A CRITICAL ANALYSIS OF THE NEXUS BETWEEN INTERNATIONAL HUMAN RIGHTS NORMS AND TRADE POLICIES IN NIGERIA

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Abstract

This article delivers a critical analysis of the complex legal nexus between international human rights norms and global trade regimes within the Nigerian legal framework, focusing on the structural tension between market liberalization and state duties to protect citizens' socio-economic rights. Operating within a strict dualist model under Section 12(1) of the 1999 Constitution, Nigeria faces significant enforcement gaps when applying un-enacted international treaties to commercial, trade, and investment operations. However, recent constitutional transformations notably Section 254C(1)(f) and (h) introduced via the Third Alteration Act have empowered the National Industrial Court of Nigeria (NICN) to bypass this dualist barrier in labour and trade-related employment matters. By analysing landmark judgments from the Supreme Court and the Court of Appeal, this paper assesses the evolution of human rights enforcement, procedural constraints in commercial contexts, and emerging regional pathways under the African Continental Free Trade Area (AfCFTA). It ultimately offers statutory and policy recommendations to reconcile sovereign trade strategies with global humanitarian baselines.

Keywords: *Trade Liberalization, Human Rights Norms, Section 12(1) Constitution, Dualism, National Industrial Court, AfCFTA.*

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1.0 INTRODUCTION

The interplay between international human rights norms and international trade agreements presents a complex and evolving legal landscape, particularly for a major African economy like Nigeria. While international trade frameworks aim to foster economic integration and wealth creation, they frequently collide with a state's sovereign obligation to safeguard the socio-economic, cultural, and environmental rights of its citizens.[2] As a leading economic powerhouse in Africa and a signatory to both global trade pacts and international human rights treaties, Nigeria faces the intricate challenge of driving macroeconomic growth without compromising its international humanitarian commitments.[3] This article provides a comprehensive legal appraisal of the systemic conflicts, normative synergies, and statutory frameworks that shape Nigeria's trade policies under international human rights standards.

The interaction between international trade and human rights is deeply embedded in the evolving character of global governance. Historically, international trade law and international human rights law developed along separate paths, creating distinct institutional frameworks, philosophical pillars, and legal vocabularies.[4] Trade regimes, notably through the World Trade Organization (WTO) and various regional free trade agreements, focused on market liberalization, tariff reduction, and removing non-tariff barriers to maximize economic efficiency and cross-border commercial flows.[5] Conversely, international human rights law emerged from the Universal

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[2] Ernst-Ulrich Petersmann, *International Trade Law and Human Rights* (Oxford University Press 2006) 45.

[3] Olabisi D Akinkugbe, 'The African Continental Free Trade Area: A New Frontier for Human Rights Protection?' (2021) 24 Journal of International Economic Law 451, 456.

[4] Philip Alston (ed), *Non-State Actors and Human Rights* (Oxford University Press 2005) 12-15.

[5] Marrakesh Agreement Establishing the World Trade Organization 1994.

Declaration of Human Rights (UDHR) and its subsequent binding covenants, emphasizing human dignity, state accountability, and protecting vulnerable populations from institutional or corporate overreach.[6] For a developing state like Nigeria, these two legal worlds no longer exist apart. They intersect heavily across daily operations, including foreign direct investment in the extractive sector, agricultural protections, access to essential medicines, and labour standards within local manufacturing.[7]

This legal friction requires a detailed appraisal of how international obligations affect Nigeria's domestic laws. As Nigeria seeks to enhance its position in international commerce, particularly through the African Continental Free Trade Area (AfCFTA),[8] it must handle the domestic legal issues that arise when commercial commitments cross paths with fundamental human rights protections. This was clearly illustrated in the celebrated case of *Abacha v Fawehinmi*,[9] where the Supreme Court of Nigeria established a pivotal precedent on treaty status within the domestic legal order. In that matter, Chief Gani Fawehinmi challenged his arbitrary arrest and indefinite detention by state security agents, who had acted under a military ouster clause. The apex court ruled that because the African Charter on Human and Peoples' Rights had been formally domesticated by national legislation, it was fully enforceable and held a rank superior to ordinary domestic statutes, meaning that national security decrees could not easily set aside international human rights guarantees. Applying this principle to trade disputes shows how domesticated international instruments can act as crucial legal checks on both state and corporate overreach. This analysis focuses on how these competing regimes are integrated, interpreted, and applied by

