

RESEARCH ARTICLE

Private Property Rights in Company Ownership in Nigeria: Neoliberal Policies and Structural Injustice

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Abstract

After World War II, many countries, including Nigeria, embraced Keynesian “welfarist” policies to stimulate economic growth and enhance the well-being of their citizens. However, in the late 1960s and early 1970s, a global economic crisis prompted a shift towards neoliberalism, leading to the commodification of social institutions and the implementation of policies such as privatization, trade liberalization and deregulation in Nigeria. This shift had a significant impact on Nigeria’s socio-legal economy, particularly in terms of property rights in company ownership. The article raises concerns about the structural injustice and growing inequality resulting from these neoliberal policies. It advocates for a legal framework that addresses these issues and proposes reconceptualizing private property rights in company ownership in Nigeria. This proposed framework aims to counter the dominance and power of property-owning elites and mitigate the structural injustice induced by neoliberal policies in Nigeria.

Keywords: company ownership; neoliberalism; Nigeria; private property rights; structural injustice

Introduction

During the post-World War II era, many newly independent countries, including Nigeria, adopted Keynesian policies to modernize their economies.¹ Keynesianism is an economic theory that emphasizes the importance of aggregate demand in driving an economy. It argues that free markets do not naturally lead to full employment and advocates for government intervention through public policies to achieve full employment and price stability.² However, as the late 1960s and 1970s economic crisis took hold, the Keynesian paradigm was gradually abandoned in favour of neoliberal ideas. Advocates of neoliberalism³ blamed the crisis on the Keynesian economic model and the political parties that had followed it.⁴ As a result of the neoliberal hegemony, which argued that state-led

- 1 J Rapley *Understanding Development and Practice in the Developing World* (3rd ed, 2007, Lynne Rienner Publishers) at 3.
- 2 S Jahan, AS Mahmud and C Papageorgiou “What is Keynesian economics?” (2014) 51/3 *Finance and Development* 53, available at: <https://www.imf.org/external/pubs/ft/fandd/2014/09/basics.htm> (last accessed 15 April 2025).
- 3 This article engages with structuralist accounts of neoliberalism, given the focus on structural inequality, structural adjustment programmes and property rights. Other approaches exist but they are less relevant in this context – ie, governance / governmentality – see M Dean *Governmentality: Power and Rule in Modern Society* (2nd ed, 1999, Sage) 1–304; N Rose, P O’Malley and M Valverde “Governmentality” (2006) 2 *Annual Review of Law and Social Science* 83 at 104.
- 4 HJ Chang 23 *Things They Don’t Tell You About Capitalism* (2010, Penguin Books) at 72.

institutions were inefficient, social institutions (like education, health and government) have been transformed into commodities traded in markets,⁵ and the state's political significance has dwindled due to the increasing prevalence of anti-state ideologies.⁶ The Nigerian experience is a clear example of this trend.

The impact of neoliberal policies on national economies has been widely researched.⁷ However, further investigation is necessary to understand their effects on property rights systems in developing nations such as Nigeria. This article argues that neoliberal policies have led to a concentration of property ownership in the hands of a few, exacerbating poverty and inequality in the country. It focuses on the implications of neoliberal policies on company ownership and regulation, a topic of considerable relevance in Nigeria's context. This relevance is underscored by the fact that companies are a significant source of wealth creation, concentration and distribution in Nigeria.⁸ While the Nigerian Government advocates for self-regulation among companies through non-legal instruments, such as corporate codes of conduct, it also aims to create and enforce legal instruments, such as the Companies and Allied Matters Act (CAMA) 2020 and various bilateral and investment treaties, to protect corporate and institutional investors.⁹ Drawing on the structural injustice theory, the article proposes rethinking private property rights in company ownership, advocating for a legal framework that fosters community representation in companies.

The article makes two significant contributions to the literature. Firstly, it provides a comprehensive evaluation of the impact of neoliberal policies on private property rights in Nigeria, how it aids in the entrenchment of structural injustice and highlights the emergence of a property-owning class that dominates society and exerts substantial influence over the country's political and economic landscape. Secondly, the article recommends restructuring private property rights in company ownership, arguing that a more equitable legal framework promoting community interests or representation would foster greater economic democracy, reduce inequality and advance social justice in Nigeria. These findings have practical implications for future policymaking in Nigeria, aiming to balance the interests of property owners and the public. The research can also contribute to the ongoing policy discourse on the influence of neoliberalism on property rights regimes in Nigeria and other developing nations. Nigeria is chosen for this study due to its critical role in West Africa, with a population of around 202 million, representing approximately half of the region's total population,

5 P Ireland "Financialization and corporate governance" (2009) 60/1 *Northern Ireland Legal Quarterly* 15 at 34.

6 FEC Onyeoziri "The Nigerian state and the relative autonomy proposition: A theoretical analysis" (paper presented at the 1984 Annual Conference of the Nigerian Political Science Association, University of Benin, Benin City, Nigeria, 16–18 May 1984) at 1.

7 See for instance K Gatwiri, J Amboko and D Okolla "The implications of neoliberalism on African economies, health outcomes and wellbeing: A conceptual argument" (2020) 18/1 *Soc Theory Health* 86 at 101; R Kwon "How do neoliberal policies affect income inequality? exploring the link between liberalization, finance, and inequality" (2018) 33/3 *Sociological Forum* 643; N O'Donovan "Demand, dysfunction and distribution: The UK growth model from neoliberalism to the knowledge economy" (2023) 25/1 *The British Journal of Politics and International Relations* 178; K Siddiqui "Developing countries' experience with neoliberalism and globalisation" (2012) 4/4 *Research in Applied Economics* 12.

8 J Eluka, PU Ndubuisi-Okolo and RI Anekwe "Multinational corporations and their effects on Nigerian economy" (2016) 8/9 *European Journal of Business and Management* 59 at 59; K Donald and J Martens "The increasing concentration of wealth and economic power as an obstacle to sustainable development – and what to do about it" (2018) *Spotlight*, available at: <https://www.2030spotlight.org/sites/default/files/spot2018/chaps/Spotlight_Innenteil_2018_chapter1_donald.pdf> (last accessed 15 April 2025).

9 Nigeria is a developing economy and in a 2024 report, the African Development Bank states that the world's 20 fastest-growing economies were in developing countries; see African Development Bank "Africa dominates list of the world's 20 fastest-growing economies in 2024—African Development Bank says in macroeconomic report" (16 February 2024) *African Development Bank Group*, available at: <<https://www.afdb.org/en/news-and-events/press-releases/africa-dominates-list-worlds-20-fastest-growing-economies-2024-african-development-bank-says-macroeconomic-report-68751>> (last accessed 15 April 2025).

and being home to one of the world's largest youth populations, making it an appealing investment opportunity.¹⁰

The article is divided into four sections. First, it provides a brief overview of the ideology of neoliberalism and how neoliberal policies act as catalysts for structural injustice. Second, it examines neoliberalism's emergence, growth and impact in the Nigerian political economy. Third, it analyses the effects of neoliberalism on private property rights in Nigeria, specifically regarding company ownership. Finally, it explores the possibility of redefining private property rights in company ownership in Nigeria. The article contends that reimagining property rights can play a vital role in addressing structural injustices, lifting many Nigerians out of poverty and establishing a more equitable, inclusive and prosperous society.

Understanding the ideology of neoliberalism

Neoliberalism¹¹ is an ideology that has significantly impacted the global economy, promoting market-based approaches to enhance wealth and welfare.¹² It encourages privatization, free market competition and the unrestricted movement of goods and services across borders.¹³ Proponents argue that deviating from free market principles may lead to economic instability.¹⁴ Over the past 30 years, there has been a noticeable shift toward neoliberalism in global economic policy, expanding market forces into healthcare, education and state-owned industries and impacting financial markets and organizational frameworks.¹⁵ Neoliberalism has been imposed through international financial institutions, pressuring financially struggling nations to implement structural adjustments in line with neoliberal policies.¹⁶

The practical application of neoliberal concepts has led to the financialization of markets and the use of market-based structures to discipline states.¹⁷ This "market rationality" requires structural reforms in banking, corporate governance, tax administration, legal systems and property rights. The demand for restructuring in various policy sectors is seen as the political counterpart to the socio-economic authority of market forces and the power of capital, known as the new constitutionalism.¹⁸ This set of proposed changes aims to limit the power of national politics over markets by granting privileged rights to corporate capital.¹⁹ It places binding constraints on the state's macro-economic, trade, investment and industrial policies while guaranteeing the freedom of capital.²⁰ The new constitutionalism seeks to ensure that the owners of capital determine how production operates by imposing the political-judicial form of neoliberalism on states.²¹ Renato Ruggiero, a former

10 The World Bank "The World Bank in Nigeria; Nigeria at a glance" (2025) *The World Bank Group*, available at: <<https://www.worldbank.org/en/country/nigeria/overview>> (last accessed 15 April 2025).

11 The form of neoliberalism this article engages with was pointed out in note 3 above.

12 D Harvey *A Brief History of Neoliberalism* (2005, Oxford University Press) at 1; Chang *23 Things They Don't Tell You About Capitalism*, above at note 4 at 72.

