

# UNDERSTANDING DIFFERENTIAL EFFECTS OF ENERGY GOVERNANCE CONSTRAINTS IN NIGERIA: A TRANSITIONAL JUSTICE PERSPECTIVE

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## ABSTRACT

Sub-Saharan nations face a plethora of constraints in advancement of their economic development, a phenomenon particularly vivid in the extractive sector. A large chunk of the limitations – inherited and retained in the post-colonial era – adversely affect an effective and efficient governance of energy and natural resources. Drawing on the case study of Nigeria, Africa’s largest oil producing nation, this paper looks as to how energy governance is constrained by the historical legacy of colonialism and post-colonialism. The paper argues that the colonial legacy has had a profound impact on the effectiveness of energy governance and its institutions in the post-colonial era, in particular those confined to oil and gas. Drawing on transnational justice and energy governance theories, the paper seeks to reconcile the demands of today – including the need for improved efficiency and skilled management as well as investment liberalization and resilience of the energy system – with the colonial and post-colonial legacies that are deeply rooted in the energy sector and beyond. Using a systematic literature review method, the paper outlines its content analysis and research findings in a form of a set of recommendations addressed at the country’s policymakers and decision makers calling for a greater accountability and consistency in Nigeria’s energy policy.

*Keywords:* energy governance, transitional justice, accountability, Nigeria, energy policy.

## 1 INTRODUCTION

The economies of sub-Saharan Africa (SSA) remain the least diverse in the world, and about 80% of the continent’s exports are from oil, minerals, and agricultural products. Africa’s immediate post-independence atmosphere was optimistic and not without justification, which turned out to be the continent’s decisive sustainable development. Many newly independent African countries made significant progress. Nigeria, Ghana, and other SSA economies had a larger economy than Indonesia and a per capita income comparable to South Korea in the 1960s. However, today, Indonesia’s per capita income is about 3.5 times higher than that of these African countries, and South Korea’s economy is about 47 times higher than Ghana’s [1], [2].

Nigeria’s post-independence achievements in improving life expectancy, infant mortality, and literacy rates occurred only during the period up to the mid-1970s. Since then, development has generally slowed and occasionally, even reversed. The leading causes of this chronic underdevelopment have been a subject of debate for many years. Nigeria is a nation blessed with abundant natural and human resources, but its slow economic development has been one of the most baffling paradoxes. However, there is little doubt that the country has faced numerous internal and external challenges that have hampered long-term economic progress, some of which were self-inflicted by colonial legacies, and others brought on by its subordinate/peripheral position in the contemporary global order. Thus, the development dilemma can be seen as a reflection of the country’s history, geography, domestic policies, and global geopolitics [2].



## 2 LITERATURE REVIEW

Research question: How has the colonial legacy influence energy governance practices and its outcomes in Africa?

The primary focus of scholarly research on colonialism lies in broadening the scope of transitional justice to encompass the experiences of indigenous peoples concerning historical injustices, colonial violence that leads to structural harm within the context of stable and liberal democratic society.

### 2.1 Colonial legacy as the root of Africa's failure

One dimension of the colonial legacy relates to the relevance in safeguarding interests of colonist. This unfolds in many ways. First, colonial resource management systems were built in the context of conquest and subjugation and mainly to enable resource flows outwards [3], which are not precisely made to promote local interests. Second, former colonized countries can find themselves dependent on colonizers long after the colonization ended. As was found in Francophone African countries, there was a significant increase in resource dependence across the selected French West African countries [4].

Another dimension of the legacies of colonization on countries relate to how it has facilitated possibilities of rent-seeking and misconduct. As noted by Silvy et al. [5] in the case of the Bahamas, both overharvest and regulations constraining harvest of marine resources pertain to outside colonial influences. Also, colonial legacy of inherited auditing institutions in Benin has rendered them to become empty crates, which sometimes facilitate rather than control corruption [6].

Further dimension of the role of colonial legacies on resource governance centres on how they continue to remove managerial efficacy from the current contexts of formerly colonized countries. For example, in the context of Zimbabwe, efforts at decentralising entrustments over use and management of resources to the peasant communities have largely resulted in recentralisation at the district level, where such efforts are still practised in the trickle-down mode [3]. In the same vein, much of the colonial legislation was inherited piecemeal into post-colonial times, and amendments to date have largely deracialized the colonial acts and policies without democratizing them [3].

