

DNA PROFILING OF CONVICTED PERSONS IN NIGERIA: SECURITY IMPERATIVES AND CONSTITUTIONAL SAFEGUARDS

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Abstract

The growing incidence of jailbreaks, violent recidivism, terrorism, and other heinous crimes in Nigeria has intensified calls for the integration of forensic science into the criminal justice system. Among the most debated measures is the compulsory Deoxyribonucleic Acid (DNA) profiling of convicted persons. This article uses doctrinal methodology to examine the legal and constitutional rights of convicted persons vis-à-vis security imperatives in establishing a statutory DNA profiling regime for convicted persons within Nigeria's criminal justice framework. It interrogates whether such a regime can be justified as a national security imperative without undermining constitutionally guaranteed rights, particularly the rights to dignity, privacy, and fair hearing under the Constitution of the Federal Republic of Nigeria 1999 (as amended). The article argues that Nigeria currently lacks a coherent legislative structure for post-conviction DNA data banking. It concludes that a carefully designed rights-sensitive statutory regime for convicted persons is both legally feasible and defensible and can reconcile security imperatives with constitutional safeguards provided it incorporates strict limitations on collection, retention, access, and misuse.

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1. INTRODUCTION

Nigeria is presently confronted with one of the most complex internal security crises in its post-independence history. The proliferation of violent crimes ranging from terrorism, insurgency and banditry to kidnapping, armed robbery and transnational organised crime, has fundamentally strained the country's criminal justice system. These security threats are compounded by repeated and often coordinated attacks on correctional facilities, leading to mass jailbreaks involving both awaiting-trial inmates and convicted persons; such as 2021 Abolongo jailbreak of 837 inmates in Oyo, Oyo state Nigeria.¹ These incidents not only undermine the authority of the state but also pose grave risks to public safety, as escaped convicts frequently return to criminal networks or reinforce insurgent groups.

In this context, jailbreaks do not merely represent correctional failures; they expose a deeper crisis of identity management, forensic incapacity, and institutional inadequacies of its law enforcement framework within Nigeria's security architecture, limiting the ability of security agencies to trace escaped convicts, link offenders to crime scenes, or dismantle organised criminal structures. Against this background, DNA profiling which refers to the analysis of an individual's genetic material for purposes of identification, has emerged as a prominent policy proposal in Nigeria's evolving security discourse.

¹ Agency Report, '837 inmates escaped from Oyo prison, 262 recaptured – Official' *Punch Newspapers* (Lagos, 23 October 2021) <https://punchng.com/837-inmates-escaped-from-oyo-prison-262-recaptured-official/> accessed 8 May 2026

The surge in the progress of forensic science has significantly reshaped the landscape of criminal justice administration across the globe.² Among the most transformative developments is DNA profiling, a technique that enables the identification of individuals based on unique genetic markers. Its application has revolutionised criminal investigations, enhanced prosecutorial accuracy, and improved post-conviction management of offenders.³ In advanced jurisdictions, DNA profiling is not merely an investigative tool but a central component of criminal justice systems, particularly in relation to convicted persons. DNA profiling involves the collection and processing of deeply personal and permanent biological information, the misuse of which may have far-reaching consequences beyond the criminal justice system.⁴ Concerns about data security, purpose creep, discriminatory targeting and surveillance abuse are particularly acute in jurisdictions lacking strong oversight institutions. In Nigeria, where regulatory enforcement remains weak and public trust in security agencies is fragile, these risks are magnified. However, the integration of DNA profiling into the criminal justice system remains underdeveloped and largely unregulated. This deficiency is particularly of concern in the light of increasing security challenges, including jailbreaks, terrorism, banditry, and recidivism.⁵

These challenges underscore the urgent need for reliable mechanisms for identifying, tracking, and managing offenders, especially those who attempt to evade justice through escape or identity manipulation.