13 P Ireland "Financialization and corporate governance" (2009) 60/1 *Northern Ireland Legal Quarterly* 15 at 34; P Ireland "Law and the neoliberal vision: Financial property, pension privatization and the ownership society" (2011) 62/1 *Northern Ireland Legal Quarterly* 1.

14 P Ireland "Property, private government and the myth of deregulation" in S Worthington (ed) *Commercial Law and Commercial Practice* (2003, Hart Publishing) 1 at 85–86.

15 Harvey *A Brief History*, above at note 12 at 70–71.

16 Ibid.

17 S Gill "The constitution of global capitalism" (2000), available at: <<https://stephengill.com/news/wp-content/uploads/Gill-2000-Constitution-of-Global-Capitalism.pdf>> (accessed 15 April 2025).

18 Ibid.

19 D Schneiderman "Investment rules and the new constitutionalism" (2000) 25 *Law and the Social Inquiry* 757 at 758.

20 Gill "The constitution of global capitalism", above at note 17.

21 GW Anderson *Constitutional Rights after Globalisation* (2005, Hart Publishing) at 113.

Director-General of the World Trade Organization (WTO), emphasized the essential nature of the new constitutionalism by stating that “we are writing the constitution of a single global economy”.²²

This model of constitutionalism significantly relies on globalization as an external economic constraint. In simpler terms, economic imperatives hold greater weight than political discretion.²³ This means that fluid capital has more power than immobile government and labour. In such a context, the state, as the fiscal authority, must adapt and accommodate the perceived interests of capital to avoid a loss of invested funds. Mobile assets demand swift and severe judgement, requiring fiscal responsibility, prudence, rules-bounded economic policies, flexible labour markets and low corporate and personal taxation. The appeal to globalization creates a logic of economic necessity and compulsion, driving an unwavering agenda for welfare retrenchment and labour-market reform. This approach also supports open economy macroeconomics. The policy is presented as a necessary accommodation to the “harsh realities” of new economic times in a dispassionate, technocratic manner, with the appeal made to processes beyond the control of political actors. This creates an unyielding logic of economic compulsion that is non-negotiable.²⁴ The implications for policies based on this account are unmistakable. As globalization creates competition in the international economy, it becomes necessary to eliminate any regulations that hinder the market’s efficient operation, including welfare institutions, regulatory controls and inflexible labour markets.²⁵

Neoliberalism as a catalyst for structural injustice

Structural injustice refers to deeply rooted and often institutionalized conditions that limit the rights and opportunities of specific individuals and social groups,²⁶ making them vulnerable to oppression by those in power. This can include unequal access to resources, discrimination, exclusion from decision-making and limited social mobility. The consequences of structural injustice can perpetuate cycles of poverty, inequality and marginalization.²⁷ State-mediated structural injustice, as described by Mantouvalou, involves systems created by the state through legislation that initially may seem legitimate but lead to exploitation and social injustices.²⁸ Private law principles, such as those of contract and property law, are built on specific interpretations of private property and contractual liberty, which do not necessarily protect against social injustices.²⁹ Privileged individuals can exploit these principles due to their wealth and education, further perpetuating systemic / structural injustice, while disadvantaged individuals may struggle to break free from their predicament.³⁰

In analysing how neoliberal policies contribute to structural injustice, the article refers to Ireland, who argues that contrary to neoliberal thinking, private property rights and free markets are not solely about individual freedoms but are also shaped by social, political and legal factors.³¹ He highlights how the financial market enables finance to wield coercive power and how market participants supported by the state may use their rights related to private property to coerce others.³² Drawing

22 Gill “The constitution of global capitalism”, above at note 17.

23 Ibid.

24 Ibid.

25 For a more recent analysis of the “new constitutionalism”, see Q Slobodian “The backlash against neoliberal globalization from above: Elite origins of the crisis of the new constitutionalism” (2021) 38/6 *Theory, Culture & Society* 51 at 69.

26 IM Young *Responsibility for Justice* (2011, Oxford University Press) at 52.

27 Ibid.

28 V Mantouvalou “Structural injustice and the human rights of workers” (2020) 73/1 *Current Legal Problems* 59 at 73.

29 J Wolff and V Mantouvalou “Introduction” in J Wolff and V Mantouvalou (eds) *Structural Injustice and the Law* (2024, UCL Press) 1 at 4–5.

30 See K Pistor *The Code of Capital – How the Law Creates Wealth and Inequality* (2019, Princeton University Press) at 214.

31 Ireland “Property, private government and the myth of deregulation”, above at note 14 at 86; N Duxbury “Robert Hale and the economy of legal force” (1990) 53 *Modern Law Review* 421 at 422–24.

32 Ireland, *ibid.*

from Hale's market analysis,³³ Ireland distinguishes between "voluntary" and "volitional" freedom, emphasizing that individuals typically experience volitional freedom due to various background factors that constrain their choices. He also underlines the significant influence of property rights on the bargaining process and argues that markets are not truly free as property rights depend on the state's recognition. Chang's perspective also challenges the common belief that free markets exist.³⁴ He critiques the politicized nature of property rights and other legal entitlements assumed by neoliberalism. In their development, countries such as the USA and the UK implemented highly prescriptive and anti-free market policies that were not liberal. Chang points out that developed countries imposing neoliberal, free-market policies on developing states through international organizations like the International Monetary Fund (IMF) and World Bank create structural injustices, making them "bad Samaritans".³⁵

Pistor argues that applying capital's legal principles to an asset such as shares, as neoliberalism does, grants the holder significant rights that exceed those of others.³⁶ These enduring and globally enforceable rights provide a legal advantage, allowing holders to convert gains into state-protected wealth more quickly and efficiently. This provides certain assets (company shares for instance) and their holders with substantial rights globally, empowering them to thrive and effectively navigate unforeseen events and competition. The legal provisions that allow shareholders to apply their local regulations or adhere to foreign laws have played a crucial role in the substantial global expansion of trade, commerce and finance.³⁷ This transfer of capital from its native legal frameworks has facilitated the accumulation of wealth for capital holders. Nevertheless, it has also led to a disproportionately skewed distribution of wealth, particularly impacting those seeking access to sophisticated financial strategies.³⁸ This is a classic case of structural injustice.

Gill argues that the ideology of neoliberalism has exacerbated social and economic inequality through tactics such as wealth redistribution and power restructuring.³⁹ Neoliberal policies have transformed market dynamics and legal frameworks, granting those who own capital more significant influence and control. Financial property owners leverage a "free market" approach to pressure workers, corporations and entire countries to generate more significant economic gains. In essence, this is an effort by the capitalist class to regain lost power and income.⁴⁰ Despite its poor economic results, the widespread adoption of neoliberalism has significantly impacted income and wealth inequality, both within countries and across borders.⁴¹ For Harvey, neoliberalism benefits wealthy individuals and organizations by prioritizing business interests over society's collective rights and quality of life.⁴² He points out two significant inconsistencies in the rhetoric of neoliberalism. Firstly, while some conditions are neutral, others, such as treating labour and the environment as commodities, are biased towards class power. Secondly, neoliberalism prioritizes the financial system's integrity over the public's welfare and the environment. As a result, policies like structural adjustment programmes create unequal opportunities and perpetuate class power despite the stated objective of promoting general welfare.⁴³

33 R Hale "Coercion and distribution in a supposedly non-coercive state" (1923) 38 *Political Science Quarterly* 470 at 470.

34 HJ Chang *Bad Samaritans: The Guilty Secrets of Rich Nations and the Threat to Global Prosperity* (2008, Random House) at 16–17.

35 Ibid.

36 Pistor *The Code of Capital*, above at note 30 at 116–17.

37 Id at 7–8.

38 Ibid.

39 Gill "The constitution of global capitalism", above at note 17.

40 G Dumenil and D Levy "The nature and contradictions of neoliberalism" (CEPREMAP-CNRS working paper, 2002), available at: <<https://www.cepremap.fr/membres/dlevy/dle2002c.pdf>> (last accessed 18 September 2025).

