHENERUME

## INTRODUCTION

Most Nigerian laws that create criminal offences prescribe imprisonment either as a mandatory punishment or as an alternative sanction. This is especially common in the case of misdemeanours, which form the focus of this discourse. However, Nigeria's correctional system is currently overcrowded and the measures implemented to address this challenge have yielded limited success. A closer examination of the causes of this congestion reveals that a significant number of these incarcerations are unnecessary, particularly where less restrictive alternatives could have been employed.

## THE NIGERIAN DETENTION SYSTEM

Nigeria as a society has come a long way in the operation of its laws, but we have a farther journey ahead of us in our development. The legal system is established to punish citizens with imprisonment or fine, when they break the laws. However, the Nigerian prisons have become so populated that to some persons, incarceration seems more like a death sentence.

According to the NBS report on Nigerian Correctional Service Statistics, the total inmate population has climbed from 69,946 in 2017 to 81,710 in the second quarter of 2025. That is a 16.82 per cent increase over eight years in a system that is already overstretched. In Lagos, approximately 9,209 inmates are in facilities designed for 4,167 people, which is an overcrowding ratio of 221 per cent and double the number. Similarly, Ogun State holds 4,939 inmates, Kano 4,667, and Enugu 3,536. These are not "correctional facilities" in the sense of the word but rather human storage units, lacking human dignity.

From this numbers one may reasonably assume that the system is out to get its citizens. Sometime in 2019, the Nigerian Correctional Service Act replaced the Prison Act and Nigerian Prisons Service changed its name to the Nigerian Correctional Service as one of the criteria to solve the problem of administration of the criminal justice system. Despite this change, the correctional centres have not lived up to its name and the purpose for its creation. Prison congestion still poses a huge threat to the security of the country.

## WHAT IS THE CAUSE OF THIS PROBLEM?

One of the major causes of the problem of overpopulation is the prolonged detention of suspects in police cells, who are later transferred to correctional centres. Too many times, we see where the members of the police force arrest people in a bid to bring them before court, but these persons never have their day in court. Many people who have been accused of crimes are rather presumed guilty, detained and even 'imprisoned' prior to their cases being investigated. Thousands of inmates are awaiting trial in all the correctional centres across the country. Correctional centres ordinarily are designed to serve a purpose beyond mere custody. They serve the purpose of rehabilitation and reformation.

This act in itself can be considered as a breach of the fundamental right to fair hearing of these individuals. Section 35 of the 1999 constitution of the Federal Republic of Nigeria as amended provides every individual upon arrest must be brought to court timeously within 24 hours or 48 hours depending on the distance to the court. Also, a consequential breach of their fundamental right to personal liberty and freedom of movement.

Another reason for this is the slow litigation process in Nigeria. The route to justice in Nigeria is one that can be slow and without patience or a good resolve. Most persons in the

system lose hope of finding their freedom afterwards especially those not on bail. It is not uncommon for a single case to linger for years, depriving individuals of timely justice. These inefficiencies are exacerbated by outdated laws and procedures that have not evolved to meet contemporary societal needs. The lack of technological integration further complicates matters, with many records maintained in physical form, leading to lost files and mismanagement. This slow process would have a ripple effect, resulting in a backlog of cases which in turn would worsen the already slow process. Many scholars have maintained the notion that justice delayed may forever be justice denied.

Another problem is the fact that in certain cases especially in misdemeanours and simple offences, some courts are quick to imprison without giving the defendant an option. For instance, a Magistrate Court sitting in Bolade, Oshodi, Lagos, sentenced a 45-year-old man, Mr. Ime Bassey, to three weeks' imprisonment for illegally dumping waste along the Ikorodu Road Median near Ketu bus stop. According to the Lagos State Ministry of Environment and Water Resources, Bassey was apprehended by the monitoring team of the Lagos Waste Management Authority (LAWMA) in the early hours of Tuesday and brought before the court the same day. Upon arraignment, he pleaded

guilty to the environmental offense and was promptly convicted and sentenced. Bassey's conviction comes a day after 13 individuals arrested in the early hours of Monday were arraigned and subsequently sentenced to three months imprisonment each for engaging in open defecation and urination at Agege and Alimosho areas.

Other causes included the failure of the government in providing adequate infrastructure, corruption in the police force, and the government, improper and outdated legislature