### 2.2 Colonial legacy as good for development of natural resources in Africa

Besides the discourses around the dual bottom-lines of colonial legacy on resource management in Africa, a group of studies lean towards the benefits of these legacies as well as some good practices that have been useful in the process.

In the case of Botswana, for example, a careful blend between cultural practices of the local people with useful aspects into the modern, inherited natural resource management expertise has been found to lead to sustainable natural resource utilization and management [7]. Similarly, in Mali, Becker [8] found that even while the precolonial peasantry favoured certain social groups on the outset, a further careful reform of the forestry policy in the 1990s, helped forest resource user-groups to have a greater role in management of natural resources [8]. This line of arguments suggests that, while colonial legacy may have negative outcomes for colonized countries, the role of governments in directing their own development trajectory is important, in so far as the colonial approaches and policies had some positive benefits.



Likewise, some scholars argue the critical role of colonial legacies in helping to advance the development of countries. For example, Glaister et al. [9] found that prior colonial ties are positively related to inward Foreign Direct Investment (FDI) from colonizers to former colonies, which is helping, in many ways to address development challenges, including those related to natural resource management.

### 2.3 Colonial legacy as an ambivalent factor on the trajectory of development

Besides the stream of literature on the problems of colonial legacy on resource governance in African countries, another scholarly articulate both good and bad aspects of colonial legacy. For example, Perold et al. [10] discovered that, while there was a range of positive benefits of colonial legacy in the form of international voluntary service, such as new systems and structures, human resource development, building social capital as well as improved global connectedness, there were important difficulties, such as poor reciprocity between hosting and sending organizations, and supply-driven volunteer placements, which require additional measures to strengthen the potential benefits of the international service. Likewise, in the context of Morocco, Balgley and Rignall [11] noted that while colonial legacy has some noteworthy benefits, particularly depending on the agro-ecological, economic, and political circumstances, they discovered that it was the extractives forms of capitalism prevalent in Morocco that still work to prioritize commoditization.

### 2.4 Gap

From a transitional perspective, literature on the role of colonial legacy on energy governance requires a pragmatic approach. At current standing, the progress of research cannot be considered as conclusive, given the many contextual conditions that may be helpful in explaining this relationship. Therefore, subsequent studies will need to explain the conditions that determine the positive and negative effects of colonial legacy on energy governance in African countries.

## 3 METHODOLOGICAL APPROACH

### 3.1 Review approach

The rationale for employing a formal methodological approach is to enhance reliability of the chosen literature and mitigate distortions resulting from an excessive narrow literature search [12]. Literature reviews can be categorized into two types: background reviews for empirical studies, and standalone reviews. Background reviews are commonly used to provide theoretical context, justify research design choices, or identify gaps in the existing literature. On the other hand, standalone reviews aim to interpret, explain, or integrate prior research to make sense of a body of work. Prior to conducting empirical research, a systematic review is ideally conducted, and a subset of the literature can be used as a background review. Effective standalone reviews can improve the quality of background reviews [13]. For this article, background literature reviews were utilized.

### 3.2 Literature search and evaluation

The initial and crucial step in conducting a systematic review is the identification of appropriate literature sources. Hence, we used the research question as a unique facet to define the literature search as well as a determinant criterion of inclusion and exclusion before



commencing the search. The search was performed electronically. However, the quality and effectiveness of the search strategy necessitates the examination of literature across various domains. To achieve this, we utilized three databases, namely, Google Scholar, Web of Science, and EBSCOhost. These databases are widely used by researchers from different disciplines because they provide comprehensive access to high-quality, peer-reviewed scholarly literature that covers several fields relevant to the diverse impacts of energy governance constraints in Nigeria.

Having identified the literature databases, we utilized the document-term matrix (i.e., lists of search terms in accordance with the topic in Table 1) and divided the research question into blocks of terms, known as block-building method [14], [15]. The goal is to discover a number of diverse partial terms that are synonymous to the research topic.

Table 1: Document-term matrix.