41 Ibid.

42 Harvey *A Brief History*, above at note 12 at 70–71.

43 Ibid.

The emergence and growth of neoliberalism in Nigeria

In 1956, commercial oil was discovered in Oloibiri, present-day Bayelsa State of Nigeria.⁴⁴ By the 1980s, oil comprised over 80 per cent of the country's total export incomes, contributing billions of dollars to Nigeria's foreign exchange earnings.⁴⁵ Nigeria produced approximately 69 million metric tons of oil in 2022, making it the top oil producer in Africa.⁴⁶ While the oil boom between 1958 and 1978 brought benefits to the country, it also created a false sense of achievement. In this period, the revenue earned from oil was seen as an indicator of Nigeria's development, nationally and internationally.⁴⁷ Unfortunately, the country became reliant on the fluctuating prices of petroleum products when oil became the main export and the government's primary revenue source. By the early 1980s, an oil glut in the international market led to the virtual collapse of the Nigerian economy.⁴⁸

During the 1980s, Nigeria grappled with economic challenges and resorted to heavy borrowing to fund various projects. This, in turn, led to repayment difficulties when the economy slumped.⁴⁹ In response, the Shagari administration implemented the Economic Stabilisation Act to stabilize the economy, control inflation and provide social welfare programmes.⁵⁰ The government equally sought loans from the IMF and the World Bank.⁵¹ However, when the military took over in 1983, they balked at certain aspects of the IMF proposal, including currency devaluation, privatization and subsidy cancellation. Nevertheless, they reduced public spending, downsized the workforce and capped wages.⁵² By 1985, the government had borrowed USD 19.1 billion for a flawed national development strategy,⁵³ and by 1986, the economy was teetering on the brink of collapse.⁵⁴ The government signed the Structural Adjustments Programme (SAP) agreement with the IMF to avert further crisis.⁵⁵ This led to the devaluation of the Naira, the privatization of state-owned enterprises and a decrease in petroleum subsidies.⁵⁶ The adjustment programmes aimed to limit the government's role in social welfare provision, cut fiscal deficits, reduce public sector borrowing and lower government subsidies for "unprofitable" ventures.⁵⁷ As a result, Nigeria has experienced increased deregulation in many sectors of the economy, privatization of government-owned enterprises and trade liberalization through bilateral and multilateral trade and investment agreements.

Stepping into the post-neoliberal era, Nigeria's new constitutionalism has established robust support for capital. It has implemented political and legal mechanisms that cannot be easily undone, thereby solidifying their impact on the country's socio-economic structure.⁵⁸ As a result, the Nigerian

44 K Kalu "Political economy in Nigeria: The military, ethnic politics and development" (1996) 10/2 *International Journal of Politics, Culture and Society* 229 at 247.

45 O Salami and A Ayoola "The 'war' of appropriate pricing of petroleum products: The discourse of Nigeria's reform agenda" (2010) 42/2 *Linguistic on Line* 43 at 45.

46 Statista "Oil production in Africa as of 2022, by country" (2022), available at: <<https://www.statista.com/statistics/1178514/main-oil-producing-countries-in-africa/>> (last accessed 15 April 2025).

47 A Kass "Neoliberal Nigeria, The United States, and oil: Linking production and consumption" (senior honours thesis, The Ohio State University, 2008) at 12.

48 J Adesina "From development crisis to development tragedy: Africa's encounter with neoliberalism" (paper presented at the International Development Economics Associates International Conference on The Economics of the New Imperialism, 22–24 January 2004) at 12.

49 D Otoo (ed) *Labour Relations in Nigeria* (1992, Malthouse Press) 1 at 65.

50 Ibid.

51 DO Adeyemo and A Salami "A review of privatization and public enterprises reform in Nigeria" (2008) 4/4 *Contemporary Management Research* 401 at 410.

52 Ibid.

53 Kalu "Political economy in Nigeria", above at note 44.

54 J Dibia *Modernization and the Problem of Development in Africa* (2006, Ashgate Publishing) 1 at 252.

55 A Olukoshi "Impact of IMF-World Bank programmes in Nigeria" in B Onimode (ed) *The IMF, The World Bank and the African Debt: The Economic Impact* (1989, Zed Books) 1 at 184.

56 Ibid.

57 E Etieyibo "Privatization in Nigeria, social welfare, and the obligation of social justice" (2011) 2/1 *Journal of Economics* 37 at 38–39.

58 This point is discussed further below.

State, through this “neoliberal lock-in”, has introduced a system of structural injustice, leading to social and economic inequalities in the country.

Impact of neoliberal policies on the socio-economic development of Nigeria

The Nigerian economy’s downstream sector involves refining crude oil, distributing natural gas and selling other products derived from crude oil. This industry, including oil refineries, petrochemical plants, distributors of petroleum products, retail outlets and natural gas distribution corporations, has been continuously deregulated.⁵⁹ In the past, before the government intensified the process of disciplinary neoliberalism in the country, the sector was regulated and provided subsidies for Nigerian citizens.⁶⁰ The argument is that subsidies help reduce prices and benefit specific economic segments or sections of the country by easing poverty and enhancing the enjoyment of energy resources. Fuel subsidies also maintain employment, especially during economic transitions, thus promoting collective interests.⁶¹ The government has always maintained control over the downstream sector by providing subsidies for internally used oil. Past governments have been reluctant to fully deregulate fuel prices for local consumers due to concerns about the unfavourable effect of higher prices on household real incomes.⁶² The impact of fuel price hikes on lower-income households, who are least able to absorb the welfare cost of higher prices, is a critical consideration when deciding how best to protect households from higher fuel prices.⁶³

Since implementing neoliberal policies and the SAPs, the Nigerian Government has worked to reduce their control over the fuel sector. These policies have had different names, such as “subsidy withdrawal”,⁶⁴ “appropriate pricing”⁶⁵ and “correct pricing”.⁶⁶ In January 2012, the Goodluck Jonathan administration removed fuel subsidies, increasing fuel prices by over 100 per cent.⁶⁷ This led to mass protests, and the government was forced to restore the subsidy partially. In 2016, the Buhari administration also removed subsidies, leading to almost a 100 per cent hike in fuel prices.⁶⁸ During his inaugural address on 29 May 2023, Nigerian President Bola Tinubu declared that the fuel subsidy would be eliminated due to escalating expenses and scarce resources.⁶⁹ As a result of the declaration, the price of petrol at the pump surged significantly, from around NGN 780 per gallon (roughly USD 1 at the time) to NGN 2160 per gallon (USD 2.80 at the time), increasing the overall

59 OI Eme and A Onyishi “The fallacies about the down-stream oil sector deregulation in Nigeria” (2011) 3/8 *Interdisciplinary Journal of Contemporary Research in Business* 187 at 187.

60 Ibid.

61 European Environmental Agency “Energy subsidies in the European Union: A brief overview” (EEA technical report no 1, 2004), available at: <https://www.eea.europa.eu/en/analysis/publications/technical_report_2004_1> (accessed 18 September 2025).

62 Eme and Onyishi “The fallacies about the down-stream oil sector”, above at note 59.

63 J Granado, D Coady and R Gillingham “The unequal benefits of fuel subsidies: A review of evidence for developing countries” (IMF working paper WP/10/202, 2010), available at: <www.imf.org/external/pubs/ft/wp/2010/wp10202.pdf> (last accessed 23 February 2024).

64 By the Babangida Military Regime.

65 Ernest Shonekan’s short-lived Transition Committee.

66 By the Sanni Abacha military junta; see P Onyeonoro “The dictatorship of neoliberalism and the Nigerian trade movement struggles for inclusive development” (University of Montreal working paper, 2009), available at: <www.cccg.umontreal.ca/RC19/PDF/Onyeonoru-I_Rc192009.pdf> (last accessed 28 January 2024).

67 AO Onyishi, IO Eme and IEJ Emeh “The domestic and international implications of fuel subsidy removal crisis in Nigeria” (2012) 1/6 *Kuwait Chapter of Arabian Journal of Business and Management Review* 57 at 58.

68 A Ademiluyi “Three decades of neoliberalism in Nigeria: ASUU holds symposium in Lagos” (15 September 2016) *Socialist Nigeria*, available at: <https://www.socialistnigeria.org/3212/2016/09/15/three-decades-of-neoliberalism-in-nigeria/?doing_wp_cron=1758198315.2126250267028808593750> (last accessed 18 September 2025).

69 Jordan Kyle and Kwaw Andam “Nigeria’s lesson on scrapping fuel subsidies” (1 August 2023) *IFPRI Blog*, available at: <<https://www.ifpri.org/blog/nigerias-lesson-how-scrap-fuel-subsidies/#:~:text=In%20his%20inauguration%20speech%20in,to%20protect%20the%20most%20vulnerable.>>> (last accessed 18 September 2025).

cost of living in the country.⁷⁰ In doing this, most Nigerians, already overburdened by the effects of the structural adjustment programmes, continue to suffer due to the higher fuel prices.⁷¹

Nigeria had a long tradition of state ownership and management of enterprises until the implementation of the neoliberal SAPs.⁷² In 1988, Nigeria introduced the Privatization and Commercialization Decree to privatize 111 public enterprises and commercialize 34 others, with a Technical Committee set up to oversee the process. By 1993, 88 of the 111 enterprises were successfully privatized. The Bureau for Public Enterprises (BPE) was established through the Bureau for Public Enterprises Act of 1993 to implement the privatization programme, and the Public Enterprise (Privatization and Commercialization) Act of 1999 established the National Council on Privatization to oversee the process, chaired by the then vice president.⁷³ The privatization campaign of Obasanjo (1999–2007) aimed to privatize state-owned enterprises and other sectors of the economy such as education, health, pensions, power and communications.⁷⁴ The National Health Insurance Scheme Act of 1999, put into force in 2005, facilitated Nigeria's privatization of health services. However, it commodified health services, impeding low-income individuals' access to medical facilities. Consequently, Nigeria's health indicators have remained below international benchmarks, and the country's health status indicators are among the worst in the world.⁷⁵ Nigeria's Pension Reform Act was established to decentralize and privatize pension administration in 2004.⁷⁶ It introduced a contributory pension scheme, which replaced the old non-contributory scheme that was more favourable to workers. The new scheme is based on neoliberal economic and social development paradigms prioritizing individual responsibility over collectivist ideas.⁷⁷ Other privatizing legislation in Nigeria include the Primary Mortgage Institutions Act, the National Housing Fund Act and the Nigerian Social Insurance Trust Fund Act, all of which seek to extend the application of neoliberal ideas to most Nigerians.⁷⁸

