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Pan-African Free Trade
A Current Overview

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Verena Wehmeyer

Völkerrechtliche Besonderheiten des Freihandels zwischen afrikanischen Staaten

Unter besonderer Berücksichtigung der Pan-Afrikanischen Freihandelszone AfCFTA

2025, 418 pp., pb., € 139.00
ISBN 978-3-7560-3463-5
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(Recht und Verfassung in Afrika – Law and Constitution in Africa, vol. 49)
In German

The work begins by addressing the origins of the AfCFTA and its legal nature, followed by a presentation of the AfCFTA institutions. Particular attention is paid to the integration of the AfCFTA into the WTO system. The 'flexibility', which is inter alia expressed through the principle of variable geometry and overlapping membership in different RECs, is illustrated in detail. Finally, the eight RECs, whose free trade areas are regarded as building blocks of the AfCFTA, as well as their sub-groups, are discussed. Lastly, the AfCFTA dispute settlement mechanism is analysed.

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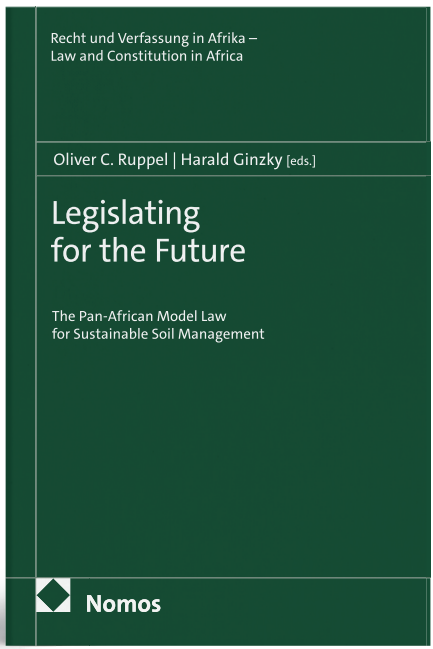

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Oliver C. Ruppel | Harald Ginzky [Eds.]

Legislating for the Future

The Pan-African Model Law for Sustainable Soil Management

2026, approx. 250 pp., pb., approx. € 84.00
ISBN 978-3-7560-3274-7
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(Recht und Verfassung in Afrika – Law and Constitution in Africa, vol. 50)
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This publication is based on a project funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) on a 'Model Law for Sustainable Soil Management in Africa'. The Model Law consists of a Framework Law with general soil governance principles and a number of commentaries. Designed for adaptability, the Model Law offers a flexible and modular framework that can be domesticated on demand, i.e. tailored to diverse legal systems and national circumstances across different African Union member countries and regions in Africa. The model law shall serve as a guidance for the national legislation concerning an effective governance of sustainable soil management.

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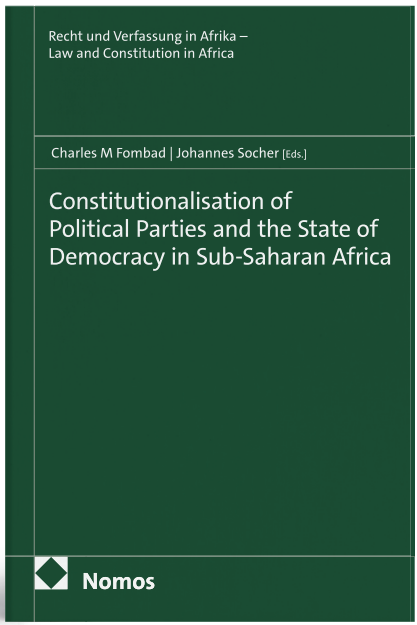

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Charles M Fombad | Johannes Socher [Eds.]

Constitutionalisation of Political Parties and the State of Democracy in Sub-Saharan Africa

2025, 574 pp., pb., € 119.00
ISBN 978-3-7560-3353-9
E-Book 978-3-7489-6316-5
(Recht und Verfassung in Afrika – Law and Constitution in Africa, vol. 48)

Edited by C. Fombad and J. Socher, this volume offers unique insights into the regulation of political parties and its impact on constitutionalism and multiparty democracy in Sub-Saharan Africa. Building on an examination of the relevant international and African regional standards and drawing on experiences in continental Europe, it presents a detailed framework for analysing the constitutionalisation of political parties in Sub-Saharan Africa. Further contributions on 12 countries — Cameroon, Ethiopia, Kenya, Liberia, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Uganda, and Zimbabwe — analyse the experiences with the constitutionalisation of political parties in concrete cases. A concluding chapter outlines key findings and some recommendations for reform.

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Inhalt

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FOREWORD

This volume ensures the continuation of the exchange of ideas and inspiration throughout the "Leaders for Justice Workshops" which took place in Arusha, Tanzania from 29th August to 1st September 2022, Dar es Salaam, Tanzania, from 28th to 29th July 2023 and Entebbe, Uganda, from the 26th to 27th July 2024.

The workshops, which were organised by the Rule of Law Program for Sub-Saharan Africa of Konrad Adenauer Stiftung, brought together lawyers from anglophone African countries and the DR Congo to facilitate the exchange of thoughts and the identification of best practice.

Most of the participants have professional experience as advocates in private practice, in companies and institutions or as judges and lecturers. After the workshops participants continued to exchange thoughts and experiences. The results of their ongoing research are presented in this volume.

Dr. Kweku Ainuson, Ghana, presents on "Parliamentary ratification and the governance of mining contracts in Africa" – This paper adopts a doctrinal approach to analyse the legal and institutional significance of parliamentary ratification as a mechanism of democratic oversight in the governance of mining contracts. Anchored in the Ghanaian constitutional and statutory framework, and drawing comparative insights from Tanzania and the Democratic Republic of Congo (DRC), the study argues that legislative scrutiny enhances accountability, aligns resource governance with constitutional principles, and mitigates the risks of executive overreach.

Bernard Kengni, South Africa, analyses "Evaluating the effectiveness of Niger's labor laws in mitigating health risks associated with mining work" – This contribution examines the regulatory framework governing health and safety in Niger's mining industry, a sector central to the country's economic development and subject to substantial investment despite ongoing political instability. It reviews the constitutional, mining, and labour codes that aim to protect mine workers from occupational hazards particularly in uranium mines.

Umutoniwase Rosette, Rwanda, writes on "Bridging borders through law – tackling environmental challenges in the east African community" – This paper analyses the EAC's key legal instruments, including the Treaty for the Establishment of the EAC, protocols, Acts, and policies, to assess their effectiveness in tackling regional environmental challenges such as deforestation, biodiversity loss, and transboundary pollution.

Zoe Mauki, Uganda, examines "The rise of armes groups in the DRC territory; analysis of the emergence and persistence of armed groups and their impact on the recurring conflict in the territory" – Since 1998 to the present time, the Democratic Republic of Congo (DRC) has faced ongoing instability due to the persistent activities of numerous armed groups in the territory. This contribution tries to gain a clear understanding of the drivers, dynamics, and consequences of these armed actors and find a lasting solution to restore peace in the territory.

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Daniel Chibembe and Crispin Murhula Bahozi, DR Congo, share insights in "The legal status of marriages contracted in areas of lawlessness; a case study of marriages celebrated in territories under M23 occupation in the DRC" – The study examines the validity and recognition of these unions under Congolese and international law. It takes a comparative law approach, examining similar experiences in Liberia, Rwanda, and Sierra Leone, countries that have also seen marriages celebrated under occupation or during internal armed conflicts.

Assiimwe Jackline, Uganda, presents on "Impeaching judges – Challenges or achievement" – This contribution explores the impeachment of judges in Uganda as both a safeguard for judicial integrity as well as a potential threat to judicial independence. It finds that there is a disconnect between the legal framework and the practical implementation of it.

Theresa Uzoamaka Akpoghome and *Dr. Nkechinyere Huomachi Worluh-Okolie*, Nigeria, write "A paper on the analysis of the legal framework on cybercrime in Nigeria" – This paper examines Nigeria's legal framework on cybercrime to assess its adequacy in addressing emerging threats. It analyses the Cybercrimes Act. 2015, the 2024 Amendment, and related statutes.

All articles published in this first volume cover the continuation of cooperation and demonstrate the engagement of a young generation of African lawyers.

Special thanks go to all participants and organizers at the KAS Rule of Law Program, for their commitment and input.

Hartmut Hamann Stefanie Rothenberger

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Legal Foundations of Legislative Review: Parliamentary Ratification of Mining Agreements in Africa.

Kweku Ainuson*

Abstract

The governance of mineral resources in Africa continues to pose complex constitutional and policy challenges. Across the continent, executive dominance in resource contracting has often resulted in opacity, weakened accountability, and limited public participation. Ghana's 1992 Constitution establishes a unique legal safeguard: the requirement of parliamentary ratification for all agreements relating to the exploitation of natural resources. This paper adopts a doctrinal approach to analyse the legal and institutional significance of parliamentary ratification as a mechanism of democratic oversight in the governance of mining contracts. Anchored in the Ghanaian constitutional and statutory framework, and drawing comparative insights from Tanzania and the Democratic Republic of Congo (DRC), the study argues that legislative scrutiny enhances accountability, aligns resource governance with constitutional principles, and mitigates the risks of executive overreach. Nonetheless, weaknesses in legislative capacity, procedural clarity, and political independence continue to undermine the transformative potential of ratification. The paper concludes by proposing legal and institutional reforms to strengthen parliamentary oversight and promote a more transparent, accountable, and equitable extractive regime across Africa.
Keywords: Parliamentary ratification, mining contracts, constitutional accountability, resource governance, democratic oversight, extractive industries.

A. Introduction

The governance of natural resources in Africa remains one of the most enduring legal and developmental challenges on the continent.[1] While the extractive sector constitutes a major source of public revenue, foreign investment, and industrial growth, it has also been a site of contestation between the imperatives of economic development, national sovereignty, and public accountability.[2] At the heart of this tension lies the question of how resource contracts are negotiated, approved, and monitored, and more importantly,

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1 *Arthur, P.* (2014), Governance of natural resource management in Africa: contemporary perspectives; In Managing Africa's natural resources: Capacities for development (pp. 39–65). London: Palgrave Macmillan UK.

2 *Arthur P* (2014) (n 2), pp 39–65.

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which state institutions bear ultimate responsibility for ensuring that such contracts serve the collective good.

Across much of Africa, the executive branch has historically dominated the negotiation and approval of mining and petroleum contracts.[3] These agreements are often complex, confidential, and long-term, granting private investors extensive fiscal and operational privileges. In many cases, the process has been characterised by secrecy, inadequate legislative oversight, and limited public participation.[4] This executive concentration of power, combined with asymmetrical bargaining dynamics between resource-rich but institutionally weak states and multinational corporations has frequently produced outcomes that provide short-term political or financial gains over sustainable national development.[5]

To counteract these deficiencies, parliamentary ratification has emerged as a key legal mechanism for restoring balance and legitimacy to the governance of extractive resources.[6] Ratification entails the formal approval by a national legislature of contracts or agreements negotiated by the executive branch. Within constitutional democracies, it represents a procedural checkpoint, ensuring that the exploitation of natural resources is consistent with national policy objectives, statutory standards, and the public interest.[7] In effect, it operationalises the principle that sovereignty over natural resources belongs to the people, who exercise that sovereignty through their elected representatives in Parliament.[8]

Ghana provides one of the most constitutionally entrenched examples of this approach. Article 268(1) of the 1992 Constitution mandates that *"any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person or authority of the Republic to any other person or body of persons for the exploitation of any mineral, water or other natural resource of Ghana"* must receive parliamentary ratification before taking effect.[9] This constitutional requirement reflects a deliberate attempt by the framers of the Constitution to constrain executive discretion in resource governance and to embed democratic accountability into the contractual process. It is both a procedural safeguard and a substantive guarantee of public interest oversight. However, the practice of

3 *Buur, L., Pedersen*, *R. H., Nystrand, M. J., Macuane*, *J. J., & Jacob, T.* (2020), The politics of natural resource investments and rights in Africa: A theoretical approach. The Extractive Industries and Society, *7*(3), 918–930.

4 *Buur, L., Pedersen, R. H., Nystrand et al* (2020) (n 4), pp 918–930.

5 *Ayangafac, C., Bulcha, D., Bekele, S.* (2016), Why Do Some African Countries Negotiate Unfair Natural Resource Contracts? In Nyeck, S. (eds) Public Procurement Reform and Governance in Africa, Contemporary African Political Economy, Palgrave Macmillan, New York, Available at <https://doi.org/10.1057/978-1-137-52137-8_3> assessed 11 November 2025.

6 *Botchway, F. N., & Rukuba-Ngaiza, N*. (2015), The Constitutional Regime for Resource Governance in Africa: The Difficult March toward Accountability. *World Bank Legal Rev.*, *6*, 149.

7 *Kusi-Appiah, F*. (2023), Sustainable Natural Resource Governance in Ghana: An Appraisal of Legal Provisions on Public Participation and Accountability. African Journal of International and Comparative Law, *31*(1), 32–54.

8 *Kusi-Appiah, F*. (2023), (n 8), pp 32–54.

9 1992 Constitution of Ghana, Article 168(1).

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ratification in Ghana has not always matched its constitutional ideal.[10] In some instances, ratification has been treated as a mere formality, an administrative step occurring after executive negotiation rather than a substantive review. Parliamentary debates are often cursory, constrained by limited time, inadequate technical expertise, and partisan alignment.[11] Furthermore, there is no statutory framework prescribing the procedure for ratification, leaving much of the process to ad hoc parliamentary practice and executive discretion.[12] There are also many contracts that have been operationalised without Parliamentary ratification and yet do not suffer from any sanctions regime.[13] These gaps raise important governance questions. How effective is parliamentary ratification as a tool of accountability? To what extent does it balance democratic legitimacy with administrative efficiency? And how might the Ghanaian experience inform broader reforms in Africa's resource governance landscape?

This paper situates these questions within a comparative doctrinal analysis, using Ghana as the anchor jurisdiction and drawing lessons from Tanzania and the Democratic Republic of Congo (DRC). Both comparator countries have adopted divergent yet instructive approaches: Tanzania, through assertive statutory intervention grounded in resource nationalism, and the DRC, through transparency and publication obligations in lieu of formal ratification. The comparative analysis enables a broader understanding of how constitutional and legislative design shapes the balance between executive authority, parliamentary oversight, and public accountability in the extractive sector.

Methodologically, the paper adopts a doctrinal legal approach, analysing constitutional provisions, statutes, regulations, and case law. It further draws on normative frameworks such as the Africa Mining Vision and the Extractive Industries Transparency Initiative (EITI) standards to situate the discussion within regional and international best practices. The analysis proceeds on the premise that legal frameworks are not merely procedural devices but instruments of governance, shaping institutional behaviour, policy outcomes, and democratic legitimacy. The argument advanced is twofold. First, parliamentary ratification, when effectively operationalised, is a vital constitutional mechanism for ensuring transparency, public accountability, and the equitable management of resource wealth. Second, the Ghanaian model, while robust, requires significant procedural and institutional strengthening to realise its full potential. Comparative insights from Tanzania and the DRC suggest that the effectiveness of parliamentary ratification depends less on its formal

10 *Kusi-Appiah, F*. (2023), (n 8), pp 32–54.

11 *Kusi-Appiah, F*. (2023), (n 8), pp 32–54.

12 Although article 268(1) of the 1992 Constitution provides for parliamentary ratification of natural resources contract, there is no statute that details when the agreements should be submitted to parliament and what format it should take once it arrives in parliament.

13 Mining leases without ratification: 'Prosecute' past ministers, 18th January 2019. Online newspaper article: Available at <https://reportingoilandgas.org/mining-leases-without-ratification-prosecute-past-ministers-dr-manteaw/>Assessed on 11 October 2025.

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existence and more on the political will, institutional capacity, and procedural clarity with which it is implemented.

The paper proceeds as follows. Section 2 articulates the theoretical and constitutional rationale for parliamentary ratification, situating it within democratic and accountability frameworks. Section 3 examines the legal architecture supporting ratification in Ghana, Tanzania, and the DRC. Section 4 analyses the governance benefits of ratification, particularly its role in promoting transparency and checks on executive authority. Section 5 discusses the challenges and limitations of the current frameworks. In section 6, the paper offers policy and legal reform recommendations. Section 7 concludes by reflecting on the constitutional and developmental significance of ratification in advancing democratic resource governance in Africa.

B. The Rational for Parliamentary Ratification

The rationale for parliamentary ratification of mining and natural resource contracts lies in constitutional theory, democratic governance, and public accountability.[14] In African resource economies, the state is often the trustee of natural wealth,[15] but this trusteeship is only legitimate when exercised through transparent and accountable institutions. Ratification, therefore, acts as a constitutional bridge between executive negotiation and public consent, ensuring that the exploitation of finite resources aligns with the national interest and the rule of law.[16]

The principle of parliamentary ratification draws upon the broader doctrines of separation of powers, representative democracy, and sovereignty of the people. In Ghana, sovereignty is explicitly vested in the people by Article 1(1) of the 1992 Constitution, which provides that "the sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised." By requiring parliamentary ratification for natural resource contracts, Article 268(1) operationalises this principle, ensuring that executive acts concerning public resources are subject to legislative consent. This constitutional design reflects a commitment to democratic legitimacy in the management of natural resources.[17] Mining contracts are not ordinary commercial transactions, they are public law instruments that define how collective national wealth is distributed between the state and private entities.[18] As such, they must pass through a democratic filter. Parliamentary ratification provides this legitimacy by ensuring that the people, through their elected representatives, have an opportunity to scrutinise and,

14 *Kusi-Appiah, F*. (2023), (n 8), pp 32–54.

15 *Huffel, S. V.* (2024). The evolving developmental role of the state as public trustee of South Africa's natural resources and property. Law, Democracy and Development, *28*, 152–173.

16 *Kusi-Appiah, F*. (2023), (n 8), pp 32–54.

17 *Currie-Alder, B*. (2005), Unpacking participatory natural resource management: a conceptual framework to distinguish democratic governance from resource capture. Environments, 33(2), 1.

18 *Currie-Alder, B.* (2005) (n 18), pp 1.

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if necessary, withhold approval for resource agreements that may not serve the public interest.[19]

Comparatively, Tanzania's Natural Wealth and Resources (Permanent Sovereignty) Act 2017 expresses a similar rationale by declaring that all natural wealth and resources "shall be held in trust by the President on behalf of the People of the United Republic of Tanzania."[20] The statute requires that all contracts related to the exploitation of natural resources be reviewed by Parliament before becoming binding.[21] This legislative practice resonates with Ghana's constitutional model, affirming that sovereignty over natural resources belongs to the people, and the legislature is its institutional custodian.

The theoretical foundation of ratification also draws from international law principles, particularly the doctrine of permanent sovereignty over natural resources, articulated by the United Nations General Assembly Resolution 1803 (XVII) (1962).[22] This doctrine recognises that the people of each nation have the right to freely dispose of their natural wealth in accordance with national interests. Parliamentary ratification, in this sense, is an internal mechanism for giving effect to this external principle. It ensures that the state's contractual commitments are not merely acts of executive will but expressions of national consent.

I. Public Interest and State's Fiduciary Role

Natural resources, particularly minerals, are held in trust by the state for the benefit of its citizens.[23] This fiduciary relationship imposes obligations of care, loyalty, and transparency on public officials involved in the management of extractive resources. As custodians of public assets, state actors must ensure that contracts governing the exploitation of these assets reflect fair value and protect long-term national interests. Parliamentary ratification enhances this fiduciary accountability by compelling the executive to justify the terms of each contract before a representative body. In Ghana, the process serves as a procedural safeguard against executive excesses, ensuring that resource rights are not granted without legislative oversight. In The Republic v High Court, General Jurisdiction 6, Accra; Ex Parte Attorney-General (Exton Cubic Group Ltd), the majority of the Supreme Court reaffirmed that any mining lease or concession involving the exploitation of natural resources requires parliamentary ratification before it can acquire legal validity. The Court held that until such ratification is obtained, the agreement is of no legal effect, and no enforceable rights

19 *Nyamai, A. M*. (2020). A Critical analysis of public participation in parliamentary ratification of oil and gas agreements (Doctoral dissertation, Strathmore University).

20 Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 Act 5 of 2017, section 5(2).

21 Natural Wealth and Resources (Permanent Sovereignty) Act, 2017 Act 5 of 2017, section 5(2).

22 *G.A. Res*. 1803 (XVII), U.N. Doc. A/5209 (Dec. 14, 1962).

23 *Huffel, S. V.* (2024) (n 16) pp 152–173.

https://doi.org/10.5771/2363-6262-2025-4 https://www.inlibra.com/de/agb - Open Access -

accrue to the contracting party.[24] Moreover, the public interest dimension of ratification extends beyond legality to encompass intergenerational equity and sustainable development. Mining contracts typically span decades, influencing not only present economic returns but also future environmental and social costs.[25] Legislative scrutiny introduces a forum for interrogating these long-term implications, whether through parliamentary committees, public hearings, or stakeholder consultations. In theory, this transforms ratification into a site for balancing economic opportunity with ecological stewardship and social justice.

II. Accountability and Rule of Law

Parliamentary ratification also strengthens the rule of law in extractive governance by embedding legality and procedural regularity into resource contracting.[26] It ensures that all mining agreements pass through a defined constitutional pathway before attaining validity.[27] This requirement mitigates risks of corruption, irregular approvals, or clandestine dealings[28] that have historically plagued extractive sectors across Africa.[29] In Ghana, the procedural significance of ratification lies not only in parliamentary approval but also in its public visibility. Contracts laid before Parliament become part of the public record, subject to media scrutiny and academic commentary. This transparency fosters public trust, enhances investor confidence, and anchors the legitimacy of state actions within the constitutional framework.

Furthermore, ratification reinforces checks and balances between the branches of government.[30] It prevents the executive from unilaterally binding the state to long-term

24 The Republic v High Court, General Jurisdiction 6, Accra; Ex Parte Attorney-General (Exton Cubic Group Ltd) [2020] GHASC 97.

25 UNDP and UN Environment (2018). Managing mining for sustainable development: A sourcebook. Bangkok: United Nations Development Programme.

26 *Duri, J.* (2022). Overview Of Parliamentary Oversight Tools and Mechanisms, Transparency International. Available at <https://knowledgehub.transparency.org/assets/uploads/kproducts/Overview-of-parliamentary-oversight-tools-and-mechanisms-2022-final.pdf> Last assessed on 20th September 2025.

27 *Duri, J.* (2022). Overview Of Parliamentary Oversight Tools and Mechanisms, Transparency International. Available at <https://knowledgehub.transparency.org/assets/uploads/kproducts/Overview-of-parliamentary-oversight-tools-and-mechanisms-2022-final.pdf> Last assessed on 20th September 2025.

28 *Duri, J*. (2022). Overview Of Parliamentary Oversight Tools and Mechanisms, Transparency International. Available at <https://knowledgehub.transparency.org/assets/uploads/kproducts/Overview-of-parliamentary-oversight-tools-and-mechanisms-2022-final.pdf> Last assessed on 20th September 2025.

29 *Knutsen, C. H., Kotsadam, A., Olsen, E. H., & Wig, T.* (2017), Mining and local corruption in Africa, American Journal of Political Science, 61(2), 320–334.

30 *Akili, R. H*. (2023). The Role of the Legislature, In Maintaining the Balance of Power in the Constitutional Legal System. Jurnal Multidisiplin Sahombu, 3(01), 77–85.

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financial and environmental obligations without representative consent.[31] In doing so, it also protects Parliament's budgetary oversight role, since mining contracts often have fiscal implications through royalty rates, tax exemptions, and revenue-sharing mechanisms.[32] However, for ratification to perform these functions effectively, it must be supported by clear procedures, adequate institutional capacity, and genuine political will. In practice, legislative oversight can be undermined by partisan majorities, time constraints, or lack of technical expertise. These challenges, explored in later sections, demonstrate that ratification's normative strength must be matched by procedural rigor if it is to serve as a true instrument of accountability.

C. Legal Frameworks for Parliamentary Ratification

The legal basis for parliamentary ratification of mining and natural resource contracts in Africa is rooted in constitutional provisions, statutory enactments, and judicial interpretation. These frameworks collectively define how state institutions share authority in the governance of extractive resources. In Ghana, the executive negotiates the contract, parliament ratifies it and the judiciary interprets and enforces rights and obligation under it. Ghana's constitutional and legislative architecture provides one of the clearest examples of a mandatory ratification regime in Africa.[33] By contrast, Tanzania's framework relies primarily on statutory innovation,[34] while the DRC depends on transparency and disclosure obligations rather than direct legislative approval.[35] This section examines these frameworks comparatively, highlighting Ghana's doctrinal distinctiveness and the lessons it offers for the continent.

Ghana's constitutional requirement for parliamentary ratification is anchored in Article 268(1) of the 1992 Constitution, which provides that any transaction "involving the grant of a right or concession by or on behalf of any person or authority of the Republic to any other person or body of persons for the exploitation of any mineral, water or other natural resource" must receive parliamentary approval before taking effect.[36] This provision confers a binding constitutional duty and situates Parliament as the ultimate guardian of the national interest in the exploitation of natural resources. The Ghanaian judiciary has

31 *Akili, R. H*. (2023) (n 31), pp 77–85.

32 *Bowman, J. P*. (2023), Evaristus Oshionebo, Mineral Mining in Africa: Legal and Fiscal Regimes.

33 1992 Constitution of Ghana, Article 168(1).

34 *Poncian, J., & Kigodi, H. M*. (2018), Transparency initiatives and Tanzania's extractive industry governance, Development Studies Research, 5(1), 106–121.

35 *Gervasoni, A*. (2024) Mining Law in the Democratic Republic of Congo (DRC): Challenges and Perspectives of Transition in Search of a Sustainable Model of Development" (2024) 1 *Antwerp Law Review.* Available at https://antwerplawreview.be/wp-content/uploads/2024/10/A.-Gervasoni-Mining-law-in-the-Democratic-Republic-of-Congo-DRC-challenges-and-perspectives-of-transition-in-search-of-a-sustainable-model-of-development-.pdf Last assessed on 12th October 2025.

36 1992 Constitution, Article 268(1).

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reinforced the constitutional importance of this requirement. In Exton Cubic Group Ltd case, the Supreme Court held unequivocally that any natural resource contract not ratified by Parliament is void ab initio and cannot bind the Republic.[37] The Court reasoned that Article 268 establishes a condition precedent to validity, and that failure to comply with this requirement constitutes a constitutional breach. This position underscores the view that the executive's powers in resource contracting are constitutionally constrained by legislative consent. Again, in John Ndebugre v. Attorney General and others, the Supreme Court in Ghana emphasised the power of Parliament to ratify natural resources contract.[38]

Complementing the constitutional framework, the Minerals and Mining Act 2006 (Act 703) vests all minerals in the President of Ghana, acting in trust for the people.[39] Section 5 of the Act provides that mineral rights, whether reconnaissance, prospecting, or mining leases are granted by the Minister for Lands and Natural Resources, subject to parliamentary ratification in accordance with Article 268.[40] This statutory structure integrates the constitutional mandate into the everyday administrative practice of mineral governance. In practice, however, the ratification process is procedurally underdeveloped. The Constitution provides no clear guidance on timelines, committee procedures, or the extent of parliamentary scrutiny. Since the coming into force of the constitution in January 1993, parliament has also not passed any law guiding the process of ratification. Typically, agreements are negotiated by the Ministry of Lands and Natural Resources and the Minerals Commission, after which they are laid before Parliament for approval.[41] Parliamentary debates are often time constrained, and members may not receive full documentation in advance.[42] Nonetheless, every ratified agreement gains the force of law, ensuring its enforceability under domestic and international standards. This legal arrangement gives Ghana a hybrid model, one that blends constitutional supremacy with administrative discretion. It establishes a strong legal safeguard but leaves procedural discretion in the hands of Parliament. The absence of codified rules for how ratification is conducted remains a critical gap that invites executive influence and diminishes legislative efficiency.

Tanzania provides an alternative model in which parliamentary authority arises primarily from legislative enactment rather than direct constitutional mandate. Although the 1977 Constitution of the United Republic of Tanzania does not expressly require ratification, Parliament has assumed a central role through the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Natural Wealth and Resources (Review and Renegotia-

37 The Republic v High Court, General Jurisdiction 6, Accra; Ex Parte Attorney-General (Exton Cubic Group Ltd) [2020] GHASC 97.

38 John Akparibo Ndebugre v. The Attorney General, Aker Asa and Chemu Power Company Ltd Dlsc2855.

39 Minerals and Mining Act 2006 (Act 703), Section 1(1).

40 Minerals and Mining Act 2006 (Act 703), Section 5.

41 Extractive Industries Transparency Initiative (GHEITI) (2020).

42 *Kusi-Appiah, F.* (2023), (n 8), pp 32–54.

https://doi.org/10.5771/2363-6262-2025-4 https://www.inlibra.com/de/agb - Open Access -

tion of Unconscionable Terms) Act 2017.[43] These twin statutes emerged from a wave of resource nationalism and were designed to reclaim public control over extractive contracts that were previously negotiated with minimal scrutiny. Under section 4 of the Permanent Sovereignty Act, natural wealth and resources belong to the people of Tanzania, and that the government holds them in trust for their benefit. Section 6 further mandates that all arrangements or agreements related to natural wealth shall be reviewed by Parliament.[44] This provision establishes a statutory ratification framework that mirrors the constitutional function performed under Article 268 in Ghana. Importantly, Parliament is empowered not only to approve but also to renegotiate contracts deemed inconsistent with national interest. The companion Review and Renegotiation of Unconscionable Terms Act empowers the government to revisit or nullify contract clauses that undermine Tanzania's sovereignty or economic welfare.[45] Together, these laws effectively transform Parliament into a gatekeeper for extractive contracting and a forum for reasserting public control over natural resources.

However, Tanzania's experience reveals the tension between formal empowerment and political reality. While Parliament is statutorily empowered, it operates within a political system characterised by executive dominance and limited opposition influence.[46] As a result, parliamentary review may sometimes reflect the policy preferences of the ruling party rather than independent legislative judgment. Nonetheless, the Tanzanian framework demonstrates how legislative authority can be strengthened through ordinary legislation, even without constitutional amendment.