Topic: Understanding differential effects of energy governance constraints in Nigeria: A transitional justice perspective				
Categories	Block 1	Block 2	Block 3	Period
Keywords search terms	Energy governance	Transitional justice	Colonial legacy	2010–2023
Related terms	Energy resource management, Energy policy	Accountability, Restitution	Colonial rule, Colonial era	
Broader terms	Legislative framework, Local governance structure	Suppression of indigenous justices' systems	British authorities, Subjugation	

To ensure that our review is based on peer-reviewed articles, we conducted a thorough investigation across various fields of study that examine the differential impacts of energy governance constraints in Nigeria. To do this, we utilized the title and keyword search terms 'energy governance', 'colonial legacy systems' and 'transitional justice' and conducted our search on Google Scholar, Web of Science and EBSCOhost. We limited our search to publications released between 2010 and 2023 to ensure our review is based on the most up-to-date literature. Our initial search on Google Scholar yielded 250 publications, while the Web of Science Core Collection search yielded 182 papers, and the EBSCOhost search yielded 213 peer-reviewed publication records. After conducting an initial title screening (see Fig. 1), we identified a total of 645 records related to the differential impacts of energy governance constraints in Nigeria, including 10 duplicates that we later removed. Our literature search process concluded in July 2023.

### 3.3 Screening and analysis

The process of selecting and filtering search results was done using specific criteria. Our review focused only on primary research studies published between 2010 and 2023, written in English, and that examined the differential effects of energy governance constraints in Nigeria. We did not include reviews, policy documents, peer-reviewed studies, books, or articles in other languages. Our aim was to provide a concise and high-quality report with



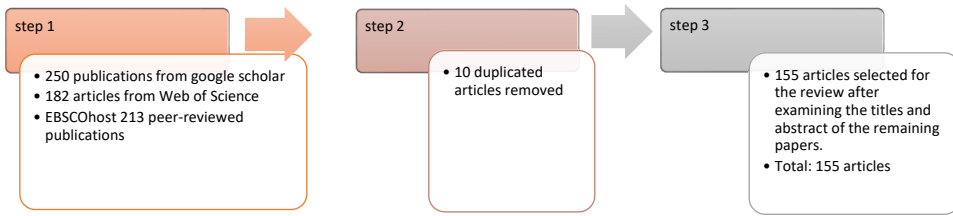


Figure 1: Initial search steps.

well-cited references, so only a small number of reports were included. The screening procedure for the results involved three stages. Firstly, we removed any duplicate articles. Secondly, we examined the titles and abstracts of the remaining papers, which led to the selection of 155 articles for the review. Finally, we scanned the abstracts, subject headings in the database to determine their inclusion status. We conducted an analysis of 155 article abstracts to determine their applicability to our study on the differential impacts of energy governance restrictions in Nigeria. Two researchers independently and concurrently evaluated the manuscripts, and any discrepancies in their assessments were resolved through discussion. Of the 155 articles, 64 were deemed relevant and undergone a quality assessment via full-text article review. Fig. 2 illustrates the flowchart of the whole process of the screening and analysis taken.