[6] Universal Declaration of Human Rights 1948.
[7] Rhuks Temitope Ako, 'Socio-Economic Rights, Environmental Justice and the Extractive Industries in Nigeria' (2012) 56 Journal of African Law 131, 134-138
[8] Agreement Establishing the African Continental Free Trade Area 2018.
[9] (2000) 6 NWLR (Pt 660) 228.

state organs, regulatory agencies, and the judiciary. This analysis focuses on how these competing regimes are integrated, interpreted, and applied by state organs, regulatory agencies, and the judiciary.

2.0 LEGAL APPRAISAL OF INTERNATIONAL HUMAN RIGHTS AND NORMS

The relationship between international human rights and international trade is a dynamic, highly contested area of law.[10] Within the Nigerian context, the framework for recognizing, protecting, and enforcing international human rights norms relies on a matrix of constitutional provisions, domestic statutes, and specialized procedural rules.[11]

Human rights are fundamentally understood as moral principles and legal norms that delineate baseline standards of human behaviour.[12] Commonly recognized as inalienable, universal, and interdependent, they are rooted in the premise that all individuals possess equal dignity and deserve identical protections.[13] These standards are codified as justiciable rights under both municipal and international law, giving structural expression to principles of empathy, fairness, and the rule of law.[14] In *Nigerian Army v Thomas*,[15] the Court of Appeal reinforced the status of human rights as standards of human conduct recognized across municipal and international legal systems, describing them as a

[10] Ernst-Ulrich Petersmann, *International Trade Law and Human Rights: Foundations and Conceptual Frameworks* (Oxford University Press 2006) 45.
[11] Dapo Olowu, 'The Integration of International Human Rights Regimes into Municipal Legal Systems: A Review of the Nigerian Experience' (2009) 11 African Journal of International and Comparative Law 62, 65
[12] Jack Donnelly, Universal Human Rights in Theory and Practice (3rd edn, Cornell University Press 2013) 24.
[13] Upendra Baxi, *The Future of Human Rights* (3rd edn, Oxford University Press 2008) 51.
[14] Malcolm N Shaw, *International Law* (9th edn, Cambridge University Press 2021) 280.
[15] (2022) LPELR-57959(CA).

specific species of rights that have been specially codified by the *Grundnorm* of the Constitution of the Federal Republic of Nigeria in Chapter IV thereof.[16] Consequently, these rights operate not merely as aspirational declarations, but as external constitutional limits on state and corporate action.[17]

The primary impediment to the seamless integration of international human rights norms into Nigeria's international trade regime is the constitutional requirement of domestication.[18] Nigeria operates a strict dualist model of international law, explicitly codified under Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999, which stipulates that no treaty entered into by the Executive shall have the force of law except to the extent that it has been enacted into law by the National Assembly. The Supreme Court robustly affirmed this position in the *locus classicus Abacha v Fawehinmi*,[19] clarifying that an undomesticated treaty cannot form the basis of an actionable claim in Nigerian courts, notwithstanding its binding nature on the international plane. This dualist hurdle introduces legal fragmentation into Nigeria's trade policies; while trade-driven statutes like the Customs and Excise Management Act[20] or the Nigerian Investment Promotion Commission Act[21] are fully operational domestic laws, many modern international human rights, environmental, and sustainability norms remain stalled within un-enacted treaties. This

[16] Constitution of the Federal Republic of Nigeria 1999 (as amended), Chap IV
[17] Philip Alston (ed), *Non-State Actors and Human Rights* (Oxford University Press 2005) 112.
[18] Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 Journal of African Law 249, 253.
[19] (2000) 6 NWLR (Pt 660) 228.
[20]Customs and Excise Management Act, Chapter C45 Laws of the Federation of Nigeria 2004.
[21] Nigerian Investment Promotion Commission Act, Chapter N117 Laws of the Federation of Nigeria 2004.

strict requirement of legislative transformation has been consistently revalidated by the apex court, notably in the case of *JFS Investment Ltd v Brawal Line Ltd*[22] and *Attorney General of the Federation v Anuebunwa*.[23]