On the other hand, the Democratic Republic of Congo (DRC) presents a markedly different approach. Its 2006 Constitution and Mining Code 2002 (as amended in 2018) do not impose a formal parliamentary ratification requirement. Instead, the country relies on transparency and disclosure obligations to promote accountability in mining governance. Amendments made in 2018 reflects the Extractive Industries Transparency Initiative (EITI) and requires that licenses granted by the Mining License Registry be published in the government's Official Journal. This transparency model stems from the DRC's historical experience with opaque "resource-for-infrastructure" agreements, most notably the Sino-Congolese contracts that raised concerns about corruption, undervaluation, and debt exposure.[47] In response, civil society organisations and parliamentary committees began demanding post-hoc reviews of major contracts, effectively introducing parliamentary scrutiny through

43 Natural Wealth and Resources (Permanent Sovereignty) Act 2017 (Tanzania), ss 4–6.

44 Natural Wealth and Resources (Permanent Sovereignty) Act 2017 (Tanzania), ss 4–6.

45 Natural Wealth and Resources (Review and Renegotiation of Unconscionable Terms) Act 2017 (Tanzania), s 4.

46 *Roder, K*. (2019). "Bulldozer politics", state-making and (neo-) extractive industries in Tanzania's gold mining sector, The Extractive Industries and Society, 6(2), 407–412.

47 Skaltsounis, P. (2025), The Sicomines Agreement: Strategic Partnership or Unequal Exchange between China and Democratic Republic of Congo? African Studies Quarterly, 23(2), 76–88.; Lempereur, P. (2024). China's Debt Trap Diplomacy in the Democratic Republic of Congo: A case study of a failed state (2006–2023) through Neoclassical Geopolitics.

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practice rather than law.[48] While this informal oversight has occasionally led to the renegotiation of controversial agreements, the absence of a binding ratification requirement weakens the enforceability of legislative scrutiny. Parliament's influence depends largely on political will and public pressure rather than constitutional or statutory authority. The DRC's model therefore emphasises transparency over legality, a useful but incomplete substitute for formal ratification.

I. Regional and International Frameworks

Across these jurisdictions, regional and international instruments have reinforced the principle of legislative oversight in natural resource governance. The Africa Mining Vision (AMV), adopted by the African Union in 2009, calls for the integration of extractive industries into national development frameworks through "transparent, equitable and optimal exploitation" of mineral resources.[49] Although the AMV does not mandate parliamentary ratification, it encourages member states to strengthen institutional checks and public participation in resource contracting.

Similarly, the Extractive Industries Transparency Initiative (EITI), of which Ghana, Tanzania, and the DRC are all implementing members, promotes disclosure of extractive contracts as a condition of membership.[50] The 2019 EITI Standard, particularly Requirement 2.4, calls for publication of the full text of any contracts and licenses that provide the terms attached to the exploitation of oil, gas or minerals.[51] While not legally binding, EITI standards have influenced domestic reforms by embedding transparency expectations into governance norms and donor conditionalities.

These soft-law frameworks complement domestic legislation by reinforcing the moral and policy rationale for parliamentary oversight. They establish benchmarks that African parliaments can use to evaluate the adequacy of their legal regimes, ensuring that national resource governance aligns with international best practices.

Comparatively, Ghana's model represents the strongest form of legislative control among the three jurisdictions. Its constitutional embedding of ratification makes parliamentary approval a condition precedent to legality, whereas Tanzania's statutory regime allows for political flexibility and the DRC's system relies primarily on ex-post transparency. However, the Ghanaian model's strength is partly offset by its procedural vagueness and limited parliamentary capacity. The absence of codified processes and expert support

48 *Skaltsounis, P* (2025) (n 48), pp 76–88.

49 African Union, Africa mining vision, Available at <https://www.delvedatabase.org/uploads/resources/Africa-Mining-Vision.pdf> Last assessed on 15th September 2025.

50 *Nadibaidze, T., & Maisuradze, D*. (2016). Extractive Industries Transparency Initiative (EITI). *Institute for Development of Freedom of Information*, *12*.

51 Extractive Industries Transparency Initiative. (2019, June 17). *The EITI standard;* Available at *<2019*. https://eiti.org/sites/default/files/attachments/changes-to-2016-standard-bc274.pdf> assessed 9 October 2025.

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structures can render ratification a perfunctory exercise rather than a substantive review. Tanzania, despite its statutory clarity, risks politicisation due to executive influence. The DRC's transparency-only approach may promote disclosure but lacks the legal force of veto or approval that defines genuine legislative oversight.

D. Benefits of Parliamentary Ratification

Parliamentary ratification of mining contracts offers an essential mechanism for reinforcing democratic accountability, enhancing legal certainty, and embedding transparency within the governance of natural resources.[52] In Africa, where executive dominance and opaque contracting have historically undermined public confidence in the extractive sector,[53] legislative involvement in contract approval represents both a constitutional safeguard and a policy innovation. One of the most direct benefits of parliamentary ratification is the enhancement of transparency in extractive sector governance.[54] Ratification introduces a mandatory stage of public disclosure that compels the executive to lay agreements before the legislature. In Ghana, this process has contributed to the opening of contract negotiations to public scrutiny. Parliamentary debates, though sometimes limited are held in open session making it possible for the media to report on the terms and controversies surrounding mining agreements.[55] This transparency, even when imperfect, serves to legitimise the process by demonstrating that the contracts affecting public resources are subject to democratic oversight.

By contrast, jurisdictions without a formal ratification requirement, such as the DRC and Nigeria, often struggle to achieve comparable levels of visibility. Although the DRC's Mining Code requires that contracts be published in official sources, the process occurs *after* execution, denying Parliament and the public the opportunity for meaningful input before commitments are finalised.[56] Ghana's pre-execution ratification model thus offers a stronger mechanism for ex-ante accountability, ensuring that agreements are scrutinised before they acquire legal effect. This is in sharp contrast to Nigeria where the executive dominate the negotiations and signing of mining contracts without any legislative role for parliament. In fact, in the oil and gas industry, the presidency often plays a direct role in the

52 John Akparibo Ndebugre v. The Attorney General, Aker Asa and Chemu Power Company Ltd Dlsc2855.

53 *Ayangafac, C., Bulcha, D., & Bekele, S.* (2016). Why Do Some African Countries Negotiate Unfair Natural Resource Contracts? In Public Procurement Reform and Governance in Africa (pp. 51–73). New York: Palgrave Macmillan US.

54 John Akparibo Ndebugre v. The Attorney General, Aker Asa and Chemu Power Company Ltd Dlsc2855.

55 *Dzisah, W. S.* (2016). The Print media coverage of Ghana's legislature. Journal of Communications, Media and Society (JOCMAS), 3(1), 3–29.

56 *Gervasoni, A.* (2024) (n 36).

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assignment of petroleum rights without any participation from outside the executive arm of government.

However, transparency plays a preventive role in curbing corruption and elite capture. The public nature of parliamentary debate deters the negotiation of lopsided contracts that disproportionately benefit foreign investors or politically connected actors.[57] As the Natural Resource Governance Institute (NRGI) has argued, transparency in extractive contracting reduces the informational asymmetries that allow private interests to exploit state weaknesses.[58] Parliamentary ratification, by mandating disclosure and debate, therefore strengthens the integrity of the contracting process and fosters public trust in state institutions.

I. Strengthening Constitutional Checks and Balances

Parliamentary ratification contributes to the constitutional balance of power. In most African democracies, the executive branch wields extensive authority over natural resource management.[59] Parliamentary ratification introduces a constitutional counterweight by requiring that executive actions be subjected to legislative consent. In Ghana, the Supreme Court has affirmed that the executive cannot unilaterally bind the Republic in natural resource transactions without parliamentary approval.[60] It underscores the position that legislative consent is a condition precedent to the validity of natural resource agreements.[61] Thus Parliament not merely an approving body but also a constitutional co-author of natural resource policy. From a theoretical perspective, this aligns with Madisonian principles of checks and balances, ensuring that no single branch of government monopolises control over resource wealth.[62] It also operationalises the fiduciary principle underlying resource

57 *Wang, V*. (2005). The accountability function of parliament in new democracies: Tanzanian perspectives. Chr. Michelsen Institute.

58 Pitman, R. Contract Transparency is an Extractive Industries Success Story—But It's Not Over Yet. Blog Post 8th December 2020. Natural Resources Governance Institute; Available at < https://resourcegovernance.org/articles/contract-transparency-extractive-industries-success-story-its-not-over-yet#:~:text=With%20the%20coronavirus%20pandemic%20and,changes%20will%20impact%20national%20assets.&text=Finally%2C%20as%20governments%20and%20companies,Resource%20Governance%20Institute%20(NRGI)> Last assessed 9th October 2025.

59 *Okeke-Uzodike, U., Amao, O. B., Idoniboye-Obu, S., & Whetho, A.* (2014). From adversity to prosperity: Towards a 'new'governance paradigm for natural resource management in Africa's conflict zones. African Security Review, 23(3), 243–263.

60 The Republic v High Court, General Jurisdiction 6, Accra; Ex Parte Attorney-General (Exton Cubic Group Ltd) [2020] GHASC 97.

61 The Republic v High Court, General Jurisdiction 6, Accra; Ex Parte Attorney-General (Exton Cubic Group Ltd) [2020] GHASC 97.

62 *James Madison*, Federalist Papers No. 51 (1788).

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governance, namely, that the state holds natural resources in trust for the people and must account for their management through representative institutions.[63]

In Tanzania, the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 similarly embeds parliamentary review as a safeguard against executive discretion.[64] The Tanzanian legislature's power to review and renegotiate unconscionable contracts represents an effort to recalibrate the balance between state sovereignty and investor interests. Although executive influence remains strong, the statutory requirement of parliamentary review provides a formal avenue for oversight that can evolve into substantive accountability with institutional maturity. Parliamentary ratification also enhances legal certainty and contractual legitimacy. When a contract is ratified by Parliament, it becomes imbued with the authority of law and gains stability within the domestic legal order. This dual effect benefits both the state and investors by reducing the risk of future invalidation and reinforcing confidence in the rule of law. In Ghana, once a natural resource agreement is ratified, it is insulated from unilateral alteration by the executive.[65] This legal sanctity ensures that subsequent governments cannot easily repudiate or modify the terms of the agreement without risking legal action. Investors, in turn, perceive ratified agreements as more secure, while citizens can rely on the fact that public representatives have vetted the transaction. This fosters an environment of predictable governance, balancing private investment confidence with public accountability.

Comparatively, in jurisdictions such as the DRC, where executive approval alone confers contractual validity, agreements are more likely to be vulnerable to legal and political disputes.[11] Parliamentary ratification thus offers an institutional guarantee that contracts conform to constitutional and statutory norms, reducing the incidence of arbitral challenges and the reputational costs of policy reversals.

Ratification also contributes to policy coherence by integrating resource contracting into broader national development priorities. Through parliamentary debate, legislators can assess whether proposed agreements align with national economic strategies, environmental protection objectives, and community development policies.[66] In Ghana, parliamentary committees often invite the Ministry of Finance, the Environmental Protection Agency (EPA), and the Minerals Commission to provide technical inputs before ratification. Although these interactions are not always systematic, they promote a degree of inter-agency coordination that is absent in purely executive-driven models. Ratification thereby transforms contract approval into a multi-sectoral process that considers fiscal, environmental, and social implications.

63 African Commission on Human and Peoples' Rights, Principles and Guidelines on Economic, Social and Cultural Rights (2009).

64 Natural Wealth and Resources (Permanent Sovereignty) Act 2017 (Tanzania), Section 6.

65 Constitution of Ghana 1992, Article 75(2).

66 Minerals and Mining Act 2006 (Ghana), Section 5–6. The sections provide broad policy guidelines on determining areas that can safely be the subject matter of mineral rights and the mode by which minerals mined in Ghana can be disposed off.

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Similarly, Tanzania's statutory framework enables Parliament to revisit contracts that undermine local content obligations or environmental safeguards.[67] This form of ex-post correction ensures that extractive agreements remain consistent with evolving public policy objectives. The DRC's transparency provisions, though less robust, have similarly enabled parliamentary committees to question the terms of controversial agreements, especially where issues of debt sustainability or environmental degradation arise.[68] Through these mechanisms, parliamentary ratification advances a vision of extractive governance that is not purely transactional but developmental, linking resource exploitation to broader societal goals of equity, sustainability, and national transformation.

II. Public Participation and Democratic Ownership

The process of parliamentary ratification also fosters democratic ownership of natural resource governance.[69] By bringing extractive agreements into the public domain, it allows citizens, through their representatives to influence decisions about how their natural endowments are managed. Although the Ghanaian process remains largely elite-driven, ratification creates an avenue for civil society advocacy and public discourse. Media coverage and civil society briefings surrounding high-profile mining and petroleum agreements have helped demystify the contracting process and increase public awareness of the economic stakes involved.[70] This participatory dimension enhances the legitimacy of state decisions and mitigates public resentment that often accompanies opaque or unpopular deals. Moreover, the Africa Mining Vision (AMV) and the EITI Standard both emphasise the need for public participation in extractive governance.[71] Ratification, by opening legislative space for public observation and input, operationalises these soft-law commitments in a tangible way. It serves as a bridge between the constitutional ideal of sovereignty of the people and the practical realities of state-led resource management.

67 Natural Wealth and Resources (Review and Renegotiation of Unconscionable Terms) Act 2017 (Tanzania), s 4.

68 Resource Matters and Centre Carter, Analyse des Contrats Sino-Congolais: Transparence et Défis (2021) 5–7.

69 Political parties and natural resource governance A practical guide for developing resource policy positions 2018. Natural Resource Governance Institute; Available at < https://www.idea.int/sites /default/files/publications/political-parties-and-natural-resource-governance.pdf > assessed 9 October 2025.

70 IMANI Urges Parliament to Reject Flawed Atlantic Lithium Agreement, Online newspaper article dated 12 November 2025. Available at <https://www.newsghana.com.gh/imani-urges-parliament-to-reject-flawed-atlantic-lithium-agreement/> Last assessed on 13th November 2025.

71 African Union, Africa Mining Vision (2009). Available at <https://au.int/sites/default/files/documents/30995-doc-africa_mining_vision_english_1.pdf> assessed 9 October 2025; EITI Standard 2019 (2019) Requirement 2.4. Available at https://api.eiti.org/sites/default/files/2022-01/EN%20EITI%20GN_2.4.pdf Last assessed on 12th October 2025.

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A comparative analysis suggests that Ghana's constitutional model provides the strongest legal guarantee of the benefits outlined above, particularly in ensuring transparency, legality, and legitimacy. However, its practical impact is constrained by institutional weaknesses limited technical capacity, insufficient public disclosure, and political dominance of the executive. Tanzania's statutory model, though driven by resource nationalism, demonstrates how legislative empowerment can reshape the extractive governance landscape without constitutional amendment. The DRC's transparency model, while lacking formal ratification, underscores the importance of disclosure as a precursor to meaningful accountability. Together, these experiences illustrate that the efficacy of parliamentary ratification depends not merely on its legal existence but on the quality of its implementation. Ratification must be accompanied by procedural clarity, technical capacity, and an enabling political environment if its theoretical benefits are to be fully realised.

E. Challenges and Limitation of Parliamentary Ratification

While the constitutional requirement for parliamentary ratification of mining contracts represents a major step toward democratic accountability and transparent governance, its practical implementation in Africa, particularly in Ghana has revealed several institutional, procedural, and political weaknesses. These challenges limit the transformative potential of legislative oversight and raise questions about whether ratification, as currently practised, effectively ensures accountability or merely adds a procedural formality to the contracting process.

The most persistent limitation to effective parliamentary ratification in Ghana and other African states is the enduring dominance of the executive branch in governance.[72] Although Article 268(1) of the 1992 Constitution of Ghana mandates parliamentary approval for natural resource agreements, the process is often driven and controlled by the executive, which retains discretion over contract negotiation, timing, and presentation to Parliament.[73] In practice, Parliament typically receives mining contracts for approval after negotiations have been completed by the Ministry of Lands and Natural Resources and the Minerals Commission. At this stage, Parliament's role becomes largely reactive and constrained, with limited opportunity to modify substantive terms.[74] The absence of a statutory mechanism empowering Parliament to propose amendments or to delay approval until concerns are addressed further weakens its oversight function.[75] This executive dominance is exacerbated

72 *Buur, L*., et al (2020) (n 4); pp 918–930.

73 *Buur, L*., et al (2020) (n 4); pp 918–930.

74 *Buur, L*., et al (2020) (n 4); pp 918–930.

75 John Akparibo Ndebugre v. The Attorney General, Aker Asa and Chemu Power Company Ltd Dlsc2855. The Supreme Court of Ghana in the case held that parliament's role is limited to approval of the initial agreement. Once ratified, the executive remains responsible for its implementation. Parliament's ratification does not give it continuing control over the contract's life cycle.

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by partisan politics. In Ghana's majoritarian parliamentary system, the ruling party almost always holds a majority in Parliament, allowing the executive to secure easy ratification of its preferred contracts.[76] Consequently, debates are often perfunctory and lack substantive scrutiny. Members of Parliament (MPs) rarely challenge the executive's position for fear of political repercussions, particularly when the party hierarchy exerts control over committee assignments, leadership positions, and electoral endorsements.[77]

A similar pattern is observed in Tanzania, where, despite the 2017 legislative reforms that enhanced parliamentary powers over natural resource contracts, the dominance of the Chama Cha Mapinduzi (CCM) party has limited genuine legislative independence.[78] The DRC presents an even more executive-centred model, where parliamentary involvement remains minimal, and contract approval occurs almost exclusively within the Ministry of Mines.[79] Thus, across jurisdictions, executive control continues to overshadow legislative autonomy, undermining the intended purpose of parliamentary ratification as a constitutional check on power.

Parliamentary ratification requires not only political will but also technical expertise. Mining contracts are highly complex legal instruments involving fiscal regimes, environmental standards, stabilization clauses, and dispute resolution mechanisms.[80] Effective scrutiny therefore depends on the ability of legislators and parliamentary committees to comprehend and interrogate these provisions. The absence of a permanent technical advisory unit dedicated to extractive industries weakens institutional memory. Each Parliament begins afresh with new members who may lack prior experience with mining contracts.[81] Capacity-building initiatives supported by external actors such as the Natural Resource Governance Institute (NRGI) and the Ghana Extractive Industries Transparency Initiative (GHEITI), have improved awareness but have not yet achieved structural sustainability.[82]

76 *Gyimah-Boadi, E., & Prempeh, H. K*. (2012). Oil, politics, and Ghana's democracy. Journal of democracy, 23(3), 94–108.

77 *Olaore, O., & Stapenhurst, R*. (2018). Parliamentary Oversight of Extractive Industries. JACL, 2, 1.

78 *Omary, I. N*. (2023). One-Party Dominance and Democratic Backsliding in Botswana and Tanzania: Whither Peace and Development?

79 *Talla, M. M.* (2010). Revisiting mining contracts in the DRC: Impossible Transparency in a Weak State. TRAVAIL, capital et société, 43(1).; Center, C. (2017). A state affair: privatizing Congo's copper sector. Atlanta, GA: The Carter Center.

80 *Phillips, S. K*. (2025). Mining law and governance: structures and challenges; In Comparative environmental law (pp. 389–415). Edward Elgar Publishing.

81 *François, A., & Grossman, E*. (2015). How to define legislative turnover? The incidence of measures of renewal and levels of analysis. The Journal of Legislative Studies, 21(4), 457–475.

82 Strengthening Parliamentary Law-making and Oversight of the Oil, Gas and Mining Sectors. Undated Report by Natural Resources Governance Institute. Available at <https://resourcegovernance.org/sites/default/files/documents/strenghtening-law-making-brochre.pdf > Last assessed on 12th October 2025.

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The problem is not unique to Ghana. In Tanzania, legislative committees often lack the financial and technical resources to evaluate complex contracts, leading to superficial debates and reliance on executive summaries.[83] The DRC faces even greater challenges, with legislative review often constrained by inadequate legal expertise and chronic underfunding of parliamentary operations.[84] Without significant investment in institutional capacity, the effectiveness of ratification remains largely symbolic.

I. Lack of Transparency and Limited Public Participation

Although parliamentary ratification is meant to promote transparency, the process itself often suffers from opacity. In Ghana, the Constitution does not require that contracts be published prior to ratification, nor does it mandate public hearings or consultations.[85] As a result, the public and civil society organisations have little opportunity to review or comment on proposed agreements before they are approved. In practice, many contracts are laid before Parliament shortly before adjournment, leaving minimal time for debate or public input.[86]The absence of a statutory disclosure framework compounds the problem, as ministries and parliamentary secretariats exercise discretion over whether and when to release contract documents. Even when agreements are eventually published, they may appear long after ratification, reducing opportunities for accountability.

This contrasts with emerging international best practices, such as those under the Extractive Industries Transparency Initiative (EITI), which encourages pre-ratification disclosure of contract terms.[87] In Tanzania, while the 2017 reforms have strengthened public discourse around extractive governance, Parliament still conducts most reviews in closed sessions.[88] In the DRC, the Mining Code's requirement to publish contracts within a defined number of days after signature provides transparency after the fact, but without parliamentary ratification, the public cannot influence decisions in real time.[89]

83 *Baregu, M*. (2004), Parliamentary oversight of defence and security in Tanzania's multiparty parliament. Guarding the Guardians. Pretoria: Institute for Security Studies. Available at <www. iss. co. za/index. Php> Last assessed on 12th October 2025.

84 *Magha-A Ngimba Charles Gimba*, Analysis of the D.R. Congo Legal Framework Pertaining to the Mining Industry: Comparative Perspectives from the South African Framework (PhD thesis, Aston University 2024).

85 Constitution of Ghana 1992, Article 268(1).

86 *Ayee, J., Soreide, T., Shukla, G. P., & Le, T. M*. (2011). Political economy of the mining sector in Ghana. World Bank Policy Research Working Paper, (5730).

87 *Heller, P. & Westenberg, E*. (2016) Five Steps to Disclosing Contracts and Licences in EITI. Natural Resources Governance Institute. Available at https://resourcegovernance.org/sites/default/files/nrgi_EITI-Contracts.pdf. Last assessed on 12th October 2025.

88 *Poncian, J., & Kigodi, H. M*. (2018). Transparency initiatives and Tanzania's extractive industry governance. Development Studies Research, 5(1), 106–121.

89 Mining Code (DRC) 2002 (as amended in 2018).

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The lack of transparency undermines public confidence in the ratification process and reinforces perceptions that resource governance remains elite-driven.[90] Without institutionalised procedures for public participation, such as stakeholder hearings, open-access repositories, or media engagement parliamentary ratification risks replicating the opacity it is designed to eliminate.

II. Procedural Ambiguities and Absence of Statutory Guidelines

A further limitation arises from the absence of clear statutory procedures governing how parliamentary ratification should occur. Article 268(1) of the Ghanaian Constitution establishes the *obligation* to obtain parliamentary approval but does not specify the process by which it must be done. Neither the Minerals and Mining Act 2006 (Act 703) nor any subsidiary legislation provides detailed guidance on how agreements are to be presented, debated, or approved. This procedural lacuna has led to inconsistencies in practice. There is no standard timeline for deliberation, and in some instances, Parliament has ratified contracts within days of receipt. Such variability undermines procedural fairness, invites legal uncertainty, and weakens the constitutional significance of ratification.

Comparatively, Tanzania's Natural Wealth and Resources (Permanent Sovereignty) Act 2017 provides a clearer statutory process, including provisions for review and renegotiation of unconscionable terms.[91] The DRC's Mining Code similarly outlines procedural steps for contract approval within the executive branch, though not within Parliament. Ghana's lack of codified ratification procedures stands out as a critical gap that must be addressed through legislative reform. Codification would not only promote consistency but also strengthen the enforceability of Article 268 by transforming it from a broad constitutional principle into a precise administrative process with defined roles, timelines, and consequences for non-compliance.

III. Judicial and Institutional Enforcement Gaps

Although Ghana's Supreme Court has underscored the constitutional necessity of parliamentary ratification, enforcement remains weak. In the Exton Cubic case, the Court held that unratified agreements are void, but no formal institutional mechanism exists to ensure that all contracts are submitted for ratification. There have been instances where resource agreements were implemented without parliamentary approval, either due to administrative oversight or deliberate executive expediency. The absence of sanctions for non-compliance and the lack of a public registry of ratified contracts make detection and redress difficult. Furthermore, the judiciary's reliance on ex-post adjudication means that irregularities may only come to light after disputes arise.

90 *Okada, K., & Shinkuma, T*. (2022). Transparency and natural resources in sub-Saharan Africa. Resources Policy, 76, 102574.

91 Natural Wealth and Resources (Permanent Sovereignty) Act 2017 (Tanzania).

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In Tanzania and the DRC, judicial enforcement is even weaker. Courts rarely review contract ratification procedures, viewing them as political questions outside the judicial domain. The lack of institutional synergy between the judiciary, Parliament, and oversight bodies limits accountability and perpetuates procedural laxity.

To realise its full potential, parliamentary ratification must evolve from a procedural ritual into a substantive process of accountability and deliberation. This requires reforms to strengthen legislative independence, codify ratification procedures, build technical capacity, and institutionalise transparency. Without such reforms, ratification risks remaining a formalistic exercise that legitimises executive decisions rather than subjecting them to democratic scrutiny.

F. Policy and Legal Reform

The preceding analysis demonstrates that, while parliamentary ratification of mining contracts provides a constitutional anchor for democratic oversight and public accountability, the mechanism remains underdeveloped in practice. Executive dominance, procedural uncertainty, and limited capacity have rendered the process largely formalistic. To transform parliamentary ratification into an effective governance tool, both Ghana and other African states must adopt targeted reforms that address legal, institutional, and political deficiencies. This section proposes five interrelated reforms: (1) codification of ratification procedures; (2) institutional strengthening of Parliament; (3) integration of transparency and stakeholder participation; (4) regional peer learning and harmonisation; and (5) broader governance alignment.

I. Enactment of Specific Legislation on Ratification Procedures

A key reform priority is the codification of clear procedural rules governing how parliamentary ratification should be conducted. Although Article 268(1) of the 1992 Constitution of Ghana mandates parliamentary approval for natural resource agreements, it does not specify the steps involved. The absence of such clarity has allowed inconsistency in how contracts are laid, debated, and approved. To resolve this, Parliament should enact a natural resources ratification procedures law or alternatively, introduce a dedicated part within the Minerals and Mining Act 2006 (Act 703) as well as other analogous natural resources legislation to address the following. The law should specify the timeline for submission and consideration of contracts. It should indicate the roles of the relevant parliamentary committees, the criteria for assessing contracts, including compliance with national policy, fiscal soundness, and environmental obligations. The law should outline the right of Parliament to request clarifications, amendments, or renegotiations. It should also indicate the legal consequences for non-compliance, such as rendering unratified contracts void ab initio after a defined period.

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Codification would ensure uniform practice, provide legal certainty, and reduce executive discretion. Tanzania's Natural Wealth and Resources (Permanent Sovereignty) Act 2017, which operationalises parliamentary review of extractive agreements, offers a relevant model for procedural clarity.[92] Such legislation would further align Ghana with the Africa Mining Vision (AMV) and the Extractive Industries Transparency Initiative (EITI) standards, both of which emphasise the importance of formalised oversight mechanisms.

II. Strengthening Parliamentary Capacity and Technical Expertise

Effective legislative scrutiny depends on Parliament's institutional strength. The complexity of mining contracts requires MPs to possess or access technical expertise in law, economics, geology, and environmental science.[93] Without such knowledge, ratification risks being a mere rubber stamp. Ghana should establish a Parliamentary Technical Advisory Unit on Extractive Industries, modelled after the UK's Parliamentary Office of Science and Technology (POST) or Nigeria's National Assembly Budget and Research Office (NABRO). The unit would provide non-partisan, expert analyses of contracts and their fiscal and environmental implications. In addition, reforms should include continuous training programmes for MPs and their backroom staff on resource governance and contract law. There should be institutional partnerships with universities, think tanks, and civil society to provide policy briefings and legal reviews. The government should consider adequate budgetary allocation for oversight committees so that, among other things, they can integrate independent consultants during contract reviews to enhance objectivity.

Building such capacity would enable Parliament to interrogate executive submissions more rigorously, align contract terms with national priorities, and ensure that legislative decisions are informed rather than political. Tanzania's experience illustrates the benefits of equipping Parliament with professional staff capable of interpreting fiscal and environmental data.[94] Similarly, Ghana's collaboration with GHEITI and the Natural Resource Governance Institute (NRGI) should be institutionalised and expanded to provide continuous technical support rather than ad hoc interventions.

III. Institutional Transparency and Stakeholder Participation

Transparency and public participation are central to the democratic legitimacy of ratification. Yet, as demonstrated earlier, Ghana's process remains largely closed to public scrutiny. Mining contracts are often laid before Parliament without prior publication or

92 Natural Wealth and Resources (Permanent Sovereignty) Act 2017 (Tanzania).

93 *Evelyn, D*. (2019), Balancing mining contracts and mining legislation: experiences and challenges, Mineral Economics, 32(2), 153–169.

94 *Amundsen, I.* (2010) Support for Parliaments-Tanzania and Beyond (Chr. Michelsen Institute 2010); Available at <https://www.cmi.no/publications/file/3822/support-for-parliaments-tanzania-and-beyond.pdf> assessed 9 October 2025.

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stakeholder consultation. To remedy this, Ghana should legislate for mandatory disclosure of all mining agreements prior to parliamentary consideration. The proposed framework for natural resources ratification procedures could require publication of the full text of draft agreements at least 30 days before the agreement is laid before parliament. It can also include, open parliamentary hearings to solicit inputs from affected communities, trade unions, and civil society organisations. By establishment an online contract repository accessible to the public, it would encourage greater public participation. Such provisions would align Ghana's practice with the EITI Standard 2019, which calls for proactive disclosure of contracts and beneficial ownership information.[95] Public participation would also reduce corruption risks, enhance public trust, and democratise the governance of mineral resources. The DRC's Mining Code, which mandates publication of contracts within 60 days, represents an incremental step toward transparency, though Ghana can go further by ensuring participation *before* rather than *after* ratification.

IV. Promoting Regional Standards and Peer Learning

The governance of extractive industries in Africa increasingly benefits from regional cooperation and the diffusion of best practices. Ghana, Tanzania, and the DRC all face similar challenges in balancing investor confidence with public accountability. To strengthen ratification systems, these countries should engage in inter-parliamentary peer learning and adopt regional policy frameworks.

At the ECOWAS level, the Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009) encourages member states to ensure parliamentary participation and community engagement in mining governance.[96] The Africa Mining Vision Action Plan (2011) also highlights the importance of legislative oversight as a pillar of transparent and equitable resource management.[97] Ghana could take the lead in developing a Model Parliamentary Ratification Framework within ECOWAS or the African Legal Support Facility (ALSF), offering a template for standardised procedures across the continent. This could include guidelines on public disclosure, technical evaluation, and post-ratification monitoring. Peer review mechanisms, similar to the African Peer Review Mechanism (APRM) in governance, could be extended to natural resource management, creating incentives for compliance and learning through benchmarking.[98]

95 Extractive Industries Transparency Initiative (EITI), EITI Standard 2019 (2019) Requirement 2.4.

96 ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009).