## RECOMMENDATIONS

- 1.** Until the prison system decongests, the courts should refrain from sending persons to the Nigerian correctional centres in cases where they are convicted for mere misdemeanours and simple offences. Most of these misdemeanour offences do not really require jail time. Nigerian law makers should review the basic legislations that govern misdemeanours and simple offences and create more inventive and yet effective punishments that do not require incarceration. A good example would be to enforce punishment that would promote active and well-regulated community service. This will in turn benefit the community and at the same time serve as a deterrent.
- 2.** Law enforcement should be more attentive to the law with the arrest and detention of suspects. There are instances where members of the police and the law enforcement would institute an arrest or multiple arrest of individuals in the society, and fail to arraign them before a proper court of law and if not granted administrative bail, these persons may lose their freedom for a good period of time.
- 3.** The police and law enforcement should deter from interfering with matters that relates to civilian affairs. Many times, these law officers would get involved in civilian matters in a bid to make profit. This practice should be frowned at because it leads to unnecessary arrests and intimidation. Such matters could be resolved with proper intervention or civil suit. Citizens should stop using the police as a tool of intimidation and oppression on other individuals in society. The Inspector General of Police, Mr Kayode Egbetokun, has warned against the misuse of police authority in civil disputes, particularly, matters of land ownership. Egbetokun said police officers had no jurisdiction over purely civil matters unless there was an underlying criminal element involved.
- 4.** Heads of state should appoint more judicial officers to adjudicate over these cases. Considering the backlog of already waiting cases in prisons and yet to be determined cases in court, if more judicial officers are appointed it would help in the control of this clog in the wheel of justice and the judicial officers already in place would have a reduced workload and work more efficiently.

## CONCLUSION

The Nigerian detention system is one that is in dire need of help and without the proper intervention, this problem will only grow worse. It is then up to the law officers and other relevant authorities to play their roles correctly and efficiently. The law should seek to reshape and reform these persons, not only imprisoned them. The system should be one that the Nigerian populace can trust.

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# REFORMS UNDER THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 (ACJA): A NEW DAWN FOR NIGERIAN CRIMINAL PROCEDURE.

OLUWABUSAYOMI OLABODE



## INTRODUCTION

**T**he Administration of Criminal Justice Act, 2015 (ACJA) represents the most significant legislative intervention in Nigerian criminal procedure since independence in 1960. For over five decades, Nigeria operated a fragmented dual procedural system: the Criminal Procedure Act (CPA) applied in Southern Nigeria, while the Criminal Procedure Code (CPC) governed criminal proceedings in Northern Nigeria. This bifurcated framework created a constitutional anomaly where the procedural rights of a defendant depended largely on geographical location rather than the nature of the offence or the principles of justice.

The consequences of this fragmentation were severe. The criminal justice system suffered from chronic delays, with some cases lingering in the courts for over a decade. Correctional facilities became severely overcrowded, with a significant proportion of inmates being pre-trial detainees who had not been convicted for any offence. The system offered insufficient protection for suspects' rights, with widespread reports of torture, prolonged incommunicado detention, and the misuse of criminal process for civil debt recovery. Alternative sentencing options were virtually non-existent.

The ACJA was enacted on 13 May 2015 and came into force on 26 May 2015, repealing the CPA, CPC, and the Criminal Justice Act. This article examines the key reforms introduced by the ACJA, the judicial interpretations that have shaped its application, and the persistent challenges that continue to limit its effectiveness.

## FOUNDATIONAL REFORMS: PURPOSE AND APPLICATION

### **The Statutory Purpose (Section 1)**

Section 1 of the ACJA articulates a comprehensive purpose that marks a deliberate departure from the traditional adversarial model. The section provides that the Act shall ensure that the criminal justice system promotes the efficient management of criminal justice institutions, the speedy dispensation of justice, the protection of society from crime, and the protection of the rights and interests of the suspect, the defendant, and the victim.

This tripartite focus is significant. First, it elevates the victim from a peripheral figure to a stakeholder whose interests, the system must actively protect. Under the CPA and CPC, victims had limited procedural standing and were largely reduced to witnesses for the prosecution. Second, the emphasis on speedy dispensation directly confronts the culture of delay that plagued the old system. Third, by explicitly protecting suspects' rights at the investigative stage, the Act extends procedural safeguards beyond the courtroom.

This philosophical shift in Nigeria's criminal procedure aligns with international human rights standards, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, both of which Nigeria has ratified.

### **Territorial Application (Section 2)**

Section 2 provides that the ACJA applies to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja. It expressly excludes Courts Martial from its scope.

The territorial limitation was tested in *Chief Saatsaha Thaddeus Yenge v Attorney-General of the Federation* where the appellant sought a declaration that the ACJA applies throughout Nigeria. The Court of Appeal firmly rejected this argument, holding that extending the ACJA's application nationwide by judicial fiat would constitute judicial legislation and violate the doctrine of separation of powers. The court emphasised its role as *jus dicere* (to declare the law), not *jus dare* (to make the law).

This limitation has prompted many states to enact their own Administration of Criminal Justice Laws (ACJLs), including Lagos, Ekiti, Ogun, Rivers, and Anambra States. While this state-level adoption is gradually creating a more uniform framework, the pace remains uneven. Some states continue to operate under the old CPA or CPC, creating a patchwork system where procedural justice still depends on geography.