The conflicts between these legal frameworks becomes apparent when analysing how market-opening policies impact socio-economic rights.[24] When a state drops trade barriers or grants concessions to foreign investors, it often reduces its own domestic regulatory space.[25] For instance, trade rules that protect intellectual property rights can sometimes limit a country's ability to manufacture or import cheap, generic medicines, directly affecting the right to health.[26] Similarly, investment treaties that protect foreign capital from state interference can make it difficult for host governments to pass strict new environmental or labour laws without facing expensive international arbitration claims.[27] Therefore, assessing international human rights alongside international trade requires a clear understanding of the hierarchy of norms under both international and domestic law, ensuring that economic initiatives remain anchored to human protections.

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[22] (2010) 18 NWLR (Pt 1225) 495 (SC).
[23] (2022) LPELR-57750(SC).
[24] Robert Howse and Mutua Makau, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization* (International Centre for Human Rights and Democratic Development 2000) 11–14.
[25] Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (WW Norton & Company 2011) 182.
[26] Frederick M Abbott, 'The TRIPS Agreement and Access to Medicines: Operationalizing the Public Health Safeguards' (2002) 5 Journal of International Economic Law 469, 472.
[27] Miles Kahler, 'The Global Investment Regime and Domestic Regulation' (2014) 40 Review of International Studies 825, 831.

In Nigeria, this balance is further complicated by the country's socio-economic conditions. As a resource-dependent economy heavily reliant on crude oil exports and consumer imports, Nigeria's trade policies have direct consequences for its citizens' daily survival.[28] The influx of foreign imported goods can overwhelm local industries, leading to factory closures and high unemployment, which impacts the right to work and maintain an adequate standard of living. On the flip side, unguided exploitation of natural resources by transnational corporations for global export markets has historically led to severe environmental damage, particularly in the Niger Delta, directly undermining the right to a clean, healthy environment.[29] Thus, for Nigeria, identifying and enforcing human rights norms within its trade apparatus is an active, ongoing necessity rather than just an academic exercise.

Furthermore, international law itself has gradually acknowledged that trade agreements cannot be executed in a vacuum. International bodies and legal scholars highlight that states maintain core human rights obligations that run parallel to their trade commitments. Under the principle of systemic integration, as outlined in the Vienna Convention on the Law of Treaties, international agreements should be interpreted in harmony with other relevant rules of international law, including human rights obligations.[30] This means that trade treaties signed by Nigeria must be understood alongside its commitments under instruments like the International Covenant on Economic, Social and Cultural Rights (ICESCR)[31] and the International Covenant on Civil

[28] Pat Utomi, 'The Political Economy of Trade Policy in Nigeria' (2002) 14 Journal of African Economies 112, 115.
[29] Kaniye, SA Ebeku, 'The Right to a Satisfactory Environment and the Protection of the Niger Delta' (2003) 47 Journal of African Law 149, 154–158.
[30] Vienna Convention on the Law of Treaties 1969, art 31(3)(c).
[31] International Covenant on Economic, Social and Cultural Rights 1966.

and Political Rights (ICCPR).[32] This normative interaction creates an external boundary, ensuring that trade liberalisation does not compromise fundamental human rights protections.

2.1 Conceptualizing Human Rights as Standards of Conduct

In *Nigerian Army v Thomas*,[33] the Court of Appeal examined the essential character of human rights within the domestic legal framework. The court observed that fundamental rights are not ordinary legal entitlements granted by the grace of the state; rather, they are primordial protections that belong to every individual by virtue of their humanity. The court emphasized that Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 does not create these rights, but rather codifies and protects them within municipal law to insulate them from arbitrary interference by state or private actors. Thus, when applied to commercial relations and international trade, this principle entails that all economic actions whether by corporate entities, state regulatory agencies, or foreign investors must respect these basic standards of conduct. Commercial goals cannot justify actions that infringe upon human dignity or the rule of law.