97 African Union, Africa mining vision, Available at <https://www.delvedatabase.org/uploads/resources/Africa-Mining-Vision.pdf> Last assessed on 15th September 2025.

98 *Mapuva, J.* (2011), The African Peer Review Mechanism: Lessons from the Pioneers, Journal of Contemporary African Studies, 29(3), 358–359.

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V. Integrating Ratification into Broader Resource Governance Reforms

Parliamentary ratification should not be viewed in isolation but as part of a comprehensive resource governance architecture. The process must connect seamlessly with related frameworks on contract negotiation, revenue management, environmental protection, and local content regulation. In this direction, reforms could include linking parliamentary ratification to pre-negotiation disclosure requirements, ensuring that the executive consults Parliament before contract terms are finalised. It can also co-ordinating with the Public Procurement Authority (PPA) and the Attorney-General's Department to ensure that contracts comply with domestic procurement and legal standards. In addition, ratification can be embedded within national development planning frameworks. There can also be a post-ratification monitoring to evaluate whether contractual obligations such as royalty payments, environmental restoration, and community development projects, are being fulfilled.[14] By integrating these reforms, Ghana and its peers can move toward a more holistic and accountable extractive governance model that balances efficiency, sovereignty, and sustainability.

G. Conclusion

Parliamentary ratification of mining contracts represents one of the most significant mechanisms for embedding democratic accountability in the governance of Africa's extractive industries. It operationalises the constitutional principles of separation of powers, public participation, and the fiduciary duty of the state to manage natural resources on behalf of its citizens. Within the African context where executive discretion over mineral resources has historically been unchecked, the legal requirement of legislative approval provides a constitutional counterweight to opacity and elite capture.

Ghana's experience under Article 268 of the 1992 Constitution illustrates both the promise and the pitfalls of this system. The Ghanaian framework provides a clear constitutional obligation, reinforced by judicial authority, that no mining contract shall take effect without parliamentary ratification. This requirement, by subjecting executive agreements to legislative scrutiny, has enhanced the legitimacy of mining governance and introduced an important layer of transparency. However, as this study has demonstrated, the potential of this constitutional safeguard remains undermined by executive dominance, limited institutional capacity, procedural ambiguities, and a lack of systematic transparency. The comparative insights from Tanzania and the Democratic Republic of Congo (DRC) reveal that similar tensions exist across Africa's resource governance landscape. Tanzania's statutory reforms demonstrate the value of procedural codification and political will in strengthening legislative oversight, while the DRC underscores the limits of transparency without formal ratification. The Ghanaian model, therefore, occupies a middle ground, constitutionally robust yet operationally fragile, offering valuable lessons for legal and institutional reform across the continent.

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To transform parliamentary ratification from a procedural formality into a substantive instrument of democratic control, African states must institutionalise clear procedures, strengthen parliamentary capacity, ensure public participation, and align domestic laws with regional and international best practices. Ultimately, the effectiveness of ratification will depend not merely on the existence of constitutional provisions, but on the political culture of accountability that sustains them.

When properly implemented, parliamentary ratification can bridge the gap between executive authority and public interest, ensuring that Africa's natural resource wealth serves as a foundation for inclusive development rather than a source of political contestation. It embodies the principle that natural resources belong to the people, and that their exploitation must be subject to the scrutiny of those elected to represent them.

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An Assessment of the Effectiveness of Niger's Labour Laws in Mitigating Health and Safety Risks Associated with Mining Work

Bernard Kengni*

Abstract

This paper examines the regulatory framework governing health and safety in Niger's mining industry, a sector central to the country's economic development and subject to substantial investment despite ongoing political instability. It reviews the constitutional, mining, and labour codes that collectively aim to protect mine workers from occupational hazards, including exposure to radioactive materials and toxic chemicals, particularly in uranium mines. Despite the existence of these legal provisions, the paper finds that their practical effectiveness is undermined by inadequate enforcement, limited funding, insufficient legal coverage of emerging risks, corruption, lack of political will, exclusion of workers from policy-making, and scarcity of occupational health resources. Empirical evidence reveals persistent health and safety violations, especially in artisanal and small-scale mining, with frequent accidents and occupational diseases. The study concludes that, while Niger's legal framework has the potential to safeguard miners, systemic flaws in implementation and governance have resulted in ongoing health and safety risks, highlighting the urgent need for reforms to ensure legal compliance, worker participation, and resource allocation for occupational health and safety in the mining sector.
Keywords: Health, Safety, Mining, Workers, Niger, Radioactivity, Uranium, Legal Framework

1 Introduction

Several African countries have continuously relied on their extractive industry for economic development for decades. As a result, investment in the extractive sector in Africa has steadily climbed over the years. As an example, exploration budgets for Africa "continued to grow year over year in 2022, maintaining their 10 % share of the global budget".[1] Historically, mining has played a central role in Niger's economic growth. Even after the 2023

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1 *S&P Global Market Intelligence*, Africa – mining by the numbers, 2022 (2022) https://www.spglobal.com/marketintelligence/en/news-insights/research/africa-mining-by-the-numbers-2022 (accessed on 20 July 2024).

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military coup, mining has continued to shape debates in the country. In 2024, the military junta revoked mining licenses, including a significant uranium permit, and proceeded to nationalise the Samira Hill gold mine in 2025,[2] and plans to nationalise the SOMAÏR uranium mine.[3] Despite political instability, Niger has granted new licenses for copper and lithium mining in the Agadez region, with the government holding significant stakes in these new ventures.[4] In addition, Niger possesses significant mineral wealth, particularly in uranium, and has potential in rare earth elements and battery minerals.[5]

The above demonstrates a growing appetite for investing in extractive activities. However, such investment opportunities can lead to various issues, including health and safety concerns. The main health and safety issue in the mining industry is the exposure of workers to hazardous conditions that can cause injuries, diseases, or fatalities. There have been reports of workers being exposed to radioactive ore and dust in the uranium mines of Arlit and Akokan, for example, due to inadequate protection against radioactive dust.[6]

Such issues raise a question as to whether health and safety are adequately regulated in the Nigerien mining industry. Thus, this paper aims to analyse the effectiveness of the legal framework regulating and promoting health and safety measures in the country's mining industry. The paper first reviews existing laws applicable to health and safety to highlight the extent to which they enable the prevention and mitigation of health and safety issues in the mining industry. The paper then proceeds to analyse the effectiveness of the legal framework in practice, highlighting failures and reasons thereof before concluding.

2 Regulation of Health and Safety

A legal framework is the essential foundation for regulating health and safety in the mining industry, which is inherently a dangerous space for workers. A practical legal framework provides the legal enforcement authority and creates a culture of safety by defining standards, assigning responsibilities, and ensuring employee rights.[7] The Nigerien legal

2 *AFP*, Niger announces nationalisation of its only gold mine (2025) https://www.ewn.co.za/2025/08/09/niger-announces-nationalisation-of-its-only-gold-mine (accessed on 28 October 2025).

3 *Africanews with AP*, Niger to nationalize uranium venture operated by France's Orano (2025) https://www.africanews.com/2025/06/20/niger-to-nationalize-uranium-venture-operated-by-frances-orano// (accessed on 27 October 2025).

4 25 % in the copper project and 40 % in the lithium project. See *Martina Schwikowski*, Sahel juntas drive new era in mineral extraction (2025) https://www.dw.com/en/sahel-juntas-drive-new-era-in-mineral-extraction/a-72124570 (accessed on 28 October 2025).

5 *SFA-Oxford*, Niger: Critical minerals, policy, and the energy transition (2025) https://www.sfa-oxford.com/lithox/critical-minerals-policy-legislation/all-countries/africa/niger/ (accessed on 28 October 2025).

6 *The Guardian*, https://www.theguardian.com/world/2010/oct/15/niger-mining?utm_source=chatgpt.com (accessed on 08 October 2025).

7 *Johs Andenæs*, 'The legal framework', Aspects of Social Control in Welfare States (1968).

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framework, therefore, takes steps to ensure health and safety in the workplace, especially in hazardous working environments such as mining.

Article 12 of the Nigerien Constitution guarantees several fundamental rights, including the right to health. Thus, the article explicitly grants to every individual in Niger the right to health by emphasising the state's responsibility to provide these necessities. This suggests a focus on social and economic rights. However, by highlighting that the right must be realised within "the conditions specified by the law", the Constitution indicates that such a right is not absolute and can be regulated by domestic legislation. It is therefore necessary to explore how the legislation enables the right to health and safety in the Nigerien mining sector.

The Nigerien mining code provides that natural or legal persons involved in the exploration or extraction of mineral resources must comply with best practices to ensure the safety and hygiene of employees and other persons on site.[8] Thus, the mining code requires any persons or legal entities engaged in prospecting or mining activities to comply with standard practices to guarantee the safety and health of their employees and of third parties. The Code also provides for ensuring minimum safety and hygiene standards applicable to mining activities, including health risks such as silicosis and ionising radiation.[9] It equally provides for safety rules relating to the transport, storage, and use of explosives during mining operations.[10] Thus, the Mining Code aims to ensure that mining companies conduct their operations in ways that minimise risk to miners (as well as to people in proximity), especially from known health hazards in mining, such as silicosis (from dust) and radiation exposure.

The mining code's provisions for health and safety implement guidelines provided by the Labour Code.[11] The primary aim of Niger's Labour Code is to regulate the relationship between employees and employers, ensuring fair labour practices and promoting social justice in the workplace. In essence, the Labour Code aims to strike a balance between the rights and obligations of employers and employees, aiming to create a stable and productive labour environment in Niger. Such rights and responsibilities include health and safety at the workplace. The health & safety provisions in the Nigerien Labour Code are designed to protect the life, physical integrity, and health of employees by ensuring that employers take the necessary preventive measures and maintain working conditions that reduce risks.[12] More specifically, the Labour Code aims to ensure that employers implement all "useful measures" suited to their particular operating conditions to guarantee health, safety, and hygiene at work.[13] This implies that mining companies must design workplaces, tools,

8 Article 121 of the Mining Code.
9 Ibid.
10 Ibid.
11 Law No. 2012–45 of 25 September 2012.
12 Chapter II of Law No. 2012–45.
13 Articles 136–137 of Law No. 2012–45.

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and procedures to avoid or minimise health risks associated with mining activities. As a result, the Labour Code sets minimum standards that employers must meet to ensure safety, hygiene, and medical oversight, as well as in the layout and arrangement of installations.[14] The overall goal is to prevent incidents that threaten the health and life of workers. Thus, rather than merely reacting to accidents or illnesses, the law aims to promote proactive action: risk prevention, safety planning, hygiene and health monitoring, among others. To ensure that the Labour Code achieves its aim, it assigns legal obligations that must be complied with, subject to regulation and inspection, so that employers who fail to meet safety and health requirements are held accountable.[15]

Having Occupational Health and Safety provisions in place, as provided by the Labour Code discussed above, is essential for protecting workers, employers, and society as a whole. Such provisions create structured systems that prevent accidents, reduce disease, and improve productivity.[16] Hence, occupational health and safety provisions are critical in the mining industry to save lives. This, in turn, strengthens productivity, reduces economic losses, ensures legal compliance and promotes social justice. Thus, promoting and enhancing health and safety in the Nigerien mining sector is not just a legal requirement — it is a foundation for sustainable and equitable economic development.[17]

While Niger does not have a single, stand-alone "Mine Health and Safety Act", mine safety is covered by the various provisions discussed above. These provisions have the potential to prevent and or limit health and safety hazards associated with mining in Niger. However, research suggests that the promising aims of such provisions are not translated into reality. The following section highlights factors hindering the achievement of a zero-harm mining sector in Niger.

3 Factors Limiting Effective Regulation

As mentioned above, the promising provisions promoting occupational health and safety in Niger have not been as effective as intended from their conception. As a result, there have been reports of instances where the safety and health of mine workers have been seriously compromised. In a 2024 study (Dosso, Niger), data from the Caisse Nationale de Sécurité Sociale (CNSS) highlighted 160 declarations of occupational accidents or diseases in 2017,

14 Ibid article 136.

15 Article 239–140 of Law No. 2012–45.

16 *Ahmed Farouk Kineber, Maxwell Fordjour Antwi-Afari, Faris Elghaish, Ahmad MA Zamil, Mohammad Alhusban and Thikryat Jibril Obied Qaralleh*, 'Benefits of implementing occupational health and safety management systems for the sustainable construction industry: a systematic literature review' (2023) 15 Sustainability 12697, 10.

17 *Kassu Jilcha and Daniel Kitaw*, 'Industrial occupational safety and health innovation for sustainable development' (2017) 20 Engineering science and technology, an international journal 372, 372–373.

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with 95 % being accidents, including 8.6 % fatalities.[18] Further, in 2019, mine workers reported about 600 cases of occupational accidents.[19] Similarly, Workers in Niger's mining sector face serious health issues stemming from a combination of toxic chemical exposure, radiation, physical hazards, and infectious diseases.[20] These risks are most likely severe for those in the poorly regulated artisanal and small-scale mining sector, where safety measures are often nonexistent.[21]

As a major uranium producer, Niger's mine workers, particularly in the northern regions, are at risk of exposure to radioactive materials.[22] For example, radiation exposure is a major concern for workers as they frequently risk exposure to radon gas, a decay product of uranium linked to lung cancer.[23] External exposure to alpha and gamma radiation from uranium and its decay products is another concern for people working in processing plants and near tailings.[24] Besides radioactive elements, mine workers are also at risk of exposure to contamination by heavy metals such as radium and thorium, which are released during uranium mining.[25] These heavy metals can contaminate water sources and dust, posing a health hazard when consumed or inhaled by mine workers.[26] Ingestion or inhalation of heavy metals can cause various cancers and organ damage.[27] For example, a 2023 study by a health observatory for former uranium mine employees identified cases of lung and blood

18 *Halimatou Nassirou-Sabo and Moussa Toudou-Daouda*, 'Assessment of knowledge, attitudes, and practices of occupational risks and diseases among healthcare providers of the Regional Hospital Center of Dosso, Niger' (2024) 12 SAGE Open Medicine 20503121231224549, 1–2.

19 *Agence Nigérienne de Presse (ANP),* Accidents de travail au Niger: 200 cas dont dix décès et près de 600 millions d'indemnisation (2019) https://anp.ne/accidents-de-travail-au-niger-200-cas-dont-dix-deces-et-pres-de-600-millions-dindemnisation/ (accessed 28 October 2025).

20 Ibid.

21 *Gavin Hilson, Halima Goumandakoye and Penda Diallo*, 'Formalizing artisanal mining 'spaces' in rural sub-Saharan Africa: The case of Niger' (2019) 80 Land use policy 259, 260.

22 *Moustapha Kadi Oumani*, Conditions d'extraction de l'uranium au Niger, impact sur le développement et conditions de travail (2019) https://www.energiesosfutur.org/publications/international/conditions-dextraction-de-luranium-au-niger-impact-sur-le-developpement-et-conditions-de-travail/ (accessed on 28 October 2025).

23 *Marilyn Urrutia-Pereira, José Miguel Chatkin, Herberto José Chong-Neto and Dirceu Solé*, 'Radon exposure: a major cause of lung cancer in nonsmokers' (2023) 49 Jornal Brasileiro de Pneumologia e20230210, 1–2.

24 *Vasyl Lyashenko, Viktor Stus, Yuriy Kyselov and Ivan Lisovyi*, 'Assessment of the Impact of the Uranium Industry on the Environment and Population' (2025) 31 Mining Revue/Revista Minelor.

25 *Nnabuk Okon Eddy, Ogbonaya Igwe, Ifeanyi Samson Eze, Rajni Garg, Kovo Akpomie, Chinwe Timothy, Gloria Udeokpote, Ifeanyi Ucheana and Hazratullah Paktin*, 'Environmental and public health risk management, remediation and rehabilitation options for impacts of radionuclide mining' (2025) 6 Discover Sustainability 209.

26 *SV Fesenko and ES Emlutina*, 'Thorium concentrations in the environment: A review of the global data' (2021) 48 Biology Bulletin 2086, 2087.

27 *Wafa Alimam and Anssi Auvinen*, 'Cancer risk due to ingestion of naturally occurring radionuclides through drinking water: A systematic review' (2025) 968 Science of the Total Environment 178849, 2–3.

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cancers and silicosis linked to their work in uranium mines.[28] These examples suggest that the Nigerien legal framework has been ineffective in addressing health and safety concerns within its mining industry. Such a failure can be attributed to various factors.

Research suggests that while Niger's labour and mining codes address health and safety, their provisions are undermined by significant flaws in implementation, particularly regarding the large informal and mining sectors. The following discussion examines the major flaws that hinder the effective promotion of health and safety in the Nigerien mining industry.

3.1 Lack of effective enforcement and funding

The most prominent flaw hampering the prevention of health and safety issues in the Nigerien mining industry is the lack of effective enforcement by regulatory agencies. A lack of effective health and safety enforcement, due to institutional and resource capacity gaps within regulatory agencies, poses a significant challenge for many African countries.[29] These gaps lead to problems like weak oversight, inadequate infrastructure, and limited human resources for monitoring and enforcement, despite the existence of legal frameworks designed to protect workers.[30]

Thus, even when laws and decrees exist, their practical application can be limited by capacity issues. This is because regulatory bodies in countries like Niger often lack the necessary funding, infrastructure, and skilled personnel to monitor and enforce safety regulations effectively.[31] There is, therefore, a need for more robust enforcement mechanisms, including consistent monitoring, clear penalties, and effective evaluation of compliance with health and safety standards. Niger can achieve this by enabling international oversight. However, while international bodies can offer guidance, they do not have the authority to compel compliance with domestic regulations, as noted in the case of the African Union's African Peer Review Mechanism.

Poor enforcement is also attributed to limited funding. Particularly, there is an insufficient staffing level and a lack of training for labour inspectors within government agencies,

28 *Rédaction Africanews and AFP*, Million tonnes of partially radioactive waste stir up fear in Niger (2024) https://www.africanews.com/2023/03/16/million-tonnes-of-partially-radioactive-waste-stir-up-fear-in-niger/ (accessed on 28 October 2025).

29 *Oluwatosin B Igbayiloye and Danny Bradlow*, 'An assessment of the regulatory legal and institutional framework of the mining industry in South Africa and Kenya for effective human rights protection: Lessons for other countries' (2021) 21 African Human Rights Law Journal 363, 376 & 385.

30 *Erin Smith and Peter Rosenblum*, 'Enforcing the rules: Government and citizen oversight of Mining' (2011) 7 & 10.

31 *Oliver P Maponga and Chilombo Musa*, 'Domestication of the role of the mining sector in Southern Africa through local content requirements' (2021) 8 The Extractive Industries and Society 195, 199 & 208.

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due to limited funding, which often results in inadequate monitoring of workplaces.[32] As a result, many companies operate with little regard for safety regulations.[33] While specific company names are not publicly disclosed for negligence in Niger, the artisanal and small-scale mining (ASM) sector in Niger is often characterised by a lack of proper health and safety, leading to frequent accidents and exposure to hazards such as dust and noise.[34] Large-scale operations are less frequently the subject of such reports, but a general lack of enforcement and poor working conditions, such as inadequate or non-existent safety equipment and training, are common across many mining sectors in countries like Niger.[35] Another reason why the rule of law fails to prevent health and safety issues effectively in Niger is the flaws of the legal framework, as explained below.

3.2 Inadequate legal framework

While the Niger's legal framework acknowledges occupational health and safety (OHS) — mainly through the Mining Code and the Labour Code, it remains inadequate to protect mine workers effectively. The legal framework fails to provide for emerging risks and modern technologies. This limitation creates little incentive for companies to comply.

Furthermore, due to inadequate health and safety provisions in the mining industry, companies often resort to self-monitoring.[36] While there is no specific literature confirming this exact situation in Niger, evidence indicates a lack of robust government oversight, which may explain why self-monitoring occurs. As a result, formal mines are often expected to self-report accidents or radiation levels, which can lead to underreporting or data

32 World Bank, Préparation du Projet Intégré de Gouvernance du Secteur Extractif pour le Développement Local (GOLD) (2020) Report, xi & 150 https://documents1.worldbank.org/curated/en/099120502222326239/pdf/P1642710f11d2803608ad500713e5983f31.pdf (accessed on 29 October 2025).

33 *Abdoulkader Afane and Laurent Gagnol*, 'Une ruée vers l'or contemporaine au Sahara: l'extractivisme aurifère informel au nord du Niger' (2021) VertigO-la revue électronique en sciences de l'environnement.

34 Boubacar Zanguina Djafarou, 'Perceptions des risques sanitaires, environnementaux et sociaux par les orpailleurs de Koma Bangou (Liptako nigérien)', Université Abdou Moumouni de Niamey 2023) 15–16.

35 *International Labour Organization*, Chemical exposures in mining: Impacts for occupational safety and health (ILO 2024) 10 & 19; *Francis Arthur-Holmes and Kwaku Abrefa Busia*, 'Safety concerns and occupational health hazards of women in artisanal and small-scale mining in Ghana' (2022) 10 The Extractive Industries and Society 101079, 3.

36 *May Hermanus, Nancy Coulson and N Pillay*, 'Mine Occupational Safety and Health Leading Practice Adoption System (MOSH) examined-the promise and pitfalls of this employer-led initiative to improve health and safety in South African Mines' (2015) 115 Journal of the Southern African Institute of Mining and Metallurgy 717, 724.

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manipulation.[37] This is concerning because poor waste and tailings management expose workers and nearby communities to radioactive dust and contaminated water.[38] Such poor management is attributed to minimal or absent long-term monitoring of miners' health (for radiation-related cancers or lung diseases).[39]

Past studies around Arlit and Akokan show high levels of radiation and heavy metals, but few formal accountability mechanisms exist for worker compensation.[40]

3.3 Corruption and lack of political will

Reports indicate that corruption can affect regulatory oversight, allowing some companies to operate in violation of safety standards by bribing officials. Corruption has severely undermined the enforcement of health and safety standards in Niger's mining industry through bribery, illicit practices, weak governance, and exploitation.[41] For decades, the lack of effective governance and pervasive corruption has created an environment where the safety of miners and the surrounding environment is neglected for private profit.[42] There is a strong indication that mining companies in Niger have used bribes to secure or expedite the issuance of licenses and permits, thereby bypassing mandatory environmental and safety assessments.[43] While there is no clear evidence in the case of Niger, such a situation allows operators to run mines without proper oversight, leading to the neglect of health and safety protocols. As observed in Nigeria, officials responsible for inspecting mine sites have reportedly accepted bribes to ignore safety violations.[44] This includes overlooking dangers such as poor ventilation in underground mines, inadequate personal protective

37 *Seyedeh Arezoo Baghaei Naeini and Adel Badri*, 'Identification and categorization of hazards in the mining industry: A systematic review of the literature' (2024) 15 International Review of Applied Sciences and Engineering 1, 11.

38 *Eddy and others*, 'Environmental and public health risk management, remediation and rehabilitation options for impacts of radionuclide mining'.

39 Ibid.

40 *MO Sidibé, AO Manga, S Soumana and OK Adukpo*, 'Assessment of the Level of Radioactivity in the Soil in Urban Areas and Building Materials of Arlit City (Agadez-NIGER)' (2024) 50 Atom Indonesia 273, 277–278; Bruno Chareyron and Corinne Castanier, *Remarks on the radiological situation in the vicinity of the uranium mines operated by Somair and Cominak (subsidiaries of Areva) in northern Niger. Study conducted on behalf of Greenpeace International-Criirad Report no. 10-09*, 2010).

41 Julien Gourdon and Hugo Lapeyronie, *Le potentiel minier de l'Afrique: Panorama, enjeux et défis*, 2024) 17 & 25.

42 *Bella Malcolm*, The Dark Side of Africa's Mining Industry and the Road to Reform (2025) https://www.africanleadershipmagazine.co.uk/the-dark-side-of-africas-mining-industry-and-the-road-to-reform/ (accessed on 30 October 2025).

43 *Enrica Chiappero Martinetti, Juan Núñez Leanes and Marco Spalluto*, 'A Neo-Colonialist Mining Legacy: The Past and Present of Uranium Extraction in Niger' 46.

44 *Salihu Ayatullahi*, Lithium Hunters: Bribery, Abuses, Deaths – The Dark Side Of Nigeria's Illegal Mining (2023) https://crossriverwatch.com/2023/09/__trashed-14/ (accessed on 30 October 2025).

https://doi.org/10.5771/2363-6262-2025-4 https://www.inlibra.com/de/agb - Open Access -

equipment, and the unsafe handling of toxic chemicals like mercury and cyanide.[45] Further, corrupt officials are reported to actively aid and abet illegal mining operations in return for bribes.[46] This complicity allows unlicensed miners to operate in remote areas with minimal government presence, where health and safety are virtually non-existent.

The consequences of corruption in the industry are often exacerbated by a lack of strong political will to enforce labour laws.[47] This flaw is very likely to enable influential companies to evade proper penalties for health and safety negligence. Areva, a French state-controlled nuclear company (now Orano), provides a prominent example of a multinational corporation that has evaded proper penalties for health and safety negligence in Niger, largely due to a lack of political will from both the Nigerien and French governments. This impunity was exposed through decades of activism by non-governmental organisations (NGOs) and local groups, which consistently documented the severe and long-lasting impacts of the company's uranium mining operations.[48] Despite decades of evidence and advocacy, Areva repeatedly avoided meaningful penalties or prosecution for its negligence.[49] This example highlights the gross systemic failure of political will in both Niger and France. As a result, prosecuting employers like Areva for violations was slow and ineffective, largely because agreements between the Nigerien government and Areva were often opaque and non-transparent.[50] This resulted in a lack of public oversight, enabling the company to operate with little accountability.

3.4 Limited inclusion of workers in policy

There is no documented evidence of workers' exclusion. However, analyses of Niger's mining sector reveal systemic issues that suggest that workers and their representatives are at times excluded from the process of formulating health and safety policies, meaning that

45 *BIT*, La sécurité et la santé dans les mines à ciel ouvert (2018) 60 & 66.

46 *Hervé LADO, Christophe Vadot and Ibrahim Amani*, 'La Renégociation des Contrats Miniers en Afrique. Cas du Niger et de la Guinée' (2017) Centre d'Excellence pour la Gouvernance des Industries Extractives en Afrique Francophone 11.

47 *Ahamadou Mohamed Maiga*, « Les compagnies minières ne sont pas là pour les beaux yeux des Africains » (2025) https://www.agenceecofin.com/reflexion/0505-128067-les-compagnies-minieres-ne-sont-pas-la-pour-les-beaux-yeux-des-africains-dr-ahamadou-mohamed-maiga (accessed on 30 October 2025).

48 *Sherpa*, Health of uranium miners at AREVA sites in Gabon and Niger (2012) https://www.asso-sherpa.org/health-of-uranium-miners-at-areva-sites-in-gabon-and-niger/ (accessed on 30 October 2025).

49 *Libération* – AFP, Imprudence Areva visée par un procès pour «négligence» lors de l'enlèvement de Français au Niger en 2010 (2025) https://www.liberation.fr/societe/police-justice/areva-visee-par-un-proces-pour-negligence-lors-de-lenlevement-de-francais-au-niger-en-2010-20251019/ (accessed on 30 October 2025).

50 Resource Justice Network, Niger & Areva – missing contracts and presidential planes (2015) https://resourcejustice.org/niger-areva-missing-contracts-and-presidential-planes. (accessed on 30 October 2025).

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regulations may not adequately address the on-the-ground realities of various workplaces.[51] Including workers and their representatives in the formulation of health and safety policies is not just good practice — it's a legal, ethical, and practical necessity for effective protection in any workplace, especially in high-risk sectors like mining.[52] This is because workers experience daily operations and are often the first to notice unsafe conditions, faulty equipment, or poor ventilation. Thus, their involvement is likely to ensure that safety measures are practical and context-specific, rather than merely theoretical or imposed from above. Workers help identify hidden or emerging hazards such as fatigue, repetitive strain, toxic exposure and unsafe shortcuts.

Without worker input, policies risk being irrelevant, incomplete, and thus, challenging to implement effectively. Including them enhances risk assessments and early warning systems, reducing the likelihood of accidents and occupational diseases.[53] Additionally, involving workers promotes public participation, a key element of good governance. Participatory risk assessment strengthens the accuracy of hazard mapping and safety prioritisation.[54]

Policies created with workers rather than for them build mutual trust. When workers are part of the process, they are more likely to accept, understand, and comply with safety rules.[55] This is especially necessary in situations where many workers, particularly those with limited education, have a limited understanding of their legal rights and standard occupational health and safety practices. Limited or no involvement is likely to exacerbate a poor reporting culture and fear of job loss, which prevents many from speaking out against unsafe working conditions.[56]

3.5 Insufficient resources for occupational health

Research shows that Niger has very few occupational physicians, and safety/hygiene departments in health facilities are often managed by nurse technicians rather than by

51 *Doudou SIDIBE*, La renégociation du partenariat entre Orano (ex-Areva) et l'Etat du Niger en 2013: relations avec les parties prenantes et politique RSE (2025).

52 *Isidora Milošević, Anđelka Stojanović, Đorđe Nikolić, Ivan Mihajlović, Aleksandar Brkić, Martina Perišić and Vesna Spasojević-Brkić*, 'Occupational health and safety performance in a changing mining environment: Identification of critical factors' (2025) 184 Safety Science 106745, 1–2.

53 Ibid 3.

54 *Marat Rudakov, Elena Gridina and Jürgen Kretschmann*, 'Risk-based thinking as a basis for efficient occupational safety management in the mining industry' (2021) 13 Sustainability 470, 3 & 5.

55 Ibid 5.

56 *Diego Bellini, Serena Cubico, Piermatteo Ardolino, Marino Bonaiuto, Maria Lidia Mascia and Barbara Barbieri*, 'Understanding and exploring the concept of fear, in the work context and its role in improving safety performance and reducing well-being in a steady job insecurity period' (2022) 14 Sustainability 14146, 4.

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specialised OHS staff.[57] This results in a limited ability to diagnose, monitor, and prevent occupational diseases.[58] The country has a severe lack of trained occupational health practitioners and facilities to diagnose and treat work-related diseases.[59] This means that the health impacts of occupational hazards often go unaddressed, particularly for workers in the informal sector.