## REFORMS IN ARREST AND TREATMENT OF SUSPECTS (PART 2)

### **Humane Treatment and Prohibition of Unnecessary Restraint**

Section 5 of ACJA prohibits handcuffing, binding, or restraining a suspect unless there is reasonable apprehension of violence, an attempt to escape, or where necessary for the suspect's safety. Section 8 mandates humane treatment and prohibits torture, cruel, inhuman, or degrading treatment. Notably, Section 8 also provides that a suspect shall not be arrested merely on a civil wrong or breach of contract, targeting the misuse of criminal process for debt recovery.

### **Enhanced Rights of Suspects (Section 6)**

Section 6 is a landmark reform. Upon arrest, the suspect must be informed of the right to remain silent

until after consultation with a legal practitioner, the right to consult a legal practitioner before making any statement, and the right to free legal representation by the Legal Aid Council where applicable. Additionally, the police must notify the suspect's next of kin of the arrest at no cost. This addresses the historical problem of suspects held incommunicado.

However, implementation remains a challenge. Many police officers lack adequate training on these new requirements, and compliance is inconsistent. Civil society organisations continue to document cases where suspects are denied access to legal representation or where next of kin are not notified.

### **Prohibition of Arrest in Lieu (Section 7)**

Section 7 provides that a person shall not be arrested in place of a suspect. This targets the practice of arresting family members to pressure a suspect to surrender.

### **Recording of Arrest and Time Limits (Section 15)**

Section 15 requires that the alleged offence, date and circumstances of arrest, the suspect's details, and identification information must be recorded immediately and completed within 48 hours. This is a significant step towards preventing detention without charge.

### **Confessional Statements**

Where a suspect voluntarily makes a confessional statement, it must be in writing and may be recorded electronically. The Supreme Court in *FRN v Nwakuche Jerry Nnaji* reinforced that these procedural safeguards are mandatory. Non-compliance renders the statement inadmissible. The court further held that where a judge has ruled on the voluntariness of a confession, the case must be heard by a different judge if remitted, to preserve fair trial integrity.

## **BAIL REFORMS (PART 19)**

### **General Entitlement to Bail (Section 158)**

Section 158 establishes a general entitlement to bail unless the offence is capital or punishable with life imprisonment. This reverses the pre-AC

JA position where bail was often treated as a privilege rather than a right.

### **Bail for Capital Offences (Section 161)**

Section 161 provides that bail may be granted for capital offences where exceptional circumstances justify it, and the court is satisfied the defendant will not abscond, commit further offences, or interfere with witnesses.

### **Continuous Bail (Section 173)**

Section 173 introduces continuous bail. Once granted, bail continues throughout proceedings unless revoked. This eliminates repeated bail applications at each adjournment.

### **Surety's Rights**

In *Ndume v FRN*, the Court of Appeal held that a surety is entitled to a fair hearing before a court can order forfeiture of a bail bond. The court must strictly comply with statutory procedures.

## **PLEA BARGAINING (PART 28, SECTION 270)**

### **Statutory Framework**

Perhaps the most controversial reform is the formalisation of plea bargaining under Section 270. The provision allows the prosecutor and defendant to negotiate a plea agreement, which may include a reduction in charges or a recommendation of a specific sentence. Plea bargaining was previously unknown in Nigerian criminal procedure.

### **Condition for Plea Bargain**

A remarkable feature is that plea bargaining can take place where the prosecution's evidence is insufficient to secure a conviction. Where evidence is sufficient, the law does not permit plea bargaining. This creates a paradox: a defendant with strong evidence against them cannot bargain, while one against whom the case is weak can. Critics argue this may incentivise weak investigations and selective prosecution.

### **Judicial Interpretation**

In *Cristobal v FRN* the Court of Appeal held that where a trial court accepts a plea bargain, it is bound by its terms and must take into account pre-trial detention when computing a sentence

under Section 416(2)(e).

In *Anieto v FRN*, the court held that a trial court cannot renege on a plea bargain's terms without warning the defendant; failure to do so renders the deviation invalid.

In *Cervantes Madrid Jose Bruno v FRN* the court reiterated that pre-conviction detention must be factored into sentencing.

### TRIAL PROCEDURE REFORMS (PARTS 31 AND 36)

#### Day-to-Day Trial (Section 396)

Section 396 requires day-to-day trial of criminal cases. The court shall sit from day to day until the trial is concluded, and adjournments shall be kept to the barest minimum. This targets the problem of protracted trials contributing to correctional facility congestion.

#### Time for Raising Objections

Section 396 requires that certain objections be raised before or at the time the plea is taken, preventing late procedural objections as delay tactics.

#### No Case Submission (Section 303)

Section 303 codifies grounds for a no-case submission, which shall be upheld where an essential element of the offence has not been proved; there is no evidence linking the defendant to the offence; the evidence is so manifestly unreliable that no reasonable court would convict; or on any other ground showing no prima facie case. The Supreme Court in *Atoyebi v FRN* (2018) affirmed these

grounds.

#### 6.4 Electronic Recording (Section 364)

Section 364 requires evidence to be recorded electronically or in writing, promoting accuracy and transparency.