² Shrey Jhalani, Ruth M Morgan, Amelia Shooter, John Cassella and Jakub Pintér, 'The Development of Forensic Science in the Criminal Justice System of England and Wales (2000–2024): A Systematic Review' (2025) 11 *Forensic Science International: Synergy* 100641

³ Carole McCartney, 'The DNA Expansion Programme and Criminal Investigation' (2006) 46(2) *British Journal of Criminology* 175–192

⁴ Erin E Murphy, 'The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence' (2007) 95(3) *California Law Review* 721

⁵ UNODC, *Global Crime Trends Report* (2023)

While the security imperatives for adopting DNA profiling are compelling, its implementation raises critical constitutional questions. The collection, storage, and use of genetic data implicate fundamental rights, including the right to dignity, privacy, and fair hearing.⁶ Convicted persons, although lawfully deprived of certain liberties, retain their fundamental rights subject only to lawful restrictions.⁷ Consequently, any framework for DNA profiling must strike a delicate balance between national security interests and the protection of individual rights.

This paper examines the legal, constitutional, and security dimensions of DNA profiling of convicted persons in Nigeria. The central problem addressed in this paper is whether the prioritisation of national security can lawfully justify the DNA profiling of convicts without eroding constitutionalism and the rule of law. It argues that while DNA profiling is indispensable for enhancing criminal justice administration, its adoption must be guided by a robust legal framework that ensures compliance with constitutional safeguards.

2. EVOLUTION OF DNA PROFILING

DNA originated in 1860 when a Swiss physiological Chemist Friedrich Miescher discovered while researching in a laboratory. The modern DNA profiling was invented in 1984 through the groundbreaking research of Sir Alec Jeffreys, who discovered that certain regions of human DNA exhibit significant variability, enabling individual identification.⁸ The first forensic application occurred in the United Kingdom in 1986, leading to the exoneration of an innocent

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 34, 36, 37

⁷ *Peter Nemi v Attorney-General of Lagos State* (1996) 6 NWLR (Pt 452)

⁸ Alec J Jeffreys, Victoria Wilson and Stephen L Thein, 'Individual-specific "Fingerprints" of Human DNA' (1985) 316 *Nature* 76.

suspect and the conviction of the actual perpetrator.⁹ This milestone marked the beginning of the widespread adoption of DNA evidence in criminal justice systems.

Subsequent technological advancements led to the development of Polymerase Chain Reaction (PCR) and Short Tandem Repeat (STR) analysis, which significantly enhanced the accuracy, speed, and reliability of DNA profiling.¹⁰ These innovations facilitated the establishment of national DNA databases, enabling law enforcement agencies to match crime scene evidence with stored profiles. In the United States, the enactment of the DNA Identification Act 1994 led to the creation of the Combined DNA Index System (CODIS), which has become a critical tool for solving crimes and identifying repeat offenders.¹¹ Similarly, the United Kingdom established the National DNA Database, one of the largest in the world, which has contributed significantly to crime detection and prevention.¹² The application of DNA profiling by law enforcement authorities was originally sanctioned for the identification of rapists, murders, and other egregious offenders; however, it has progressively broadened to encompass suspects of a wider array of crimes.¹³ The evolution of DNA profiling has also extended to post-conviction applications, including the monitoring of offenders, identification of escapees, and exoneration of wrongfully convicted persons.¹⁴ These developments

⁹ *R v Pitchfork* (1988) 2 All ER 908 (CA).

¹⁰ J. M. Butler, *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers* (2nd edn, Elsevier 2015), 81-118

¹¹ DNA Identification Act 1994 (US).

¹² Protection of Freedoms Act 2012 (UK),

<https://www.legislation.gov.uk/id/ukpga/2012/9> accessed on May 9, 2026

¹³ Khaleda Parven, "Forensic Use of DNA Information v Human Rights and Privacy Challenges". (2013) *University of Western Sydney Law Review*, 17, 41-65

¹⁴ Erin Murphy, *Inside the Cell: The Dark Side of Forensic DNA* (Nation Books 2015).

highlight the transformative potential of DNA technology in enhancing both the efficiency and fairness of criminal justice systems.