While large-scale mining operations controlled by multinational corporations have more financial resources than the artisanal sector, there is still a risk of neglecting to recruit and train staff to enforce worker safety.[60] Information regarding specific mining companies operating in Niger that have neglected worker health and safety, as explained earlier, is limited. This may be due to poor reporting, lack of regulatory enforcement, and a history of corporate opacity.[61] However, the French state-owned uranium company, AREVA and its subsidiaries have previously been the subject of numerous reports and investigations for serious health and environmental neglect during decades of uranium mining in Niger.[62] Another example involves the SOMINA uranium mine in the Azélik region, a joint venture that included China National Nuclear Corporation (CNNC).[63]

Therefore, the above is exacerbated by the current legal framework's failure to enable the labour inspectorate on the one hand. On the other hand, mining safety authorities have very few trained staff and have insufficient resources to conduct regular mine visits, as explained above.[64]

4 Conclusion

While Niger possesses a comprehensive legal framework for regulating health and safety within its mining industry, comprising constitutional guarantees, the Mining Code, and

57 *Laurence Svirchev*, '9 Challenges of Managing Occupational Health' (2021) Improving Global Worker Health and Safety Through Collaborative Capacity Building Initiatives 127.

58 *Nassirou-Sabo and Toudou-Daouda*, 'Assessment of knowledge, attitudes, and practices of occupational risks and diseases among healthcare providers of the Regional Hospital Center of Dosso, Niger' 2 & 7.

59 Ibid 2.

60 *Olanrewaju Clement Alaba*, 'Systematic Review of Occupational Injuries and Illnesses in the Nigerian Mining Industry' (2024) 7 ABUAD Journal of Engineering Research and Development (AJERD) 405, 409.

61 *Ibrahima Aidara*, Why does AREVA refuse to pay a fair rate of tax in Niger? (2014) https://africanarguments.org/2014/02/why-does-areva-refuse-to-pay-a-fair-rate-of-tax-in-niger-by-dr-ibrahima-aidara/ (accessed on 30 October 2025).

62 *The New Humanitarian*, Niger: Uranium – blessing or curse? (2007) https://www.thenewhumanitarian.org/report/74738/niger-uranium-blessing-or-curse (accessed on 30 October 2025).

63 *Ousmane Naomi Binta Stansly et al*, *Étude de référence sur les Entreprises et les Droits de l'Homme : cas des industries extractives au Niger* (2014) 5 & 68.

64 *Nassirou-Sabo and Toudou-Daouda*, 'Assessment of knowledge, attitudes, and practices of occupational risks and diseases among healthcare providers of the Regional Hospital Center of Dosso, Niger' 2.

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the Labour Code, the practical effectiveness of these provisions remains significantly limited. The country's mining sector, especially given its central economic role and recent expansion into new minerals, continues to expose workers to serious occupational hazards, including toxic chemical exposure, radiation, and physical dangers. Despite legal requirements, there is persistent evidence of inadequate enforcement, insufficient funding, and limited capacity among regulatory authorities, resulting in frequent accidents and occupational diseases, particularly within the artisanal and small-scale mining sector.

Weak penalties, inconsistent application of existing laws, and a lack of clear standards for emerging risks further compound the inadequacy of the legal framework. Self-monitoring by companies, especially in the absence of robust oversight, leads to under-reporting and insufficient accountability. Corruption and a lack of political will further undermine regulatory efforts, allowing both domestic and multinational companies to evade proper scrutiny and penalties for health and safety violations. The exclusion of workers from policy formulation processes, coupled with low awareness of rights and insufficient occupational health resources, further diminishes the effectiveness of existing health and safety measures.

Ultimately, the Nigerien experience demonstrates that the mere existence of legal provisions is insufficient to guarantee the health and safety of mine workers. Effective protection requires not only a robust and adaptive legal framework but also strong enforcement mechanisms, adequate resources, genuine political commitment, and meaningful worker inclusion in policy development and implementation. Addressing these systemic challenges is essential for achieving a mining sector that is both safe for workers and conducive to sustainable, equitable economic development in Niger.

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BRIDGING BORDERS THROUGH LAW: TACKLING ENVIRONMENTAL CHALLENGES IN THE EAST AFRICAN COMMUNITY

Prepared by Rosette UMUTONIWASE*

Abstract

Environmental challenges rarely respect national boundaries, making regional cooperation essential. This paper examines how law serves as a bridge for addressing cross-border environmental issues within the East African Community (EAC), while situating these efforts within the wider framework of international environmental governance. It analyzes the EAC's key legal instruments, including the Treaty for the Establishment of the EAC, protocols, Acts, and policies, to assess their effectiveness in tackling regional environmental challenges such as deforestation, biodiversity loss, and transboundary pollution. Despite notable progress, persistent enforcement and capacity challenges continue to undermine the region's legal framework. The paper argues that deeper alignment with international obligations, improved institutional collaboration, and increased legal harmonization are essential for creating sustainable solutions by emphasizing both governance gaps and synergies with international law. Ultimately, it highlights how legislation can serve as a unifying force in protecting the EAC's shared natural resources.

Keywords: East African Community, Environmental Law, Regional Integration, Transboundary Challenges, Sustainable Development.

A. Introduction

Environmental issues, including pollution, deforestation, and biodiversity loss, rarely respect national boundaries.[1] Although international legal frameworks offer valuable direction, actual development hinges on how nations and regions implement these standards.[2] In

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1 *Athanasios Valavanidis*, the 12 Most Pressing Global Environmental Issues: Environmental Problems Humanity Needs to Resolve Before 2050, 2022, p. 2.

2 *United Nations*, Sustainably Manage Forests, Combat Desertification, Halt and Reverse Land Degradation, Halt Biodiversity Loss, available at <https://www.un.org/sustainabledevelopment/biodiversity/>, (accessed on 17/9/2025).

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this situation, the law acts as a bridge that facilitates coordination, collaboration, and the defense of common resources in addition to being a regulatory tool.

The East African Community (EAC) was established through the Treaty for the Establishment of the East African Community (EAC Treaty) and has since emerged as a leading example of successful regional integration in Africa.[3] Originally signed on 30th November 1999 and entering into force on 7th July 2000, the Treaty was ratified by the founding Partner States, Kenya, Tanzania, and Uganda.[4] Over time, EAC has expanded to include Rwanda and Burundi (2007), South Sudan (2016), the Democratic Republic of Congo (DRC) (2022),[5] and, most recently, Somalia, which joined as the eighth member in November 2023.[6] This gradual expansion reflects the EAC's growing ambition to foster cooperation, shared development, and regional unity across the EAC.

Partner States are expressly committed to working together on social and environmental issues in addition to political and economic ones. However, implementation of regional frameworks remains uneven due to varying national capacities. This paper examines the EAC's institutional and legislative framework for transboundary environmental issues, situates these initiatives in the international context, and identifies strategies for strengthening regional governance.

B. Legal Foundations for Environmental Sustainability in the EAC

In the EAC, sustainability is a cornerstone of regional integration, and environmental governance is rooted in a strong legislative framework. The EAC Treaty obliges Partner States to pursue sustainable development and cooperate on environmental protection.[7] This foundation is reinforced by the Protocol on Environment and Natural Resources Management, which sets obligations on biodiversity, water, pollution control, and climate change.[8] These instruments reflect a shared commitment to environmental stewardship and regional cooperation, though their impact depends on consistent implementation across Partner States. The following subsections explore the core legal instruments, guiding principles, and institutional structures that define and drive environmental governance within the EAC.

3 *East African Community*, History of the EAC, available at <https://www.eac.int/eac-history>, (accessed on 17/9/2025).

4 *East African Community*, Overview of EAC, available at <https://www.eac.int/overview-of-eac>, (accessed on 17/9/2025).

5 *East African Community*, History of the EAC, available at <https://www.eac.int/eac-history>, (accessed on 17/9/2025).

6 *Victor Owino*, Somalia Officially Admitted into East African Community, The East African, available at <https://www.theeastafrican.co.ke/tea/news/east-africa/somalia-officially-admitted-into-eac>, (accessed on 18/9/2025).

7 Treaty for the Establishment of the East African Community (adopted 30 November 1999, entered into force 7 July 2000), art. 111.

8 Protocol on Environment and Natural Resources Management (adopted 3 April 2006, entered into force 3 May 2006).

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I. Progress and Challenges in Environmental Law

Environmental governance in the EAC has taken on growing significance as the region seeks to balance development with sustainability and align with global priorities. At the core of this framework is the EAC Treaty, which affirms that a clean and healthy environment is indispensable for sustainable development.[9] Partner States are obliged to cooperate in the conservation of natural resources, the prevention of pollution, the regulation of hazardous waste, and the integration of environmental considerations across all sectors of development.[10] Building on this foundation, the Protocol on Environment and Natural Resources Management[11] sets out more detailed obligations on biodiversity conservation, pollution control, and the management of transboundary ecosystems.

These commitments are further reinforced under Article 40 of the EAC Common Market Protocol, which obliges Partner States to uphold sound environmental and natural resources management for the proper functioning of the Common Market.[12] This includes preventing activities that are detrimental to the environment and ensuring consistency with existing community policies, strategies, and laws. Supporting these legal instruments, the EAC Climate Change Policy[13] advances regional adaptation, mitigation, and resilience, while the EAC Biodiversity Strategy[14] promotes the conservation and sustainable use of species and genetic resources.

Additionally, the EAC has actively embraced Multilateral Environmental Agreements (MEAs) as a key mechanism to address cross-border and global environmental challenges. MEAs are international agreements between states that may take the form of "*soft law*," which establishes non-binding principles to guide national action, or "*hard law*," which imposes legally binding obligations to achieve specific environmental objectives.[15] These agreements respond to a wide range of pressing global issues, including biodiversity loss, climate change, ozone depletion, hazardous and persistent organic pollutants, marine pollution, trade in endangered species, and wetland destruction.

9 Treaty for the Establishment of the East African Community (adopted 30 November 1999, entered into force 7 July 2000), art. 111.

10 Id, arts. 111–114.

11 Protocol on Environment and Natural Resources Management (adopted 3 April 2006, entered into force 3 May 2006).

12 Protocol on the Establishment of the East African Community Common Market (adopted 20 November 2009, entered into force 1 July 2010), art. 40.

13 *East African Community*, EAC Climate Change Policy, (EAC, 2011), available at <https://www.eac.int/environment>, (accessed on 20/9/2025).

14 *East African Community*, EAC Regional Biodiversity Strategy and Action Plan (2021–2031), 2021, available at <https://www.eac.int/environment>, (accessed on 20/9/2025).

15 *United Nations Environment Programme*, Auditing the Implementation of Multilateral Environmental Agreements (MEAs): A Primer for Auditors, UNON Publishing Services Section, 2010, p. 4.

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Furthermore, the EAC Partner States have committed to the effective implementation of key MEAs, including the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD), the Ramsar Convention on Wetlands, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Montreal Protocol on Ozone Depletion, the Stockholm Convention on Persistent Organic Pollutants, and the International Tropical Timber Agreement (ITTA). Through these commitments, the EAC not only strengthens regional cooperation but also aligns its environmental governance with global objectives, contributing to the achievement of the Sustainable Development Goals (SDGs) by 2030.[16]

Together, these instruments form a robust legal and policy framework for environmental governance. While gaps in implementation and coordination remain, they also present unique opportunities for reform, innovation, and deeper regional collaboration, positioning the EAC as a proactive leader in sustainable development and environmental protection.

II. Harmonization and Approximation of Environmental Laws

One of the central challenges for cross-border environmental governance in the EAC is reconciling divergent national laws and policies.[17] While the EAC Treaty promotes harmonization, differences in national priorities and legal capacities can impede uniform implementation.[18] Harmonizing and approximating laws fosters consistent approaches to sustainable development, pollution control, and biodiversity conservation across Partner States.[19] It also strengthens compliance with international agreements, promotes best practices, and enhances the EAC's credibility in global environmental governance.

It is crucial to note that by aligning legal frameworks, the EAC can more effectively manage shared environmental resources, streamline cooperation among Partner States, and participate constructively in international environmental agreements.[20] This approach not only promotes uniformity in environmental management but also facilitates knowledge sharing and collaboration with neighboring regions and global partners, reinforcing the EAC's role as a proactive regional actor in sustainable development.

16 *East African Community*, Multilateral Environmental Agreements, 2025, available at <https://www.eac.int/environment/multilateral-environmental-agreements>, (accessed on 20/9/2025).

17 *Aleem Tharani*, Harmonization in the EAC, in Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger, and Armin Cuyvers (eds), East African Community Law: Institutional, Substantive and Comparative EU Aspects, Brill, 2017, p. 487.

18 *United Nations Development Programme,* Regional Integration and Human Development: A Pathway for Africa, UNDP, New York 2011, p. 31.

19 *World Trade Organization and United Nations Environment Programme,* Making Trade Work for the Environment, Prosperity and Resilience, UNEP, Nairobi, 2018, p. 59.

20 *Nicholas J. Mwabu*, East African Community (EAC) Integration and Environmental Management, Master of Arts dissertation, University of Nairobi, Institute of Diplomacy and International Studies, 2014, p. 51.

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III. Enforcement Challenges and Institutional Frameworks

The effectiveness of environmental laws depends on robust enforcement and institutional oversight.[21] The EAC has established mechanisms such as the East African Court of Justice (EACJ) and specialized committees on environment and natural resources to monitor compliance, adjudicate disputes, and ensure accountability.[22] These institutions provide the structure necessary for harmonized enforcement and foster transparency in cross-border environmental governance.

In addition to strengthening institutional frameworks and enforcement mechanisms, the EAC also contributes to larger global initiatives for environmental stewardship and sustainable development, making it more resilient to environmental issues.[23] However, the enforcement of these laws is often hindered by limited financial and technical capacity, which weakens the ability of institutions to monitor compliance effectively. Moreover, inconsistent commitment among Partner States and overlapping mandates across institutions create enforcement gaps and slow the implementation of agreed frameworks.

IV. Regional Integration and Environmental Governance

Regional integration offers both opportunities and constraints for environmental governance. It enables Partner States to pool resources, coordinate policies, and respond collectively to transboundary threats, yet disparities in economic development and political priorities may hinder cohesive action.[24] For instance, while some Partner States may prioritize rapid industrialization, others place greater emphasis on conservation, creating tensions in policy alignment. In addition, variations in institutional capacity and enforcement mechanisms across the region can slow down the implementation of joint environmental commitments.

In addition, regional integration improves the uniformity and efficacy of environmental management by harmonizing environmental laws and standards.[25] It fosters mutual accountability, promotes collaborative conservation efforts, and facilitates joint strategies for climate change mitigation, pollution control, and biodiversity protection. Integration

21 *Willy Onzivu*, The Long Road to Integrating Public Health into Sustainable Development of Shared Freshwaters in International Environmental Law: Lessons from Lake Victoria in East Africa, 46(3), The International Lawyer, 2012, p. 868.

22 *East African Community Secretariat*, EAC Sub-Regional Input to the Eleventh Session of the United Nations Forum on Forests (UNFF), 2016, p. 5.

23 *RES4Africa, International Renewable Energy Agency and United Nations Economic Commission for Africa*, Towards a Prosperous and Sustainable Africa, RES4Africa Foundation, Rome, 2022, p. 130.

24 *Nicholas Kimani*, A Collaborative Approach to Environmental Governance in East Africa, 22(1), Journal of Environmental Law, 2010, p. 28.

25 *Kavita Khanna*, Regional Integration in Africa: A Study on the East African Community, Observer Research Foundation, 2013, p. 4.

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also allows Partner States to share expertise, technology, and resources, ensuring more efficient responses to environmental crises. Moreover, it encourages green economic growth by promoting trade and investment practices that minimize ecological impact.[26] In this way, regional integration strengthens environmental protection, advances sustainable development, and amplifies the EAC's voice in international environmental negotiations.

C. Environmental Governance Across Borders

Beyond the EAC, other regional economic communities and international organizations play crucial roles in global environmental governance. Drawing comparative insights from regions such as the European Union (EU) or the Association of Southeast Asian Nations (ASEAN),[27] this identifies best practices and lessons learned that could inform the EAC's approach to addressing cross-border environmental challenges. The EAC can improve its own methods for efficiently handling transboundary environmental concerns and managing shared natural resources by comprehending these international models and frameworks.

A comparative analysis of legal approaches to addressing cross-border environmental challenges within the EAC reveals both similarities and differences when viewed in a global context. One notable similarity is the emphasis on harmonizing environmental laws and regulations among Member States to foster cooperation and streamline the management of shared natural resources.[28] This approach mirrors efforts seen in other regional blocks worldwide, such as the EU, where harmonization aims to create a unified framework for addressing environmental issues across diverse national contexts.

However, a key difference lies in the enforcement mechanisms and institutional frameworks. Unlike the EU, where supranational bodies have significant authority in enforcing environmental regulations across member states, the EAC relies more on cooperative mechanisms and national enforcement agencies.[29] This difference reflects varying levels of integration and institutional maturity, with the EAC still developing its institutional capacity to effectively manage cross-border environmental challenges.

In the global context, regional integration in environmental governance within the EAC faces unique challenges related to socioeconomic disparities, infrastructure limitations, and

26 *Rwanda Environment Management Authority*, Revised Green Growth and Climate Resilience: National Strategy for Climate Change and Low Carbon Development, REMA, 2022, p. 5.

27 *I-Chun Xuechen*, The Role of ASEAN's Identities in Reshaping the ASEAN–EU Relationship, 40(2), Contemporary Southeast Asia, 2018, p. 223.

28 *Owen S. Njura*, A Comparative Analysis of the European Union (EU) and the East African Community (EAC) Economic Integration Models: Lessons for Africa, Master of Arts dissertation, University of Nairobi, 2016, p. 51.

29 *Piotr T. Milej*, What is Wrong about Supranational Laws? The Sources of East African Community Law in Light of the EU's Experience, 75, ZaöRV, 2015, p. 588.

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political stability across Partner States.[30] These factors can impact the uniform application of environmental laws and the implementation of sustainable development strategies. By contrast, more established regional blocs often benefit from greater economic cohesion and institutional robustness, which facilitate more effective cross-border environmental management and resource allocation.

Moreover, global trends in environmental governance emphasize the importance of collaborative approaches and partnerships beyond regional borders. Both the EAC and other regional blocs engage in international agreements and partnerships to address transboundary environmental issues such as climate change, biodiversity conservation, and pollution control.[31] Strengthening these global partnerships and leveraging international cooperation frameworks can enhance the EAC's capacity to address its environmental challenges while contributing to global sustainability efforts.[32]

Furthermore, while the EAC's legal approaches to cross-border environmental challenges align with broader global trends in regional integration and environmental governance, contextual differences in enforcement mechanisms, institutional frameworks, and socioeconomic dynamics shape its effectiveness. To guarantee resilient environmental management and sustainable environmental management within the EAC, there is a need to customize policies that build on regional advantages while tackling particular problems.

D. Cross-Border Environmental Challenges in the EAC

Addressing cross-border environmental challenges within the EAC presents several significant legal and practical challenges in a global context. In the EAC, Partner States maintain control over integration policies. Decisions require approval from state representatives in the Council and endorsement from Heads of State at the Summit. Unlike the EU, where decisions rely on a simple or qualified majority, the EAC operates on consensus with veto power. The variable geometry principle enshrined in the EAC treaty allows flexibility in integration speed among Partner States but may limit broader participation due to challenges with consensus and veto power.[33]

30 *Center for Strategic and International Studies*, State of Eight: Challenges Facing the East Africa Community, available at <https://www.csis.org/analysis/state-eight-challenges-facing-east-africa-community>, (accessed on 21/9/2025).

31 *East African Community*, Conservation and Management of Natural Capital in East African Community Program under USAID/Kenya & East Africa Support, (2019–2022), available at <https://www.eac.int/environment/programmes-and-projects/management-of-natural-capital>, (accessed on 21/09/2025).

32 *Nicholas S. Chisika and Chan Yeom*, Enhancing Sustainable Development and Regional Integration through Electrification by Solar Power: The Case of Six East African States, available at <https://www.mdpi.com/2071-1050/13/6/3275>, (accessed on 22/09/2025).

33 *Edward F. Ssempebwa*, Brexit: Are there lessons for the East African Community?, 1(1), East African Community Law Journal, 2020, p. 7.

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Additionally, in the EAC, there exists variability in legal frameworks and enforcement capacities among Partner States.[34] For instance, Rwanda has implemented stringent environmental laws and established effective enforcement mechanisms, contributing to better pollution control and environmental protection compared to some other Partner States. In contrast, Tanzania faces challenges in enforcing environmental regulations uniformly across its diverse regions, leading to disparities in environmental management practices. Despite efforts towards harmonization, disparities in environmental laws, regulations, and enforcement mechanisms hinder effective collaboration and coordination within a regional bloc. This diversity may lead to inconsistencies in environmental management practices and difficulties in achieving unified responses to transboundary environmental issues such as pollution, biodiversity loss, and climate change impacts.[35]

Moreover, the presence of limited institutional capacity and resources within the EAC poses an obstacle to effective environmental governance. While regional institutions like the EACJ and specialized committees exist, their effectiveness in enforcing environmental laws and resolving disputes across borders can be constrained by funding gaps, technical expertise shortages, and administrative bottlenecks.[36] Thus, strengthening institutional capacity-building efforts and enhancing resource mobilization are crucial for overcoming these challenges and ensuring robust environmental governance across the region.

Furthermore, political will and commitment from Partner States are essential for implementing and enforcing harmonized environmental laws effectively. Disparities in political priorities, competing national interests, and varying levels of commitment to environmental protection can undermine collective efforts within the EAC.[37] It is crucial to note that achieving consensus on environmental policies and initiatives requires continuous diplomatic efforts and mutual trust among Partner States, particularly in navigating complex issues where economic development goals may conflict with environmental sustainability objectives.[38] It is important to note that the complexity of managing transboundary environmental challenges necessitates enhanced cooperation with neighboring regions and international stakeholders.[39] While the EAC strives to address its environmental issues internally, collaborative efforts with external partners and organizations are often essential

34 *Omar J. A. Kaniki*, Examination of Security Challenges in the East African Community (EAC) Region, 1(2), International Diplomatic Review Journal, 2022, p. 2.

35 *Sylvie Maljean-Dubois*, The Effectiveness of Environmental Law, 3, European Environmental Law Forum Series, 2017, p. 2.

36 *East African Community*, Legal & Judicial Affairs, available at <https://www.eac.int/press-releases/153-legal-judicial-affairs>, (accessed on 22/9/2025).

37 *The Access Initiative*, The Road to Realizing Environmental Rights in Africa: Moving from Principles to Practice, 2022, p. 26.

38 Ibid.

39 *George C. Kaua*, Transboundary Natural Resource Management: Rationale, Challenges and Way Forward, Environment Management, 2018, p. 13.

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for tackling global environmental threats that transcend national and regional boundaries; otherwise, if not addressed, challenges will persist.

E. Way Forward

To effectively address cross-border environmental challenges, the EAC should prioritize coordinated action, clear policies, and robust institutional support. Key steps include:

Firstly, the EAC should prioritize harmonizing environmental laws across Partner States by aligning national legal frameworks and standards and establishing mechanisms for regular review to address evolving environmental concerns and international obligations.

Secondly, regional institutions such as the EACJ and specialized environmental committees should be strengthened through capacity-building, technical expertise, and administrative support to enhance enforcement, dispute resolution, and coordination of cross-border initiatives.

Thirdly, political commitment from national and regional leaders is essential to integrate environmental sustainability into development agendas and promote incentives for sustainable practices across key sectors, including agriculture, energy, and transportation.

Fourthly, regional and international partnerships should be leveraged to access additional resources, expertise, and opportunities for joint initiatives, facilitating knowledge exchange and alignment with global sustainable development goals.

Finally, public participation and environmental awareness programs should be promoted to engage communities in decision-making and support local conservation efforts, ensuring that environmental governance is inclusive and effective.

F. Conclusion

The EAC exemplifies the potential of law as a unifying instrument in addressing environmental challenges that transcend national borders. Effectively confronting these complex issues requires the EAC to promote deeper regional cooperation, harmonize legal and policy frameworks, and facilitate inclusive public participation. While notable progress has been achieved, persistent obstacles, such as inconsistent enforcement, limited institutional capacity, divergent national priorities, and financial constraints, continue to undermine the region's collective efforts. These challenges underscore the need for stronger legal structures, more resilient institutions, and closer alignment with international environmental standards. By consolidating regional initiatives, fostering political commitment, forging strategic partnerships, and empowering local communities, the EAC can establish itself as a proactive regional leader. In doing so, it will not only safeguard shared natural resources and advance sustainable development but also strengthen its contribution to global environmental governance.

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THE RISE OF ARMED GROUPS IN DRC; ANALYSIS OF THE EMERGENCE AND PERSISTENCE OF ARMED GROUPS AND THEIR IMPACT ON THE RECURRING CONFLICT IN THE TERRITORY.

Zoe Richard Mauki*

Abstract

Since 1998 to the present time, the Democratic Republic of the Congo (DRC) has faced ongoing instability due to the persistent activities of numerous armed groups in the territory, making it one of Africa's most enduring humanitarian crisis zones. These militia groups are comprised of local and foreign armed groups, and they are located in the eastern part of the DRC. These armed groups are driven by complex motives, which are political ambitions, ethnic tensions, and economic interests. Their growth and persistence have been shaped by factors such as the aftermath of regional wars, the government's limited control, competition over valuable resources, and unresolved local disputes. The groups are known as the Allied Democratic Forces (ADF), March 23 Movement popularly known as (M23), Democratic Forces for the Liberation of Rwanda (FDLR), and other various groups such as Amka jeshi, and Chini ya Tuna. These groups are frequently involved in severe human rights violations, sexual violence, mass killings, child soldier recruitment, and forced displacement of civilians. Although disarmament initiatives, military campaigns, and peacekeeping missions have been deployed, they have had limited effectiveness due to the complex nature of the conflict and the broader geopolitical landscape. Gaining a clear understanding of the drivers, dynamics, and consequences of these armed actors and the lasting solution to restore peace in the territory is crucial to establishing lasting peace and stability in both the DRC territory and the Great Lakes region.

1.1. Introduction

The Democratic Republic of Congo (DRC) is Africa's third-largest country, covering 2.3 million square kilometers[1]. It is rich in natural resources, including fertile land, valuable minerals such as copper, cobalt, coltan, diamonds, and gold), major hydroelectric potential,

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1 Jean A. P. Clément, The Democratic Republic of the Congo: Lessons and Challenges for a Country Emerging From War year 2005, available on https://www.elibrary.imf.org/configurable/content/book$002f9781589062528$002fch02.xml?t:ac=book%24002f9781589062528%24002fch02.xml on 16 August 2025.

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and one of the world's largest rainforests[2]. With a population of around 56 million people from over 350 ethnic groups and growing at 3 % a year, it is the fourth most populous country in Africa[3]. The DRC lies in the Congo River basin and encompasses 11 varied provinces, from the Great Lakes to the Atlantic Ocean[4]. Its location and transport links to nine neighbouring countries make it a potential regional economic powerhouse, comparable to other African countries[5].

The DRC territory is hosting various armed groups that have been destabilising the country for a while now. Since 1998, the Country has not experienced peace. The territory is marred by armed groups that have caused so much damage to the country, which is rich in minerals and precious stones, that one would expect it to be a leading African state with powerful economic growth, but it is the contrary.

For several decades, the country has been in conflict; to date, the country has yet to witness peace. The world is majorly paying attention to other conflicts in other parts of the world; however, the DRC's war is one of the most overwhelming, with so many human atrocities being committed. The atrocities are mainly in the eastern part, and this part of the DRC territory has suffered a devastating effect, and the conflict is overlooked in all aspects. In January 2025, the conflict gained attention when the M23 captured Goma, and allegations rose that Rwanda was supporting this rebel group, although the Rwandan president came out and denied these allegations.

Some scholars suggest that for over three decades, communities in the eastern provinces of the DRC have faced ongoing threats from armed group attacks and recurring inter-community violence[6]. In provinces such as Ituri, North Kivu, South Kivu, and Tanganyika, more than 120 militias and armed factions are currently active[7]. Many of these

2 Jean A. P. Clément, The Democratic Republic of the Congo: Lessons and Challenges for a Country Emerging From War year 2005 available on https://www.elibrary.imf.org/configurable/content/book$002f9781589062528$002fch02.xml?t:ac=book%24002f9781589062528%24002fch02.xml on 16 August 2025.

3 Jean A. P. Clément, The Democratic Republic of the Congo: Lessons and Challenges for a Country Emerging From War year 2005 available on https://www.elibrary.imf.org/configurable/content/book$002f9781589062528$002fch02.xml?t:ac=book%24002f9781589062528%24002fch02.xml on 16 August 2025.

4 Jean A. P. Clément, The Democratic Republic of the Congo: Lessons and Challenges for a Country Emerging From War year 2005 available on https://www.elibrary.imf.org/configurable/content/book$002f9781589062528$002fch02.xml?t:ac=book%24002f9781589062528%24002fch02.xml on 16 August 2025.

5 Jean A. P. Clément, The Democratic Republic of the Congo: Lessons and Challenges for a Country Emerging From War year 2005 available on https://www.elibrary.imf.org/configurable/content/book$002f9781589062528$002fch02.xml?t:ac=book%24002f9781589062528%24002fch02.xml on 16 August 2025.

6 Democratic Republic of the Congo, population at risk, available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/ accessed on 12th August 2025.

7 Democratic Republic of the Congo, population at risk, available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/ accessed on 12th August 2025.

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groups are responsible for repeated and severe abuses against civilians, acts that could constitute war crimes and crimes against humanity[8]. Scholars further argue that it is not only the non-state actors that are committing these atrocities, but also the government's armed forces, to some extent, were implicated for human rights violations, international humanitarian violations, which also include arbitrary killings, sexual violence offences, torture, and these crimes that may amount to crimes against humanity[9]. Due to all these calamities that are going on in the territory, some scholars have described DRC as 'Africa's Heart of Darkness,' and a "forsaken black hole characterized by calamity, chaos, confusion, and a bizarre form of social cannibalism where society is its prey."[10]

My position differs from the foregoing narratives. The current situation in the DRC, while grave, is not without precedent. Numerous states have experienced similar periods of instability in the African continent and other countries on other continents. The international community witnessed the genocide in Rwanda, an atrocity of unspeakable magnitude. Nevertheless, Rwanda was able to recover, rebuild, and is now widely recognised as a model of economic progress and institutional development in Africa. Of course, with its own internal challenges, like other states. Comparable examples can be drawn from countries such as Ethiopia, Mali, Burkina Faso, and Benin, which have all, at various times, experienced severe internal challenges yet demonstrated resilience and the capacity for recovery.

In light of these precedents, the international community must afford the DRC the space and support necessary for national renewal. The DRC possesses the potential to rebuild and foster sustainable economic growth; it is not beyond recovery.

It is also worth emphasising that the DRC's vast geographical size presents unique governance challenges, particularly concerning the central government's capacity to effectively administer the remote and peripheral regions. This physical factor must be taken into account when evaluating the state's ability to manage nationwide stability. The vast land is displayed below.