Regarding liberalization, Nigeria has embraced the principles of disciplinary neoliberalism and expanded its economic horizons. The country has established trade agreements with several nations, both bilaterally and multilaterally. Nigeria is a WTO member and has inked bilateral trade and investment deals with various developed economies, such as France, the UK, the Netherlands, Germany, Switzerland, Spain and Sweden.⁷⁹ Moreover, it has negotiated with emerging economies like China,

70 Ibid.

71 Eme and Onyisi "The fallacies about the down-stream oil sector", above at note 59.

72 O Igbozor "Privatization in Nigeria, critical issues of concern to civil society" (paper presented at a power mapping round table discussion on the privatization programme in Nigeria organized by the Socio-Economic Rights Initiative, Abuja, 3 September 2003), available at: <<https://nigerianlawguru.com/wp-content/uploads/2024/06/PRIVATIZATION-IN-NIGERIA-CRITICAL-ISSUES.pdf>> (last accessed 15 April 2025); EC Ugorji "Privatization / commercialization of state-owned enterprises in Nigeria; Strategies for improving the performance of the economy" (1995) 27/4 *Comparative Political Studies* 537 at 537.

73 Igbozor, *ibid.*

74 Ibid.

75 AN Gyuse, AE Ayuk and MC Okeke "Facilitators and barriers to effective primary health care in Nigeria" (2018) 10/1 *African Journal of Primary Health Care & Family Medicine* 1 at 2; ME Eghareva et al "Neoliberal reforms, healthcare and other human development challenges in Nigeria" (2015) 15/2 *Global Journal of Human Social Science* 1 at 10.

76 D Yaya "Pension reform and the fate of Nigerian workers" (29 April 2008) *Socialist Nigeria*, available at: <<https://www.socialistnigeria.org/1345/2008/04/29/pension-reform-and-the-fate-of-nigerian-workers/>> (last accessed 18 September 2025).

77 U Nwoke "Neoliberal lock-in and the new constitutionalism in Nigeria's political economy" in PI Enemo et al (eds) *Law, Democracy, and Development: Essays for the 60th Anniversary of the Faculty of Law, University of Nigeria, Nsukka* (2021, Snaap Press Ltd) ch 9 at 239.

78 Ibid.

79 A Adefulu "Nigeria: National treatment & Nigeria's new local content legislation" (9 June 2010) *Mondaq*, available at: <www.mondaq.com/x/102400/international+trade+investment/National+Treatment+Nigerias+New+Local+Content+Legislation> (last accessed 15 April 2025).

Korea and Romania.⁸⁰ The primary purpose of these investment treaties is to safeguard the treaty rights and assets of foreign investors in the host community.⁸¹ However, the preferential treatment and heightened protection accorded to foreign investors may impede the growth and operation of Nigerian businesses, particularly in sectors dominated by foreign corporations.⁸² International investment treaties constrain the host states' ability to regulate foreign investment, and developing countries like Nigeria may exchange their sovereignty for credibility by signing bilateral and multilateral treaties.⁸³

In terms of impacts, these policies have altered power dynamics, redistributed wealth and intensified social and economic inequality patterns. Implementing these policies has resulted in the state increasingly favouring corporations and the wealthy while neglecting the needs of the working-class and poor citizens.⁸⁴ This wealth redistribution has further widened the gap between the rich and poor, resulting in new forms of exclusion and inequality.⁸⁵ Additionally, these policies have led to new challenges, including unemployment,⁸⁶ poverty⁸⁷ and environmental degradation, which have profoundly affected Nigerians' lives. Since the start of the Obasanjo regime in 1999, the government's reform agenda has resulted in the loss of approximately 4.8 million jobs for Nigerians employed in the civil service, statutory corporations, state-owned companies, banks and insurance companies.⁸⁸ The downsizing of the public sector has had a devastating impact on various sectors of the economy, resulting in a chain of negative consequences.⁸⁹ Most notably, the decline in consumer demand, occasioned by the loss of jobs, has triggered a ripple effect across the economy, reducing the propensity to produce and resulting in a decreased gross domestic product (GDP) growth rate. The loss of jobs due to the public sector downsizing has further reduced consumer demand, exacerbating the situation for local businesses. Consequently, many businesses have experienced reduced sales and profits.⁹⁰ These economic inequalities have imposed significant barriers and limitations that undermine the ability of group members to attain well-being, thereby exemplifying structural injustice in practice. Beyond the immediate economic implications, the reduction in the GDP growth rate poses broader concerns. It has led to a decline in the availability of public services, reduced investments in infrastructure and a decline in the standard of living for the population.

80 See UNCTAD "International investment agreements navigator", available at: <<https://investmentpolicy.unctad.org/international-investment-agreements>> (last accessed 15 April 2025).

81 E Neumayer and L Spess "Do bilateral treaties increase foreign direct investment to developing countries?" (2005) 33/10 *World Development* 1567 at 1570.

82 Ibid.

83 Z Elkins, A Guzman and B Simmons "Competing for capital: The diffusion of bilateral investment treaties 1960-2000" (2008) 2008/1 *University of Illinois Law Review* 265.

84 O Olajide "Urban paradox and the rise of the neoliberal city: Case study of Lagos, Nigeria" (2022) 59/9 *Urban Studies* 1763 at 1767.

85 OV Ekanade "The dynamics of forced neoliberalism in Nigeria since the 1980s" (2014) 1/1 *Journal of Retracing Africa* 1 at 3.

86 Which stood at 33.3 % in 2020: see J Lain and U Pape "Nigeria's dichotomy: Low unemployment, high poverty rates" (20 October 2023) *World Bank Blogs*, available at: <<https://blogs.worldbank.org/opendata/nigerias-dichotomy-low-unemployment-high-poverty-rates>> (last accessed 15 April 2025).

87 According to the World Bank, the poverty rate in Nigeria has increased to 46 % in 2023, representing 104 million poor Nigerians. The number of poor people in urban areas, more exposed to inflation, increased from 13 million to 20 million: see O Fakoyejo "World Bank: Number of poor Nigerians increased by 24 million between 2018 and 2023" (14 December 2023) *The Cable*, available at: <<https://www.thecable.ng/world-bank-number-of-poor-nigerians-increased-by-24m-between-2018-and-2023>> (accessed 15 April 2025).

88 Ekanade "The dynamics of forced neoliberalism", above at note 85 at 24.

89 K Gatwiri, J Amboko and D Okolla "The implications of neoliberalism on African economies, health outcomes and wellbeing: A conceptual argument" (2020) 18 *Social Theory & Health* 86 at 89–90.

90 Ibid.

Removing fuel subsidies has significantly impacted the economy, with rising costs affecting a majority of Nigerians.⁹¹ Unfortunately, while prices have increased, salaries have remained stagnant, resulting in reduced demand for goods and decreased economic activity.⁹² Although some individuals benefit from removing subsidies, most Nigerians face setbacks, including doubling transportation costs and increasing food prices by 25–50 per cent.⁹³ This has resulted in food and medicine shortages, with more children hungry. Additionally, poor and middle-class consumers are now spending the same amount to buy less, leading to decreased demand and economic activity. Small business owners in the middle class are feeling the squeeze, facing higher costs and reduced sales volumes, which impact employment opportunities. According to the National Bureau of Statistics, Tinubu's announcement that subsidies were eliminated led to a contraction of the transportation sector's GDP by 50.64 per cent in the second quarter of 2023 and by 35 per cent in the third quarter of 2023.⁹⁴

The Nigerian State's shift towards privatization under neoliberal policies has resulted in neglect of its responsibility to provide essential public goods, leaving citizens feeling forgotten.⁹⁵ Unfortunately, the government's failure to fulfil its obligations in areas such as education, healthcare and infrastructure has significantly impacted the lives of Nigerians, contributing to high levels of poverty and unemployment. Moreover, using neoliberal policies, the Nigerian Government has implemented a privatization strategy marred by corruption and favouritism. This approach has allowed a privileged few from the country's elite class to exploit national resources and assets for their benefit, leaving many Nigerians struggling and the economy in disarray.⁹⁶ Therefore, privileged property owners in Nigeria exploit the "locking-in" of neoliberal policies to consolidate their position and accumulate wealth. At the same time, the structural injustice occasioned by this remains a significant barrier for marginalized individuals seeking to break free from challenging economic and social circumstances. This scenario in Nigeria serves as a poignant and archetypal illustration of structural injustice.