### SENTENCING REFORMS (PARTS 40 AND 44)

#### Computation of Pre-Trial Detention (Section 416)

Section 416(2)(e) requires the court to take into account the period spent in custody before conviction when determining the sentence. This addresses the injustice of defendants spending years in pre-trial detention only to receive a sentence shorter than the time already served.

#### Non-Custodial Alternatives (Part 44)

The ACJA introduced probation orders (Sections 453-459), suspended sentences (Section 460), community service orders (Sections 460-466), and conditional discharge (Section 454). These reforms aim to reduce prison overcrowding and promote rehabilitation over punishment for less serious offences. However, Nigeria lacks the institutional infrastructure, such as probation services and community service supervisors, to fully implement these alternatives.

#### Parole (Section 468)

Section 468 empowers the court to direct the release of a prisoner before sentence completion on such terms as the court considers fit.

### INSTITUTIONAL REFORMS: THE MONITORING COMMITTEE (PART 46)

The ACJA established the Administration of Criminal Justice Monitoring Committee (Sections 469-476) to oversee implementation, collect and analyse data, identify problems, recommend solutions, and publish annual reports. This recognises that legislative reform alone is insufficient. However, the Committee has faced significant resource constraints. Annual reports have not been consistently published, and there is limited evidence of systematic data collection.

### THE ACJA AND STATE-LEVEL ADOPTION

Many states have enacted their own Administration of Criminal Justice Laws (ACJLs) based on the ACJA model, including Lagos, Ekiti, Ogun, Rivers, and Anambra States. This state-level adoption is gradually creating a more uniform criminal procedure framework across Nigeria's federal system. However, significant gaps remain, with some states still operating under the outdated CPA or CPC.

### CHALLENGES AND CRITICISMS

#### Implementation Deficit

Despite progressive provisions, implementation remains uneven due to inadequate infrastructure for electronic recording, limited police training on new procedures, resistance to change, and insufficient resources for the Monitoring Committee.

### **Plea Bargaining Controversies**

The Plea bargaining provisions have been criticised for potentially enabling corruption, creating a paradox where strong cases cannot be bargained but weak ones can, and lacking victim participation.

### **Territorial Limitations**

The ACJA's limited territorial application remains a challenge. While states are adopting ACJLs, the pace is uneven, and variations between state laws may create inconsistencies.

### **Persistent Congestion**

Despite day-to-day trial provisions, court congestion persists due to insufficient judges, inadequate facilities, and frequent adjournments by counsel.

### **RECOMMENDATIONS**

To realise the full potential of the ACJA, the following measures are recommended. First, the National Assembly should consider a constitutional amendment to extend the ACJA's application nationwide. Second, the Federal Government should allocate dedicated funding for the Monitoring Committee. Third, the Nigerian Police Force should develop comprehensive training on ACJA-compliant procedures with sanctions for non-compliance. Fourth, the judiciary should invest in electronic recording equipment for all courts. Fifth, the plea bargaining framework should be reviewed to allow bargaining in all cases subject to judicial oversight and victim consultation. Sixth, the federal and state governments should establish and fund probation services and community supervision programmes.

### **CONCLUSION**

The Administration of Criminal Justice Act, 2015 represents a bold and comprehensive reform of Nigerian criminal procedure. Its innovations, ranging from enhanced suspect rights and bail reforms to plea bargaining and non-custodial sentencing, reflect a modern, rights-respecting approach to criminal justice administration. The courts have played an important role in interpreting and enforcing the Act's provisions, most notably with the Supreme Court's decision in *FRN v Nnaji* which settled a major controversy over confessional statements.

However, a significant gap persists between legislative aspiration and practical implementation. Realising the full potential of the ACJA requires sustained investment in infrastructure, training, and institutional capacity. The Act's greatest legacy may ultimately be the framework it provides for ongoing reform, recognising that criminal justice administration must continually evolve to meet the needs of a changing society. Nigeria's criminal justice system has been given the tools for transformation. The question that remains is whether the political will exists to use them.

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## **BEYOND THE TENURE:** CONSTITUTIONALISING DEVELOPMENT IN AN AGE OF POLITICAL FLUX TO BOLSTER KENYA'S FIRST-WORLD DREAM.

**JOE ONYANGO**

There is the need for Africa to move from governing for the next election to governing for the next generation. This entails protecting a nation's long term strategic investments, rather than a politician's pet projects. The mismatch between development cycles and political cycles is the primary reason most African bureaucracies prefer short term development projects over long-term visionary sustainability agenda. The transitional tenures make it a herculean task to effect substantial socioeconomic change, which is why most politicians in Africa prefer a short-term development agenda. Institutions that exist are subservient to the executive, hence making it difficult for development policy to survive transition and regime change. This difficulty is coupled with the intense personalisation of projects and visionary agenda around a sitting leader—what can be termed “The Founders Syndrome. When regimes change through elections, term limits, or less democratic means, it creates a reset or reprioritisation effect that disrupts long-term capital-intensive projects (infrastructure, industrial policy, education reforms) which have timelines extending beyond electoral terms. Since democracy is meant to serve the long-term will of the people, and not just short-term electoral whims, there is a need to deepen democracy through institutional constraints on any incumbent executive. First-world status can only be built over generations and not terms. Consequently, this requires a shift from governing for the next election to governing for the next generation.