8 Democratic Republic of the Congo, population at risk, available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/ accessed on 12th August 2025.

9 Democratic Republic of the Congo, population at risk, available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/ accessed on 12th August 2025.

10 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo" Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 1.

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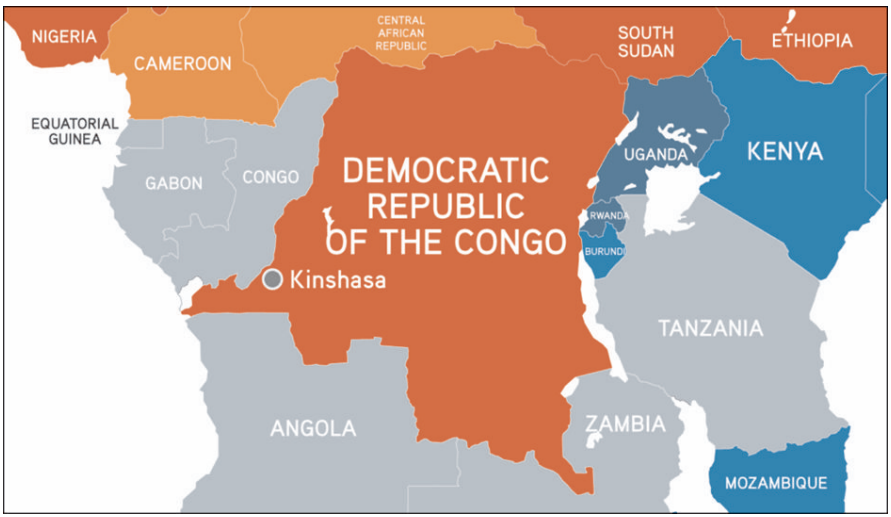

DRC map showing the topographical size of its land compared to other neighbouring countries. Available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/, accessed on 12th August 2025.

This Article, therefore, examines the emergence of armed groups in the DRC territory, analyses their mission/plans and strategies, and examines the government's response to the rise of these armed groups. Additionally, the analysis of whether, from 1998 to date, the groups have achieved their goals. Further, an analysis of government, non-governmental organisations, the United Nations, and all stakeholders' strategies for achieving lasting peace. The article finally suggests ways to achieve lasting peace that will help to restore sanity and peace in the country to allow developmental activities to take place, build the DRC as a prosperous nation, and restore pride to its territory. It will also enable DRC citizens who sought refuge in other neighbouring countries to return to their home country.

1.2. Emergence of the armed groups in the DRC territory and their motive.

The Allied Democratic Forces-National Army for the Liberation of Uganda (ADF-NALU) is among the oldest yet least recognized armed groups operating in eastern Democratic Republic of Congo (DRC)[11]. It is also the only group in the region classified as an Islamist terrorist organization[12]. While it does not pose a significant threat to stability like the March 23 Movement (M23), it has successfully resisted the Congolese army since 2010[13].

11 Policy briefing.
12 Policy briefing.
13 Policy briefing.

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The origins of the ADF-NALU trace back to the early Rwenzururu independence movement, which emerged from the Bakonzo community, a marginalized ethnic group in western Uganda. This earlier armed struggle, one of several efforts following Uganda's independence, laid the groundwork for the formation and growth of NALU. Beginning in 1967, the Rwenzururu movement waged a low-level guerrilla campaign seeking formal recognition of the Kingdom of Rwenzururu by the Ugandan government. This conflict officially concluded on August 15, 1982, when Charles Wesley Irema-Ngoma, the Bakonzo's traditional leader (Omusinga), allied with Milton Obote's government, which offered the kingdom autonomy rather than full independence.

The Allied Democratic Forces (ADF) is believed to be the main Ugandan group involved in the conflict. Although Muslims are a minority in Uganda, the ADF claims to be fighting for an Islamic State there. Like other armed groups, it took advantage of the instability in the Democratic Republic of Congo (DRC) to establish its base. In some ways, Uganda's influence in the region is seen through the ADF[14].

The most active armed groups in the region today include M23, Forces Démocratiques de Libération du Rwanda (FDLR), ADF, and Cooperative for Development of the Congo (CODECO). This shows that M23 is not the only group affecting the region's power dynamics. For example, CODECO started as an agricultural cooperative but became an ethnic militia supporting the Lendu people against the Hema. It has carried out attacks in Ituri province and now focuses on controlling gold mines and exploiting resources. Another scholar suggests that the presence of the re-emergence of the M23 group, known for committing extensive human rights violations and war crimes against civilians, has heightened regional instability and intensified the militarisation of mining areas.[15]

According to existing scholars, between 27 and 40 armed groups exist in the DRC territory[16]. Among them, the M23 is considered the largest and the one that draws the government's attention[17]. Below are among the existing rebel groups in the DRC. According to Joanne's analysis, the scholars' study dealt with two armed groups situated in the Eastern part of the DRC territory[18]. These are Rally for Congolese Democracy situated in Goma

14 *MN, Ankitha Lahari, and Nivedita Mahesh*. "Rich Land, Poor People: Unravelling the DRC Crisis and the M23 Rebellion.", Jus Corpus LJ 5 (2024): 277 at page 283.

15 Democratic Republic of the Congo, population at risk, available on https://www.globalr2p.org/countries/democratic-republic-of-the-congo/ accessed on 12th August 2025.

16 *Alida, Furaha Umutoni*. "'"Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 72.

17 Alida, Furaha Umutoni. "'"Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 72.

18 *Richards, Joanne*. "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC).", Stability: International Journal of Security and Development 5, no. 1 (2016): 11–11 at page 2.

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(RCD-Goma) and the National Congress for Defence of the People (CNDP)[19]. The scholar contends that RCD was later integrated into the DRC national army, and later the armed group was demobilised and returned to the civilian lifestyle, while CNDP remained actively fighting in the Eastern part of the territory[20].

Another group is the Coalition Nationale du Peuple pour la Souveraineté du Congo (CNPSC), led by veteran militia leader William Amuri Yakutumba and primarily recruiting from the Bembe community, which quickly gained ground. Within a few months, it inflicted significant losses on the Congolese army and temporarily captured key gold mining sites. Other groups include the Democratic Forces for the Liberation of Rwanda (FDLR) and Abacunguzi Fighting Forces (FOCA), among some of the enduring armed groups in the eastern part of the DRC[21]. Some of the senior leaders of this armed group are believed to have participated in the Rwanda genocide of 1994, making the FDLR's ongoing presence in the DRC a persistent source of conflict between Kinshasa and Kigali[22]. They are in the DRC to regain political control in Rwanda and safeguard the Rwandan refugee community residing in the DRC[23]. This armed group also engaged in controlling mining operations in specific regions, particularly in northern Walikale[24]. Meanwhile, some FDLR members continue to engage in trade independently, but they no longer share their earnings with the group's leadership[25].

Various reasons have been proffered for the emergence of the non-state armed groups. Among them are mineral resources within the DRC territory, as well as political and social power, and gaining control over trading activities[26]. In line with the pursuit of economic gain, various analysts have argued that the self-sustaining nature of the conflicts in the DRC

19 *Richards, Joanne*. "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC).", Stability: International Journal of Security and Development 5, no. 1 (2016): 11–11 at page 2.

20 *Richards, Joanne*. "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC).", Stability: International Journal of Security and Development 5, no. 1 (2016): 11–11 at page 2.

21 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at page 1.

22 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at page 1.

23 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at page 1.

24 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at page 2.

25 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at page 2.

26 *Vlassenroot, Koen.* "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 2.

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has transformed the nature of violence[27]. This shift has reportedly led to the systematic criminalisation of warfare, as rebel groups have become more involved in illicit economic activities and formed connections with transnational criminal networks to traffic locally sourced resources[28]. Consequently, the struggle to control natural resources has heavily influenced the power strategies of these armed actors, who have increasingly sought to establish territorial control over resource-rich areas and key trade routes[29]. Some scholars contend that these strategies closely resembled the practices of Mobutu's political regime, highlighting the consistent historical patterns of destructive governance in the DRC[30].

Even during the time of Kabila, Kabila faced significant opposition from numerous armed groups. During the Second Congolese War (1998–2003) in particular, control over the extraction and trade of natural resources emerged as a major challenge for the various warring factions[31]. New military leaders sought to take over the remnants of Mobutu's redistribution networks to gain access to resource exploitation and dominate informal trade systems[32].

Apart from fighting for mineral's strategic locations, according to Umutoni Alida, some of these armed groups, such as M23, claim to be fighting to put pressure on the peace agreement, which was signed on March 23, 2009, between CNDP and the DRC government, to be fully implemented[33]. Two key concerns that are crucial in the M23's stance regarding this agreement are: the return of refugees and internally displaced persons, and the ongoing discrimination and insecurity issues faced by Congolese Rwandophones, which they argue make returning to their homes unsafe[34].

The scholar further contends that although M23 is claiming to represent the interests of all Congolese, much like Nkunda did in 2009, the rebel group continues to assert that their struggle was primarily on behalf of Kinyarwanda-speaking Congolese, particularly

27 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 3.

28 *Vlassenroot, Koen*."Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 3.

29 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo. Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 3.

30 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 3.

31 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

32 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

33 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 72.

34 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 80

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the Tutsis from Rwanda, who they claim face widespread discrimination in the DRC territory[35]. However, there is limited information on how the communities they claim to represent perceive these claims[36]. Meanwhile, some public statements have emerged on the issue, stating that the voices of the refugees that M23 claims to defend have been largely missing from reports on the conflict[37]. Not only M23, which claims to fight for the Kinyarwanda-speaking Congolese in the DRC, but also other groups such as RCD and CNDP, also claim the same[38]. There are also allegations of the DRC's illegitimate power, that some of the CNDP are fighting to take power in Kinshasa[39].

Similar to the ADF, soldiers involved in the Rwenzori Operation are frequently accused of engaging in one of the key cross-border commercial activities between the DRC and Uganda, that is, the timber trade[40]. Allegedly operating under the guise of protecting local communities, FARDC troops have been suspected of illegally exploiting timber resources in Mambasa territory, located in the eastern province, as well as extorting money from local farmers and businessmen in Beni[41]. Accusations of collaboration between Congolese military officials and the ADF are common in the region[42]. In 2010, General Kakolele, then FARDC chief of staff in Butembo, reportedly travelled to Nairobi, where he is said to have met with members of the Mai-Mai militias and the ADF[43]. Hence, on top of the rebel

35 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 73.

36 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 73.

37 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 73.

38 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 75.

39 *Alida, Furaha Umutoni*. "Do They Fight for Us?" Mixed Discourses of Conflict and the M23 Rebellion Among Congolese Rwandophone Refugees in Rwanda.", African Security 7, no. 2 (2014): 71–90 at page 76.

40 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

41 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

42 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

43 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

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groups picking interest in minerals and trans -border trade, they were also interested in the timber business[44].

Various scholars have analysed the impacts of the armed groups' activities in the communities they operate in. According to Steams and Vogel, the scholars suggest that the conflict has contributed to the internal displacement of 4,1 million people and 550,000 displaced persons only in the last three months[45]. Kavulikirwa's analysis of the impact of these armed groups is on how they have affected the health care system[46]. The scholar contended that armed conflict disrupts healthcare systems, impacting both healthcare facilities and healthcare workers, resulting in the loss of millions of lives, deepening poverty in communities, and weakening disease surveillance networks[47]. This harmful situation poses a major obstacle to achieving the Sustainable Development Goals, particularly Universal Health Coverage, by denying millions of Congolese access to essential health services[48]. Additionally, the direct consequences of insecurity undermine Global Health Security by contributing to environmental degradation and biodiversity loss, which in turn heighten the risk of disease outbreaks[49].

Furthermore, it is essential to recognise that the ongoing conflict is geographically concentrated. The instability primarily affects the eastern provinces, whereas the central, southern, north-western, and western regions of the DRC remain largely stable, with normal economic and social activities continuing undisturbed.

44 Policy brief, Eastern Congo: The ADF-NALU's Lost Rebellion, Africa Briefing N°93 Nairobi/Brussels, 19 December 2012. Translation from French 2012.

45 *Stearns, Jason, and Christoph Vogel.* "The landscape of armed groups in Eastern Congo: fragmented, politicized networks.", Kivu Security Tracker (*KST)* 2017 (2017) at page 1.

46 *Kavulikirwa, Olivier Kambere*. "Intersecting realities: Exploring the nexus between armed conflicts in eastern Democratic Republic of the Congo and Global Health.", One Health 19 (2024): 100849.

47 *Kavulikirwa, Olivier Kambere*. "Intersecting realities: Exploring the nexus between armed conflicts in eastern Democratic Republic of the Congo and Global Health.", One Health 19 (2024): 100849.

48 *Kavulikirwa, Olivier Kambere*. "Intersecting realities: Exploring the nexus between armed conflicts in eastern Democratic Republic of the Congo and Global Health.", One Health 19 (2024): 100849.

49 *Kavulikirwa, Olivier Kambere*. "Intersecting realities: Exploring the nexus between armed conflicts in eastern Democratic Republic of the Congo and Global Health.", One Health 19 (2024): 100849.

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A map showing areas affected by the war in the DRC territory. Available on https://www.gov.uk/foreign-travel-advice/democratic-republic-of-the-congo accessed on 13th August 2025.

During the Congolese war, the extreme levels of violence and the increased targeting of civilians happened even at the grassroots level, which led to security and protection

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becoming subjects of negotiation between rebel forces and the local community[50]. As early as the 1990s, following President Mobutu's announcement of a democratization process, rural militias began to emerge in eastern Zaire[51]. Principally, these groups functioned primarily as protection units, serving the interests of local politicians, often in collaboration with traditional chiefs[52].

However, as political rivalry and ethnic tensions over access to key resources, like land, intensified, these militia groups increasingly evolved into ethnic-based defence forces[53]. Typically recruiting along ethnic lines and primarily from indigenous Congolese populations, their composition often reflected the local demographic makeup[54]. With the outbreak of the Congolese war, these militias became entangled in the broader political-military conflict. Local ethnic groups now found themselves needing protection not only from rival communities but also from foreign troops and their Congolese allies occupying significant parts of the country[55]. In some instances, the leadership of the militia group would go as far as protecting the rural population, at the same time exploiting the mineral resources and prompting change in the existing rural orders[56].

1.3. What is the government, UN Agencies, and other stakeholders doing about the rise of these armed groups and to restore peace in the DRC territory?

According to Joanne Richards, the DRC government formulated a policy on disarmament in 2003[57]. In December 2003, the Congolese government formed a National Commission for Disarmament, Demobilization, and Reintegration to serve as the main body responsible for developing and executing the National Disarmament, Demobilization, and Reintegration Plan[58]. This plan, officially adopted in May 2004, aimed at addressing the disarmament and

50 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo*"*. Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 10.

51 *Vlassenroot, Koen.* "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 10.

52 *Vlassenroot, Koen.* "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 10.

53 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 10.

54 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 10.

55 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 1.

56 *Vlassenroot, Koen*. "Armed groups and militias in eastern DR Congo". Totalförsvarets forskningsinstitut; Nordiska Afrikainstitutet, 2008 page 11.

57 *Richards, Joanne.* "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC)." 2016 page 8.

58 *Richards, Joanne.* "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC)." 2016 page 8.

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reintegration of groups that were signatories to the Global and Inclusive Peace Agreement, including the Congolese Rally for Democracy (RCD)-Goma[59].

Conversely, the United Nations also advocated for voluntary disarmament. The United Nations established a Force Intervention Brigade in 2013, as part of the UN Organization Stabilization Mission in the DRC, for voluntary disarmament[60]. This force was specifically mandated to launch targeted military operations against armed groups in eastern DRC, including the Democratic Forces for the Liberation of Rwanda (FDLR)[61]. The voluntary disarmament process was initiated in 2014. While some analysts viewed this move as a tactic to delay what they saw as an inevitable military confrontation, sources close to the FDLR claimed it reflected a strategic decision by the group's political wing, which preferred pursuing political solutions[62].

Florquin contends that the initial disarmament began in May 2014, when FDLR members surrendered in Kateku, North Kivu. In June, more armed members further surrendered in Kigogo, South Kivu[63]. Through this process, 339 combatants were demobilized, and 253 weapons were handed over[64]. Although MONUSCO initially advocated for the return of these ex-combatants to Rwanda, the FDLR leadership was against the idea. By December 2015, the demobilized fighters and their families remained in camps in Kanyabayonga, Kisangani, and Walungu, with no clear resolution to their situation[65].

According to Joanne, the demobilization exercise was not done without challenges. It is important to highlight that not all former combatants were willing to disarm and demobilize[66]. Some, especially ex-child soldiers who had worked as close assistants to the high-ranking officers, expressed that life was more manageable and secure for them as fighters than it was as civilians[67].

59 *Richards, Joanne.* "Implementing DDR in settings of ongoing conflict: The organization and fragmentation of armed groups in the democratic republic of Congo (DRC)." 2016 page 8.

60 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

61 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

62 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

63 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

64 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

65 *Florquin, Nicolas*. "Down, but Not Out: The FDLR in the Democratic Republic of the Congo." (2016) at 2.

66 *Richards, Joanne*. "Demobilization in the DRC: Armed Groups and the Role of Organizational Control". Small Arms Survey, 2022 page 9.

67 *Richards, Joanne*. "Demobilization in the DRC: Armed Groups and the Role of Organizational Control". Small Arms Survey, 2022 page 9.

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Former combatants showing their official demobilization cards, Goma, July 2011. © Joanne Richards available on the article by Joanne Richards. *Demobilization in the DRC: Armed Groups and the Role of Organizational Control*. Small Arms Survey, 2022, page 6.

Shepherd examined various efforts that were put in place by the UN and also the neighbouring states. The scholar stated that the UN approved the forced eviction of the armed troops[68]. The Scholar stated that different views of the conflict led to different and sometimes opposing ways of trying to solve it. Starting in late 2012, peace talks were held in Kampala, Uganda, between the M23 and the Congolese government[69]. These talks were led by a regional group that included both Rwanda and Uganda. At the same time, Congo's allies in the Southern African Development Community (SADC) focused on supporting a military solution to defeat the M23[70]. The broader international community and the UN tried to combine both approaches; they supported the Kampala talks but also worked to stop

68 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194.

69 *Shepherd*, *Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194.

70 *Shepherd*, *Ben.* "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194.

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Rwanda's involvement and to maintain regional stability. Eventually, the UN approved a SADC military intervention through a Security Council resolution[71].

The Addis Ababa PSC Framework introduced a new peace strategy for the DRC and the Great Lakes region[72]. It outlines the responsibilities of the DRC government and neighbouring countries in achieving lasting peace. At the same time, it guides how the international community, led by the UN, should respond to the ongoing crisis in eastern DRC[73]. UN Resolution 2098 created a special intervention brigade within MONUSCO. This brigade is responsible for neutralizing armed groups in eastern DRC, helping to reduce threats to security and allowing for stabilization efforts to begin[74].

Together with all these efforts that were made by the United Nations and the government, there are also various peace agreements that were reached between the warring parties and the government. The agreements are listed below.

1.3.1. Agreements between governments and non-state armed Groups.

i) Lusaka Ceasefire Agreement of 1999. Available at: <https://peacemaker.un.org/sites/default/files/document/files/2024/05/cd990710lusakaagreement.pdf >. This was a Ceasefire Agreement. The agreement states that 'the cessation of hostilities between all the belligerent forces in the DRC, as provided for in (his Cease-fire Agreement (hereinafter referred to as "the Agreement"); Effective cessation of hostilities, military movements and reinforcement'.

ii) Pretoria Accord of 2002. Available at;<https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/drc_rwanda_pa07302002.pdf >. This was a peace agreement between the DRC and Rwanda.

iii) 'Peace Agreement Between the Governments of the Republic of Rwanda and the Democratic Republic of the Congo on the Withdrawal of the Rwandan Troops from the territory of the Democratic Republic of the Congo and the Dismantling of the Ex-FAR and Interahamwe Forces in the Democratic Republic of the Congo (DRC)'.

iv) 'The Lusaka Ceasefire Agreement of 1999 sets out modalities for the tracking down and disarmament of ex-FAR and Interahamwe forces in the territory of the DRC. To

71 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194.

72 *Koko, Sadiki*. "The Mouvement du 23 Mars and the dynamics of a failed insurgency in the Democratic Republic of Congo.", South African Journal of International Affairs 21, no. 2 (2014): 261–278 at page 265.

73 *Koko, Sadiki*. "The Mouvement du 23 Mars and the dynamics of a failed insurgency in the Democratic Republic of Congo.", South African Journal of International Affairs 21, no. 2 (2014): 261–278 at page 265.

74 *Koko, Sadiki.* "The Mouvement du 23 Mars and the dynamics of a failed insurgency in the Democratic Republic of Congo.", South African Journal of International Affairs 21, no. 2 (2014): 261–278 at page 265.

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date, it has not been possible to effectively implement the decisions relating to these armed groups'

v) Global and All-Inclusive Agreement (2002 – Sun City Agreement) available at; <https://peacemaker.un.org/sites/default/files/document/files/2024/05/cd021216global20and20inclusive20agreement20on20transition20in20drc.pdf >Cessation of Hostilities Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo. 'We, the various elements and entities involved in the Inter-Congolese Dialogue, Parties to this Agreement: the Government of the Democratic Republic of the Congo, the Congolese Rally for Democracy (RCD), the Movement for the Liberation of the Congo (MLC), the political opposition, civil society, the Congolese Rally for Democracy/Liberation Movement (RDC/ML), the Congolese Rally for Democracy/National (RCD/N), the Mai-Mai; forces, namely the Government of the DRC, the RCD, the MLC, the RDC-ML, the RCD-N, and the Mai-Mai, renew their commitment, in accordance with the Lusaka Agreement, the Kampala Withdrawal Plan, the Harare Sub-Agreement and the relevant Security Council Resolutions, to cease hostilities and to seek a peaceful and equitable solution to the crisis that the country is facing'.

vi) March 23 Agreement (2009) Available at; < https://peacemaker.un.org/sites/default/files/document/files/2024/05/cd090323peace20agreement20between20the20government20and20the20cndp.pdf > This was a Peace Agreement between the Government and le Congres National pour la defense du People (CNDP).

vii) Framework Agreement for Peace, Security and Cooperation for the DRC and the Region (Addis Ababa Agreement) (2013) Available at; <https://ungreatlakes.unmissions.org/sites/default/files/peace_security_and_cooperation_framework_agreement_0.pdf > Peace Security and Cooperation Framework for the Democratic Republic of Congo and the Region. These are the agreements so far that were introduced between the DRC government and the non-state armed groups, while others were done with the neighbouring countries, such as Rwanda.

In the efforts to bring peace in the DRC, there are also United Nations Resolutions that were for purposes of cease fire. Such as;

1.3.2. UN RESOLUTIONS.

i) Resolution 1325 of 2000, adopted by the Security Council at its 4213th meeting, on 31 October 2000 Available at < https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20SRES1325%20.pdf >.

ii) Resolution 1701 0f 2006 available at < https://unsco.unmissions.org/sites/default/files/s_res_17012006.pdfs_res_17012006.pdf >

iii) Resolution 2149 of 2014 – Central African Republic available at < https://www.globalr2p.org/resources/resolution-2149-central-african-republic-s-res-2149/ >. This resolution aimed to establish the deployment of the UN Multidimensional Integrated

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Stabilization Mission in the Central African Republic (MINUSCA) that will facilitate a deployment of the initial period, which was April 2015.

All these were the efforts that were made by the DRC government and the United Nations to see that peace is restored in the DRC territory; however, to this date, the efforts have been in vain. Below, the analysis proposes other measures that the government can try to see if they can possibly bring peace to the DRC territory.

In January 2025, the world witnessed the taking of Goma by the M23, which committed several human rights abuses. Civilians were arrested while others disappeared, and some people were trying to trace their loved ones, with no success. This shows that the M23 activities are still ongoing in Goma, the Eastern part of the DRC, near the Rwanda border. There are various allegations that Rwanda is backing up this rebel group, and the group promised the civilians a better life, who, for a long time, were subjected to violence. Hence, it is recommended that the government come up with better measures and find a way of having these disputes resolved once and for all, to have a lasting peace. The government has two options: either to use force to disarm all the armed groups or to go for negotiation, which is the most recommended one.

1.4. Why is the war in the DRC never-ending?

The DRC Government has undertaken significant efforts aimed at bringing an end to the ongoing conflict involving rebel factions within its territory. Regional actors, including neighbouring countries such as Uganda and Ethiopia, have intervened in an attempt to facilitate a resolution to the hostilities. Additionally, the United Nations adopted Security Council Resolution 2098, which was specifically intended to address and manage the conflict between the two parties involved.

Despite these concerted efforts, the situation on the ground remains volatile, and the DRC continues to experience persistent violence and instability. This enduring state of conflict raises a critical question: What essential measures has the DRC government failed to implement effectively in its pursuit of sustainable peace?

Prunier contends that although peace efforts were made, the major African war never truly ended[75]. In the Congo's eastern provinces, North and South Kivu, bordering Uganda, Rwanda, and Burundi, there are many ethnic groups, including a large number of Banyarwanda[76]. These are Congolese citizens who are ethnically Rwandans. Movement between them and Rwanda was common during and after the war[77]. The scholar further states that the region became filled with militias and mining groups. Rwanda backed some,

75 *Gérard Prunier Council*, Atlantic. "Why the Congo Matters", Atlantic Council 2016 at page 4.
76 *Gérard Prunier Council*, Atlantic. "Why the Congo Matters", Atlantic Council 2016 at page 4.
77 *Gérard Prunier Council*, Atlantic. "Why the Congo Matters", Atlantic Council 2016 at page 4.

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while others were ethnic militias trying to resist Rwandan influence. Many groups were simply criminals[78].

Shepherd analysed the challenges that M23 faces, which make it difficult to reach any peaceful agreement. The scholar argues that the main difficulty in dealing with the M23 crisis was the unclear nature of the group[79]. People disagreed about what the M23 was, why it existed, and whether it was legitimate, making it hard to choose the right response[80]. Some saw M23 as a reaction to government failure, corruption, and abuse, especially against the Congolese people of Rwandan origin[81]. They believed the complaints were valid and could be addressed through negotiation[82]. The scholar contends further that others view M23 as just another Rwandan-backed rebel group, serving Rwanda's interests, and believes it should be dealt with through military force[83].

The scholar further argues that when states choose to engage in peace talks, it might not be of much help. The scholar cited the example of the Kampala peace talks of 2012, which looked vital in ending the escalation[84]. However, the attempt to seek peace through an illegitimate local actor and a national government was more to lend credibility to the M23[85]. In case the deal had gone through, it would have looked like a temporary solution[86]. This is because M23 alone is the outcome of a failed peace deal. Hence, if the parties have

78 *Gérard Prunier Council*, Atlantic. "Why the Congo Matters", Atlantic Council 2016 at page 4.

79 *Shepherd, B*en. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 3.

80 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 3.

81 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 3.

82 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 3.

83 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 3.

84 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 4.

85 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 4.

86 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study.", Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 4.

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to consider a peace deal, the legality of the parties must be assessed because of the potential for misguided peace talks that can hardly resolve the existing conflict[87].

1.5. Analysis of whether since 1998 to date, the armed groups have achieved their goals.

It is submitted that, since 1998, non-state armed groups operating within the territory of the DRC have failed to achieve their principal strategic objectives[88]. While some of these entities have, at various times, attained limited tactical successes or exercised de facto control over discrete geographic areas, their broader aims namely, the overthrow of the central government, the establishment of sustained territorial sovereignty, or the creation of an independent political entity have not been accomplished in a manner that is durable or recognized under international law[89]. The prevailing security situation remains marked by a high degree of fragmentation, with a multiplicity of armed actors engaged in ongoing hostilities for control of resources and territory. This has resulted in a protracted state of insecurity, widespread violations of international human rights and humanitarian law, and the continued displacement of civilian populations[90].

From the foregoing analysis, while non-state armed groups operating within the Democratic Republic of Congo (DRC) have, at times, achieved limited tactical gains and inflicted significant harm upon the civilian population, they have not realized their principal strategic objectives, including regime change, sustained territorial control, or the establishment of an independent state[91]. The conflict remains a multifaceted and evolving situation, characterized by ongoing violations of international law and widespread humanitarian consequences[92]. A durable resolution necessitates a comprehensive, multi-dimensional response that addresses both the underlying structural causes of the conflict and the urgent humanitarian and protection needs of affected populations, following international legal

87 *Shepherd, Ben*. "Elite bargains and political deals project: Democratic Republic of Congo (M23) case study." Elite Bargains and Political Deals Project: Democratic Republic of Congo (M23) Case Study (2018): 188–194 at page 4.

88 Congo, DR Country Report 2024 available on https://bti-project.org/en/reports/country-report/COD accessed 11th August 2025.

89 *Carayannis, Tatiana*. "The Democratic Republic of the Congo, 1996–2012." In Responding to conflict in Africa: The United Nations and regional organizations, pp. 177–202. New York: Palgrave Macmillan US, 2013.

90 *Carayannis, Tatiana*. "The Democratic Republic of the Congo, 1996–2012." In Responding to conflict in Africa: The United Nations and regional organizations, pp. 177–202. New York: Palgrave Macmillan US, 2013.

91 Center for Preventive Action Conflict in the Democratic Republic of Congo, Updated June 09 2025, available on https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo, accessed on 16th August 2025.

92 Center for Preventive Action Conflict in the Democratic Republic of Congo, Updated June 09 2025, available on https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo, accessed on 16th August 2025.

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standards[93]. With one million Congolese refugees abroad and 21 million people in urgent need of food, medical care, and other help, the DRC territory is facing one of the world's largest and deadliest humanitarian crises[94].

1.6. Strategies of achieving lasting peace.

According to Bahoze 'a socio-economic approach to peace in the DRC must promote social justice that is based on an equitable distribution of economic resources and wealth to the Congolese people. This requires the implementation of social development policies that promote greater access to basic infrastructures and put an end to social inequalities and marginalization of vulnerable sections of the population. It is also necessary to promote the diversification of the domestic economy away from the production of primary commodities and raw materials for export and take concrete steps towards expansion into the small, medium, and large-scale manufacturing and service sectors'[95].

On the issue of the culture of violence, the scholar argues that to replace a culture of violence with one of peace, the DRC needs reconciliation and national healing[96]. One way to do this is through transitional justice, such as setting up truth and reconciliation commissions. These bodies can investigate past human rights abuses, help victims and perpetrators come to terms, and stop the ongoing cycle of violence and atrocities[97].