Impact of neoliberalism on private property rights in Nigeria: company ownership

Property rights are essential for economic growth, individual liberty and innovation.⁹⁷ They allow property owners to establish legally enforceable rules for property use.⁹⁸ Rothbard presents three possible scenarios for the right to self-ownership. Accordingly, the person who transformed a resource from its natural state or brought it into production through labour should become its rightful owner and controller.⁹⁹ However, if a resource has already been transformed or produced, another person or group should be the owner and controller of that resource or property. Rothbard also suggests that the ownership and control of resources and properties can be communal, wherein everyone should have an equal share or quota of these resources.¹⁰⁰ This approach ensures that resources and properties are owned and controlled collectively, and the distribution should be fair and equal for everyone

91 F Kperogi "Tinubu's accurate 12-year-old prediction on subsidy removal effects" (17 February 2024) *Notes From Atlanta*, available at: <<https://www.farookkperogi.com/2024/02/tinubu-accurate-12-year-old-prediction.html>> (last accessed 15 April 2025).

92 Ibid.

93 B Bailey "Subsidy removal pushes transport industry into recession" (28 November 2023) *Business Day*, available at: <<https://businessday.ng/business-economy/article/subsidy-removal-pushes-transport-industry-into-recession/>> (last accessed 15 April 2025).

94 National Bureau of Statistics "Transport fare watch" (December 2023), available at: <<https://nigerianstat.gov.ng/elibrary/read/1241444>> (last accessed 15 April 2025).

95 I Folasade "The fourth Republic economic reforms in Nigeria and the millennium development goal one: A perspective" (2010) 9 *African Studies Review* 1 at 1.

96 Ibid.

97 S Douglas "The scope of conversion: Property and contract" (2011) 74 *Modern Law Review* 329 at 335.

98 JP Robé "Property, corporations, and constitutionalisation in a global political economy" (2022) 1 *European Law Open* 891 at 899.

99 M Rothbard *For a New Liberty: The Libertarian Manifesto* (2d ed, 1973, Ludwig von Mises Institute) at 2.

100 Ibid.

involved. The situation in Nigeria today aligns with Rothbard's second option, where a small group of people control the production and distribution of resources to their advantage by manipulating existing private property rights.¹⁰¹

The implication is that the Nigerian State is increasingly relying on foreign investment funds to stimulate its domestic economy. The country has ratified trade and investment treaties with developed countries, allowing these foreign entities the right to exploit the country's resources. In this way, Nigeria has become locked into a rule of investment law that gives foreign and local investors, including multinational corporations, immunity from legislative and administrative actions that would typically affect their investment interests. The state, owning most natural resources,¹⁰² rents them out to multinational and local oil companies regulated by a corporate governance system rooted in the Anglo-American neoliberal social and economic development theory.¹⁰³ This corporate governance model often overlooks the specific needs of local communities and does not involve them in decision-making processes.¹⁰⁴ As a result, companies prioritize short-term profits over the long-term preservation of communities and natural resources,¹⁰⁵ leading to excessive profit accumulation, deprivation, environmental degradation through pollution and gas flaring, and the underdevelopment of these areas.¹⁰⁶ This raises questions about justice and fairness and has been identified as one of the country's main obstacles to economic development.

As far as companies are concerned, transforming company shares from shares in assets and contracts to freely transferable income rights without obligations, responsibilities or liabilities involves complex legal and judicial interventions that significantly redefined the rights associated with shares.¹⁰⁷ Parliament enacted corporate privileges and exemptions from general law to promote this transformation, which was controversial and political, driven by specific interests and involving departures from traditional notions of contractual obligation and individual responsibility.¹⁰⁸ The widespread use of companies to structure economic production and exchange led to a massive concentration of productive property rights and the emergence of industrial and financial capitalism.¹⁰⁹ In response, the welfare state was required to intervene in economic processes and reconnect economic and political processes nationally.¹¹⁰ However, with the advent of neoliberalism, the issue regarding the corporate structuring of property rights has moved to a global level where there is no state intervention. Large multinational, transnational and global companies are not simply "companies" or groups of companies. They are used to structure the ownership of the assets they control and connect them to the broader network of contracts that comprise the World Wide Web.¹¹¹

101 T Alex "It belongs to me! A libertarian analysis of property rights in Nigeria (2020) 24/2 *Journal of Libertarian Studies* 362 at 366.

102 See, for instance, sec 44 (3) of the 1999 Nigerian Constitution and sec 1 of the Petroleum Act, Cap P10, Laws of the Federation of Nigeria 2004.

103 P Ireland and RG Pillay "Corporate social responsibility in a neoliberal age" in P Ytting and J Marques (eds) *Corporate Social Responsibility and Regulatory Governance* (2009, Palgrave Macmillan) 23 at 26.

104 KM Amaeshi et al "Corporate social responsibility in Nigeria: Western mimicry or indigenous influences?" (2006) 24 *The Journal of Corporate Citizenship* 83 at 95.

105 Alex "It belongs to me!", above at note 101 at 373.

106 U Uwem and EB Akpan "Gas flaring in Nigeria: Problems and prospects" (2017) 5/1 *Global Journal of Politics and Law Research* 5 at 16.

107 See K Vandeveld "The new property of the nineteenth century: The development of the modern concept of property" (1980) 29 *Buffalo Law Review* 325 at 325.

108 Ireland "Property, private government and the myth of deregulation", above at note 14; see also P Ireland, I Grigg-Spall and D Kelly "The conceptual foundations of modern company law" (1987) 14 *Journal of Law & Society* 149 at 149.

109 JP Robé "Property, corporations, and constitutionalisation in a global political economy" (2022) 1 *European Law Open* 891 at 894–95.

110 Ibid.

111 JP Robé "Conflicting sovereignties in the world wide web of contracts – property rights and the globalization of the power system" in G-P Calliess et al (eds) *Soziologische Jurisprudenz, Festschrift für Gunther Teubner* (2009, De Gruyter Recht) 691 at 703.

The modern company is designed for large-scale economic activity, allowing corporate decisions to fundamentally alter a nation's industrial technology, work organization pattern, industry location, market structure, resource allocation and executive compensation and status. The modern multidivisional company vastly differs from the Marshallian firm in its vision and strength.¹¹² The rise of neoliberalism has amplified the influence of prominent companies, giving them more leverage than ever to pursue their interests. This includes continuing to sell harmful chemicals, creating high-risk financial derivatives, deforestation and selling personal data without regard for the consequences.¹¹³ By seeing global multinationals as regular business entities, it becomes more challenging to understand the exceptional privileges afforded to them and to identify why the concentration of productive property rights within these entities has led to the current imbalance in the institutions of our global economy.¹¹⁴ In this context, the Nigerian State is not an exception.

The implementation of neoliberal policies in Nigeria has had a profound impact on private property rights, as well as the ability of property rights owners to sway critical stakeholders. Accordingly, there has been a notable change in the dynamic between the state and economic entities, shifting towards neoliberal social and economic development theories.¹¹⁵ As was pointed out earlier, while the neoliberal policies aim to prioritize the rights of private property owners, resulting in increased industrial and economic profits, they have also led to structural injustices, such as decreased job security, lower wages and reduced employee benefits.¹¹⁶ The adoption of these policies has encouraged systemic inequalities that permeate all levels of Nigerian society,¹¹⁷ granting disproportionate power and influence to property owners while leaving the less fortunate to bear the brunt of their effects.¹¹⁸ This has contributed to the creation of a starkly divided society, where a small minority controls most of the country's resources.¹¹⁹ The Nigerian Government has contributed to and perpetuated these structural injustices, and the result is a vicious cycle of exploitation and inequality that is incredibly difficult to reverse.

One significant area where the protection of private property rights is visible is in company ownership and regulation. While advocating for self-regulation among companies through non-legal instruments, such as corporate codes of conduct, the Nigerian Government is eager to create and enforce legal instruments to safeguard corporate and institutional investors – evidenced for instance in the various bilateral / multilateral trade and investment agreements ratified by the country and the provisions of CAMA.¹²⁰ This has resulted in significant shifts in the socio-legal relations between the Nigerian State and companies, with the latter becoming a major centre in allocating societal resources. The Nigerian Government has granted companies the power to undertake fundamental transformations that increase their corporate profits and drive the socio-economic structures of the country. As a result, companies in the country have been able to construct opportunities for economic gains,¹²¹ further strengthening their powers and enriching the profits of shareholders.¹²²

112 T Hathaway "Neoliberalism as corporate power" (2020) 24/3-4 *Competition and Change* 315 at 321.

113 Ibid.

114 Robé "Property, corporations, and constitutionalisation", above at note 109 at 894.

115 Nwoke "Neoliberal lock-in and the new constitutionalism", above at note 77 at 239.

116 Gatwiri, Amboko and Okolla "The implications of neoliberalism on African economies", above at note 89 at 89–90.

117 I acknowledge that systemic inequalities have always existed, with property owners having more influence and wealth than the less fortunate since feudal times. However, neoliberalism has worsened these inequalities.

118 Olajide "Urban paradox and the rise of the neoliberal city", above at note 84 at 1767.

119 NP Anazonwu, PO Mbah and CK Ajaero "Neoliberal state and child welfare policy in Nigeria" (2023) 24/1 *Social Work and Social Sciences Review* 96 at 99.