This article would define Strategic National Projects (SNPs) based on strict and apolitical criteria. It would go further to define SNPs through the lens of multi-generational impact, existential importance to national security, ecological sustainability, and capital requirements beyond a single fiscal cycle. The vision must be transformed from a political slogan into a managed portfolio of national assets, overseen by independent technocratic institutions, whose mandate would be to monitor the progress of SNPs, conduct audits and publish annual intergenerational equity reports. Staffed by career experts, engineers, economists, ecologists and insulated from political dismissal, SNPs would provide the institutional memory and technical credibility which ephemeral cabinets lack.

At the inception of a major SNP—a 50-year vision project for example, a national convention should be convened, involving all major political parties, regional leaders, traditional authorities, business chambers, and labour unions.

The aim of any sustainable long term development agenda should be to bring on board all political parties, stakeholders from non-governmental institutions and people's representatives to deliberate on the suggested plans and reach a solemn agreement that places the project outside the fray of partisan point-scoring. A forum like this would allow for enduring legal and institutional solutions, undergirded by deep public ownership and civic vigilance. The long-term vision and its flagship projects must be popularised, visualised, and woven into the national narrative. The vision must be segmented into actionable phases devoid of an abstract nature to ensure that each new regime has a scorecard to deliver per phase. This allows a new leader to put their stamp on the implementation and claim credit for reaching a milestone, without needing to renounce the entire endeavour. Ultimately, the answer lies in understanding that the true adversary of transformative development is not a competing political party, but the relentless tyranny of the short term. To defeat it, a nation must consciously build a system that honours its past commitments and protects its future aspirations from the inevitable ebb and flow of political fortune.

In Kenya, President William Ruto has proposed his vision to transform the country into a first world country, relying on Singapore as an example. The executive has launched the National Infrastructure Fund with the aim of consolidating funds from government assets divestiture, privatisation, foreign reserves, and other domestic resource mobilization frameworks to transform infrastructure. However, critics have vehemently opposed this move, citing the existence of the Consolidated Fund which serves the same purpose. They have also alluded to institutional failures in previous tenures. This indicates that the vision is not embraced by majority of the citizens and in turn cripple its progress. The national debt that is currently at KSh 12 trillion coupled with minimal fiscal legitimacy also hampers this endeavour.

President Ruto's vision represents a top-down, strategic leap model after Singapore's success, built on exceptional long-term planning, ruthless efficiency, a powerful sovereign wealth fund (Temasek, GIC), and a singular focus on global competitiveness over electoral cycles. Ruto's proposed National Infrastructure Fund (NIF) is an attempt to create a similar, dedicated, and agile financial vehicle to bypass bureaucratic inertia and channel capital into transformative projects. With national debt at KSh 12 trillion (over 70% of GDP) and significant revenue going to debt servicing, minimal fiscal legitimacy is paramount. Launching a new mega-fund amidst austerity measures creates a cognitive dissonance for citizens. It begs the question, why a new fund when basic services are strained and taxes are felt as oppressive?