Further, 'It should be up to the Congolese people to declare their agenda for the DRC to the rest of the world, rather than the reverse. The DRC state needs to be strengthened to defend its sovereignty and guarantee the freedom of the Congolese to decide on their economic, social, and cultural priorities and policies. Consolidating unity and peace within the country will help address the issue of the role played by meddlesome neighbors and international actors'[98].

93 Center for Preventive Action Conflict in the Democratic Republic of Congo, Updated June 09 2025, available on https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo, accessed on 16th August 2025.

94 Center for Preventive Action Conflict in the Democratic Republic of Congo, Updated June 09 2025, available on https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo, accessed on 16th August 2025.

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1.7. Conclusion

While ceasefire agreements and power-sharing arrangements constitute important components of peacebuilding efforts, they are insufficient in isolation. Sustainable peace in the DRC necessitates the comprehensive resolution of structural drivers of conflict, including land tenure disputes, systemic ethnic exclusion, weak governance frameworks, and the effective disarmament, demobilization, and reintegration (DDR) of ex-combatants. These underlying issues must be addressed through inclusive, legally binding mechanisms that promote long-term peace.

The above-mentioned failed peace agreements were contributed by lack of robust mechanisms. To ensure compliance and efficacy, peace agreements must incorporate provisions for independent monitoring bodies with clearly defined mandates, benchmarks, and timeframes, alongside enforceable sanctions for non-compliance. Furthermore, accountability for gross violations of international humanitarian law and human rights is imperative. Perpetrators of war crimes, crimes against humanity, and other serious offenses must be subject to investigation and prosecution in accordance with domestic and international legal standards, in order to combat impunity and restore public confidence in the law.

Given the transnational nature of the conflict in the DRC, regional dynamics play a decisive role in perpetuating or resolving hostilities. It is therefore essential that neighbouring states cease all forms of direct or indirect support to non-state armed groups operating within Congolese territory. Regional cooperation must be strengthened through legally binding agreements under the patronage of regional organizations such as the East African Community (EAC) and the Southern African Development Community (SADC). These organizations should be empowered to facilitate dialogue, coordinate peacebuilding initiatives, and oversee the implementation of regional security agreements aimed at fostering durable peace and stability across the Great Lakes region.

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THE LEGAL STATUS OF MARRIAGES CONTRACTED IN AREAS OF LAWLESSNESS: A CASE STUDY OF MARRIAGES CELEBRATED IN TERRITORIES UNDER M23 OCCUPATION IN THE DEMOCRATIC REPUBLIC OF CONGO.

By Crispin MURHULA BAHOZI and Daniel BWABIRE CHIBEMBE*

Abstract

This study on the legal nature of marriages celebrated in areas outside government control is of paramount importance given the topicality of the issue in the Democratic Republic of Congo, where two provinces, North Kivu and South Kivu, remain under occupation of the M23, a rebel movement that has been operating in the region for more than a decade and has been active again since the beginning of the year. The study examines the validity and recognition of these unions under Congolese and international law. It takes a comparative law approach, examining similar experiences in Liberia, Rwanda, and Sierra Leone, countries that have also seen marriages celebrated under occupation or during internal armed conflicts. It thus calls for the establishment of a legal mechanism for post-conflict regularization to ensure respect for the right to marry and start a family for people living in occupied territories.

Introduction

The question of the legal validity of marriages celebrated in lawless areas, particularly those under the control of the M23 armed movement, is a subject of rare complexity. It touches on the foundations of civil law, the requirements of international humanitarian law, and the very philosophy of republican legality.

In a state facing territorial fragmentation, war does not suspend social life. People continue to be born, marry, start families, and pass on property. However, when these acts take place under the de facto authority of an armed group, their legality becomes uncertain. Congolese law, like most contemporary laws, bases the validity of civil acts on territorial jurisdiction and the legitimacy of the public official. In situations of occupation, both of these foundations are called into question.

This study aims to examine, from a legal and doctrinal perspective, the nature and value of marriages celebrated in situations of lawlessness in the Democratic Republic of Congo.

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It aims to demonstrate that, even outside the effective sovereignty of the State, certain acts of marriage can produce legal effects in the name of the principle of State continuity and the protection of the family.

The analysis will be based on the provisions of the Congolese Family Code, national case law, international humanitarian law, and modern doctrine relating to acts performed by de facto authorities. This work has a twofold objective: on the one hand, to understand the legal scope of these unions; on the other hand, to propose realistic mechanisms for recognition and regularization in order to ensure legal security for the families concerned.

Marriage under Congolese law and the question of civil legitimacy

Article 330 of the **Congolese Family Code**[1] defines marriage as a civil, public, and solemn act by which a man and a woman, not previously married, unite before a civil registrar to start a family. This definition enshrines two essential dimensions: the legality of the form and the publicity of the act.

Congolese marriage is therefore both a **contract**—because it results from the free and mutual consent of the spouses—and an **institution**—because it aims to protect society and family stability. This duality is also confirmed by case law. In its ruling RCC 1220 of March 15, 2018, the Court of Cassation reiterated that marriage is not a simple private contract, but an act of public order producing social and legal effects that go beyond the individual will of the parties.[2]

Thus, for a marriage to be valid, it is not enough for the spouses to consent: the ceremony must also be performed by a legally appointed authority with territorial jurisdiction. Outside this framework, the act is considered null and void or non-existent. It is on this specific point that marriages celebrated in areas under M23 occupation pose a major difficulty: civil registrars there are often de facto agents appointed by an illegitimate authority.

Marriages celebrated in the context of occupation: between formal illegality and human necessity

The history of law shows that, even in times of war, the fundamental needs of society do not cease to exist. Populations living under the control of an armed group continue to exercise their natural rights: to marry, procreate, inherit, and educate their children.

To deny any value to these acts would be to condemn thousands of families to legal non-existence.

1 Family Code of the Democratic Republic of Congo (Law No. 87/010 of August 1, 1987), Art. 330.

2 Court of Cassation of the DRC, judgment RCC 1220, March 15, 2018.

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International humanitarian law, in particular Article 27 of the Fourth Geneva Convention of 1949[3], requires respect for family rights, honor, and dignity, including in occupied territory. This humanistic provision establishes that marriage remains a fundamental right that cannot be suspended by war.

Similarly, Article 43 of the **Hague Regulations of 1907[4]** specifies that the de facto authority must, as far as possible, restore and ensure public order and civil life in the territory it occupies, while respecting the laws in force.

It follows that even when an armed group administers a territory, it has an obligation to maintain a certain degree of civil organization in accordance with local legal norms, to the extent possible.

Thus, marriages celebrated under these conditions cannot be considered null and void, especially when they meet the substantive requirements of Congolese law: legal age, mutual consent, monogamy, and publicity.

Legal continuity and the theory of de facto authorities

The principle of state continuity is based on the idea that legality does not disappear with the temporary loss of territorial control.

Even if the public authority is prevented from acting, its laws continue to apply.

According to this logic, acts taken by de facto authorities may be recognized if they are aimed at protecting the civilian population and preserving fundamental rights.

This approach is supported by several international doctrines and decisions.

The International Court of Justice, in its advisory opinion on Kosovo (2010)[5], recognized that certain administrative acts emanating from unrecognized authorities may produce legal effects, particularly when they ensure the normal civilian life of the population.

Similarly, the ad hoc international tribunals for Rwanda and the former Yugoslavia have, in various decisions, recognized the partial validity of civil acts (including customary marriages) performed during periods of conflict, when these served to protect the rights of children, women, or families.[6]

These precedents reflect a shift towards legal realism: political illegality must not destroy fundamental human rights.

3 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Art. 27.

4 Hague Regulations concerning the Laws and Customs of War on Land, 1907, Art. 43.

5 International Court of Justice, Advisory Opinion on the Conformity under International Law of the Unilateral Declaration of Independence in Respect of Kosovo, July 22, 2010.

6 See, in particular, ICTY and ICTR, various decisions recognizing the civil effects of acts in the context of conflict, as protection.

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The jurisdiction of civil registrars and the validity of documents in lawless areas

Under Congolese law, the jurisdiction of civil registrars is based on their legal appointment by the public authorities.

This jurisdiction is both material (to perform marriages) and territorial (to act within the district to which they are assigned).

Article 370, paragraph 1 of the Family Code provides that:

"Within one month of the celebration of the marriage in the family, the spouses and, where applicable, their representatives must appear before the civil registrar of the place of celebration in order to have the marriage recorded and to ensure its publicity and registration."[7]

However, in areas under M23 occupation, legally appointed civil registrars are generally unable to perform their duties.

Agents appointed by the de facto authority replace them to ensure a minimum form of civil administration.

The legal problem that arises is one of functional legitimacy: these officiants have no official investiture, but they act out of necessity.

However, Article 72 of Law No. 87/010 of August 1, 1987, stipulates that civil status records drawn up by unqualified persons are null and void unless ratified.

This provision, which at first glance appears rigid, is nevertheless limited in humanitarian practice and case law.

In a context of war, Congolese courts have sometimes accepted that nullity should not be applied with excessive formalism when fundamental rights are at stake.

Thus, several local decisions—notably those of the courts of Goma (2014) and Uvira (2019)—have recognized, on an exceptional basis, the validity of marriages celebrated by customary or community authorities, provided that the substantive conditions were met and that the interests of the family so required.[8]

Humanitarian arguments and the best interests of the family

Marriage, as a social and legal institution, is a fundamental right protected both by the Congolese Constitution (Article 41) and by international instruments ratified by the DRC.

Article 23 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right of every man and woman to marry and found a family, while Article 18 of the African Charter on Human and Peoples' Rights (ACHPR) enjoins States to protect the family, "the natural basis of society."

These texts show that the protection of the family transcends political or military uncertainties.

7 Family Code of the Democratic Republic of Congo (Law No. 87/010 of August 1, 1987), Art. 371.

8 Uvira Regional Court 2004 inheritance dispute.

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An absolute refusal to recognize a marriage celebrated in a war zone would amount to a violation of the fundamental rights of the individuals concerned and would destabilize an already fragile social structure.

Furthermore, the principle of the best interests of the child, enshrined in the Convention on the Rights of the Child (CRC), requires that filiation and the civil rights arising from these unions be preserved.

Thus, even if the marriage certificate was drawn up by a de facto authority, subsequent regularization becomes a requirement of justice and social protection.

With this in mind, recent Congolese doctrine has adopted a more pragmatic approach.

Professor MBUYI wa Bampembe argues that "the best interests of the family must take precedence over legal formalities."[9]

For his part, Gilbert Kapita distinguishes between legal non-existence and formal irregularity: in his view, a marriage celebrated by a de facto authority is not necessarily null and void, but can be regularized if the substantive conditions are met.[10]

These analyses illustrate the contemporary trend toward prioritizing legal certainty and family stability over administrative rigidity.

Retrospective recognition: a path to regularization and justice

In Congolese practice, there are already implicit mechanisms for regularizing marriages celebrated in exceptional circumstances.

Courts of peace, when asked to rule on supplementary judgments, can recognize the existence of a customary marriage or a de facto marriage when proof is provided by testimony or documents.

The Ministry of Justice, for its part, may authorize the transcription of such marriages in official registers, provided that the substantive conditions are met.

These practices, although not codified, reflect a desire to avoid the legal exclusion of entire families.

They demonstrate that retroactive regularization is a balanced solution between the rigor of the law and human needs.

In areas formerly occupied by the M23, many couples appeared before the state authorities after the territories were retaken to have their unions recognized.

This dynamic illustrates the importance of designing an explicit legal framework to deal with such situations.

A national regularization mechanism could draw inspiration from the experience of other post-conflict states, such as Rwanda and Sierra Leone, which have set up civil reintegration commissions to validate acts committed during the war.

9 *MBUYI wa Bampembe,* Famille et droit congolais : entre coutume et légalité, Revue congolaise de droit, 2019.

10 *CAPITA Gilbert*, Études sur le droit familial en RDC, Presses Africaines, Kinshasa, 2020.

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The creation in the DRC of a special court for the regularization of marriages or a one-stop shop within the civil registry divisions would make it possible to standardize practice and avoid local disparities.

The limits of legal formalism in times of war

War tests the ability of the law to adapt to reality.

Strictly applying the rules of territorial jurisdiction or legal appointment during a period of occupation would amount to denying the civilian life of the population.

However, the law only makes sense if it responds to the concrete needs of society.

As the Supreme Court of Canada noted in Roncarelli v. Duplessis (1959), "legality must be interpreted in the light of the requirements of justice and common sense."[11]

Similarly, contemporary Congolese doctrine considers that the functional validity of acts performed by de facto authorities must be recognized when they aim to protect citizens' rights and maintain civil peace.

This approach is consistent with the theory of the apparent state, according to which acts taken by an illegitimate authority may be recognized if they guarantee legal certainty and no other authority could reasonably have performed them.

In this sense, the conditional recognition of marriages celebrated in lawless areas does not constitute political legitimization of the occupation, but an act of justice and humanity.

It reflects the desire of Congolese law to remain at the service of the people, even in the most extreme circumstances.

Prospects for legal reform in the Democratic Republic of Congo

As a state governed by the rule of law, the Democratic Republic of Congo cannot be satisfied with the empirical regularization of marriages celebrated in lawless areas.

It is imperative to establish a clear legislative framework that reconciles legality and reality.

The aim of this reform would be to protect the family unit, ensure legal certainty for spouses and children, and avoid differences in interpretation between jurisdictions.

Such a reform could be incorporated directly into the Family Code, in the form of a specific title or chapter relating to civil status records issued during periods of occupation or armed conflict.

This text should recognize the possibility of subsequent regularization of marriages celebrated by de facto authorities, provided that the following substantive elements are met:

- free and informed consent of the spouses;
- compliance with the legal age;
- absence of impediments to marriage;

11 Roncarelli v. Duplessis, [1959] S.C.R. 121 (Supreme Court of Canada).

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- monogamy;
- publicity of the union, even minimal.

A special procedure could be established, requiring the couples concerned to file a voluntary declaration with the registrar within twelve months of the restoration of state authority.

The case could be examined by a justice of the peace, assisted by witnesses and, where applicable, customary or religious certificates.

At the end of the procedure, a judgment of approval would serve as proof of marriage and allow for transcription in the official registers.

The rationale for reform: fairness, stability, and fundamental rights

There are several considerations that argue in favor of such reform.

First, fairness: it would be unjust to deprive citizens of their family rights solely on the grounds that they were forced to marry under an illegitimate administration.

Second, social stability: recognizing these marriages would help strengthen cohesion in post-conflict territories and prevent the legal marginalization of families.

Finally, respect for fundamental rights, guaranteed by the Congolese Constitution (Articles 23 and 41), requires the State to ensure the protection of the family and to recognize the civil effects of legitimate unions.[12]

Such an approach does not legitimize the occupation: it repairs its human consequences.

As Professor BOMPAKA Nkeyi Makanyi points out, “the law must be able to bend without breaking, in order to preserve its purpose: social justice.”

This idea reflects the humanist mission of the law, which must adapt without compromising itself.[13]

Comparison with post-conflict experiences in Africa

Rwanda after the 1994 genocide

After the genocide, Rwanda faced a major administrative vacuum: thousands of marriages had been celebrated in refugee camps or by improvised community authorities.

To prevent the collapse of the family structure, the government established a system of local courts (Gacaca), which played an essential role in recognizing civil acts performed during the war.

12 Constitution of February 18, 2006, as amended by Law No. 11/002 of January 20, 2011, revising certain articles of the Constitution of the Democratic Republic of Congo, January 20, 2011. Art. 41 (protection of the family).

13 *BOMPAKA Nkeyi Makanyi,* Le mariage en droit congolais, Éditions de l’Université de Kinshasa, 2018.

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Customary or religious marriages were validated on the basis of testimony and summary documents, then transcribed into civil registers after verification.[14]

This process enabled lasting legal and social reconciliation, while consolidating the legitimacy of the reborn state.

Liberia and Sierra Leone

In these two countries, also devastated by civil wars, the transitional authorities adopted special laws recognizing civil acts committed during periods of insurrection.

Joint verification commissions, composed of magistrates, traditional leaders, and community representatives, were created to examine requests for regularization.[15]

This approach has helped restore trust between the state and the population.

It has also promoted legal security for women and children, who are often the most affected by the non-recognition of marriages.

Lessons for the Democratic Republic of Congo

The experience of these countries shows that the legal recognition of marriages celebrated in situations of lawlessness is not simply a political choice, but a requirement for justice and social stability.

The DRC, which has a similar history of repeated armed conflict, should draw inspiration from these models to develop a contextualized national reform.

This reform could be carried out with the support of international partners, such as MONUSCO, UNICEF, or the International Conference on the Great Lakes Region (ICGLR), in order to ensure the credibility and feasibility of the process.

Such a measure would have several advantages:

1. Restoring citizens' confidence in civil institutions;
2. Preventing disputes over inheritance and parentage;
3. Reaffirming the legal continuity of the Congolese state;
4. Consolidating social peace in formerly occupied areas.

Ultimately, this reform would be part of the post-conflict reconstruction and restoration of republican legality, while reflecting the DRC's commitment to human rights and the dignity of families.

14 Comparative example: Rwanda post-1994, Gacaca mechanisms and transcription of civil acts after verification.

15 Comparative examples: Liberia and Sierra Leone, special laws and post-conflict verification commissions.

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The international and diplomatic implications of recognizing marriages celebrated in situations of lawlessness

The recognition of marriages celebrated during periods of non-statehood goes beyond the strict framework of Congolese law. It also commits the Democratic Republic of Congo to international human rights law and regional diplomatic relations.

Indeed, the family is an institution universally protected by the international instruments to which the DRC has subscribed.

Article 16 of the Universal Declaration of Human Rights (UDHR) states that "men and women of marriageable age have the right to marry and found a family," while Article 23 of the ICCPR reaffirms this right by linking it to the protection of human dignity.[16]

These provisions, combined with those of the African Charter on Human and Peoples' Rights (Article 18), confer normative value on the protection of the family in all contexts, including in times of war.

Thus, the non-recognition of marriages celebrated under occupation could be interpreted as an indirect violation of the DRC's international obligations.

On the diplomatic front, the issue also concerns the Congolese diaspora.

Many Congolese people who are married in conflict zones encounter difficulties in having their marital status recognized abroad, which affects their right to family reunification and their access to nationality in certain host countries.

A clear position by the Congolese state on the validity of these marriages would help to avoid administrative discrimination and strengthen the consistency of Congolese civil law on the international stage.

Geopolitical issues and regional cooperation

The issue of recognizing civil acts performed during periods of non-statehood also has a geopolitical dimension.

The states of the Great Lakes region share similar realities: unstable border areas, displaced populations, and the coexistence of parallel authorities.

The International Conference on the Great Lakes Region (ICGLR) could serve as a framework for consultation on the development of a regional protocol on the mutual recognition of civil status records established in situations of instability.[17]

Such an approach would avoid conflicts of law, unify administrative practices, and promote regional legal cooperation.

In addition, international organizations such as MONUSCO, the African Union, and UN agencies (UNICEF, UNDP, OHCHR) could support the Congolese state in setting up a national post-conflict regularization program.

16 Universal Declaration of Human Rights, UN, 1948.

17 African Charter on Human and Peoples' Rights (ACHPR), African Union, 1981.

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This program could include:

- training civil registry officers and magistrates on the management of irregular records;
- the creation of digital databases to avoid double registrations;
- community awareness-raising on regularization procedures.

These measures would anchor the reform in a sustainable institutional approach based on transparency, consistency, and social justice.

General conclusion

The study of the legal nature of marriages celebrated in situations of lawlessness reveals the constant tension between formal legality and social necessity.

Congolese law, while remaining committed to the legitimacy of acts of the State, cannot ignore the reality of the experiences of citizens in war zones.

Marriages celebrated under occupation, although formally irregular, reflect a legitimate human desire to start a family and preserve individual dignity.

Recognizing these unions, under certain conditions, does not amount to legitimizing the de facto authorities, but rather to affirming the primacy of the right to a family over political contingencies.

The principle of legal continuity of the state, combined with humanitarian imperatives, provides the theoretical and practical basis for such recognition.

The establishment of a legal mechanism for post-conflict regularization thus appears to be a legal, social, and moral necessity.

It would help restore confidence in institutions, protect inheritance and property rights, and consolidate civil peace in areas long affected by conflict.

Ultimately, through this reform, the Democratic Republic of Congo has the opportunity to assert its legal maturity and social responsibility by demonstrating that justice does not stop at the borders of effective power, but extends to all those who still believe in the rule of law.

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Impeaching Judges: Challenge or Achievement? The Ugandan Perspective

Asiimwe Jackline*

Abstract

The impeachment of judges in Uganda reflects both a safeguard for judicial integrity and potential threat to judicial independence. While intended to ensure accountability within the judiciary, the process is often marred by concerns over political influence and procedural fairness. The legal framework provides for impeachment under strict conditions, yet the practical implementation often reveals lack of transparency, limited public trust, and executive overreach. The existing case law though scanty illustrates the tension between enforcing ethical standards and safeguarding impartial adjudication. Ultimately, judicial impeachment in Uganda remains both a necessary tool for accountability and a test of democratic governance.

1.1 Introduction and general background

You shall appoint judges…to administer true justice to the people...you shall not distort justice; you must be impartial. You shall not take a bribe; for a bribe blinds the eyes of the wise and twists the words even of the just. Justice and justice alone, shall be your aim. (Deuteronomy 18:20).

> *"A good judge must have an enormous concern for life, animate and inanimate, and a sense of its tempestuous and untamed streaming. Without such fire in one's belly, as Holmes also called it, he would turn into a stuffed shirt the instant a robe is put around him…the first signs of judicial taxidermy are impatience with trivial matters…Worse than judicial error is to mishandle impatiently the small affairs of momentarily helpless people, and judges should be impeached for it."*[1]

The impeachment of judges could serve as a powerful tool in addressing misconduct and upholding judicial integrity. However, the impeachment process is complex and raises significant questions regarding the balance between accountability and judicial independence. Impeachment may be defined as a constitutional remedy of removing a judicial

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1 American Bar Association & The National Judicial College 'The Judge's book' 2nd edition 1994 iii.

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officer[2]from his or her office on the grounds of serious misconduct, incompetence or incapacity.[3]

The constitutional basis for impeachment can be derived from Article 144 (2), (3), (4), (5), (6) & (7). The Uganda Constitution grants the Judicial Service Commission (JSC) power to remove errant, incompetent or feeble judicial officers. This power emanates from the principle of checks and balances; to ensure that no single branch of government enjoys excessive powers.[4] The purpose of impeachment is not personal punishment; rather, its function is primarily to maintain constitutional governance.[5] Chief Justice Coke[6] on the role of impeachment stated that:

> *For their protection the people should have a right to remove from public office an unfaithful official. It is equally necessary for their protection that the offender should be denied an opportunity to sin against them a second time.*

As Justice Coke put it, the very object of removal is to rid the community of a corrupt, incapable, or unworthy official and disqualification to hold any office of honor and trust under the state.

Nevertheless, in the exercise of removal, there is need to take heed of two principles: The first is the requirement for judges to be honest. The second is that they must be independent.[7] This is because judges engage in judicial review; by declaring executive and legislative acts unconstitutional, perhaps the greatest idea of constitutional government.[8] Courts speak with a voice of reason and moral authority that the political branches of government sometimes fail to hear, which has antidemocratic implications.[9] The constitution guarantees judicial independence in many ways.[10] Hence, protecting these men and women of integrity. Only a limited number of judicial officers from the lower bench have been

2 The Judicial Service (Complaints and Disciplinary Proceedings) Regulations, 2005 regulation 2(a), (b)& (c) thereof define a judicial officer to mean a judge or any person who presides over a court or tribunal howsoever described; the chief registrar or a registrar of the court; such other person holding any office connected with a court as may be prescribed by the law.

3 *DC Steelman* 'Judicial tenure and politics of impeachment-comparing the United States and the Philippines' (2018) International Journal for Court Administration 260.

4 Articles 146 and 147 of the Constitution of Republic of Uganda,1995.

5 *Deschler* Ch 14 App. Pp. 726–728.

6 In the case of *Ferguson v. Maddox 114 Tex.85.*

7 *JH Garvey* 'Judicial discipline and impeachment' (1988) 76 Kentucky Law Journal 633.

8 Ferguson v. Maddox (n 6).

9 *Steelman* (n 3).

10 Art 128; courts shall be independent and not subject to control or direction of any person or authority, immunity from suits, security of tenure, salaries charged on the consolidated fund and removal from office, only by impeachment only on ground of misconduct, incompetence or incapacity(art144(2).

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interdicted[11]and subsequently impeached.[12] It is usually limited to grave ethical or criminal misconduct such as perjury, fraud, or conflict of interest. Impeachment of judges is rare, and removal is rarer still.[13]However, because impeachment power lies primarily in the hands of the ruling party, it is at times misused as a tool of political persecution.

Nevertheless, this does not deny the fact that judicial misbehavior remains an issue of public concern in Uganda. Yet, judges enjoy much power and decide all manner of cases from chicken theft to national budget, and presidential elections. It is therefore important that we prevent and punish unethical behaviour by judges. The Constitution explicitly provides for methods of doing this. The first line of defense is the scrutiny that judges undergo in the appointment process. The second is removal by impeachment and the third is prosecution which is not foreclosed by impeachment.[14]

However, whereas these are good measures in place to ensure the integrity of the judge, they can only predict but not control the behaviour of the judge on the bench. Hence, the need to have a suitable means to correct the venial sins of errant judges. Criminal prosecution is equally bedeviled by its difficulties, and, like impeachment, may not be a perfect match for the kinds of impropriety which wayward judges commit. Hence, the need for impeachment. However, due process must be adhered to if impeachment is to bear good results, and to avoid upsetting the balance. Judges are not 'demigods', justice Douglas went as far as to call them 'sovereigns.'[15] If the power enjoyed by judges is not subject to any form of intervention, it could have grave and undesirable repercussions to judicial integrity.

Judicial independence is an aspect of separation of powers. The tenure and compensation protect judges from the legislature and executive, because this is where the danger lies. But impeachment allows the judiciary to keep its own house clean. Yet, what is most feared about control of judicial ethics is the possibility of the political branches using it to weaken

11 See: *His Worship Aggrey Bwire v. Attorney General & Another Supreme Court Civil Appeal no.8 of 2010*, the appellant was a Magistrate Grade 1. The Chief registrar acting on the directive of the Judicial Service Commission, interdicted him. The appellant was interdicted on many counts. Hi appeal was dismissed for lack of merit.

12 *Uganda v. Moses Ndifuna Criminal Case no.004 of 2009*, the accused a Magistrate Grade II was indicted for soliciting for gratification contrary to section 2(a) punishable under section 6(1) of the prevention of corruption Act, and for corruptly receiving a gratification contrary to section 6(1) of the prevention of corruption Act. The accused solicited for UGX 200,000/- from Senkayi Murishid an accused person who was appearing before him for trial as an inducement for the accused to give, make, or pass an order allowing Senkayi Murishid to open his business premises that had been closed by the health inspector Kakoba Division-Mbararara Municipality. *Justice Katutsi* held that: 'The behaviour of the accused brought disrespect to the noble profession…the accused could not supplement his salary by corrupt ways. The conviction will cost him his job and therefore livelihood. He was sentenced for 2 years in prison and a warning to those with greed that this cannot be tolerated.'.

13 *D Keith* 'Impeachment and removal of judges: An explainer' Available: https:www.brennancenter.org.

14 *Garvey* (n 7).

15 *Chandler v. Judicial Council of the Tenth Circuit 398 US 74 136 (Douglas, J dissenting).*

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the independence of the judiciary and judicial review. On the other hand, judges already review one another's decisions, but reviewing another's ethics entails a real threat. The next segment examines the attributes of an ideal system for impeachment of judges.

1.2 Attributes of an ideal system for impeachment of judges

According to Stolz, there are four attributes of an ideal system for impeachment of judges namely: (i) free from politics and partisanship (ii) confidentiality (iii) permanent staff for investigation and informal persuasion, and (iv) procedurally fair to the judge who is being investigated.[16]

Smit argues that it is a long-principle that judges should not serve at the pleasure of the executive, or be subject to loss of office as a result of changes of government or legal measures that are ostensibly intended to serve other objectives.[17] Most Commonwealth jurisdictions protect this principle implicitly by stating that their removal mechanisms are the only valid means by which a judge may be deprived of office, and some explicitly prohibit the abolition of the office of a judge while there is a substantive holder thereof.

Therefore, judicial discipline should be protected from political influence by placing this power in the hands of carefully selected group of people, primarily retired judges of the highest courts, who are relatively free of political concerns.[18] The judicial system should also be free from political interference. The men assigned to screen and to investigate alleged misconduct and incompetence of judges should do so independent of influence from the ruling party. The main purpose of this is to shield the power to impeach judges from being manipulated to purge men and women whose views are inconsistent with those of the ruling party. This danger can be avoided by using officials least subject to political pressure, the use of such men, results in a cautious, non-biased and conservative administration of discipline.[19]

The principles of judicial independence and immunity are not a privilege of the individual judicial officer. It is the responsibility imposed on each officer to enable him or her to adjudicate a dispute honestly and impartially based on the law and the evidence, without external pressure or influence and without fear of interference from anyone.

The core of the principle of judicial independence is the complete liberty of the judicial officer to hear and decide the cases that come before the courts and no outsider be it government, individual or even another judicial officer should interfere, with the way in which

16 *P Stolz* 'Disputing federal judges: Is impeachment hopeless' (1969) 57 California Law Review 664.

17 *JV Smit* 'The appointment, tenure and removal of judges under Commonwealth principles: A compendium and analysis of best practice' (2010) Report by Bingham Centre for the Rule of Law 24.

18 *Garvey* (n 7).

19 *Steelman* (n 3).

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a judicial officer makes decisions.[20] Independence and impartiality are separate distinct values. They are nevertheless linked as mutually reinforcing attributes of the judicial office. Impartiality must exist both as a matter of fact and a matter of reasonable perception. There is absolute immunity once the foregoing is adhered to.[21] It has been said that; "The Court's only armor is the cloak of public trust: it is the sole ammunition, the collective hopes of our society."[22]

In addition, there is a requirement of an unusual degree of confidentiality of proceeding. The purpose for secrecy is to insulate judges undergoing investigation from unfounded charges and whose service will be prejudiced by public exposure to false charges. The judge will react constructively to criticism if confident that others will not know about it. This cannot be achieved if proceedings have been publicized.[23]

Also, there is a need to assign discipline of judges to full time personnel, who will be able to devote the requisite time to screening and investigating alleged misconduct and incompetence. The staff would be in a position to maintain regular and informal surveillance of judges. This equally protects the discipliners of judges from political influence.[24]

The proceedings must be fair. The independence of the judiciary from the executive and legislature, party politics and vested interests is ensured through security of tenure and other immunities. The need to remove corrupt, negligent and otherwise unsuitable judges can be met through a robust and politically impartial judicial disciplinary and removal process.[25]

The judge must be given notice of the charges and an opportunity to defend themselves. This involves the right to confront their accusers and the right to present evidence on his or her own behalf in a dignified proceeding. It is against these ideals that the impeachment system in Uganda should be measured.