This conceptual framework is profoundly affirmed and practically tested in the Nigerian landmark case of *Olutide v Hamzat*.[34]In this matter, the 1st Respondent contracted to purchase two vehicles from the Appellants, but issued multiple cheques as payment that were subsequently dishonoured due to severe amount discrepancies and lack of funds. When the Appellants reported the commercial fraud to the police, leading to his arrest, Hamzat filed a fundamental rights enforcement suit, claiming his constitutional right to personal liberty had been violated. The Federal High Court initially ruled in his favour,

[32] International Covenant on Civil and Political Rights 1966.
[33] (2022) LPELR-57959(CA)
[34] (2018) LPELR-45183(CA).

but the Court of Appeal ultimately overturned the judgment, clarifying how these abstract principles operate in practice.

The appellate court's decision directly relates to the definition of human rights by establishing that while these rights are inalienable, they are not absolute and must coexist with the rule of law. The court ruled that fundamental human rights cannot be used as a shield to escape lawful state investigation or criminal liability for fraudulent actions, such as issuing dud cheques.[35] True equality and empathy under the law mean protecting a victim's right to seek state redress just as much as protecting a suspect's liberty. Consequently, *Olutide's* case affirms that human rights boundaries are legally restricted by constitutionally recognized exceptions, ensuring that standards of human behaviour remain accountable to the justice system.[36]

This intersection of commercial accountability and fundamental rights is highly relevant to international trade operations. When international transactions break down due to fraud, bad faith, or criminal conduct, individuals often attempt to use fundamental rights mechanisms to avoid contractual or criminal liability. The court's approach in *Olutide v Hamzat* reveals that the legal system balances the protection of civil liberties with the need to safeguard commercial transactions.[37] If commercial actors could use fundamental rights claims to evade regulatory or criminal accountability for market misconduct, the stability of the domestic trade environment would be compromised. Therefore, human rights norms support rather than undermine a fair-

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[35] *Olutide v Hamzat* (n 1).
[36] Chilenye Nwapi, 'The Court of Appeal's Realignment of Fundamental Rights and Commercial Malpractices in Nigeria' (2020) 14 *Nigerian Juridical Review* 89, 94.
[37] Olutide v Hamzat (n 1).

trading environment, creating an accountable ecosystem where commercial promises are respected and fraud is addressed.[38]

Furthermore, this balance helps clarify the distinction between public law protections and private law obligations. While international trade operations involve commercial agreements governed by private law, the actions of the state in regulating these markets must remain within constitutional boundaries.[39] When state actors step into commercial disputes such as arresting a debtor or seizing commercial goods they must follow due process under Chapter IV of the Constitution.[40] However, as decided in the case of *Olutide*, when a commercial actor engages in conduct that crosses into criminal fraud, the state's police power can be properly invoked. This ensures that market participants operate within a structured legal environment where both human dignity and commercial honesty are preserved.[41]

3.0 THE CONSTITUTIONAL FRAMEWORK AND THE DUALIST IMPEDIMENT

The primary impediment to the seamless integration of international human rights norms into Nigeria's international trade regime remains the constitutional hurdle of Section 12(1).[42] This structural framework ensures that the executive branch cannot alter domestic statutes or create new burdens for citizens through international declarations without legislative consent.[43] While this mechanism protects the

[38] Philip Alston (ed), *Non-State Actors and Human Rights* (Oxford University Press 2005) 142.
[39] Malcolm N Shaw, *International Law* (9th edn, Cambridge University Press 2021) 280–283.
[40] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 46.
[41] Upendra Baxi, *The Future of Human Rights* (3rd edn, Oxford University Press 2008) 118.
[42] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12(1).
[43] Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 Journal of African Law 249, 254.

domestic legal order from unexpected external changes, its application to the fast-moving field of international trade where economic development, environmental protection, and human rights are closely linked can create a fragmented and rigid enforcement gap.[44]

The legal realities of this dualist approach are clear when looking at Nigeria's participation in international trade institutions like the World Trade Organization (WTO). Nigeria has ratified various WTO agreements, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[45] and the General Agreement on Tariffs and Trade (GATT).[46] However, because these agreements have not been comprehensively domesticated through specific Acts of the National Assembly, their provisions cannot be directly invoked by individuals or corporations within Nigerian municipal courts. This creates a two-track legal environment: on the international stage, Nigeria is bound by its trade pacts and can face state-to-state dispute settlement proceedings; but domestically, those same trade commitments do not automatically alter the statutory rights and duties of Nigerian citizens.[47]

This structural separation also impacts international human rights treaties. Nigeria has ratified important regional and international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights. While the African Charter was successfully domesticated via the African Charter on Human and

[44] *General Sani Abacha & Ors v Chief Gani Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (SC).
[45] Agreement on Trade-Related Aspects of Intellectual Property Rights 1994
[46] General Agreement on Tariffs and Trade 1947
[47] Olabisi D Akinkugbe, 'The African Continental Free Trade Area: A New Frontier for Human Rights Protection?' (2021) 24 Journal of International Economic Law 451, 462.