3. LEGAL AND INSTITUTIONAL STATUS OF DNA PROFILING IN NIGERIA

In Nigeria, the implementation of DNA profiling is still in its early stages, with limited institutional integration and infrastructural obstacle. In 2017, the Nigerian Police Force inaugurated the Forensic Science Laboratory in Lagos and the DNA Forensic Centre to improve criminal investigations.¹⁵ However, the practice remains fragmented and underregulated. While DNA profiling has been instrumental in sexual assault and homicide investigations, but its systematic use for convict identification or custodial centre management is now needed urgently. Nigeria currently lacks a comprehensive statutory framework specifically regulating DNA profiling of convicted persons. The current stipulations under the Evidence Act and other criminal justice legislation allow for the acceptance of forensic evidence but fail to create a regulatory framework for mandatory DNA profiling of offenders. While the Evidence Act 2011 recognises the admissibility of expert and scientific evidence, it does not provide detailed provisions on DNA databases or compulsory profiling.¹⁶ This legislative gap creates uncertainty regarding the collection, storage, and use of genetic data.

Institutionally, several agencies have taken steps towards developing forensic capabilities. The Nigerian Police Force has established forensic laboratories, while the National Biotechnology Development Agency has engaged in genetic research initiatives.¹⁷ However, these

¹⁵ Lagos State Government, *Lagos DNA and Forensic Centre Report* (2018).

¹⁶ Evidence Act 2011

¹⁷ National Biotechnology Development Agency Reports (2022)

efforts remain fragmented and lack coordination within a unified legal framework. The Nigerian Correctional Service Act 2019 mandates the safe custody, rehabilitation, and reintegration of inmates but does not incorporate DNA profiling as part of custodial management.¹⁸ This omission is particularly problematic in addressing issues such as jailbreaks and identity fraud among inmates.

Comparatively, jurisdictions such as the United Kingdom and South Africa have enacted legislation specifically regulating DNA profiling, including provisions on data protection, retention, and oversight.¹⁹ Nigeria's failure to adopt similar measures highlights a significant policy and legal gap.

4. CONSTITUTIONAL RIGHTS OF CONVICTED PERSONS AND INMATES

The legal status of convicts' rights in Nigeria is anchored in the constitutional principle that fundamental rights are inherent in personhood and are not extinguished by conviction or incarceration.²⁰ Although imprisonment entails lawful restrictions on liberty, it does not render convicts rightless or place them outside the protection of the Constitution.²¹ This foundational premise is critical in assessing the legality of compulsory DNA profiling policies, which involve intrusive bodily and informational interference with convicted persons. In

<https://nbrda.gov.ng/wp-content/uploads/2022/04/National-Biotechnology-Development-Agency-Est-Act-2022.pdf> accessed on May 9, 2026

¹⁸ Nigerian Correctional Service Act 2019, Ss 2, 3(c), 14(1)(a) and 15

¹⁹ Criminal Law (Forensic Procedures) Amendment Act Amendment Act 37 of 2013(South Africa)

²⁰ Marcus Ayodeji Araromi, 'Prisoners' Rights under the Nigerian Law: Legal Pathways to Progressive Realization and Protection' (2015) 6(1) *Journal of Sustainable Development Law and Policy* 169

²¹ Ben Obi Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books 2003) vol X, 401–404.

Ransome-Kuti v Attorney-General of the Federation,²² the Supreme Court underscored the sacrosanct nature of fundamental rights and warned that derogations must be strictly construed. Similarly, in *Director of SSS v Agbakoba*,²³ the Court held that national security considerations cannot be used to arbitrarily override constitutional guarantees. These decisions establish that even where public safety is invoked, rights limitations remain subject to judicial scrutiny.