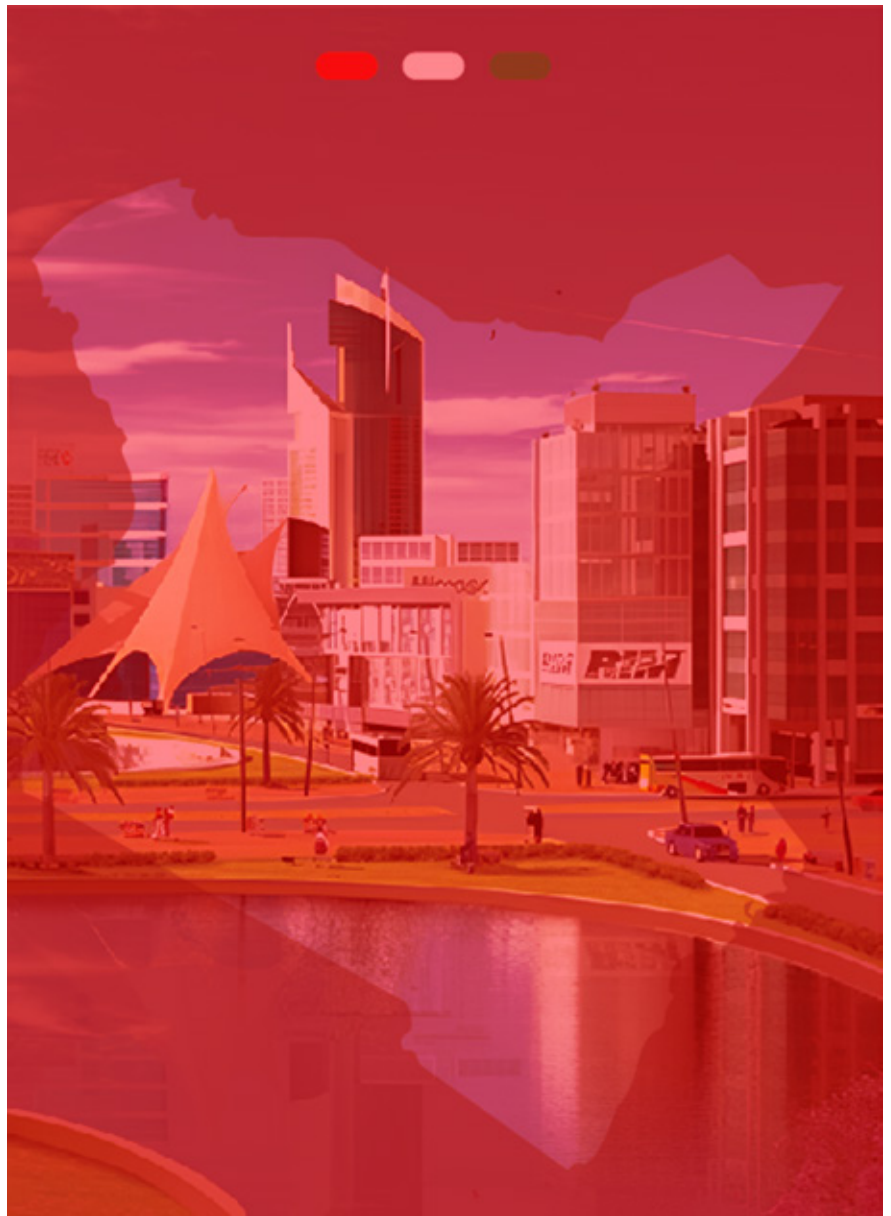
The President's Singapore model is powerfully tied to his personal presidency and his administration's agenda. Unlike the theoretical

model of a National Development Compact signed by all stakeholders, this vision is perceived as a partisan project. It was the centrepiece of his campaign (Bottom-Up, yet modelled on a top-down exemplar) and is being implemented by his government. The political opposition and the skeptical public, therefore, have no ownership of it. Their incentive is to critique, oppose, and await its potential failure which they can then blame on the administration rather than to ensure its success. If not used for the right incentives, government flagship projects, fiscal and monetary policies will often be used opportunistically to secure victory in the next political cycle. Nordhaus (1975), posits that monetary and fiscal policies are used by incumbents to alter inflation rates and other macroeconomic factors just to win votes. Similarly, the objective of the policymaker is to maximise his probability of re-election. Voting behaviour is retrospective, in that it depends on economic performance under the incumbent in the past. Economic performance in a period is measured by the behaviour of inflation and unemployment, so that voter dissatisfaction in any period can be represented by a loss function of the form.

In most African nations, regimes often prioritise development two years to the next election cycle which highlights why personalisation of projects to the sitting president is prevalent in Africa. The

economic reforms were meant to be short term to influence voters rather than uphold sustainable long-term development. Under President Uhuru Kenyatta's administration (2013-2022), the SGR was the flagship project of Kenya's "Vision 2030." It was marketed as the nation's most transformative infrastructure endeavour since independence, with its Phase 1 (Mombasa-Nairobi) completed in 2017 with Chinese financing and construction. The project was intensely personalised, branded as Uhuru's Railway and Kenyatta's Legacy, meanwhile its identity was fused with the ruling Jubilee administration as a symbol of its modernising ambition. The 2022 presidential election, which brought William Ruto to power, was a classic regime change and discontinuity event. Ruto, though Deputy President, had strategically distanced himself from the Jubilee dynasty project, positioned himself as an outsider. His victorious coalition had no political incentive to champion a project so intimately tied to his predecessor's legacy.

The critical phase of the project (Naivasha-Kisumu-Malaba) has halted due to lack of funds from the current regime, presumably because of the detachment the current regime had with regard to the SGR project. With the 2027 general election fast approaching, the regime has stated its commitment to finish the remaining part of the project—a move aimed towards endearing itself to the citizenry. The crux of the first world dream



stems from the desire to follow in the footsteps of leaders who firmly believed in the ability to change their nations to become havens of economic prosperity. Singapore is a potent example, bearing similarity to a developmental state. It is of importance to note that neither social nor economic transformation is possible without a capable and developmental state. For Kenya and any other African country to actualise the first world dream, it is a prerequisite for it to transform into a developmental state; a country that is committed to using its institutions to drive economic and social development.

The term "developmental state" was first coined in 1982 by Chalmers Johnson (1982) in his study of the role that the Japanese state played in bringing about the country's rapid industrialisation and growth between 1925 and 1975. In his book entitled, "MITI and the Japanese Miracle," Johnson distinguishes the concept of a "developmental state" from "standard government intervention" which he points out all that governments actually do, why and how a

state intervenes in the economy. The state's legitimacy in this case stems from its ability to drive economic growth and structural changes in production patterns. Developmental states must be able to formulate common national agenda (Vision in Place) which clearly outline developmental goals (Clearly Defined Concept), and resonate not only with policymakers, but also draw in the cooperation of key stakeholders from all sectors of society. These groups should work together to apply the country's resources towards common developmental goals through institutionalised engagement processes (Rice Jones, 2013).