Peoples' Rights (Ratification and Enforcement) Act,[48] other socio-economic rights instruments remain un-enacted.[49] This means that while a citizen can invoke the African Charter in domestic courts, they cannot easily do the same for un-enacted global treaties on issues like the right to health, food, or housing when those rights are impacted by trade liberalization. This dualist barrier creates a fragmented framework where economic protections are readily enforceable through statutory law, while corresponding socio-economic safeguards remain harder to access.[50]

4.0 THE JUDICIAL EXCEPTION: INTERNATIONAL LABOUR STANDARDS IN TRADE OPERATIONS

A critical constitutional exception has emerged to disrupt Nigeria's rigid dualist framework within international trade relations, specifically regarding labour and employment.[51] Under Section 254C(1)(f) and (h) of the Constitution of the Federal Republic of Nigeria 1999 (as amended by the Third Alteration Act 2010), the National Industrial Court of Nigeria (NICN) is granted expansive jurisdiction to apply international labour standards and international best practices directly, bypassing the traditional treaty domestication requirement of Section 12(1)[52] The Court of Appeal explicitly validated this exceptional jurisdiction in *Sahara Energy Resources Ltd v Oyebola*, confirming that the NICN is constitutionally empowered to

[48]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 Laws of the Federation of Nigeria 2004.
[49] International Covenant on Economic, Social and Cultural Rights 1966.
[50] Tunde I Ogowewo, 'The Systemic Problem of Treaty Incorporation in the Nigerian Legal Order' (2014) 22 African Journal of International and Comparative Law 311, 318–322.
[51] Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 *Journal of African Law* 249.
[52] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 254C(1)(f) and (h).

apply global standards of fairness directly to labour disputes arising from commercial operations.[53] Before this pivotal shift, Nigerian labour jurisprudence adhered strictly to rigid English common law doctrines of "master and servant," under which an employer could terminate an employee for any reason or no reason at all, with damages restricted strictly to what the employee would have earned during a brief notice period.[54]

This transformation has structural consequences for how corporate entities operate within Nigeria's trade and commercial sectors. By opening a direct legal entry point under Section 254C, the legislature enabled the industrial court to look to conventions established by the International Labour Organisation (ILO), regardless of whether they have undergone formal legislative domestication by the National Assembly.[55] As demonstrated in *Sahara Energy*, where the court departed from common law restrictions to award significant general damages for unfair dismissal, this jurisdictional window completely alters the risk calculations for commercial enterprises. Businesses engaged in cross-border trade, manufacturing, or supply-chain logistics must align their local employment practices with global baselines, as the industrial court can directly enforce international labour norms to address workplace grievances.

Furthermore, this mechanism serves as a progressive model for how other trade-related public concerns, such as environmental protection or consumer rights, might navigate the dualist wall. The Supreme Court has firmly anchored this specialized jurisdictional boundary,

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53 (2020) LPELR-51806(CA).

54 Folabi Kuti, 'The Measure of Damages in Master-Servant Employment Disputes Revisited: Sahara Energy Resources Limited v Mrs. Olawunmi Oyebola' (2020) 11 *The Nigeria Lawyer* 14, 16.