120 Cap C20, Laws of the Federation of Nigeria 2004; this legislation replaced the earlier CAMA 1990.

121 Through competition and anti-trust laws, working for a decline in the power of labour unions, increased flexibility in the labour market and promoting an increasingly punishing welfare system, which has resulted in a proliferation of insecure, low-paying jobs; see A Zwick "Welcome to the gig economy: Neoliberal industrial relations and the case of Uber" (2018) 83/4 *GeoJournal* 679 at 691.

122 A Zawada "Neoliberal governmentality, corporate responsibility and the governing of citizens in Nigeria: The case of ExxonMobil, Shell and Chevron" (dissertation submitted to the Faculty of Graduate Studies, University

The Nigerian State has implemented strict legal and quasi-legal measures to protect corporate and institutional investors. Section 46(1) of CAMA regards a company's constitution, memorandum and articles of association as a binding contract between the company, its shareholders and its management. By this provision, the corporation's constitution, which includes its memorandum and articles of association, is essentially a contract that binds the corporation, its shareholders and its management together. Additionally, this contract establishes a relationship between the shareholders and the officers of the corporation. By implication, a corporation is not legally obligated to other stakeholders besides those mentioned in the contract. As Amaeshi and others have argued, this means that the interests of others affected by corporate operations are not necessarily protected. For instance, a corporation can terminate the employment of its employees at will and for no reason after giving the required notice of one month by statute and three months by contract.¹²³ This is also evidenced by multiple oil spills, pollution, gas flaring, acid rains and the abandonment of social responsibility projects after they started. Despite having significant corporate resources, the communities where these companies operate continue to struggle with poverty, decay and frequent crises.¹²⁴ Studies¹²⁵ reveal flaws intrinsic to the neoliberal mode of regulation, as companies ignore local institutions and fail to invent practical measures to contribute to the communities' development.

Section 87 of CAMA outlines how a corporation can act through its members during general meetings, board of directors, officers or agents appointed by or under the authority of the members or board of directors. Under section 87(4), the board of directors must follow the directions or instructions of the members in general meetings when acting within the powers granted by CAMA or the articles of association. Section 305(3) of CAMA also mandates that directors always act in what they believe to be the company's best interests to protect its assets, enhance its business and promote its formation purposes. In addition, the sub-section requires the director to evaluate the effects of the company's operations on the environment and the surrounding community. However, it has been argued that these additional considerations are secondary; directors are obligated to factor them in only to the extent that they influence shareholder value. While attending to these interests is important, it is not the primary aim of their decisions. Instead, their focus is to drive the company's success for the benefit of the shareholders. According to section 105 of CAMA, only shareholders are considered members of the corporation, and their interests hold the most significance. Shareholders must select directors who will act in their best interests and guarantee the successful realization of their investments.¹²⁶

It is clear from Nigeria's court rulings that protecting shareholder value is paramount. The judiciary has played a vital role in furthering neoliberal ideas, reducing government involvement and

of Windsor, 2010), available at: <<https://uwindsor.scholaris.ca/server/api/core/bitstreams/19252d27-7825-45c9-87b7-539711219ed1/content>> (last accessed 18 September 2025).

123 Amaeshi et al "Corporate social responsibility in Nigeria", above at note 104 at 4; while it may be argued that strong labour protection may alleviate the harsh impacts of this to an extent, this article argues that this is not the case.

124 See GU Ojo "Community perception and oil companies corporate social responsibility initiative in the Niger Delta" (2012) 3/4 *Studies in Sociology of Science* 1 at 13; see also UNEP "Environmental assessment of Ogoni land" (2011), available at: <<https://wedocs.unep.org/handle/20.500.11822/7947?sessionid=C72621C3E034B96C9DB356B23E944660>> (last accessed 15 April 2025); U Idemudia "Community perceptions and expectations: Reinventing the wheels of corporate social responsibility practices in the Nigerian oil industry" (2007) 112/3 *Business and Society Review* 369 at 377.

125 U Nwoke "(In)effective business responsibility engagements in areas of limited statehood: Nigeria's oil sector as a case study" (2021) 60/7 *Business and Society* 1606 at 1635; KK Aaron and JM Patrick "Corporate social responsibility patterns and conflicts in Nigeria's oil-rich region" (2013) 16/4 *International Area Studies Review* 341 at 341; NE Dinkpa "Corporate governance, corporate social responsibility and community development: The case of Niger Delta" (paper for The European Business & Management Conference, 2016), available at: <https://papers.iafor.org/wp-content/uploads/papers/ebmc2016/EBMC2016_32414.pdf> (accessed 15 April 2025).

126 As Amaeshi et al have pointed out, although Nigerian company law was modelled after UK law, it has been largely interpreted and applied through the US contractual model. The reason for this remains unclear: see Amaeshi et al "Corporate social responsibility in Nigeria", above at note 104 at 83–99.

prioritizing the interests of shareholders. *Yalaju-Amaye v AREC Ltd*¹²⁷ discussed the law on shareholding and the relationship between shareholders and other interests, with the court affirming the supremacy of shareholder value. Shareholders have the legal authority to react against acts done to the corporation and can use a derivative action to sue for the corporation's wrongdoings. An individual's interests as a shareholder and as a managing director must be kept separate and shares acquired during their time as a managing director are irrelevant to their ability to act on behalf of the corporation. In *Kotoye v Saraki*,¹²⁸ the Nigerian Supreme Court was tasked with resolving a commercial dispute surrounding the ownership of shares in a corporation. The court emphasized that directors hold shares in trust for shareholders and must act in their best interests. Ultimately, the legal owners of the shares should be the primary consideration in all decision-making processes. This means that shareholders retain the right to sell, pledge, vote, mortgage or otherwise dispose of their ownership in the corporation. As agents of the shareholders, corporate managers and executives must prioritize the interests of the legal owners of the shares in all decision-making processes.

In *Ansambe v Bon*,¹²⁹ an employee of a corporation filed a claim against the corporation for unlawful dismissal. However, the Nigerian Court of Appeal ultimately dismissed the case. In doing so, the court reaffirmed the position that the shareholder is the true owner of the corporation and that their interests must take priority in all corporate activities. While this decision may not have been in favour of the employee, it serves as a reminder of the importance of prioritizing the interests of shareholders in corporate decision-making processes.

Overall, it is evident that Nigeria has taken significant steps, both through statutory and judicial pronouncements, to ensure that corporate and institutional investors' rights are protected.

Restructuring private property rights in Nigeria: company ownership

One of the unfortunate consequences of the neoliberal understanding of the corporate purpose is that it prioritizes the long-term interests of private capitalists (company owners) and the forces of the market over the welfare of the Nigerian people.¹³⁰ As a result, a growing divide has emerged between the rich and poor, with many Nigerians unable to access essential services such as food, shelter, healthcare and education. Without a doubt, people should be free to pursue their aspirations and establish economic entities. Nevertheless, private property rights are necessary if they do not harm others or depend on government enforcement, which could lead to ethical problems and inefficiencies. Under neoliberalism, these rights often receive less scrutiny than other privileges or subsidies the government provides. The perception of authority shields the legal creation of wealth in society from political examination. Private property rights were already in place before the rise of neoliberalism. However, strongly emphasizing and prioritizing these rights shifts the focus away from critical self-governance issues. This shift sidelines essential governance questions from political discussions, further entrenching a system of structural injustice.¹³¹

To address these challenges, this article suggests a review of existing private property rights in companies. This review will enable the Nigerian State to incorporate collective communal interests / rights in the framework regulating companies, ultimately leading to reduced disparities and a more equitable distribution of resources. However, achieving this goal would require a significant overhaul of the current company law framework, which is essential to address the power imbalances that result from private property rights in company ownership. Such a restructuring would require confronting influential stakeholders in the financial and legal sectors, including shareholders who

127 SC 198/1986 (judgment delivered 29 June 1990).

128 (1994) 7 NWLR (pt 357) 414.

129 (2005) 8 NWLR (pt 928) 650.

130 Nwoke "(In)effective business responsibility engagements", above at note 125 at 1635.

131 Pistor *The Code of Capital*, above at note 30 at 222.

wield significant influence over corporate decision-making. Additionally, it must challenge the conventional notion of shareholders as the sole corporate “owners” and their belief that corporations should act solely in their interests.¹³² Ultimately, this institutional overhaul is necessary to examine and modify the structures that define modern corporations critically, challenge the status quo and create an environment that fosters equitable resource distribution.