1.3 Grounds for impeachment

The constitution does not explicitly define impeachable offences. However, a judicial officer may be removed from office only for; inability to perform the functions of his or her office arising from infirmity of body or mind; misbehavior or misconduct; or incompetence.[26]

Under the Commonwealth Latimer House Principles 2003, African Commission on Human and People's Rights, UN Principles on the Independence of the Judiciary, judges are

20 *R v. Beauregard LRC (const)* 180 at 188 Chief Justice Dickson.

21 *His Worship Aggrey Bwire v. Attorney General & Another Court of Appeal Civil Appeal no.9 of 2009 per Justice Mpagi-Bahigeine (as she then was*.).

22 *IR Kaufman* USCA 2nd circuit.

23 *Kaufman* (n 22).

24 *Kaufman* (n 22).

25 *Kaufman* (n 22).

26 Art. 144 (2) (a), (b), & (c) of the Constitution of the Republic of Uganda, 1995.

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subject to suspension or removal only for reasons of incapacity or misconduct that clearly renders them unfit to satisfy their duties, removal from office is a very serious concern and that is why Uganda has fewer cases for impeachment of judges as compared to other countries.

The UN Basic Principles on the Independence of the Judiciary provide for the independence of the judiciary to be guaranteed by the State and enshrined in the Constitution or the law of the country. It also provides that the Judiciary, like other citizens, are entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.[27]

With regard to discipline, suspension and removal, the principles require that a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure.[28] It further requires that disciplinary, suspension or removal proceedings against judicial officers shall be determined in accordance with established standards of judicial conduct.[29]

It is also important that the grounds on which judges may be removed from office should be clearly discernible from the legal or constitutional framework under which they serve. The Commonwealth Latimer House Principles require these to be restricted to misconduct or incapacity.[30] The Judicial Service Commission is established under Article 146 (1), (2) and (3), and article 147 lays down the functions of the Judicial Service Commission, which include disciplinary control over judicial officers as well as receiving people's complaints concerning judicial officers. The commission is a link between the people and the judiciary.

The exercise of judicial power in Uganda respect to removal is governed by a Constitutional framework under which the Judiciary is an independent organ of government entrusted with the responsibility of administering justice[31] and other international laws and policies. To that effect it was noted in the case of *Justice Anup Singh Choudry v. Attorney General*[32] that the appointment of judicial officers is as matter of great public importance, and therefore that JSC and the public at large, including the ULS, should ensure that the right people are appointed to the Bench at all levels and as well as paying close scrutiny to their background before and even after appointment.

27 In Dire Straits? The state of the judiciary report (2016) 24.

28 *H/W Aggrey Bwire v. Attorney General & Another [2011] (as above).*

29 Aggrey Bwire v. Attorney General (n 28).

30 *JV Smit*, 'The appointment, tenure and removal of judges under Commonwealth principles: A compendium and analysis of best practice' (2015) Bingham Centre for the Rule of Law 10.

31 Art 144 (2) 1995 Constitution.

32 *Civil Appeal No. 0091 of 2012.*

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In Uganda, the procedure for impeachment is laid down in the Judicial Service Commission Act[33] and the Judicial Service Commission Regulations.[34]The address for the removal of a judge, whether of the Supreme Court or a High Court, can be presented to the President only on the ground of 'proved misbehavior' or 'incapacity'.[35]

It is further observed that the functions of the JSC are set out in ***Article 144 (2)***[36] which provides for the removal of judicial officers who include the Chief Justice, the Deputy Chief Justice, the Principal Judge, a justice of the Supreme Court, a justice of Appeal and a Judge of the High Court. Under the same ***sub-Article,*** the JSC cannot exercise disciplinary control over the Chief Justice, the Deputy Chief Justice, the Principal Judge, a justice of the Supreme Court, a justice of Appeal and a Judge of the High Court, and the Chief Registrar or registrar. Under ***Article 144 (3)***[37] it is only the President that can remove such judicial officer after the question of his or her removal has been referred to a tribunal appointed ***on the recommendation of the JSC or the Cabinet on any ground described in Article 144***[38] In analysis, the JSC is clearly empowered by the ***Constitution*** to recommend to the President whether a tribunal should be set up to remove a judge on the grounds of inability to perform the functions of his or her office arising from infirmity of body or mind; misbehavior or misconduct; or incompetence. Before the JSC undertakes this exercise, it must make a preliminary determination on whether to make the recommendation or not. In other words, it should find out whether a *prima facie* case exists. It is required that the impeachment proceedings should in this regard be properly recorded and documented.

According to Regulation 5, 8 (a) and (b), 9 (1)[39] the complaint to the JSC may be in writing or oral. If it is oral, the Secretary of the JSC is obliged to reduce it into writing. It suffices to mention that, there is no particular format for a complaint specified by law. In the case of *Justice Anup Singh Choudry v. Attorney General* **[40]**, it was noted that the procedure for removal of a judge is a two stage process; the preliminary determination that must be made by the JSC regarding whether it should make a recommendation to the President that he sets up a tribunal to consider whether a judge should be removed; and the Tribunal stage that involves the hearing of the allegations against the judge and actual determination by the Tribunal of whether he/she should be removed from office.

As the Privy Council stated in *Re Chief Justice of Gibraltar*[41] removal 'can only be justified where the shortcomings of the judge are so serious as to destroy confidence in

33 Chapter 14 Law of Uganda 2000.
34 Statutory Instrument No 87 of 2005.
35 *Civil Appeal No. 0091 of 2012.*
36 1995 Constitution.
37 Art 144 (2) 1995 Constitution.
38 Art 144 (2) 1995 Constitution.
39 Judicial Service Complaints and Disciplinary Proceedings Regulations 2005 (SI 88 of 2005).
40 *Court of Appeal Civil Appeal No. 0091 of 2012.*
41 *[2009] UKPC 43.*

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the judge's ability properly to perform the judicial function'. This shows that the bar for removal is set fairly high. The Privy Council also indicated that whereas the international standards set out in the Bangalore Principles of Judicial Conduct are equally relevant to evaluating the behavior of judges, conduct falling short of those standards does not automatically constitute grounds for removal. I now turn to the challenges of judicial impeachment.

1.4 Challenges of judicial impeachment

Impeaching a judge often faces resistance and the process is very challenging. These challenges include: the highly politicized nature of the process, vulnerability of judges to systematic factors, high burden of proof, and potential of public backlash. Leaving judges vulnerable to removal for errors which are not of their own making, but may be caused by systemic factors such as excessive caseloads or inadequate administrative support is a challenge. The same considerations apply in jurisdictions where judges are liable to be removed for breach of a judicial code of ethics.[42] While such codes provide helpful guidance to judges on the standards of conduct that is expected of them, both within and outside the courtroom, not every breach of a code will be sufficiently serious to warrant removing a judge from office.

The interference occasioned by the executive is also another serious challenge. It should be noted that unhealthy politics in the country have remarkably affected the judiciary. There is need for an ideal mechanism for removal of judges is necessary. However, the legal framework is inefficient and should be strengthened to ensure that the impeachment process is used to penalize or intimidate dissenting judges.

In March 2021, the JSC recommended to president Museveni to cause the removal of Justice Kisaakye from the Supreme Court,[43] following the delivery of her dissenting judgment in one of the 2021 presidential election petitions. In that case, main opposition leader Robert Kyagulanyi Sentamu filed a petition challenging the 2021 presidential election. He sought up leave of the Court to amend the main application. The Court refused to grant the leave, holding that the application was time barred. Justice Kisaakye argued that the applicant had been deprived of his right to prepare the main application given he had been placed under illegal house arrest. During the delivery of her judgment, the Chief Justice Alfonse Owiny-Dollo, attempted to obstruct her from handing down the dissenting judgment by ordering the confiscation of Justice Kisaakye's files.

Similarly, the payment of Justice Kisaakye's salary, housing, medical and other benefits had been stopped since July 2022 on allegations absenteeism without leave since September 2021. Justice Kisaakye filed a constitutional petition challenging the acts of the JSC

42 The Uganda Code of Judicial Conduct, 2008.

43 *A Wesaka and P Delilah* 'Judicial Commission recommends removal of Justice Kisaakye' Daily Monitor Monday February 2023.

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among others.[44] The old "idiom of who will bell the cat", the constitutional court dreaded to carry out the dangerously risky task, due to the likely backlash from the ruling party. To date, the embattled justice still faces the betrayal, by the same institution she sacrificed her fruitful years to serve.

Inversely, the United Nations Basic Principles on the Independence of the Judiciary, provides: "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."[45] The standards include the right of a judge to a fair hearing, as guaranteed for every person under article 28.[46]This is reiterated by the of the African Charter on Human and Peoples' Rights[47], the International Covenant on Civil and Political Rights[48]and the Judicial Service Act[49] of Uganda underscore their right to a fair hearing.[50]

Regulation 10(1)[51] provides procedures to be followed by the JSC upon receiving a complaint of misconduct; "The respondent shall be served the copy of the complaint and shall be required to file a reply within fourteen days from the date of service." Furthermore, the United Nations Basic Principles on the Independence of the Judiciary[52], states that: "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law." Salaries and other benefits of judges must not be tampered with during their tenure as judges.

With the aforesaid mayhem, justice Kisaakye decided to retire seven years earlier.[53]Tested against the ideal attributes of judicial impeachment, the JSC fell short. Kisaakye's case lays a bad precedent. By 'persecuting' the judge, it does not contribute to the evolution of jurisprudence in the area under study. It exposes the weakness of the commission; as being partisan and politically instigated. If judges cannot get justice in Uganda, the refuge of a common man in courts remains largely uncertain. The implications

44 *Justice Esther Kisaakye v. Justice Owinyi Dollo and 5 Others Constitutional Petition of 2022.*

45 Principle 19.

46 Constitution of Uganda.

47 Art 7.

48 Art 14.

49 Cap. 91 Section 11.

50 "In dealing with matters of discipline, and removal of a judicial officer, the Judicial Service Commission shall observe the rules of natural justice; the commission shall ensure that an officer against whom disciplinary or removal proceedings are being taken is (a) informed about the particulars of the case against him or her; (b) given the right to defend himself or herself and present his or her case at the meeting of the commission or at any inquiry set up by the commission for the purpose.".

51 Judicial Service (Complaints and Disciplinary Proceedings) Regulations.

52 Principle 11.

53 *S Kafeero* 'Justice Kisaakye draws early curtain on career', The Observer, Friday September 01, 2023.

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of impeachment extend beyond the person of the judge involved, potentially affecting public confidence in the judiciary and the legitimacy of its decisions.

As Kaufman put it: "A glance in the mirror of public opinion cannot be faulted as a mere indulgence of professional vanity, for the judiciary as an institution cannot function without the support of the people… and this public support, in turn depends upon the people's confidence in the fairness and reasonableness of their judiciary."[54]Yet, judges must not regard political consequences, however formidable they may be. If rebellion was the certain consequence, we are bound to say, let justice be done, though the sky falls.[55]

1.5 Conclusion

Considering the foregoing discussions, the process of impeachment of judges in Uganda lies beneath the checks and balances incorporated in the Constitution. Judicial power cannot be exercised in a vacuum. Thus, impeachment serves as a necessary check on judicial power. This is because impeachment ensures that judges uphold and perform their duties with due diligence and ingenuity. Also, impeachment of judges protects the independence of the judiciary by putting stringent removal process in place. Traditionally, sanctions can include private or public admonition, reprimand, censure suspension or removal from office. Therefore, the rare invocation of this process could signify the sanctity and deliberation associated with impeachment constitutional provision.

The protection of judges from arbitrary removal, together with other guarantees of judicial independence, remains an essential element of constitutional governance in many parts of the world and Uganda is not the exception. The absence or neglect of such legal guarantees occasionserious anomaly that puts the legitimacy and efficacy of the judiciary into disrepute. The removal from office by following the due process of law means that the judiciary is responsible for preserving the professional integrity and good conduct of its own members through enforcement of criminal and disciplinary laws. Thus, impeaching judges, when performed in line with constitutional provisions as opposed to being used as a tool of 'political persecution', is an achievement rather than a challenge.

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54 *Kaufman* 'The courts and the public: A problem in communications' 54 ABA Journal 1192 (1986) in American Bar Association & The National Judicial College 'The Judge's book'(1994) 2nd edition 315.

55 First earl of Mansfield, (from the case of William Murray, trial of John Wilkes.

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DC Steelman 'Judicial tenure and politics of impeachment-comparing the United States and the Philippines' (2018)9 *International Journal for Court Administration* 2156–7964.

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AN ANALYSIS OF THE LEGAL FRAMEWORK ON CYBERCRIME IN NIGERIA

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A. Abstract

This paper examines Nigeria's legal framework on cybercrime to assess its adequacy in addressing emerging threats. It analyses the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015, the 2024 Amendment, and related statutes. Adopting a doctrinal approach, the study engages statutory provisions, case law, and scholarly works. Findings reveal that while Nigeria's legal framework represents a significant step toward combating cybercrime, enforcement is hampered by evolving technological threats, jurisdictional complexities, and low public awareness. The study recommends increased funding and training for enforcement agencies, judicial capacity building in digital evidence, and stronger safeguards for citizens' digital rights. It concludes that Nigeria's framework, though progressive in scope, requires robust implementation strategies and international cooperation to effectively secure its cyberspace and build public trust.

Keywords: Cybercrime, Cyber-security, Regulation, Enforcement, Nigeria

B. Introduction

The rapid advancement of information and communication technologies has transformed social, economic, and political interactions worldwide. In Nigeria, the growing reliance on digital platforms for business transactions, communication, and governance has created new opportunities for innovation but has equally exposed the nation to the risks of cybercrime.[1] Offenses such as internet fraud, identity theft, Phishing, child pornography, intercepting electronic communication, cyber-stalking, and cyber-terrorism now threaten not only individual rights but also national security and economic development.[2] The country's notoriety for online scams, popularly referred to as "Yahoo Yahoo," has further

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1 *B.A. Omodunbi, O. M Odiase, and A. O Esan*, "Cybercrimes in Nigeria: Analysis, Detection and Prevention" *Journal of Engineering and Technology* (2016) Vol. 1, Issues I, September 37 -41. <https://www.researchgate.net accessed on 30th August 2025.

2 *Ibid*.

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attracted international attention, tarnishing Nigeria's global image and raising concerns about the adequacy of its legal and institutional frameworks for combating cybercrime.[3]

To respond to these threats, Nigeria enacted the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024,[4] which remains the first and most comprehensive legislation on cybercrime in the country.[5] The Act criminalizes a wide range of offenses including hacking, cyber-stalking, child pornography, and financial fraud, while also imposing obligations on institutions such as banks and internet service providers to aid enforcement.[6] Alongside this statute, other laws such as the Nigeria Data Protection Act (NDPA), the Economic and Financial Crimes Commission (EFCC) Act,[7] the Nigerian Communications Commission (NCC) Act,[8] and the Evidence Act, 2011[9] provide additional legal support for the prosecution of cyber-related crimes.

Despite these efforts, challenges of enforcement, weak institutional capacity, jurisdictional complexities, and conflicts between state surveillance and the protection of fundamental rights continue to undermine the effectiveness of Nigeria's response.

This study therefore aims to critically analyse the Nigerian legal framework on cybercrime with a view to assessing its adequacy in addressing current and emerging threats. It adopts a doctrinal methodology, relying on statutory interpretation, judicial decisions, and comparative analysis with international frameworks such as the Budapest Convention on Cybercrime and regional responses like South Africa's Cybercrimes Act, 2020. The study seeks to highlight the strengths and weaknesses of Nigeria's existing framework, examine enforcement challenges, and propose reforms that would enhance the effectiveness of the law while safeguarding digital rights.

The significance of this research lies in its contribution to the growing body of scholarship on cyber security law in Africa. By identifying gaps in Nigeria's legal regime and

3 EFCC (Media and Publicity), "Court Jails Yahoo Yahoo Kingpin, One Other in Calabar" (June 27, 2019)
https://www.efcc.gov.ng/efcc/news-and-information/news-release/4486-court-jails-yahoo-yahoo-kingpin-one-other-in-calabar accessed on 30th August 2025.

4 Available at: https://www.nfiu.gov.ng/images/Downloads/downloads/cybercrime.pdf accessed on 30th August 2025.

5 As laudable as the Act is, the Act has failed to totally arrest the ugly trend because of some gap or lacuna in the Act and also due to so many other factors that exacerbate cybercrime in Nigeria. See: Umejiaku Nneka Obiamaka and Anyaegbu Mercy Ifeyinwa, "Legal Framework For The Enforcement Of Cyber Law And Cyber Ethics In Nigeria"(2016) (15) (10) *International Journal of Computers and Technology*, 2277 – 3061.

6 See sections 8 – 18 of the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015.

7 Cap. E1, Laws of the Federation of Nigeria, 2010.

8 Available at: https://www.ncc.gov.ng/sites/default/files/2024-12/Legislation-Nigerian_Communications_Act_2003.pdf accessed on 30th August 2025.

9 Available at: https://archive.gazettes.africa/archive/ng/2011/ng-government-gazette-dated-2011-06-21-no-80.pdf accessed on 30th August 2025.

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suggesting reforms, the paper provides valuable insights for policymakers, law enforcement agencies, legal practitioners, and scholars. Furthermore, the findings will be of practical importance to the judiciary in adjudicating cybercrime cases, as well as to civil society in advocating for stronger safeguards against online abuses.

For clarity of analysis, this paper is divided into six sections. Following this introduction, the second section clarifies key concepts such as cybercrime, cyber security, cyberspace, and digital rights, which are essential for understanding the scope of the discussion. The third section examines the substantive provisions of the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, alongside other relevant legislation. The fourth section considers the institutional framework for combating cybercrime in Nigeria, with emphasis on the roles of the EFCC, NCC, and the Office of the National Security Adviser. The fifth section discusses the major challenges to enforcement and evaluates Nigeria's compliance with international standards, drawing comparative insights from other jurisdictions. The sixth section presents recommendations for reform, while the final section offers the conclusion of the paper.

C. Clarification of Terms

In order to properly analyse the Nigerian legal framework on cybercrime, it is necessary to clarify certain key concepts that are central to this study. The terms cybercrime, cybersecurity, cyberspace, and digital rights are often used interchangeably in both scholarly and policy discourses, yet they carry distinct meanings that must be carefully delineated.

I. Cyber crime

Section 2 of the Criminal Code Act of Nigeria defines crime as an act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any other Act.[10] The word cyber-crime is a hybrid word. It is made of "cyber" and "crime". The Commonwealth Organisation,[11] states that cyber-crime includes not only crimes against computer systems (such as hacking, denial of service attacks and the set-up of botnets) but also traditional crimes committed on electronic networks (e.g. fraud via phishing and spam; illegal Internet-based trade in drugs, protected species and arms) and illegal content published electronically, (such as child sexual abuse material).

10 Criminal Code Act, S. 2.

11 Commonwealth Organisation, *Cybercrime* (Commonwealth Secretariat 2015). Cited in: Olusola Joshua Olujobi, "Analysis of the Legal Frameworks for Combating Cyber Crimes: A Tool for Economic Development in Nigeria" (2021) (2) (1) *KWASU Law Journal*; pg. 1 – 27. https://www.researchgate.net/publication/361224574_Analysis_of_the_Legal_Frameworks_for_Combating_Cyber_Crimes_A_Tool_for_Economic_Development_in_Nigeria accessed on 30th August 2025.

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The word cyber-crime refers broadly to criminal activities carried out using computers, networks, or digital devices. Because our society is evolving towards an information society where communication occurs in cyberspace, cybercrime is now a global phenomenon. Cybercrime has the potential to significantly influence our lives, society, and economy.[12] It encompasses two broad categories:

(a) Crimes that are unique to cyberspace, such as hacking, denial-of-service attacks, and the spread of malicious software; and
(b) Traditional crimes that are facilitated through digital platforms, including fraud, identity theft, child pornography, and money laundering.

Cybercrime also includes nonmonetary offenses, such as creating and distributing viruses on other computers or posting confidential business information on the Internet.[13] The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 adopts a similarly wide definition, capturing offenses that exploit information and communication technologies (ICTs) to harm individuals, organizations, or the state.

II. Cyber security

Cyber security is the body of practices, technologies, and legal safeguards designed to protect computer systems, networks, and data from unauthorized access, disruption, or destruction.[14] While cybercrime focuses on unlawful acts, cyber security emphasizes protective and preventive measures. Effective cyber security frameworks combine legal, institutional, and technical mechanisms to ensure resilience against cyber threats.

Cyber security is the organization and collection of resources, processes, and structures used to protect cyberspace and cyberspace-enabled systems from occurrences that misalign de jure from de facto property rights.[15] Cyber security laws vary a lot from country to country and jurisdiction to jurisdiction. Penalties depend on the nature of offence, and range from a fine to imprisonment.[16]

12 *Josephine Uba,* "Cybercrimes and Cyber Laws in Nigeria: All You Need to Know" (7 July 2021) https://www.mondaq.com/nigeria/security/1088292/cybercrimes-and-cyber-laws-in-nigeria-all-you-need-to-know accessed on 30th August 2025.

13 "The Legal Framework for Cyber Crimes in Nigeria" https://wigweandpartners.com/the-legal-framework-for-cyber-crimes-in-nigeria/ accessed on 30th August 2025.

14 *K. Dasshora*, 'Cybercrime in the Society: Problems and Preventions,' (2011), 3(1), *Journal of Alternative Perspectives in the Social Sciences*, 240–259.

15 *D. Craigen and 2 Ors*, "Defining Cybersecurity" (2014) (4) (10) *Technology Innovation Management Review; 13–21.*

16 Uba (n. 11).

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III. Cyberspace

Cyberspace refers to the virtual environment created by interconnected digital technologies where communication, transactions, and interactions take place. Unlike traditional physical spaces, cyberspace is borderless, which creates jurisdictional complexities in the enforcement of cybercrime laws.[17] This feature explains why international cooperation is vital in combating cybercrime, as offenses often involve actors and victims in multiple jurisdictions.[18]

IV. Digital Rights

Digital Rights denote the application of human rights principles such as privacy, freedom of expression, and access to information in the digital environment.[19] Legal responses to cybercrime must therefore strike a delicate balance between protecting state security and individual rights online. Excessive surveillance powers or restrictive regulations, though aimed at combating cybercrime, may risk infringing upon fundamental freedoms guaranteed under the Nigerian Constitution and international human rights law.

V. Cyber Law

Cyber law acts as a shield over cyberspace, preventing cybercrime from occurring. The government is committed to developing and enforcing regulations to combat illicit online activities.[20] The "Cybercrimes (Prohibition and Prevention) Act, 2015" has a significant impact on cyber law in Nigeria. This Act creates a comprehensive legal, regulatory, and institutional framework in Nigeria to prohibit, prevent, detect, prosecute, and punish cybercrime.[21] The Act also encourages cyber security and protection of computer systems and networks, electronic communications, data and computer programs, intellectual property, and privacy rights, as well as the protection of important national information infrastructure.[22]

17 *O. J. Olujobi, and T. O. Jolaosho*, "Strategies for Combating the Crimes of Money Laundering and Terrorism Financing in Nigeria: The Need for A Paradigm Shift" (2019) (1) (10) *University of Ibadan Journal of Private and Business law,* 27–64.

18 *F. M. Opebiyi*, "Protecting the Interest of Buyers in Online Contracts of Sale in Nigeria: Making a case for Legislative Intervention" (2018) (1) *Elizade University Law Journal*, 222.

19 *Umejiaku Nneka Obiamaka and Anyaegbu Mercy Ifeyinwa*, "Legal Framework For The Enforcement Of Cyber Law And Cyber Ethics In Nigeria" (2016) (15) (10) *International Journal of Computers and Technology*, 2277 – 3061.

20 Uba (n. 11).

21 *Ibid*.

22 *Ibid*.

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D. The Legal Framework on Cybercrime in Nigeria

I. The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024

The Cybercrime (Prohibition, Prevention, etc.) Act stands as the central pillar of Nigeria's legislative response to cyber-related offenses. First enacted in 2015 and subsequently amended in 2024,[23] the Act establishes a comprehensive framework for addressing the diverse manifestations of cybercrime recognized under Nigerian law. It provides a unified and functional system for the prevention, detection, investigation, prosecution, and punishment of cyber offenses, thereby strengthening regulatory and enforcement mechanisms within the country.[24]

The 2024 amendments introduced some form of institutionalized response by establishing National Computer Emergency Response Team (ngCERT) and Security Operation Centres (SOCs) to respond to cyber-attacks.[25] The two establishments are to work in synergy. The amended Act placed the responsibility of establishing and coordinating these centres on the office of the National Security Adviser (ONSA).

As a result, it creates a cohesive, efficient, and regulatory system in Nigeria for the prevention, investigation, identification, prosecution, and punishment of cybercrime and other cyber-related offenses. The Act is Nigeria's first comprehensive legislation on cybercrime. It criminalizes offenses such as: It empowers the National Security Adviser (NSA) to coordinate cyber security programs and the Office of the National Security Adviser (ONSA) to enforce compliance. Internet Service Providers (ISPs) are mandated to retain traffic data and cooperate with law enforcement.

Furthermore, the Amended Act mandates that financial institutions must verify the identity of their customers conducting electronic financial transactions by presenting their National Identification Number (NIN) issued by the National Identity Management Commission (NIMC), along with other valid documents bearing their names, before being issued ATM cards, credit cards, debit cards, or similar electronic devices. Under the Principal Act, verification was limited to documents with the customer's name, address, and other information deemed relevant by the Institution.[26]

23 The amendment addresses gaps in the original 2015 act, broadens the scope of offenses, and enhances the nation's capacity to address cybercrime.

24 "The Legal Framework for Cyber Crimes in Nigeria" https://wigweandpartners.com/the-legal-framework-for-cyber-crimes-in-nigeria/ accessed on 30th August 2025.

25 *Shettima Mustapha, Shehu Usman Ali and Adama Asingar Yusuf*, "Legal And Institutional Framework For Cyber Security In Nigeria: An Appraisal" (2025) Volume 10, Issue 6 *International Journal of Diplomacy, Legal & International Studies*, PP 1–8, available at: https://www.arcnjournals.org/images/4272-1453-54-1061-1.pdf accessed on 30th August 2025.

26 "The Legal Framework for Cyber Crimes in Nigeria" https://wigweandpartners.com/the-legal-framework-for-cyber-crimes-in-nigeria/ accessed on 10th September 2025.

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Major offenses and penalties:

The Act addresses a wide array of cyber-related offenses

i. Cyber-terrorism: Any person that accesses or causes to be accessed any computer or computer system or network for purposes of terrorism, commits an offence and is liable on conviction to life imprisonment.[27] While Section 18 covers cyber-terrorism broadly, the Act does not expressly mention critical national information infrastructure in the provision itself. However, Part II of the Act does address protective measures for Critical National Information Infrastructure, focusing on safeguarding such assets rather than prescribing penalties for attacks against them.[28]
ii. Illegal access: Section 6 (1) of the Cybercrime Act, makes it an offense for any person to intentionally access, without authorization or in excess of authorization, a computer system or network, especially for fraudulent purposes. It prohibits unauthorized access to a computer system or network either in whole or in part. The offense covers access with intent for fraudulent purposes or to obtain data vital to national security. The penalty for this offense is imprisonment for a term of not less than two years or a fine of not less than 5 million Naira, or both. If committed with the intent to obtain confidential information such as computer data, commercial or industrial secrets, the punishment increases to imprisonment of not less than three years or a fine not less than 7 million Naira, or both. Section 6(4) also covers trafficking in passwords or access information which affects interests inside or outside Nigeria, punishable by imprisonment of up to five years or a fine, or both.[29]
iii. Computer-related forgery and fraud: These offenses involve altering, deleting, or inputting data to create inauthentic information or causing financial loss through electronic messages.[30] This offense occurs when a person knowingly accesses a computer or network and inputs, alters, deletes, or suppresses data resulting in inauthentic data meant to be considered genuine. The penalty on conviction is imprisonment for not less than three years or a fine of not less than 7 million Naira, or both. If the fraud involves sending electronic messages with intent to deceive and cause damage or loss, the penalty increases to imprisonment of not less than five years or a fine of not less

27 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 18 (1).

28 *Nuleera Ambrose Duson and Sunny D James*, "Cyber terrorism and the Protection of Critical Information Infrastructure in Nigeria: A Legal Assessment" (2020) 8 (3) *International Journal of Innovative Legal & Political Studies;* 25 -36.

29 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 6 (1) – (4).

30 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 13.

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than 10 million Naira, or both.[31] The Act criminalizes not only direct data manipulation but also the use of electronic messages for fraudulent misrepresentation.[32] These provisions aim to deter electronic fraud and forgery affecting financial transactions, data integrity, and trust in digital communications.[33]

iv. Identity theft and impersonation: Fraudulently using or impersonating another person's identity (dead or alive) information to gain an advantage or obtain property of interest in property or cause harm or disadvantage to the person being impersonated is a criminal offense punishable by imprisonment for not less than three years or a fine of not less than 7 million Naira, or both.[34]

v. Cyberstalking: This is prohibited under the Cybercrime (Prohibition, Prevention, Etc.) (Amendment) Act, 2024 in Nigeria, specifically addressed in Section 24 of the Act. It criminalizes sending grossly offensive, false, or pornographic messages with the intent to cause annoyance, intimidation, or fear to the recipient. The 2024 amendment was made following a judgment by the ECOWAS Court of Justice in March 2022, which ruled that the original Section 24 of the 2015 Cybercrime Act was vague, arbitrary, and repressive. The ECOWAS Court found the original provision violated Article 9 of the African Charter on Human and Peoples' Rights and Article 19 of the International Covenant on Civil and Political Rights concerning freedom of expression. The Court ordered Nigeria to amend Section 24 to align with human rights obligations.[35]

Although the 2024 amendment narrowed the definition of cyberstalking, the provision remains broad and has been criticized for continued misuse by Nigerian authorities to harass and intimidate journalists, activists, bloggers, and social media users exercising their rights. Human rights groups like SERAP have challenged the amended law at the ECOWAS Court, arguing it still disproportionately limits free speech and public

31 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 14.