55 Chilenye Nwapi, 'The Court of Appeal's Realignment of Fundamental Rights and Commercial Malpractices in Nigeria' (2020) 14 *Nigerian Juridical Review* 89, 97.

clarifying the exact divide between fundamental rights enforcement and industrial actions in *SCC (Nig) Ltd v George*[56] and further defining the NICN's subject-matter scope in *Elegbe v HP International Schools Ltd*.[57] Beyond this domestic statutory window, regional mechanisms offer an alternative path around domestic bottlenecks; the ECOWAS Community Court of Justice treats international human rights instruments ratified by Nigeria as immediately actionable obligations, allowing litigants to bypass Section 12(1) hurdles entirely when regional trade operations trigger human rights infractions.[58]

5.0 SCOPE OF ENFORCEABLE RIGHTS AND INTERNATIONAL NORMS

The domestic enforcement of fundamental human rights in Nigeria is primarily anchored in Chapter IV of the 1999 Constitution, with Section 46 vesting original jurisdiction in the Federal and State High Courts to determine applications for redress. The judiciary consistently guards this mandate to prevent institutional overreach during commercial or regulatory operations; for example, in *COP, Delta State v Igba*,[59] the Court of Appeal affirmed the High Court's power to penalize law enforcement authorities with substantial monetary damages following unlawful detentions linked to commercial disputes. Despite its expansive nature, this jurisdictional avenue remains subject to strict procedural standing rules. As established in *Udo v Robson*,[60] fundamental rights are strictly personal, meaning multiple claimants cannot launch a collective class action under a single originating application under the fundamental rights enforcement mechanism.

[56] (2024) 18 NWLR (Pt 1971) 421.
[57] Suit No SC/CV/899/2025
[58] Olabisi D Akinkugbe, 'The African Continental Free Trade Area: A New Frontier for Human Rights Protection?' (2021) 24 Journal of International Economic Law 451, 464.
[59] (2024) LPELR-61951(CA).
[60] (2018) LPELR-45183(CA).

This procedural barrier creates significant hurdles in trade and environmental contexts, forcing affected community members to file separate claims or use slower, alternative civil litigation procedures rather than a joint fundamental rights enforcement action when trade or industrial activities cause widespread local disruptions.[61]

Furthermore, the judiciary maintains a strict boundary regarding the types of entities subject to public law remedies in commercialized sectors. In *John v Terna*,[62] the Court of Appeal ruled that public law mechanisms, such as a writ of mandamus, cannot be enforced against unbundled, private corporate successor entities arising from state privatization policies, requiring litigants to engage these commercial actors via standard civil or contractual claims instead. Balancing these limitations, the Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules) provide a specialized framework designed to bypass normal civil technicalities and ensure swift access to justice.[63] Crucially, the FREP Rules expand the scope of enforceable claims by explicitly allowing actions based on the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*.[64] Because the African Charter was fully domesticated by the National Assembly, it serves as a powerful constitutional counterweight to the dualist restrictions of Section 12(1), holding a status superior to ordinary domestic statutes and offering litigants an active, accessible legal tool to challenge corporate or state human rights violations within the domestic trade space.[65]

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[61] Chilenye Nwapi, 'The Court of Appeal's Realignment of Fundamental Rights and Commercial Malpractices in Nigeria' (2020) 14 *Nigerian Juridical Review* 89, 101.
[62] (2018) LPELR-46396(CA).
[63] Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble
[64] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 Laws of the Federation of Nigeria 2004.
[65] Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 Journal of African Law 249, 256.

6.0 CHALLENGES IMPEDING THE INTEGRATION OF HUMAN RIGHTS IN NIGERIA'S TRADE REGIME

The practical integration of international human rights norms into Nigeria's trade architecture faces severe structural, economic, and institutional challenges. A primary issue is the deep institutional divide between economic planning agencies and human rights bodies, where trade policies are negotiated by the Federal Ministry of Industry, Trade and Investment and the Nigerian Office for Trade Negotiations (NOTN) based strictly on macroeconomic metrics like export volumes, tariff revenues, and market access.[66] Human rights considerations are rarely included as core elements in these negotiations, while the National Human Rights Commission (NHRC) operates on the periphery, stepping in after infractions occur rather than participating in design stages.[67] This separation is aggravated by macroeconomic pressures, including volatile exchange rates and high external debt obligations, which incentivize the state to prioritize foreign direct investment.[68] Consequently, to attract international capital, the government frequently grants extensive concessions such as tax holidays, regulatory waivers, and relaxed environmental oversight creating a trade-off where human rights and environmental regulations are minimized to safeguard short-term economic interests.[69]

[66] Olabisi D Akinkugbe, 'The African Continental Free Trade Area: A New Frontier for Human Rights Protection?' (2021) 24 Journal of International Economic Law 451, 466.
[67] Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 Journal of African Law 249, 258.
[68] Pat Utomi, 'The Political Economy of Trade Policy in Nigeria' (2002) 14 Journal of African Economies 112, 118.
[69] Rhuks Temitope Ako, 'Socio-Economic Rights, Environmental Justice and the Extractive Industries in Nigeria' (2012) 56 Journal of African Law 131, 140.