In this context, the article proposes amendments to the Nigerian CAMA 2020 to modify private property rights in company ownership to safeguard the interests of communities affected by company activities. The article argues that the current company ownership structure, driven by neoliberal principles, does not align with the communal values of Nigerian communities. These values emphasize the importance of humanism, sharing, community, collective responsibility, mutual assistance and harmony.¹³³ When private companies prioritize their interests above the community’s collective interests, it creates a sense of distrust and disengagement in society and leads to further inequalities and injustices. Essentially, it is recommended that companies operating within a host community¹³⁴ should allocate 13 per cent of their net profits directly to that community in the form of a special royalty payment. Although companies already pay taxes and royalties to the government, those payments often do not reach the host communities. By providing this 13 per cent payment directly to the communities, they can utilize these funds to acquire shares in the companies where possible, thus allowing them to partake in the companies’ prosperity.¹³⁵ The dividends generated from these shares can then be used to support the sustainable development of the communities.¹³⁶ The amended 1999 Nigerian Constitution includes section 162(2), establishing the derivation principle. According to this principle, a minimum of 13 per cent of the revenue from natural resources accruing to the Federation Account must be allocated to the states from which the resources were extracted. Specifically, states that produce oil are entitled to receive 13 per cent of the revenue from oil and gas extracted within their boundaries. Furthermore, all states that produce oil, gas and solid minerals are entitled to 13 per cent of the revenue from resource exploitation within their borders. Section 162(2) aims to compensate oil host communities for social / environmental pollution / damage from oil exploration and production. It is strongly proposed that the 13 per cent derivative principle contained in the Constitution be extended to all corporate host communities. Like oil-bearing states in Nigeria, corporate host communities experience the negative impacts of corporate actions, such as pollution, gas flaring, acid rain and environmental degradation. Dedicating a portion of company profits directly to host communities can significantly foster their active participation and engagement. A symbiotic relationship is established by allowing community members to become

132 For a detailed analysis of whether shareholders are the true owners of the corporation, see J Kay and A Silberston “Corporate governance” (31 August 1996) *John Kay*, available at: <www.johnkay.com/1996/08/31/corporate-governance-with-aubrey-silberston> (last accessed 15 April 2025); see also P Ireland “Company law and the myth of shareholder ownership” (1999) 62/1 *Modern Law Review* 32.

133 K Dartey-Baah and K Amponsah-Tawiah “Exploring the limits of western corporate social responsibility theories in Africa” (2011) 2/18 *International Journal of Business and Social Science* 126 at 132.

134 For this article, host communities encompass the towns or cities in which a company operates. The article recognizes that the impact of a company’s activities may extend beyond the immediate vicinity of its facilities. However, it explicitly sets boundaries by excluding communities outside the specific towns and facilities where the company is situated.

135 It may be argued that transforming communities into property owners will influence their decision-making, as they now have a stake in the property. Nevertheless, the article suggests that, because their primary identity is as community members rather than as shareholders, their commitment, connections and dedication to their communities and their long-term viability will likely lead them to prioritize a more collaborative approach rather than focusing solely on maximizing individual profits, as is often the case with dispersed shareholders.

136 This article acknowledges establishing host community trust funds in the Petroleum Industry Act (PIA) 2021. Specifically, sec 251(4) allows for the creation of a trust based on needs assessments conducted within host communities. This provision underscores the importance of promoting sustainable community development (SCD) via a development plan that must be submitted to the Nigerian Upstream Petroleum Regulatory Commission. However, the PIA specifically governs companies operating within the Nigerian oil sector and does not extend its applicability to entities in other sectors.

shareholders and investors. This mutually beneficial cycle motivates communities to collaborate in creating wealth and empowers them to exercise their democratic rights to influence how that wealth is allocated.

Therefore, the article recommends introducing mandatory corporate social responsibility (CSR) within Nigeria's regulatory framework. Mandatory CSR is a framework established by governments that imposes a societal levy on businesses, acknowledging their use of communal resources.¹³⁷ It requires companies to allocate a specific percentage of their profits to social initiatives, such as environmental conservation and community development. This framework also addresses negative externalities, encouraging companies to adopt strategies to reduce pollution, uphold labour rights and engage in ethical sourcing. Non-compliance with these regulations can result in penalties. Transitioning from voluntary to legally mandated CSR aims to promote responsible business practices that align with justice and environmental stewardship. By implementing this framework, Nigeria will follow the examples of India¹³⁸ and Mauritius.¹³⁹ In these countries, a fixed percentage of certain companies' profits is allocated for the welfare and development of the communities affected by the companies' operations. This model reflects a growing recognition of the corporate responsibility to contribute to societal well-being, thereby fostering sustainable development within affected communities. The approach would provide the affected communities with the resources needed to improve their infrastructure, healthcare, education and overall quality of life. The Nigerian National Assembly proposed a CSR Bill in 2007 to address the adverse effects of industrial and commercial activities on communities where corporations operate. The bill aimed to be the primary legislation governing the country's CSR activities, establishing a CSR commission to collect a mandatory CSR contribution from companies for community development projects. Despite its noble intentions, the bill faced intense criticism from property-owning elites (shareholders) who felt threatened by its radical nature. Consequently, it was never passed into law and is an archived document in the National Assembly bills. The paper suggests that reintroducing this bill or incorporating its provisions into the proposed amendment to CAMA is reasonable. By setting aside specific amounts from company profits, affected communities could benefit from the resources required to improve their social and economic conditions.

Some may contend that this proposal burdens the companies involved and demands substantial corporate resources. However, given the significant wealth these corporations accumulate¹⁴⁰ and the considerable impact their operations have on their host communities, this article argues that allocating 13 per cent of their net profits to support these affected communities is a reasonable and justified expectation. By investing a portion of their profits back into these areas, companies would not only meet a moral obligation but also contribute to sustainable development and social equity. This support could address local challenges, including infrastructure improvement, environmental restoration and community initiatives, ultimately fostering a more constructive relationship between

137 D Ramdhony "The implications of mandatory corporate social responsibility – A literature review perspective" (2018) 8 *Theoretical Economics Letters* 432 at 434.

138 V Garg and S Agarwal "An empirical study on the corporate social responsibility regime in India: Pre-COVID and COVID times" (2021) 13/2-3 *Review of Market Integration* 124 at 127; M Acharya "Corporate social responsibility under section 135 of Companies Act 2013" (5 May 2025) *Clear Tax*, available at: <<https://cleartax.in/s/corporate-social-responsibility>> (last accessed 18 September 2025).

139 Ramdhony "The implications of mandatory corporate social responsibility", above at note 137 at 434.

140 U Nwoke "Corporations and development: The barriers to effective corporate social responsibility (CSR) in a neoliberal age" (2017) 59/1 *International Journal of Law and Management* 122 at 122. This work also acknowledges the provisions of sec 1(2) of the Tertiary Education Trust Fund Act, as amended by the Finance Act of 2021, which raised the rate of tertiary education tax from 2 % to 2.5 % and subsequently to 3 % for accounting years ending on or after 1 July 2023. Although the 13 % royalty payment may appear excessive given these taxes, the impact of corporate activities on host communities and their environments warrants the imposition of the proposed royalty payment by companies to host communities. Furthermore, this education tax is directed to the federal government. As previously mentioned, these payments seldom reach the host communities.

corporations and the communities affected by their presence. Considering the scale of their operations and financial capabilities, this recommendation is not excessive but rather a necessary step toward responsible corporate citizenship.

It may also be argued that this proposal will face the challenge of prohibition of performance requirements under international investment law (IIL). *Piero Foresti v Republic of South Africa*¹⁴¹ is a good example of such challenge / resistance.¹⁴² This article strongly argues the need for revisions in the prohibition of performance requirements doctrine to mitigate neoliberal policies' adverse social and economic effects. These revisions, which involve examining the underlying motives of legislative and policy actions rather than focusing solely on their implications for property rights holders, are not just a suggestion but a necessity in the current global economic landscape. Countries should comply with bilateral and multilateral investment agreements to build investor trust while fulfilling social responsibilities outlined in national laws, international treaties and customary international law. The government is required under domestic and international law to eradicate all forms of discrimination, including economic and social inequality. These obligations, enshrined in the Nigerian Constitution,¹⁴³ the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and several other international conventions,¹⁴⁴ may require proactive measures by the country. In this context, the article contends that affirmative action may be necessary to eliminate conditions perpetuating discrimination to achieve true equality. While some may see it as expropriation under IIL, the Nigerian Government must reduce or eliminate conditions that lead to structural injustices and inequalities under other international law obligations the country has ratified.

The memo and articles should integrate the informal institutions of the host communities, including their values, languages and habits. This can be accomplished by requiring companies to include clauses encompassing local community values such as compassion, reciprocity, dignity, harmony and humanity, which should be integrated into corporate codes of conduct. Corporate codes serve as a benchmark for ethical conduct and significantly influence a company's decisions, even though they are not legally binding.¹⁴⁵ In Nigeria, many prominent companies originate from Europe and the USA.¹⁴⁶ Their codes of conduct are often shaped by the prevailing models of capitalism in their home countries. By incorporating informal community values, these codes can become more universally accepted and eventually transform into prescriptive regimes, leading to a more harmonious and respectful business environment. Furthermore, these codes should be adapted to include mechanisms for consultation and opportunities for dialogue between businesses and local informal organizations to ensure that corporate decisions do not adversely impact local communities. Incorporating these values in the memo and articles will promote natural justice and uprightness,

141 ICSID Case No. ARB(AF)/07/1, Award of the Tribunal (4 August 2010), available at: <<https://www.italaw.com/cases/446>>; <[https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB\(AF\)/07/1](https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/07/1)> (accessed 20 May 2024); The case involved a dispute over the Black economic empowerment provisions of the Minerals and Petroleum Resources Development Act 2002, enacted during South Africa's transition from apartheid to a democratic government. The claimants argued that the policies violated South Africa's international obligations under its bilateral investment treaties, constituting expropriation under international law. Despite a settlement outside the tribunal, significant questions remain unanswered, highlighting the case's complexity and implications for developing economies.