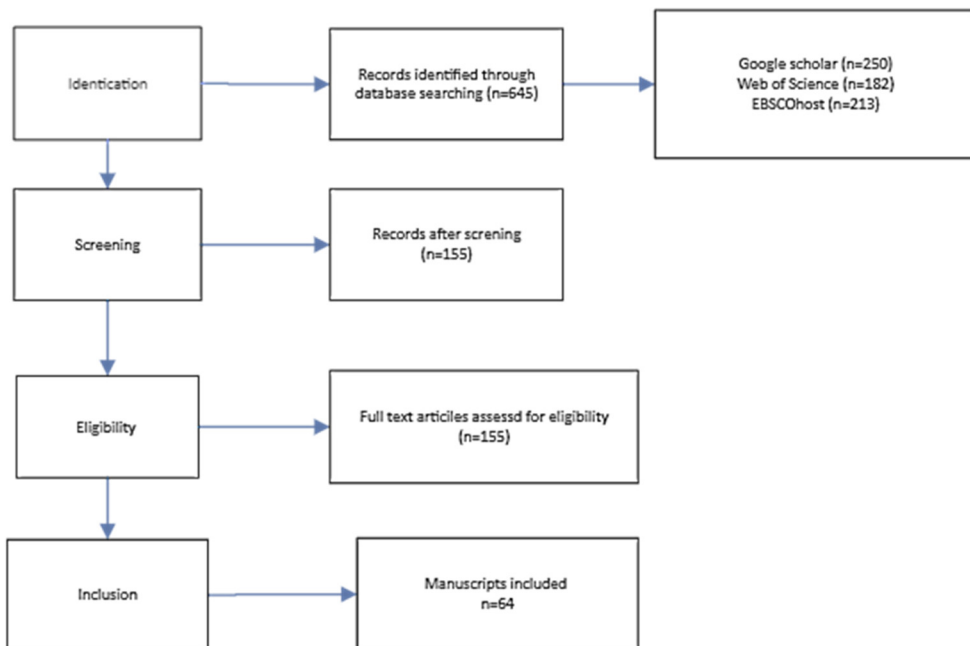


Figure 2: Literature search and evaluation for inclusion.

## 4 DISCUSSION: CONTEXTUAL TRANSITIONAL JUSTICES AND THE HISTORICAL LEGACIES OF COLONIALISM

### 4.1 Indigenous institutions and subjugation governance

The establishment of British colonial rule in Nigeria brought about a multifaceted approach towards governance, characterized by the implementation of both direct and indirect rule systems. The British colonial administration introduced the notion of 'direct rule' in some parts of Nigeria, wherein British ideas of governance were directly implemented through British institutions [16]. However, Yusuf [16] further describe the prevailing system of colonization was 'indirect rule', which entailed governance through existing indigenous political systems. In a generic sense, this approach conferred official's recognition upon traditional rulers by the British authorities a symbiotic relationship. In exchange for recognition, traditional rulers were subjected to the authority and control of colonial administrators, thereby consolidating British influence over local governance structures.

However, despite the formidable military power of the colonial authorities, the implementation of indirect rule was not without its challenges; indigenous populace exhibited instances of resistance against the subjugation of traditional rulers, reflecting a persistent attachment to their own governance traditions [17]. This resistance often took the form of defiance against British authority and attempts to preserve indigenous autonomy. In response, colonial forces resorted to military intervention and, at times, brutal violence to quell such resistance. In several instance, the resistance led to the deposition and expulsion of indigenous rulers from their ancestral domains [18]. The might of the colonial military was employed to suppress these uprisings, effectively dismantling the existing power structures and replacing them with colonial governance mechanisms [17]. This led to a significant alteration of the local political landscape and the redistribution of power within the communities.

Subjugation of indigenous formation of justice assumes a crucial role in the contemporary transitional justice landscape [19]. Transitional justice seeks to address past injustices, reconcile communities, and establish mechanisms for accountability and restitution [20]. However, the suppression of indigenous justice systems complicates this process, posing a multifaceted challenge. Hence, indigenous communities are confronted with a dual struggle: the need to engage with both the legacy of colonial subjugation and the ongoing endeavour to secure justice within a contemporary framework [17].

### 4.2 Colonial legislation and Nigeria's petroleum industry

Nigeria is one of the top oil-producing nations in Africa thanks to its large oil and natural gas reserves. These huge reserves place the nation in a dominant position in the international energy market, presenting export potential, attracting foreign capital, and generating billions of dollars in oil revenue [21]. Despite the abundance of these resources, Nigeria has been identified as a fitting example of a country suffering from the resource curse [2]. This is because, despite decades of oil production, many sections of the economy have seen little or no social, environmental, or economic growth. Instead, it has only seen a rise in corruption, misappropriation, the trafficking of refined products to other nations, and pipeline vandalism [18]. Attempts have been made to review and update the country's oil and gas legislative framework to boost real growth and development and break free from the resource curse label. However, the historical legacy of colonialism is thought to significantly influence the functioning of governance and institutions in the post-colonial era, leading to a lack of