Furthermore, the lack of explicit human rights clauses within Nigeria's older bilateral investment treaties (BITs) creates significant legal hurdles.[70] These traditional agreements focus almost exclusively on protecting investors' assets from expropriation, ensuring free capital transfers, and granting access to investor-state dispute settlement (ISDS) mechanisms without imposing corresponding obligations regarding local labour or environmental conditions.[71] If Nigeria attempts to sanction a foreign corporation using domestic regulatory bodies, the investor can bypass local courts and launch arbitration claims against the state at forums like the International Centre for Settlement of Investment Disputes (ICSID).[72] The threat of high financial penalties resulting from international arbitration regularly causes a "regulatory chill," making domestic authorities more hesitant to enforce human rights standards against powerful foreign commercial operators.[73]

6.1 The Limitation of Commercial Dispute Forums

The specialized nature of trade dispute resolution makes it difficult to raise human rights arguments within standard commercial forums. International trade bodies, such as the WTO dispute settlement mechanism, operate under legal texts focused primarily on commercial trade rules.[74] These forums generally lack the mandate or the expertise to directly interpret and apply international human rights treaties.[75] If

[70] Engela C Schlemmer, 'An Overview of Bilateral Investment Treaties and the Right of States to Regulate' (2016) 19 Potchefstroom Electronic Law Journal 1, 5–9.
[71] Miles Kahler, 'The Global Investment Regime and Domestic Regulation' (2014) 40 Review of International Studies 825, 835.
[72] Marrakesh Agreement Establishing the World Trade Organization 1994.
[73] Kaniye SA Ebeku, 'The Right to a Satisfactory Environment and the Protection of the Niger Delta' (2003) 47 Journal of African Law 149, 162.
[74] (n71)
[75] Robert Howse and Mutua Makau, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization* (International Centre for Human Rights and Democratic Development 2000) 24–26.

Nigeria tries to justify a trade restriction such as a ban on certain imported products or a restriction on foreign services by pointing to human rights obligations, it must fit those arguments into the narrow, technical exceptions allowed under trade rules, such as Article XX of the GATT.[76] This commercial focus makes it challenging to achieve a balanced legal assessment where human rights and economic priorities are considered on equal terms.[77]

7.0 STRATEGIC SYNERGIES: ALIGNING TRADE AND HUMAN RIGHTS IN THE ERA OF THE AFCFTA

Despite prominent structural challenges, the emergence of the African Continental Free Trade Area (AfCFTA) offers a valuable institutional opportunity to align trade liberalization with human rights standards across Africa.[78] Rather than solely minimizing tariffs, the AfCFTA's founding architecture explicitly seeks to foster sustainable economic growth, structural transformation, and gender equality, creating the necessary legal space for member states like Nigeria to incorporate human rights frameworks directly into regional commercial strategies.[79] This alignment is particularly visible within inclusive development instruments like the Protocol on Women and Youth in Trade. Because women constitute the vast majority of informal cross-border traders and small-scale agricultural producers in Nigeria, formalizing protections within the AfCFTA allows the state to deploy continental trade rules as an active tool for social equity, safeguarding

[76] Sarah Joseph, *Blame It on the WTO? A Human Rights Critique of the Global Trade System* (Oxford University Press 2011) 93.
[77] Olabisi D Akinkugbe, 'The African Continental Free Trade Area: A New Frontier for Human Rights Protection?' (2021) 24 Journal of International Economic Law 451, 468.
[78] Agreement Establishing the African Continental Free Trade Area 2018.
[79] AfCFTA art 3.

these vulnerable market participants from traditional pitfalls like border insecurity, arbitrary fees, and corporate marginalization.[80]