142 A Friedman "Flexible arbitration for the developing world: Piero Foresti and the future of bilateral investment treaties in the global south (2010) 7 *Brigham Young University International Law & Management Review* 37 at 37.

143 1999 Constitution, ch II and sec 42 as amended.

144 Friedman "Flexible arbitration for the developing world", above at note 142; International Covenant on Civil and Political Rights (1966), UN Treaty Series vol 999; International Convention on the Elimination of All Forms of Racial Discrimination (1966), UN Treaty Series vol 660.

145 K Kollman "The regulatory power of business norms: A call for a new research agenda" (2008) 10 *International Studies Review* 397 at 415.

146 K Amaeshi and OO Amao "Corporate social responsibility in transnational spaces: exploring influences of varieties of capitalism on expressions of corporate codes of conduct in Nigeria" (2009) 86/2 *Journal of Business Ethics* 225 at 227.

giving the communities a sense of belonging. The expectation¹⁴⁷ is that this will help corporations in the country understand and differentiate between right and wrong corporate activities. The goal is to discourage self-serving actions that could negatively impact communities and the environment. Understanding local community values will enlighten and inform corporate decisions, leading to a more respectful and harmonious business environment. This new form of company ownership will demonstrate a significant inclination towards developing and embedding a practical business responsibility approach that reflects and absorbs Nigerian society's cultural and traditional values. Ultimately, this amendment would protect the interests of local communities impacted by the company's operations, aligning corporate activities with local values and fostering a more ethical business environment.

The article proposes that a new provision in CAMA allowing host communities to nominate at least two statutory representatives to the company board is necessary to safeguard their interests. The current approach, where the company primarily serves the interests of property owners (ie, shareholders), needs to be revised to ensure that company activities benefit all members of society. These representatives must possess the necessary qualifications and personal attributes¹⁴⁸ typically expected of board members, ensuring their capacity to make meaningful contributions to the governance and decision-making processes of the company. By leveraging the local talent pool, companies can strengthen their management teams and cultivate more meaningful relationships with the communities in which they operate. This connection can facilitate a deeper understanding of local markets and cultural dynamics, ultimately enhancing the success and sustainability of the business.¹⁴⁹ These individuals, serving as non-executive directors, can attend board meetings and provide valuable insights when decisions are made on matters affecting their respective communities. This approach guarantees that the needs and interests of the local people are considered during critical decision-making processes. By empowering community representatives, companies can foster stronger relationships with their host communities and collaborate towards creating a sustainable and mutually beneficial ecosystem. It will also help reduce structural inequalities and create a more fair and just system.

Apart from host communities' participation at board meetings, the article equally proposes an amendment to CAMA 2020 to provide for an employee board participation system like what is obtainable in Germany. Germany has a unique co-determination model with a two-tier system for publicly listed companies. The supervisory board has non-executive members who oversee the management board. Employee representation laws ensure inclusivity and balance, promoting a diverse and inclusive board composition.¹⁵⁰ Companies with more than 500 employees must include

147 The term "expectation" is used because it is possible that the community might end up being okay with receiving money from the increase in share value and might not have an issue with pollution if the company disposes of the waste in their neighbour's lake rather than their own. However, it is anticipated that this scenario will not be the case.

148 This refers to the standard qualifications of Nigerian companies' directors and senior management personnel. Individuals who possess these essential qualifications are often found within host communities throughout Nigeria. These qualifications typically encompass a strong educational background, considerable professional experience and proven leadership capabilities.

149 This proposal is not in conflict with sec 305 of CAMA. By actively engaging with the local talent pool, companies can enhance their corporate governance by bringing on board individuals who deeply understand the community's nuances and values. When qualified community members are appointed to corporate boards, it strengthens the management teams and fosters a more intricate and meaningful rapport with the communities they serve. Building these connections can provide invaluable insights into local market trends, consumer behaviour and cultural dynamics, often critical elements for tailoring products and services to meet community needs effectively. This symbiotic relationship can pave the way for innovative strategies that resonate well with the local population, ultimately contributing to the business's growth and sustainability.

150 I Bucelli et al "Worker participation: Employee ownership and representation" (2020) *Harvard Law School Forum on Corporate Governance*, available at: <<https://corpgov.law.harvard.edu/2020/01/23/worker-participation-employee-ownership-and-representation/>> (accessed 15 April 2025).

employee representatives on the supervisory board.¹⁵¹ Companies with over 2,000 employees must ensure that employee representatives hold half of the supervisory board seats.¹⁵² A replication of the German concept of co-determination could benefit Nigerian company law, primarily because of the significant presence of community members among company employees. By having representation on company boards, individuals from these communities can participate in decision-making processes, ensuring that their interests are considered in important company decisions. Ultimately, this could enable companies to invest in and empower these communities, reduce environmental damage, improve people's living standards and reduce structural inequality in Nigeria.

The article further recommends amending section 305(3) of CAMA to offer enhanced clarity, emphasis and a more comprehensive understanding of companies' responsibilities beyond merely generating profits for their shareholders. It is important to explicitly articulate that corporations must operate in a manner that prioritizes their shareholders' financial interests and actively contributes to the well-being of the broader society and the environment. This revised framework must adopt a long-term perspective that balances profitability with social responsibility. This includes considering how their operations impact their immediate stakeholders, the communities in which they operate and the environment at large. Ultimately, the goal is to establish a business paradigm where generating profit and pursuing corporate responsibility are not mutually exclusive but complementary objectives that can lead to a more sustainable and equitable future for all stakeholders involved. By making it mandatory for directors to consider these interests, the amendment would help ensure that communities affected by corporate activities are given proper consideration and protection and foster a more balanced and sustainable corporate decision-making process. The article acknowledges the potential debate surrounding imposing conflicting fiduciary duties and accountability obligations on company directors.¹⁵³ However, it posits that this concern can be alleviated through the precise formulation of the legislation. An equitable framework can be established by clearly mandating directors to carefully evaluate their options and verify that the benefits of any corporate action outweigh the negative consequences for both the shareholders and the host communities.

Ultimately, the suggested amendments to the Nigerian CAMA 2020 would help reduce structural inequalities and create a more equitable and just system that protects the interests of all stakeholders.

Conclusion

The Bretton Woods institutions have significantly impacted Nigeria's economic policies. However, scholars and policymakers have a growing consensus that these policies must be re-evaluated. Nigeria should adopt locally crafted development policies that consider the country's unique challenges and needs. By shifting towards this approach, Nigeria can promote more equitable and faster economic growth. It is essential to balance free-market principles and government intervention to achieve sustained progress while mitigating any negative impacts of monetary policies on the population. Adopting ultra-free market policies could lead to long-term issues such as income inequality, environmental degradation and insufficient social welfare systems. Before the advent of the neoliberal era, corporations wielded considerable influence. However, the institutional mechanisms of neoliberalism have consistently favoured their growth, extending their reach, endowing them with fresh privileges, enabling novel modes of corporate structure and curtailing their obligations. Simultaneously, proponents of neoliberalism have advanced ideals like liberty, consumer

151 German One Third Employee Representation (Participation) Act (Gesetz über die Drittelbeteiligung der Arbeitnehmer im Aufsichtsrat, or "DrittelbG"), art 4(1).

152 See the German Co-Determination Act 1976.

153 This proposal was one of the suggestions made by the Australian Corporations and Markets Advisory Committee (CAMAC) in its 2006 report on reforming company law in the country. However, the country's policymakers rejected it – see Corporations and Markets Advisory Committee "The social responsibility of corporations: Report" (2006) *The Australian Government*, available at: <https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/corporations_report_dec_2006.pdf> (last accessed 15 April 2025).

autonomy and a worldwide framework. In essence, neoliberalism has chiefly benefited corporate hegemony.

Nigeria's current adoption of neoliberal values and private property rights regime in company ownership requires a critical re-evaluation to eliminate structural injustices and establish a more equitable and sustainable system. Private property rights are fundamental in democratic societies like Nigeria but should not be viewed as an absolute right. Therefore, a thorough analysis of existing private property rights structures is needed to ensure equal and impartial treatment for all parties involved. One potential solution is allocating a fixed percentage of corporate profits to host communities, thereby prioritizing community interests over individual profit, promoting sustainable development and greater social parity. This article serves as a starting point for more profound research into restructuring private property rights in Nigeria. Further research is required to uncover additional methods for enhancing the fairness of private property rights in Nigeria.

To establish a more equitable and sustainable property rights framework for Nigeria, it is necessary to revise existing company laws to ensure local communities have sufficient representation in companies' decision-making processes and receive a fair share of the company profits. This reconceptualization of property rights has the potential to address structural injustices, lift many Nigerians out of poverty and create a more just, inclusive and prosperous society for all. However, achieving this goal requires restructuring the company law framework, a critical step towards establishing a fair and just society.

Competing interests. None