meaningful effectiveness in the petroleum sector. Evidence revealed that, the oil exploration rights were promulgated through colonial legislation, enabling them to monopolize Nigeria's through their oil corporations with Mineral Oils Ordinance No. 17 of 1914 [16]. Therefore, it is rather not surprising that the dominant oil company in the Nigeria's oil sector is a subsidiary of Royal Dutch-Shell. Similarly, the rent seeking orientation established during the colonial time extended into the post-colonial state, through controlling the oil province deprived of corresponding investments to develop the industry [17]. Consequently, during the transitional and post-transitional of power by colonialism, both the incoming government and the colonizers were not accustomed to the structural damages created and inherited by the colonizers. Hence, the conspicuous divergence between the ruler's interest and those governed, a hallmark of colonial governance, persisted into the era of post-colonial administration [22], whose continuity perpetuated systematic injustices and concurrently hindered efforts aimed at implementing reforms measures in the petroleum legal framework.

#### 4.3 Political economy: petroleum sectorial violence

Nigeria was a British colony up until 1960. However, the Nigerian independence coincided with commercial oil exploitation, which paved way and reinforced the British imperial expansion with focus to only extraction and exploitation of raw materials and minerals [18]. Given the small scale of its oil industry that barely cater for its domestic needs, Britain was left in a vulnerable position during the time when international oil industry was booming globally. However, the ongoing structural systems established during the colonial era on rent seeking in the exploitation of mineral resources such as the oil exploration, became a key factor that ignited conflict in Nigeria. Yusuf and Omoteso [22] argue that the government monopolizes the operations and regulatory activities in the petroleum sector which, dated back from the colonial period to date, remain ill-defined and obscure. This has direct bearing with the involvement of largely foreign corporations as the major partners of the government with historical ties with colonial administrators. Host communities have been given little or no courtesy to the exploration rights, social services and environmental concerns in their areas. This has led to substantial resistance in Nigeria. Nevertheless, even amidst the political movement against Royal Dutch Shell corporation, it did not cease the exploration and production (E&P) due to the legal support, security and huge funding secured from the colonial administration [23]. The persecution was made easier for foreign corporation (Shell) to disengage the involvement of the major stakeholders (host communities) in the E&P operations through the 1914 Mineral Ordinance No. 17 as amended [16]. The continuity of both political structures and legal framework in Nigeria on the oil exploration has historically recorded connivance of abuses committed by foreign companies under the watch of regulatory bodies and the state officials [24].

Colonization has played key role both on political and socioeconomic structures of sub-Saharan Africa and elsewhere around the globe. However, the realm of transitional justice practices has over time advanced for a substantial period devoid of acknowledging the detrimental impacts and injustices stemming from colonialism, as well as enduring repercussions.

## 5 CONCLUSION

Exploring the differential effects of energy governance constraints in Nigeria through the lens of transitional justice perspective provides a profound understanding of the complex dynamics that have shaped the nation's energy landscape. This perspective has illuminated



the historical injustice, disparities, and challenges that have persisted since the post-colonial era and continued to impact Nigeria's energy policies and outcomes.

Through this examination, we have discerned the need for greater accountability and consistency in energy governance. Hence, the recommendations put forth in this context encompass truth-seeking mechanisms to investigate past injustices related to energy policy such as resource mismanagement. Second, a comprehensive historical review of energy policies since the post-colonial era, identifying areas where injustices, corruption, and inequalities occurred. Third, inclusive policy formulation through promotion of inclusivity and diversity in energy policy formulation by involving historically marginalised groups (host-communities) in decision-making. Fourth, legal reforms through strengthening and updating relevant legal frameworks that ensures energy policies align with principle of justice and accountability. Fifth, monitoring and evaluation through established commission that monitors implementation of transitional justice measures within the energy sector and access the progress on a regular basis. By embracing this set of recommendations, the nation can harness its energy resources peacefully for the benefit of all its citizens thus ensuring a brighter and more equitable future for generations to come.