The constitutional framework governing the rights of convicted persons in Nigeria is anchored in the Constitution of the Federal Republic of Nigeria, which guarantees fundamental rights to all persons, including those lawfully incarcerated. While imprisonment entails the restriction of certain liberties, it does not extinguish the entirety of an individual's constitutional protections. This principle has been affirmed in Nigerian jurisprudence, where courts have consistently held that inmates retain residual rights subject only to lawful limitations. As held by the court in *R V. Marper*, the indefinite retention of fingerprints and DNA profiles of unconvicted persons violated the right to privacy under Article 8 of the ECHR.²⁴ DNA profiling, by its nature, implicates several of these rights, particularly where biological samples are compulsorily obtained and stored. The constitutional validity of such measures must therefore be examined within the framework of necessity, proportionality, and legality. The constitutional rights considered in the context of this study are outlined below.

²² (1985) 2 NWLR (Pt 6) 211 (Supreme Court of Nigeria)

²³ (1999) 3 NWLR (Pt 595) 314 (Supreme Court of Nigeria).

²⁴ *S and Marper v United Kingdom* (2008) 48 EHRR 50 (ECtHR).

4.1.1. Right to Dignity of Human Person

Section 34 of the Constitution guarantees the dignity of the human person, prohibiting torture and inhuman or degrading treatment.²⁵ The compulsory extraction of DNA samples must therefore be conducted in a manner that respects human dignity, complies with legality, proportionality and necessity and avoids coercion.²⁶ The right to dignity under section 34 prohibits torture, inhuman, or degrading treatment. The extraction of DNA samples whether through buccal swabs, blood samples, or other means raises questions as to whether such procedures infringe on bodily integrity. While minimally invasive methods such as cheek swabs are generally considered constitutionally permissible in comparative jurisdictions, coercive or forceful extraction may violate this right.²⁷ The absence of statutory guidelines regulating the manner of DNA collection in Nigeria, creates a risk of abuse. Without clear procedural safeguards, correctional authorities may adopt practices that undermine the dignity of inmates. Therefore, any legal framework for DNA profiling must explicitly prescribe humane and non-degrading methods of sample collection.

4.1.2 Right to Privacy

Section 37 protects the privacy of citizens, including their personal data.²⁸ DNA information is inherently sensitive, containing intimate details about an individual's genetic makeup. The collection and storage of such data raise concerns about misuse and unauthorised access. The right to privacy, guaranteed under section 37, extends to personal information, including biometric and genetic data. DNA contains deeply personal information that goes beyond identification,

²⁵ Constitution of the Federal Republics of Nigeria, 1999, as amended. S 34

²⁶ United Nations Office on Drugs and Crime, *Handbook on Criminal Justice Responses to DNA Evidence* (2022).

²⁷ *Jalloh v Germany* (2006) 44 EHRR 32 (ECtHR).

²⁸ *ibid* s 37

potentially revealing familial relationships, health predispositions, and ethnic origins.

The compulsory collection and retention of such data constitute a significant intrusion into personal privacy. However, in the face of serious national security concerns where hardened escapees are concerned, would it constitute intrusion or privacy breach? Nigeria faces numerous cases of escapees at large and in the light of extracting lessons from advanced jurisdictions where the collection of DNA for profiling of criminals is observed from the point of entry into the criminal justice system, it is weighed as a measure to curb the proliferation of crimes rather than infringement on the right of privacy. The profiled DNA are often retained to resolve future crimes although the European Court of Human Rights held in *S and Marper v United Kingdom*,²⁹ that indefinite retention of DNA data violates the right to privacy. This decision underscores the need for strict limitations on the storage and use of genetic information. The lack of a comprehensive DNA regulatory regime heightens the risk of privacy violations, particularly in the absence of independent oversight mechanisms.