Furthermore, the collaborative structure of the AfCFTA incentivizes continental cooperation on shared regulatory standards, including labour laws, consumer safety, and environmental protection.[81] As member states harmonize their domestic commercial regimes, establishing unified baselines prevents a regulatory "race to the bottom" where nations aggressively depress domestic standards to secure regional investments.[82] As a leading continental economy, Nigeria can actively champion the integration of explicit labour and environmental benchmarks within these emerging trade rules to preserve supply-chain integrity. Domestically, achieving this rights-based equilibrium requires the systematic use of municipal mechanisms like the Fundamental Rights (Enforcement Procedure) Rules 2009 alongside the domesticated African Charter on Human and Peoples' Rights.[83] Because the African Charter covers an expansive array of socio-economic and community rights under Nigerian law, it offers affected local industries and populations a robust national foundation to seek legal remedies for trade-driven disruptions, ultimately ensuring that economic expansion and human dignity advance together within a balanced legal framework.

8.0 CONCLUSION

Nigeria stands at a critical structural crossroads where international trade ambitions must be reconciled with international human rights obligations. While the strict dualist barrier of Section 12(1) historically

[80] Caroline Ncube and others, 'The AfCFTA and Socio-Economic Rights: Assessing the Potential Impact on Informal Traders in Nigeria and South Africa' (2022) 30 African Journal of International and Comparative Law 114, 118-122.
[81] Ernst-Ulrich Petersmann, International Trade Law and Human Rights: Foundations and Conceptual Frameworks (Oxford University Press 2006) 114.
[82] Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (WW Norton & Company 2011) 194.
[83] Fundamental Rights (Enforcement Procedure) Rules 2009

limited the direct domestic enforcement of human rights and environmental treaties, the evolving jurisprudence of the National Industrial Court of Nigeria (NICN) and the procedural flexibilities of the Fundamental Rights (Enforcement Procedure) Rules, 2009 demonstrate a judicial commitment to rights-based accountability. To build a sustainable economic environment, Nigeria's legislative and executive bodies must move away from reactive realignments and proactively harmonize future trade agreements with domestic human rights protections, ensuring that economic growth remains tethered to the rule of law and human dignity.

9.0 LEGISLATIVE AND POLICY RECOMMENDATIONS

To address the persistent gap between international trade operations and human rights compliance, specific legislative and policy modifications should be systematically pursued within the domestic legal system. The following reforms are highly recommended:

1. The National Assembly should consider a targeted constitutional amendment to Section 12(1) of the Constitution to introduce a hybrid monist-dualist exception. This specific change would allow international human rights and environmental treaties to be automatically domesticated upon executive ratification, matching the progressive direct-application framework currently used for labour standards. Such an amendment would prevent situations where vital human rights and ecological guidelines remain unenforceable in domestic courts simply due to legislative delays, ensuring that communities impacted by trade can seek immediate constitutional remedies.
2. Existing trade legislation must be systematically updated to include clear compliance expectations. Key laws like the Customs and Excise Management Act and the Nigerian Investment Promotion Commission Act should be amended to require that foreign direct investments and cross-border trade operations

maintain explicit respect for local labour, safety, and environmental conditions. Incorporating mandatory compliance clauses directly into these trade statutes ensures that economic regulatory bodies have a clear legal mandate to monitor corporate actions, preventing commercial projects from bypassing fundamental local protections under the guise of investment privilege.

3. The Federal Ministry of Industry, Trade and Investment should formally incorporate mandatory Human Rights Impact Assessments (HRIAs) into the preparation stages of all future bilateral and multilateral trade pacts. This requirement should apply directly to ongoing implementations under regional agreements like the AfCFTA. Conducting independent impact studies before trade treaties are finalized allows policy planners to identify potential risks to local food security, access to healthcare, or small-scale industries early, allowing for protective measures to be built directly into the text of the agreement.
4. Finally, the specialized direct-enforcement authority granted to the National Industrial Court under Section 254C should serve as a template for broader judicial expansion. Statutory adjustments should be introduced to grant similar direct-application powers to the Federal High Court when managing commercial and international trade lawsuits. Giving the Federal High Court clear statutory authority to directly enforce international environmental treaties and global consumer safety benchmarks would strengthen domestic judicial accountability, ensuring that corporate operations remain answerable to both economic regulations and basic standards of human dignity.