#### REFERENCES

- [1] Padayachee, V., *The Political Economy of Africa*, Routledge: London, 2010.
- [2] Frimpong, F.B., *Financialisation and Poverty Alleviation in Ghana: Myths and Realities*, Brill: Leiden and Boston, 2021.
- [3] Mandondo, A., Situating Zimbabwe's natural resource governance systems in history. 2000.
- [4] Touré, S., *The Natural Resource Curse and Colonial Legacy in French West Africa*, 2022.
- [5] Silvy, E.H., Peterson, M.N., Heinen-Kay, J.L. & Langerhans, R.B., Illegal harvest of marine resources on Andros Island and the legacy of colonial governance. *Br. J. Criminol.*, **58**(2), pp. 332–350, 2018.
- [6] Lassou, P.J., Hopper, T. & Ntim, C., How the colonial legacy frames state audit institutions in Benin that fail to curb corruption. *Crit. Perspect. Account.*, **78**, 102168, 2021.
- [7] Phuthego, T.C. & Chanda, R., Traditional ecological knowledge and community-based natural resource management: Lessons from a Botswana wildlife management area. *Appl. Geogr.* **24**(1), pp. 57–76, 2004.
- [8] Becker, L.C., Seeing green in Mali's woods: Colonial legacy, forest use, and local control. *Ann. Assoc. Am. Geogr.*, **91**(3), pp. 504–526, 2001.
- [9] Glaister, K.W., Driffield, N. & Lin, Y., Foreign direct investment to Africa: Is there a colonial legacy? *Manag. Int. Rev.*, **60**, pp. 315–349, 2020.
- [10] Perold, H., Graham, L.A., Mavungu, E.M., Cronin, K., Muchemwa, L. & Lough, B.J., The colonial legacy of international voluntary service. *Community Dev. J.*, **48**(2), pp. 179–196, 2013.
- [11] Balgley, D. & Rignall, K., Land tenure in Morocco: Colonial legacies, contemporary struggles. *Land Tenure Challenges in Africa: Confronting the Land Governance Deficit*, Springer; pp. 183–202, 2022.
- [12] Feak, C.B. & Swales, J.M., *Telling a Research Story: Writing a Literature Review. English in Today's Research World 2*. University of Michigan Press: Ann Arbor, 2009. DOI: 10.3998/mpub.309338.
- [13] Templier, M. & Paré, G., A framework for guiding and evaluating literature reviews. *Communications of the Association for Information Systems*, **37**, article 6, 2015.





- [14] Guba, B., Systematische Literaturrecherche. *Wiener Medizinische Wochenschrift*, **158**(1–2), pp. 62–69, 2008. DOI: 10.1007/s10354-007-0500-0.
- [15] Hart, C., *Doing a Literature Review: Releasing the Social Science Research Imagination*, SAGE: London.
- [16] Yusuf, H.O., Colonialism and the dilemmas of transitional justice in Nigeria. *Int. J. Transitional Justice*, **12**(2), pp. 257–276, 2018.
- [17] Ukiwo, U., Governance regimes of oil in Nigeria: Issues and challenges. Cent. Res. Peace Dev. CRPD Work Pap Ser., 2018.
- [18] Adebite, E., Good corporate governance in Nigeria: Antecedents, propositions and peculiarities. *Int. Bus. Rev.*, **24**(2), pp. 319–330, 2015.
- [19] Gerring, J., Ziblatt, D., Van Gorp, J. & Arévalo, J., An institutional theory of direct and indirect rule. *World Politics*, **63**(3), pp. 377–433, 2011.
- [20] An-Na'im, A.A., Editorial note: From the neocolonial 'transitional' to indigenous formations of justice. *International Journal of Transitional Justice*, **7**(2), pp. 197–204, 2013.
- [21] Babayomi, O.A., A review of the key provisions of the petroleum industry bill and the implications on deregulation. *J. Sustain. Dev. Law Policy*, **3**(1), pp. 189–201, 2014.
- [22] Yusuf, H.O. & Omoteso, K., Combating environmental irresponsibility of TNCs in Africa: An empirical analysis. *Local Environment: The International Journal of Justice and Sustainability*, **21**(11), pp. 1372–1386, 2016.
- [23] Steyn, P., Oil exploration in colonial Nigeria, c. 1903–1958. *J. Imp. Commonw. Hist.*, **37**(2), pp. 249–274, 2009.
- [24] Lewis, P.M., Endgame in Nigeria? The politics of a failed democratic transition. *African Affairs*, **93**(372), pp. 323–340, 1994.