4.1.3 Right to Fair Hearing

The right to fair hearing under section 36 ensures that individuals can challenge evidence used against them.³⁰ DNA evidence must therefore be subjected to rigorous scrutiny to ensure reliability and accuracy. The constitution guarantees the right to fair hearing, which encompasses the right to challenge evidence presented in criminal proceedings.³¹ DNA evidence, though scientifically robust, is not infallible. Issues such as contamination, laboratory error, and

²⁹ *ibid*

³⁰ *ibid* s 36

³¹ Constitution of the Federal Republic of Nigeria, 1999. Section 36.

misinterpretation can undermine its reliability. Accordingly, defendants could be afforded the opportunity to scrutinise DNA evidence.

4.1.4 Freedom from Inhuman or Degrading Treatment

Closely linked to dignity is the prohibition of inhuman or degrading treatment. The conditions under which DNA samples are collected and stored must comply with international human rights standards, including the Nelson Mandela Rules.³² In particular, the use of force, coercion, or degrading procedures in obtaining DNA samples would constitute a violation of this right. The lack of explicit statutory safeguards in Nigeria increases the likelihood of such violations, especially within overcrowded and under-resourced correctional facilities. The process of obtaining DNA samples must not involve excessive force or degrading procedures.³³ The International human rights standards emphasise the need for humane treatment of inmates.³⁴ Nigerian courts have progressively affirmed the principle that inmates retain enforceable rights. In *Uzoukwu v Ezeonu II*, the Court of Appeal stated that fundamental rights are not gifts from the state but inherent rights attaching to human beings by virtue of their humanity.³⁵ This reasoning applies equally to convicted persons, whose incarceration does not negate their constitutional status.

In *Odogu v Attorney-General of the Federation*,³⁶ the court recognised that inmates are entitled to humane treatment and access to judicial remedies for rights violations. The decision reflects judicial

³² United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UNGA Res 70/175 (17 December 2015). rr 24–27.

³³ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

³⁴ *Ibid* n 29

³⁵ *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708 (CA).

³⁶ (1996) 6 NWLR (Pt 456) 508 (CA).

acknowledgment that incarceration imposes limits on liberty but not on dignity or access to justice. Similarly, in *Ekwenugo v FRN*,³⁷ the Court of Appeal reiterated that inmates retain the right to approach the courts for the enforcement of their fundamental rights. However, judicial attitudes also reveal a degree of deference to executive claims of security necessity. In cases involving national security, courts have sometimes been reluctant to interrogate the proportionality of security measures, particularly where the affected persons are convicts or detainees. This deference creates a permissive environment for intrusive policies, such as compulsory DNA profiling, to be advanced with minimal judicial resistance.

The absence of Nigerian case law directly addressing DNA profiling underscores the novelty of the issue. The courts' emphasis on dignity, legality and proportionality remains relevant in evaluating emerging forensic practices.

4.2 Specific Convict's Rights in Relation to DNA Profiling

Beyond general constitutional protections, DNA profiling raises specific rights concerns that must be addressed within any regulatory framework.

4.2.1 Right to Biometric Data Protection

The Nigeria Data Protection Act 2023 provides a framework for general protection of personal data, including biometric information.³⁸ DNA data falls within this category and must be processed in accordance with principles of legality, fairness, and transparency. The Nigeria Data Protection Act establishes principles governing the processing of personal data, including lawfulness, purpose limitation, and data minimisation. DNA data clearly falls within the category of

³⁷ (2001) 6 NWLR (Pt 708) 171 (CA).

³⁸ Nigeria Data Protection Act (NDPA), Act No. 37, 2023

sensitive personal data and requires enhanced protection. The absence of specific provisions addressing DNA data creates uncertainty regarding its classification, processing, and oversight. There is therefore a need to explicitly incorporate DNA profiling within the ambit of data protection regulation.