Singapore and other successful Asian countries with the developmental state model leveraged on the synergy derived from a symbiotic relationship between the state and citizens where the strategic national development plans are accepted by the people as an indication of legitimacy. The state does this by encouraging human development, and acting as an enabler for businesses and civil society organisations to operate in optimal conditions (Fine, 2010). This existing state-citizen relationship in developmental states is what Evans refers to as a "specific kind of embeddedness or state-social synergy" involving "dense networks of ties connecting the state to industrial elites" (Evans, 2014, p 3). He further contends that this synergy needs to morph into more extensive, inclusionary and bottom-up relationships between the state and the broader society if countries wish to be developmentally successful in this day and age (Evans, 2014). Building upon this understanding of how political regimes shape state capacity, the actualization of a "first-world dream" or sustainability, an advanced development necessitates moving beyond the simple dichotomy of control versus influence. It requires a synergistic relationship between the state and its citizens, often conceptualised as embedded autonomy. The most successful developmental stories, from the Nordic states to the later stages of East Asian tigers like South Korea and Taiwan, evolved toward a model where state capacity was coupled with increasing channels for citizen input and accountability.

This embeddedness transforms citizens from subjects of control or mere voters into stakeholders and collaborators, enabling the state to mobilise societal resources and not just compliance towards the common project of advanced development. Therefore, the first-world dream is best actualised not by a state that simply controls or merely influences, but by one that is both autonomously capable and deeply connected to an empowered citizenry. Kenya's Constitution of 2010 provides a robust and progressive framework that can be effectively leveraged to build a democratic developmental state. Its provisions align closely with the key attributes required, offering a legal foundation for transformative state action-grounded in rights, inclusivity, and accountability in governance.

Firstly, the Constitution's foundational principles explicitly mandate a proactive developmental role for the state. The preamble and chapter one commit Kenya to a "government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law." Crucially, Article 10(2) outlines national values and principles of governance, including participation of the people, inclusiveness, social justice, and sustainable development. These are not mere aspirations; they are binding obligations on all state organs. This provides the constitutional basis for forging a common national vision and legitimises the state's intensive role in guiding development to achieve social justice. Additionally, chapter four (The Bill of Rights), especially the enforcement of socio-economic rights (e.g., health, education, housing), creates a justiciable duty for the state to progressively realise these rights, directly linking development policy to constitutional mandate.

Secondly, the architecture of government establishes a system designed for both effective action and embedded accountability. Chapter nine (The Executive) vests executive authority in the President and Cabinet, providing the centralised leadership necessary to drive a coherent national agenda, akin to a "pilot agency." Simultaneously, chapter eight (the Legislature) and its oversight committees ensure this authority is checked,

fostering the insulated autonomy needed to resist narrow interests through transparent scrutiny. Most importantly, chapter eleven on Devolved Government is a powerful tool for state-societal synergy. By devolving functions and resources to 47 county governments, it mandates a form of embeddedness, requiring the national state to engage with grassroots realities and partners, turning county governments into laboratories and implementation partners for the national development plan.

Thirdly, specific provisions are designed to build the state's capacity and integrity essential for a Weberian bureaucracy. Article 232 of the Kenyan Constitution outlines the values and

principles of public service, including high standards of professional ethics, efficient and effective use of resources, and responsive service delivery. This constitutionalises meritocracy. Chapter six on Leadership and Integrity provides a framework to insulate the state from predatory interests by setting stringent ethical standards for all state officers. Additionally, Article 201 on public finance principles, including responsibility, accountability, and transparency, together with the role of institutions like the National Treasury and Auditor-General, creating a system for disciplined, strategic fiscal management crucial for long-term investment.

Finally, the Constitution

provides the tools to foster the social unity and equitable growth that underpins cohesion. The Bill of Rights (chapter four) guarantees equality and freedom from discrimination (Article 27), providing a legal basis for ensuring development benefits are shared equitably across ethnic and regional lines. Provisions on land and environment (Chapter Five) in Articles 60 and 69, link equitable land use and sustainable management to development, addressing historical grievances and resource conflicts. The judiciary's role (Chapter Ten), particularly the High Court's power to interpret the Constitution and enforce rights, acts as a critical enforcement mechanism to hold the state accountable to its developmental and inclusive promises.