32 *Olanrewaju Adesola Onadeko and Abraham Femi Afolayan*, "A CRITICAL APPRAISAL OF THE CYBERCRIMES ACT, 2015 IN NIGERIA" Being a paper presented at the 29th International Conference of the International Society for the Reform of Criminal Law (ISRCL) held at Halifax, Nova Scotia, Canada, July 24 -28, 2016.

33 "The Legal Framework for Cyber Crimes in Nigeria" https://wigweandpartners.com/the-legal-framework-for-cyber-crimes-in-nigeria/ accessed on 9th September 2025.

34 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 22. See also:"10 Things to know about Nigeria's Cybercrime Act 2015" https://lawpadi.com/10-things-to-know-about-nigerias-cybercrime-act-2015/ accessed on 9th September 2025.

35 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 24.

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discourse.[36] The amended definition under Section 58 describes cyberstalking as "a course of conduct, directed at a specific person that would cause a reasonable person to feel fear." This legal development reflects ongoing tensions between regulating cyber offenses and protecting freedom of expression in Nigeria.

vi. Cybersquatting: Cybersquatting is a crime under Nigerian law as defined in Section 25 of the Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015. It involves the intentional registration or use of a domain name that is identical, similar, or confusingly similar to a trademark, business name, personal name, or other registered name belonging to an individual, corporate body, or government entity in Nigeria, without authorization or right. The purpose of cybersquatting is to interfere with the rightful use of the domain name by its owner, often to profit, mislead, destroy reputations, or prevent the legitimate registration or use. The offense is punishable by imprisonment for up to 2 years, a fine of up to 5 million Naira, or both. Courts can order cyber-squatters to relinquish the disputed domain or name to the lawful owner. The Act does not explicitly provide civil remedies for financial damages but empowers criminal prosecution and court orders for forfeiture.[37]

vii. Phishing and malware: The Act criminalizes sending fraudulent electronic messages and deliberately spreading viruses or malware that damage or disrupt computer systems, networks or data through fraudulent electronic communications or malicious code dissemination.[38] Phishing is defined as the fraudulent means of acquiring sensitive information such as usernames, passwords, or credit card details via electronic communication like emails or instant messages. Penalties include a term of imprisonment of at least three years or a fine of at least 1 million Naira, or both upon conviction, and if such offenses result in substantial loss or damage, penalties increase to a minimum of five years imprisonment or a fine of at least 10 million Naira, or both.

The Cybercrime Act empowers relevant authorities to prosecute these offenses to protect information integrity, cybersecurity, personal data privacy, and prevent financial theft or damage.[39] Restitution orders may be enforced to compensate victims of phishing or malware attacks.[40]

36 "SERAP takes Tinubu govt, governors to ECOWAS Court over 'misuse of Cybercrimes Act" https://serap-nigeria.org/2025/01/12/serap-takes-tinubu-govt-governors-to-ecowas-court-over-misuse-of-cybercrimes-act/ accessed on 9th September 2025.

37 "Cybersquatting in Nigeria: What is Cybersquatting in Nigeria" https://lawpadi.com/cybersquatting-in-nigeria/ accessed on 9th September 2025.

38 The Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 and Cybercrimes (Prevention, Prohibition, Etc.) (Amendment) Act 2024, Section 32.

39 *Michael Akerele and Anastasia Edward*, "Prohibition and Prevention of Phishing in Nigeria" https://lawkernel.ng/prohibition-and-prevention-of-phishing-in-nigeria/ accessed on 9th September 2025.

40 *Ibid*.

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II. Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

The Nigerian Constitution primarily guarantees the right to privacy under Section 37, which protects the privacy of individuals' homes, correspondence, telephone conversations, and telegraphic communications. This right is classified as a Fundamental Right, which means it stands above ordinary laws and is essential for civilized existence, as recognized by the Supreme Court.[41]

The landmark Supreme Court case affirming the primacy of Fundamental Rights, including the right to privacy, is *Chief Dr. (Mrs.) Olufunmilayo Ransome-Kuti & Ors. v. The Attorney-General of the Federation*.[42] In this case, the Court held that Fundamental Rights are antecedent to the political society itself and must be zealously protected. The decision emphasized that the right to privacy prohibits unjustified searches and seizures, and any encroachment must be legally justified and procedurally proper.[43]

In the context of searches and seizures, the Constitutional protection implies that law enforcement agencies must obtain a search warrant before entering private premises or accessing private communications. The warrant must specify the area to be searched and the objects to be seized with precision. Failure to comply with these constitutional requirements invalidates any search or seizure, and any evidence obtained as a result may be deemed inadmissible in court.[44]

Therefore, any law enforcement access to personal electronic devices like cell phones or emails during telecom or cybercrime investigations must respect this constitutional mandate. A search and seizure executed without a proper warrant that clearly describes the place and items contravenes Section 37 and the principles outlined in *Ransome Kuti*, rendering such actions unconstitutional and of no legal effect.[45]

Freedom of expression is also guaranteed under Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria.[46] It encompasses the right to hold opinions, to receive and impart information and ideas, and to communicate without interference. This right is pivotal to a functioning democracy. It ensures that citizens can question their leaders, demand accountability, and participate meaningfully in governance. In *Director of SSS v. Agbakoba,*[47] the Supreme Court affirmed that freedom of expression includes the right to criticize government policy, provided it is done within the law. However, this right is not

41 "Right to Privacy" <https://www.learnnigerianlaw.com/learn/constitutional-law/privacy> accessed on 13th September 2025.

42 *Ransome-Kuti V. AG Fed* (1985) CLR 6(d) (SC). Available at: https://www.hbriefs.com/sc/chief-dr-mrs-olufunmilayo-ransome-kuti-ors-v-the-attorney-general-of-the-federation-ors-1985/ accessed on 13th September 2025.

43 *Ibid*.

44 *Ibid*.

45 *Ibid*.

46 Constitution of the Federal Republic of Nigeria (1999) (as amended), Section 39(1).

47 (1999) 3 NWLR (Pt. 595) 314.

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absolute. Section 39(3) and Section 45 of the Constitution provide for certain permissible limitations, which must be reasonably justifiable in a democratic society. Such limitations typically concern national security, public morality, and protection of the rights of others. But any law that seeks to limit a constitutionally guaranteed right must be sufficiently precise. Vague laws are not only inherently unfair but also dangerous, as they create room for abuse by authorities.[48]

Beyond the Constitution, Nigeria is a party to international treaties that reinforce its commitment to free expression. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to hold opinions without interference and the freedom to seek, receive, and impart information. Likewise, Article 9 of the African Charter on Human and Peoples' Rights, which has been domesticated in Nigeria, recognizes the same freedoms.

III. Economic and Financial Crimes Commission (EFCC) Act, 2004

The Economic and Financial Crimes Commission (EFCC) Act, 2004 establishes the EFCC as Nigeria's principal agency for tackling financial crimes, including those perpetrated through digital means. While the Act does not expressly regulate cybercrime, it grants the Commission broad powers to investigate and prosecute financial fraud, many of which increasingly occur via the internet and telecommunications platforms. This makes the EFCC a frontline enforcer against cyber-enabled financial offenses, notably advance fee fraud popularly known as "Yahoo Yahoo".[49]

Under the Act, the EFCC is empowered to arrest suspects, monitor financial transactions, and prosecute complex financial offenses. These statutory powers extend naturally into the digital sphere, allowing the Commission to target crimes such as internet fraud,

48 The enforcement patterns mirrored these concerns. Notable examples include: Agba Jalingo: Arrested and charged after publishing a story alleging corruption by the Cross River State governor. He was detained for over 100 days without trial. Solomon Akuma: A pharmacist arrested in 2020 over a satirical tweet about the president. He was detained for nearly a year before being arraigned. Joseph Odok: A lawyer arrested for Facebook posts critical of the Cross River State government. These cases highlight how Section 24 was used not just to combat cybercrime, but to suppress dissent and silence criticism. It became increasingly clear that the provision violated the constitutional principle of legality, which demands that offences be clearly defined so that individuals can foresee the consequences of their conduct. See: Ederagobor Prince Dafemike, "Digital Speech on Trial: Section 24 of Nigeria's Cybercrime Act and its Impact on Civil Liberties"; https://download.ssrn.com/2025/6/22/5315568.pdf?response-content-disposition=inline&X-Amz-Security-Token=-Amz-Signature=69071c8cd6578800e754c998d0310b99be4869f8cba39a5a5d5ac78cd5a0bb55&abstractId=5315568 accessed 13th September 2025.

49 *Alokun Ayomide Emmanuel*, "AN ASSESSMENT OF THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) IN COMBACTING CYBERCRIMES IN KWARA STATE, NIGERIA" http://eprints.lmu.edu.ng/5622/1/EDITED%20COPY%20Ayomide%20FINAL%20DISSERTATION.pdf accessed 13th September 2025.

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online scams, and identity theft. By leveraging its investigative mandate, the EFCC is able to pursue offenders who exploit cyberspace for illicit financial gain.[50]

In practice, the EFCC works alongside the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (as amended) to build a comprehensive legal regime against cybercrime. Its focus lies in the financial dimension of such offenses, including confiscating illicit proceeds and prosecuting offenders. Thus, the EFCC Act complements Nigeria's cybercrime framework by strengthening institutional capacity to regulate, investigate, and mitigate cyber-enabled economic crimes.

IV. Nigerian Communications Commission (NCC) Act, 2003

The Nigerian Communications Commission (NCC) Act, 2003 regulates telecommunications services and networks across Nigeria, including online communications. Although primarily designed to oversee licensing, service quality, and operations, the Act also supports the fight against cybercrime. Specifically, section 146 empowers the NCC to require licensees, such as telecom service providers to assist in preventing crimes, thereby enabling collaboration with law enforcement in tackling cyber-related offenses.[51]

Furthermore, the Act grants emergency powers under sections 147–149, authorizing the NCC to suspend licenses, control network facilities, or intercept communications during national security threats or public emergencies.[52] These provisions are crucial for protecting critical information infrastructure and ensuring a swift response to cyberattacks. Beyond enforcement, the NCC issues regulations for internet service providers, promotes consumer awareness on cyber risks, and partners with agencies such as the EFCC to counter cyber-enabled fraud.

The NCC's role complements the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 (as amended), particularly in relation to lawful interception, data retention, and incident management. Through its Computer Security Incident Response Team (NCC-CSIRT), the Commission coordinates responses to cyber incidents and strengthens national cyber resilience. In this way, the NCC Act not only regulates telecommunications but also plays an integral role in safeguarding Nigeria's cyberspace.[53]

V. Money Laundering (Prohibition) Act, 2022

The Money Laundering (Prevention and Prohibition) Act, 2022 is a Nigerian law that repealed the 2011 Act and established a comprehensive framework to combat money

50 *Ibid*.

51 NCC Act 2003, s 146.

52 Available at: https://www.ppiaf.org/documents/1424 accessed 13th September 2025.

53 Ogugua VC Ikpeze, "Appraising The Institutional Frameworks For Protection Of Rights To Privacy In Nigeria Vis-À-Vis Unauthorized Wiretapping Of Telephone Communications" *UNIZIK LAW JOURNAL* 19, (3) 2023.

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laundering and related offenses in Nigeria. Key features include addressing virtual assets, expanding the scope of covered institutions and activities, increasing penalties, and creating the Special Control Unit Against Money Laundering (SCUML) under the Economic and Financial Crimes Commission (EFCC) to strengthen compliance and prevention efforts.[54]

This Act makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act. All financial institutions are required to report transactions made that are above specified thresholds for individuals and corporate bodies.[55] The threshold is billed at US$10,000 or its equivalent and shall be reported to the Central Bank of Nigeria, Securities and Exchange Commission in writing within 7 days from the date of transaction. The Act is essentially structured to enable the authorities to monitor cash transactions in a bid to tackle money laundering.[56]

VI. Advanced Fee Fraud and Other Related Offences Act

This Act outlaws every form of fraud including obtaining property by false pretence and obtaining funds through unlawful activities.[57] This law obliges industry players including Internet Service Providers and cybercafé operators to register with the EFCC, monitor the activities of internet users, and report any suspicious activities to the EFCC. In the *Federal Republic of Nigeria v. Abdul*,[58] the accused was arraigned on a two-count charge of being in possession of documents containing false pretences contrary to Section 6(8)(b) and 1(3) of the Advance Fee Fraud and Other Related Offences Act. The accused was arrested in a cybercafé in Benin City by a group of EFCC operatives, following a petition to the Commission by a citizen alleging the incidence of Internet crimes *"yahoo yahoo*" activities at the cybercafé.

VII. Nigeria Deposit Insurance Corporation (NDIC) Act

The Nigeria Deposit Insurance Corporation (NDIC) Act is a cornerstone of Nigeria's financial safety framework. It establishes the NDIC as a statutory body tasked with protecting depositors, maintaining confidence in the financial system, and supporting the Central Bank of Nigeria (CBN) in supervising and stabilizing banks. Enacted in 1988 and replaced by the

54 "OVERVIEW OF ANTI-MONEY LAUNDERING LAWS AND COMPLIANCE FOR NIGERIAN BUSINESSES" https://www.resolutionlawng.com/overview-of-anti-money-laundering-laws-and-compliance-for-nigerian-businesses/ accessed 14th September 2025.

55 *Wigwe* (n. 33).

56 *Ibid*.

57 *MuÁzu Saulawa*, "An Overview of the Legal framework of Advanced Fee Fraud and Cybercrime in Nigeria" (2016) 1 (2) *Hasanuddin Law Review*; 195.

58 *FRN vs Abdul-Salam Abubakar* https://corruptioncases.ng/cases/frn-vs-abdul-salam-abubakar accessed 14th September 2025.

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NDIC Act 2006,[59] the law provides the legal basis for deposit insurance, bank regulation, and failure resolution.

Under the Act, all licensed banks and financial institutions are required to insure their deposit liabilities with the NDIC. The scheme guarantees payments to depositors up to a maximum limit of ₦500,000 for deposit money banks and ₦200,000 for microfinance banks and mortgage institutions. This ensures that depositors recover part of their funds if a bank fails, which in turn builds public trust in the financial system.

The NDIC also plays a supervisory role, working with the CBN to monitor banks through examinations and surveillance. Where financial distress is detected, the Corporation can intervene by offering financial assistance, taking over management, facilitating mergers or purchase-and-assumption transactions, or liquidating insolvent banks. In liquidation, NDIC is responsible for paying insured deposits promptly and distributing recovered assets fairly.

The Act further imposes obligations and penalties on banks that fail to insure deposits, conceal information, or mismanage depositor funds. NDIC staff are shielded from liability for actions taken in good faith, while the Corporation benefits from tax exemptions. These provisions strengthen enforcement and accountability across the financial sector.

While the NDIC Act is not a cybercrime law in itself, it contributes indirectly to combating cyber-related financial crimes. By requiring banks to insure deposits, report accurate information, and submit to NDIC supervision, the law enforces transparency and accountability, which are critical in detecting and preventing fraud or cyber-enabled theft in banks. NDIC's supervisory powers allow it to monitor financial institutions for irregularities, including suspicious electronic transactions, thereby complementing other cybercrime legislation such as the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015. In practice, the NDIC's role helps safeguard depositor funds against both traditional insolvency and modern digital threats.

VIII. Nigeria Data Protection Act (NDPA), 2023

The Nigeria Data Protection Act (NDPA), 2023 is the country's first comprehensive legislation on data privacy and cyber-security. It establishes the Nigeria Data Protection Commission (NDPC) and provides a framework for regulating how personal data is collected, processed, stored, and transferred. The law aligns with international standards such as the EU's GDPR, reflecting Nigeria's commitment to digital trust and security.

Under the Act, organizations must process personal data lawfully, ensure transparency, and respect the rights of individuals to access, correct, erase, or restrict the use of their information. Data controllers and processors are also mandated to adopt technical and organizational measures that safeguard data from breaches, while cross-border transfers are

59 Cap N102 LFN 2010.

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only permitted under strict conditions.[60] The NDPC is empowered to enforce compliance, impose fines, and prosecute violations, making the Act a strong tool against data misuse.

In relation to cybercrime, the NDPA strengthens Nigeria's defenses by mandating better data security practices and minimizing risks of identity theft, fraud, and unauthorized access. This is particularly relevant for financial institutions, where customer information is a prime target for cybercriminals. By ensuring responsible handling of sensitive data, the Act reduces opportunities for cyber-attacks and enhances public confidence in digital platforms.[61]

When viewed alongside the NDIC Act (2006), both laws complement each other. The NDIC Act focuses on protecting depositors and ensuring stability within the banking sector by insuring deposits, supervising financial institutions, and managing failed banks. The NDPA, on the other hand, secures personal and financial information, compelling institutions to strengthen cyber-security and privacy measures. Together, they safeguard two critical assets in the modern economy: money and data. In practice, while the NDIC Act helps protect depositors' funds from loss due to insolvency or fraud, the NDPA ensures that individuals' personal data is not exploited by cybercriminals. Both Acts therefore reinforce Nigeria's broader legal framework against cybercrime, complementing the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 to create a more resilient financial and digital ecosystem.[62]

IX. National Information Technology Development Agency Act 2007

The National Information Technology Development Agency Act 2007 created the National Information Technology Development Agency (NITDA) as a regulatory agency for information technology development in Nigeria. It offers guidelines facilitating the establishment and maintenance of appropriate infrastructure for information technology and systems that will enhance national security. It formulated policy for the development and implementation of regulatory framework for information technology to protect internet users as well as the victims.[63]

60 *Patrick Chukwunonso Aloamaka*, "A Critical Analysis of the Nigeria Data Protection Act 2023: Elevating Standards to Global Norms" (2023) *University of Cape Coast Law Journal*; <https://journal.ucc.edu.gh/index.php/ucclj/article/view/1724 accessed 14 September 2025.

61 KPMG, "*The Nigeria Data Protection Act, 2023"* (KPMG Insights, 19 September 2023); <https://kpmg.com/ng/en/home/insights/2023/09/the-nigeria-data-protection-act--2023.html_> accessed 14 September 2025.

62 Banwo & Ighodalo, "*Nigeria Data Protection Act: What Individuals, Businesses And Organizations Should Know"* (Grey Matter Concept, 2023) <https://www.banwo-ighodalo.com/grey-matter/nigeria-data-protection-act-what-individuals-businesses-and-organizations-should-know/> accessed 14 September 2025.

63 *Olusola Joshua Olujobi*, "Analysis of the Legal Frameworks for combating Cybercrimes: A Tool for Economic Development in Nigeria" (2021) 2(1*) KWASU LAW JOURNAL*; 1–27.

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E. Gaps and challenges

Despite notable progress, the Nigerian legal framework on cybercrime faces several challenges that limit its effectiveness.

I. Enforcement Difficulties and Institutional Capacity

Law enforcement agencies face significant constraints in enforcing cybercrime laws.[64] First, there is insufficient funding, limiting access to modern forensic tools and surveillance technologies needed to track and apprehend offenders. Second, lack of specialized training hampers effective investigation: many officers remain unfamiliar with handling digital evidence or tracing sophisticated attacks. Third, weak inter-agency coordination leads to inconsistent implementation, with overlaps between institutions such as the EFCC, the Nigeria Police Force Cybercrime Unit, and the Office of the National Security Adviser (ONSA).[65]

II. Evolving Technological Threats and Jurisdictional Complexities

Cybercrime evolves faster than legislation. New threats such as crypto-currency fraud, AI-driven scams, deep-fake technology, and ransomware expose gaps in the Cybercrimes Act 2015. These tools enhance the anonymity of perpetrators, complicating the attribution process.[66] Encryption and virtual private networks (VPNs) further shield criminals, making identification and prosecution extremely difficult.

The threat landscape has evolved rapidly: INTERPOL and independent analysts report rising use of AI (deep-fakes, voice-cloning), crypto-enabled fraud and large-scale social-engineering campaigns; these fast-moving techniques often outpace existing statutes and enforcement playbooks, creating legislative and operational gaps.[67]

In addition, cybercrime is inherently transnational. Nigerian cybercriminals often operate across borders, targeting victims in multiple jurisdictions. This raises complex questions of jurisdiction and applicable law. Although Nigeria is a signatory to some international

64 *Ukasha Ismail*, "The Nigeria Police Force and Cybercrime Policing: An Appraisal" (Dutse Journal of Criminology & Security Studies 2022); https://www.researchgate.net/publication/362395951_The_Nigeria_Police_Force_and_Cybercrime_Policing_An_Appraisal accessed 14 September 2025.

65 *E. Ajayi*, "Challenges to Enforcement of Cybercrimes Laws and Policy in Nigeria" (2016) 2(1) *Journal of Internet and Information Systems* https://academicjournals.org/journal/JIIS/article-full-text-pdf/37DAF9858183 accessed 14 September 2025.

66 *Ibid.*

67 INTERPOL, *Africa Cyberthreat Assessment Report 2025* (INTERPOL, 2025) <https://www.interpol.int/content/download/23222/file/2025%20Africa%20Cyberthreat%20Assessment%20Report.pdf> accessed 14 September 2025.

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instruments, limited cooperation with foreign agencies and conflicting legal systems hinder timely investigations.[68]

III. Inadequate risk management practices

Many organizations in Nigeria lack comprehensive risk management strategies for cybersecurity. Thus, insufficient investment in security infrastructure, lack of regular updates, and poor incident response plans can leave systems vulnerable to attacks and data breaches.

IV. Insufficient legal framework and enforcement

While Nigeria has established various legal frameworks to combat cybercrime, enforcement can be inconsistent due to resource constraints, lack of specialized personnel, and bureaucratic challenges. This can hinder the effective prosecution of cybercriminals and deter the implementation of robust preventive measures.

V. Governance, Human Rights, and Public Awareness Issues

Another challenge is the potential misuse of cybercrime laws. For example, the cyberstalking provisions under Section 24 of the Cybercrimes Act though amended following judicial pronouncements are criticised for vague wording that could be weaponised to stifle dissent, restrict press freedom, or criminalise legitimate online expression.[69] Low digital-security awareness among many users (phishing, romance/crypto scams, and SIM-swap vectors) increases victimisation. Studies and surveys indicate that public knowledge about cyber risks and reporting channels is limited; awareness campaigns and consumer-protection measures are repeatedly recommended to reduce the pool of vulnerable victims.[70]

VI. Data Privacy Concerns

There are also data privacy concerns. The tension between state surveillance powers (necessary for tracking cybercriminals) and citizens' rights under the Nigeria Data Protection Act 2023 reflects the delicate balance between security and privacy. Without strong oversight, surveillance can easily slip into human rights abuse.

68 United Nations Office on Drugs and Crime (UNODC), *Comprehensive Study on Cybercrime* (United Nations, Vienna 2021) https://www.unodc.org/documents/organized-crime/cybercrime/CYBERCRIME_STUDY_210213.pdf accessed 14 September 2025.

69 A. Adewopo, "Freedom of Expression and the Cybercrimes Act in Nigeria: A Critical Appraisal" (2020) *Nigerian Law Journal* 23(2).

70 Timothy Ilegbusi, *Cybercrime Prosecution in Nigeria: Challenges & Prospects* (LL.B long essay, University of Ibadan, Feb 2025); <https://www.researchgate.net/publication/390941849_CYBERCRIME_PROSECUTION_IN_NIGERIA_CHALLENGES_PROSPECTS> accessed 14 September 2025.

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VII. Potential for misuse (free speech, over-criminalisation)

Observers, diplomatic missions and press-freedom groups have warned that broad or vaguely worded provisions in Nigeria's cyber laws have sometimes been applied in ways that chill journalism and dissent. Recent high-profile detentions and critical commentaries demonstrate the risk that anti-cybercrime rules can be misapplied to suppress legitimate speech.[71]

VIII. Lack of specialised courts & judicial expertise

Technically complex evidence (logs, metadata, block-chain tracing, deep-fake analysis) needs judges and prosecutors with digital evidence skills; the absence of dedicated cybercrime or specialised technology courts means ordinary criminal dockets handle these matters causing delays, evidentiary mistakes, and inconsistent rulings. Policy reviews recommend specialized judicial tracks or training schemes.[72]

F. Recommendations for Strengthening the Regulation of Cybercrime in Nigeria

Addressing enforcement difficulties requires Nigeria to prioritize capacity building among its law enforcement agencies. The creation of accredited regional forensic laboratories, adequately funded and staffed, would provide investigators with access to modern tools for handling digital evidence. In addition, the establishment of a national certification programme for investigators, prosecutors, and judges would ensure that only those with the requisite technical expertise handle cybercrime cases. Formalised inter-agency coordination, possibly through a National Cybercrime Coordination Centre, would also enhance synergy between institutions such as the EFCC, the Nigeria Police Force, and the Office of the National Security Adviser. These measures, coupled with targeted funding streams from both government and private sector partnerships, would help overcome long-standing institutional and resource deficiencies.

To confront evolving technological threats, Nigerian legislators and regulators must adopt a technology-neutral approach to law-making. Rather than attempting to ban each new tool or platform, the law should focus on harmful conduct and its effects, whether it arises from artificial intelligence, crypto-currency, or other emerging technologies. A standing technical review committee could provide periodic recommendations for statutory updates, ensuring that legislation remains responsive to fast-moving innovations such as deep-fakes and AI-driven scams. At the operational level, strengthening the capacity of the

71 U.S. Embassy & Consulate in Nigeria, "Preventing Misuse of the Cybercrimes Act: Protecting Free Speech And Unlocking Economic Growth (op-ed / statement, 2025)" https://ng.usembassy.gov/preventing-misuse-of-the-cybercrimes-act-protecting-free-speech-and-unlocking-economic-growth/ accessed 14 September 2025.

72 Chaman Law Firm, "9 Cyber Crime Prosecution Breakthrough Challenges In Nigeria" https://chamanlawfirm.com/9-cyber-crime-prosecution-breakthrough-ch/ accessed 14 September 2025.

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National Computer Emergency Response Team (CERT) and equipping law enforcement with block-chain and crypto-forensics tools will be vital in improving attribution. Moreover, because cybercrime is inherently transnational, Nigeria should deepen its cooperation with international partners by adopting model mutual legal assistance treaties and signing bilateral agreements that permit expedited transfer of digital evidence.

The development of sound risk management practices within organizations is also essential. Many Nigerian institutions, particularly outside the financial sector, remain vulnerable because of poor cybersecurity infrastructure and weak incident response plans. Regulators should mandate baseline security standards in critical sectors such as banking and telecommunications, requiring organisations to adopt encryption, multi-factor authentication, and patch management protocols. Incident response planning and reporting obligations, tied to oversight by regulators like the NDPC and the CBN, would strengthen institutional resilience. In parallel, the promotion of cyber insurance and incentives for small and medium enterprises to adopt affordable security tools would help spread a culture of risk management across the economy.

Nigeria's legal framework for cybercrime, though relatively robust, still requires refinement. A comprehensive audit of existing statutes is needed to identify overlaps and gaps between the Cybercrimes Act, the Nigeria Data Protection Act, and sectoral regulations. Targeted amendments should clarify key definitions, especially those surrounding unauthorised access, cyberstalking, and electronic evidence. Prosecutorial units with specialised expertise should be established under the Attorney-General's office to assist state agencies and provide uniform standards for electronic evidence admissibility. These reforms would not only enhance consistency in prosecution but also improve conviction rates while safeguarding against misuse.

Governance and human rights concerns must also be addressed. Clear prosecutorial guidelines should be issued to prevent the misuse of cybercrime provisions against journalists, political opponents, or online activists. Judicial and parliamentary oversight mechanisms should review enforcement actions regularly to ensure compliance with constitutional guarantees of free expression. Alongside this, a broad-based public awareness campaign is necessary to improve digital literacy and reduce citizens' vulnerability to phishing, SIM-swap fraud, and online scams. Integrating cyber safety education into school curricula and public service training would further institutionalise awareness. Civil society organisations, too, should be empowered to provide legal support to victims of cybercrime and those wrongfully prosecuted under cyber laws.

The regulation of surveillance and data privacy demands a careful balancing act. Clear procedural guidelines must be developed for law enforcement agencies to request access to personal data in line with the Nigeria Data Protection Act 2023. Judicial authorisation, strict proportionality tests, and audit trails should be mandatory safeguards against abuse. The NDPC should play a central role in oversight by reviewing compliance and auditing agency access to personal data. Embedding such accountability mechanisms will help reconcile the tension between national security imperatives and citizens' fundamental rights.

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Concerns about over-criminalisation and vague statutory wording should be resolved through legislative clarification. Offence definitions need to be narrowed, with explicit intent requirements included to avoid criminalising innocent behaviour or legitimate expression. Prosecutors and judges should be trained in the application of digital rights and freedom of expression principles, ensuring that the law protects against harmful online conduct without undermining democracy. Independent review mechanisms or ombudsman institutions could also be created to assess complaints of misuse of cybercrime laws and provide redress where appropriate.

Finally, Nigeria's judiciary must adapt to the technical demands of cybercrime litigation. The establishment of specialised technology courts, or at least designated judges with additional training in digital evidence, would significantly improve the quality and speed of adjudication. Bench books and evidentiary protocols should be developed to guide courts on handling electronic evidence, while a national roster of independent technical experts should be made available to assist in complex cases. These measures would not only reduce delays but also increase confidence in the judiciary's ability to deliver justice in highly technical matters.

G. Conclusion

Nigeria's legal framework on cybercrime has evolved significantly with the enactment of the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and its subsequent amendment in 2024. These legislative interventions represent a conscious effort by the Nigerian state to respond to the growing complexity and sophistication of cyber-enabled crimes within an increasingly digital society. In theory, the framework is largely comprehensive, as it criminalises a wide spectrum of cyber-related offences, establishes regulatory and institutional mechanisms for enforcement, and aligns, to some extent, with international best practices in the fight against cybercrime.

Notwithstanding these commendable strides, the effectiveness of Nigeria's cybercrime regime remains significantly constrained by persistent implementation challenges. Chief among these are inadequate technical expertise and infrastructural capacity within law enforcement and prosecutorial agencies, limited public awareness of cybercrime laws and digital safety obligations, weak inter-agency coordination, and insufficient international cooperation, which is an essential component given the transnational nature of most cyber offences. Furthermore, the rapid pace of technological innovation continues to outstrip legislative and institutional responses, thereby exposing gaps in the law and complicating enforcement efforts.

In light of these challenges, it is evident that the mere existence of a robust statutory framework is insufficient to effectively combat cybercrime. There is an urgent need for sustained capacity building for relevant institutions, continuous legislative review to keep pace with emerging technologies, enhanced public sensitisation, and stronger collaboration with international partners. Addressing these issues is critical not only to improving the

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enforcement of cybercrime laws but also to strengthening Nigeria's overall digital security architecture. Ultimately, a functional and adaptive cybercrime framework will contribute significantly to national security, economic stability, public confidence in digital platforms, and Nigeria's integration into the global digital economy.

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