4.2.2 Retention, Storage, and Expungement of DNA Data

The 'coerced or non-consensual' acquisition of DNA samples from individuals poses a potential risk to bodily integrity.³⁹ Numerous complaints about the forensic use of DNA databases have been articulated, predominantly related to the collection, keeping, access, and utilization of DNA samples that constitute DNA profiles.⁴⁰ Clear rules must govern how long DNA data is retained and the conditions for its deletion.⁴¹ Indefinite retention raises concerns about proportionality and privacy. One of the most contentious issues in DNA regulation is the duration for which data may be retained. Indefinite retention raises serious constitutional concerns, particularly where individuals have served their sentences or have been acquitted. Generally, ethical concerns with the acquisition of DNA data centre on the principle of 'informed consent'.⁴² Human rights and privacy concerns are occasionally disregarded in some jurisdictions by emphasizing how helpful DNA data collection and utilization are to upholding law and order.⁴³ Even after the inquiry is complete, many DNA databases worldwide keep DNA samples including those of

³⁹ Robin Williams and Paul Johnson, 'Inclusiveness, Effectiveness and Intrusiveness: Issues in the Developing Uses of DNA Profiling in Support of Criminal Investigations' (2005) 33(3) *Journal of Law, Medicine and Ethics* 545, 546

⁴⁰ Tania Simoncelli 'Dangerous Excursions: The Case Against Expanding Forensic DNA Databases to Innocent Person' (2006) 34 *Journal of Law, Medicine and Ethics* 390, 393

⁴¹ Protection of Freedoms Act 2012 (UK)

⁴² Ibid n.40

⁴³ Nuffield Council on Bioethics, 'The Forensic Use of Bioinformation: Ethical Issues' (Nuffield Council on Bioethics, 2007) 31

innocent suspects for a while. The primary rationale for this kind of retention is the ability to swiftly identify and apprehend those who go on to conduct more crimes.⁴⁴

Comparative frameworks, such as the UK's Protection of Freedoms Act, provide for the deletion of DNA data under specified conditions. Nigeria currently lacks such provisions, thereby creating the risk of perpetual surveillance of former offenders.

4.2.4 Right against Abuse, Misuse, and Stigmatization

Improper use of DNA data can lead to discrimination and wrongful profiling.⁴⁵ Safeguards must be implemented to prevent misuse by law enforcement agencies.⁴⁶ The misuse of DNA data may lead to discrimination, wrongful suspicion, and social stigmatization. In a society with limited data governance structures, the risk of abuse is particularly high. Safeguards must therefore include strict access controls, penalties for misuse, and independent oversight mechanisms.

4.2.5 Right to Forget

Emerging data protection principles recognise the right of individuals to have their data erased under certain conditions.⁴⁷ This right is particularly relevant for individuals who have served their sentences. The right to be forgotten, recognised in international data protection regimes, allows individuals to request the deletion of their personal data under certain conditions.²² Applying this principle to DNA profiling, individuals who have completed their sentences should ordinarily have the right to seek expungement of their DNA data,

⁴⁴ Peter Gill, 'DNA as Evidence — The Technology of Identification' (2005) 352(26) *The New England Journal of Medicine* 2669, 2669.

⁴⁵ Robin Williams and Paul Johnson, *Genetic Policing: The Uses of DNA in Criminal Investigations* (Willan Publishing 2008).

⁴⁶ Nigeria Data Protection Act 2023, particularly sections 25, 27, and 30

⁴⁷ GDPR (EU) 2016/679

subject to legitimate law enforcement interests and national security concerns.