## CONCLUSION

In conclusion, far from being an obstacle, Kenya's Constitution is a strategic blueprint for a democratic developmental state. It legally obligates the state to pursue inclusive development, creates a structure that balances decisive leadership with accountable embeddedness, mandates a capable and ethical public service, and provides the legal instruments to promote unity through equity. The task is not to amend the Constitution but to fully and innovatively implement its profound provisions. The persistent failure to sustain transformative projects across political administrations is not merely a failure of planning or resources, but a systemic outcome that is deeply rooted in the dominant modes of African governance. Scholarly analysis of the post-colonial African provide the essential theoretical framework for understanding this "discontinuity dilemma." The works of Jean-François Bayart and Achille Mbembe, in particular, offer a penetrating lens through which to view the collision between long-horizon development and the logic of personal rule.

Jean-François Bayart's concept of the "politics of the belly" and the "reciprocal assimilation of elites" posit that the state is fundamentally a prize to be captured as a network for political accumulation and redistribution (Bayart, 1993). Power is exercised not through impersonal institutions, but through patrimonial networks where resources are exchanged for loyalty. Within this framework, large-scale infrastructure projects become primary instruments for political accumulation. There are less national economic assets and more critical nodes in the ruling network's "rhizome," such as providing rents, contracts, and patronage opportunities to consolidate power. Consequently, a project's viability is intrinsically tied to the political fortunes of its presidential patron. Its sustainability is a function of

intrinsically tied to the political fortunes of its presidential patron. Its sustainability is a function of network survival, not national interest, rendering it inherently vulnerable to the next cycle of elite assimilation.

In this context, megaprojects are transformed into monuments of presidential potency, physical testaments to a leader's vision and capacity to command. They serve a symbolic-political function as much as an economic one. Extreme personalisation ensures projects are conceived as extensions of a leader's legacy, deliberately bypassing or weakening impersonal bureaucratic institutions capable of long-term stewardship. This results in institutional hollowing as no resilient, technocratic body exists to protect the project's continuity. The project becomes inextricably linked to a specific patrimonial network. A successor regime inherits not a clean national asset but an entrenched ecosystem of its rivals' clients and beneficiaries. From a political rationality informed by Bayart's model, the rational response is not stewardship but strategic dismantling to rewire resources and rents to its own network. This transforms potentially viable projects into stranded political assets, orphaned not by economic infeasibility but by a change in the sovereign commandment.

Kenya's aspiration for first-world status is a generational marathon, yet its politics often remains a sprint to the next election. As this analysis has demonstrated, this fundamental mismatch between development cycles and political cycles is the primary architect of discontinuity, where visionary projects become casualties of regime change, trapped in the personalising logic of what scholars term the "politics of the belly." The Standard Gauge Railway stands not as an isolated failure, but as a stark symptom of a systemic ailment—the treatment of national infrastructure as a monument to personal legacy rather than a strategic asset protected by the state itself. The solution, however, lies not in abandoning ambitious visions but in constitutionally insulating them from the volatile tides of politics. The proposal for a framework of Strategic National Projects (SNPs), overseen by independent, technocratic guardians and anchored in a broad-based National Development Compact, is not a mere policy adjustment; it is a profound constitutional and governance recalibration. It seeks to legally disentangle the nation's long-term destiny from the short-term fate of any single administration, moving from a model of personal rule to one of institutional covenant.

Critically, Kenya is uniquely positioned to pioneer this model. The Constitution of 2010 is not an obstacle but a ready-made blueprint for a democratic developmental state. Its provisions from the binding national values of sustainable development and public participation (Article 10) to the structures for accountable executive action, robust legislative oversight, and embedded devolved governance, provide all the necessary legal tools for a democratic developmental state. The task is to wield these tools with deliberate intent. This means enacting a legislation to operationalise the Strategic National Projects (SNP) framework, establishing the independent oversight commission under the auspices of existing constitutional bodies like the Public Service Commission, and leveraging the requirement for public participation to forge genuine, cross-partisan compacts for projects like the National Infrastructure Fund.

President Ruto's Singapore-inspired ambition, therefore, needs not falter on the rocks of partisan scepticism and debt concerns. Instead, it can be elevated and secured by subjecting it to the very constitutional discipline that fosters legitimacy and longevity. By channelling such visions through a transparent, inclusive, and legally shielded process, they cease to be perceived as presidential projects and become constitutional projects owned by the people and obligatory for all who govern in their name. Ultimately, the quest for transformative development is a test of national political maturity. It demands that we build a system stronger than our political impulses, capable of honouring the plans of the past while diligently building the future.

For Kenya, the path forward is clear: it must fully embrace and implement its own foundational law to forge a governance architecture that serves not just the next five years, but the many more years in the future. By constitutionalising development, Kenya can finally protect its dreams from the flux of politics and ensure that the first-world dream is a promise made by the nation to itself—a promise that no single leader can give, and no single leader can take away. Ultimately, the quest for first-world status is a test of national political maturity. It demands a conscious choice to build a system stronger than our political impulses—one capable of honouring past commitments while diligently constructing the future. By constitutionalising its development agenda, Kenya can ensure that the first-world dream ceases to be a presidential promise, vulnerable to the flux of electoral politics, and becomes instead a national covenant: a promise made by the republic to itself, and binding on all who govern in its name.

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