4.3 Security Concerns in Nigeria Calling for DNA Profiling of Convicts

Nigeria's security landscape presents compelling justification for the adoption of DNA profiling. These concerns are discussed below:

4.3.1 Rising Incidence of Jailbreaks and Escapes

Recent years have witnessed a surge in custodial breaches across Nigeria, resulting in the escape of thousands of inmates. Between 2014 and 2024, Nigeria had eighteen (18) jailbreaks and seven thousand (7000) inmates are estimated to be at large,⁴⁸ including hardened convicts.⁴⁹ This results in a surge in crime and a persistent danger to the nation's peace and calm, resulting in an overextension of the nation's security agencies.⁵⁰ Throughout the Federal government administration from 2015 to 2023, there were a minimum of 15 jailbreaks, some of which involved escapees who were members of terrorist organizations.⁵¹ This is troubling and warrants attention. A jailbreak transpired in Kuje Custodial Centre in Abuja, FCT, Nigeria, on July 22, 2022, resulting in 879 escapees, of whom only 457 were apprehended by security forces. Of the remaining 422 individuals

⁴⁸ Dirisu Yakubu, 'Reps to probe Correctional Service over 2022 Kuje jailbreak.' *Punch Newspapers*, 20 July. <https://punchng.com/rep-to-probe-correctional-service-over-2022-kuje-jailbreak/> (Accessed 1 July 2025).

⁴⁹ Salawu, Ibrahim O., Abubakar Sulaiman and Yushau Alfakoro, 'From Prison to Correctional Services: Exploring Evidence-Based Analysis of the Plight of Awaiting Trial Inmates in Kwara State, Nigeria' (2024) *Journal of Governance*, 9(2).

⁵⁰ *ibid*

⁵¹ Chiemelie Ezeobi, 'Prison Breaks in Nigeria, a Ticking Time Bomb' *THISDAYLIVE* (11 July 2022)

<https://www.thisdaylive.com/index.php/2022/07/11/prison-breaks-in-nigeria-a-ticking-time-bomb/> accessed 24 April 2025

alleged to be at large, 60 are Boko Haram terrorists.⁵² The potential for such escapes among law-abiding persons presents a significant threat.⁵³ Breaking out of a custodial facility is illegal in and of itself, and there is a good chance that jailbreakers will commit other crimes in the future. These incidents expose systemic weaknesses in correctional security and highlight the inadequacy of existing identification systems. DNA profiling offers a reliable means of identifying escapees, even where they attempt to conceal their identities. Nigeria has experienced numerous custodial breaches, resulting in the escape of thousands of inmates.⁵⁴ These incidents highlight the inadequacy of existing identification systems.

4.3.2 Terrorism, Banditry, and Organised Violent Crime

The activities of terrorist groups and bandits have posed significant threats to national security.⁵⁵ Terrorism, banditry, and organised violent crime present complex security challenges that are often characterised by fluid networks, multiple operatives, and the systematic use of deception through aliases and false identities.⁵⁶ In this context, DNA profiling has emerged as a critical forensic tool capable of strengthening investigative capacity and enhancing intelligence-led policing.⁵⁷ Unlike traditional identification methods, DNA profiling

⁵² Dirisu Yakubu, 'Reps to Probe Correctional Service Over 2022 Kuje Jailbreak', *Punch*, 22 November, 2023 <https://punchng.com/reps-to-probe-correctional-service-over-2022-kuje-jailbreak/> (accessed 5 November 2024 at 10:41am).

⁵³ *ibid*

⁵⁴ Nigerian Correctional Service. (2024). *Annual Report on Inmate Population and Custodial Facilities (2023-2024)*. <https://www.corrections.gov.ng/> accessed on May 8, 2026

⁵⁵ Global Terrorism Index (2024).

⁵⁶ United Nations Office on Drugs and Crime, *Global Study on the Smuggling of Migrants* (2023); United Nations Office of Counter-Terrorism, *Handbook on Criminal Justice Responses to Terrorism* (2022)

⁵⁷ E. Miller and M. Smith, 'Quasi-Universal Forensic DNA Databases' (2022) 41 *Criminal Justice Ethics* 238; Erin Murphy, 'The New Forensics: Criminal Justice,

provides a scientifically reliable means of linking individuals to crime scenes, weapons, vehicles, or other biological trace evidence, thereby enabling the reconstruction of criminal networks and operational linkages among offenders.⁵⁸ DNA profiling can assist in identifying perpetrators and linking them to criminal networks. The activities of groups such as Boko Haram and armed bandits have posed significant threats to national security.⁵⁹ DNA profiling can assist in identifying perpetrators, linking suspects to crime scenes, and dismantling criminal networks.

4.3.3 Recidivism and Repeat Offending

Given the devastating epidemic of jailbreak and recidivism, the law can be used to combat the threat, in this case by establishing a legal framework for DNA profiling of inmates in Nigeria.⁶⁰ High rates of recidivism underscore the need for effective tracking of offenders.⁶¹ Jailbreakers commit more crimes to support themselves because they are unable to reintegrate into society, which results in recidivism after conviction. The public interest in preventing future harm clearly trumps the convict's right to digital erase when recidivism occurs. DNA databases can help identify repeat offenders and enhance crime prevention. High recidivism rates in Nigeria underscore the need for effective offender tracking mechanisms. DNA databases can help identify repeat offenders and enhance crime prevention strategies.

False Certainty and the Second Generation of Scientific Evidence' (2023) 111 *California Law Review* 721

⁵⁸ J. M Butler, *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers* (2nd edn, Elsevier 2015); INTERPOL, *DNA Profiling and Criminal Investigations: Global Guidelines for Law Enforcement* (2023)

⁵⁹ Agency Report, 'Boko Haram, banditry still major threats to Nigeria's security — Defence Headquarters' *Punch Newspapers* (Lagos, 12 January 2024) <https://punchng.com/> accessed 8 May 2026.

⁶⁰ International Crisis Group, *Violence in Nigeria's North West: Rolling Back the Mayhem* (Africa Report No 288, 2023).

⁶¹ UNODC Recidivism Studies (2022)

Cold Cases and Unresolved Heinous Crimes

DNA evidence has proven invaluable in solving cold cases in jurisdictions like the United Kingdom and the United States.⁶² Its adoption in Nigeria could significantly improve the resolution of long-standing criminal cases. DNA evidence has the potential to solve cold cases and bring closure to victims.⁶³ Beyond routine crime control, DNA profiling has assumed growing relevance in counter-terrorism and serious organised crime strategies. DNA evidence recovered from improvised explosive devices, weapons, safe houses or vehicles can be matched against national databases to identify perpetrators or associates.

Where terrorist groups such as Boko Haram and ISWAP have exploited porous borders and weak identity systems in Nigeria, the absence of a centralised biometric and DNA infrastructure has hindered intelligence-led policing. Escaped convicts and radicalised inmates are known to reintegrate into insurgent networks, posing renewed threats to national security. Proponents of compulsory DNA profiling argue that profiling convicts particularly those convicted of terrorism-related or violent offences would strengthen intelligence capabilities and disrupt criminal networks.⁶⁴ This securitised logic

⁶² National Institute of Justice, *Using DNA to Solve Cold Cases* (Office of Justice Programs, US Department of Justice, Special Report, July 2002) NCJ 194197; Bureau of Justice Assistance, *Prosecuting Cold Cases Using DNA* (US Department of Justice, Fact Sheet, April 2024) see also 'The Guardian', 'Ohio police solve 43-year-old murder of woman with help of DNA technology' (2024) <https://www.theguardian.com/us-news/2024/dec/31/ohio-murder-solved-dna-technology>. accessed June 2026 See also Associated Press, '1964 cold case solved in New York with DNA evidence' (2025) AP News. <https://apnews.com/article/cold-case-killing-albany-new-york-b2776a3eb31b7364230a76012ba56434> accessed June 2026

⁶³ Interpol DNA Database Reports (2023).

⁶⁴ Laverigne, L., Boivin, R., Baechler, S., Jeuniaux, P., Fiola, K., Séguin, D., Lefebvre, J.-F. and Milot, E, 'Determining the impact of unknown individuals in

increasingly frames DNA profiling as a preventive security measure rather than a reactive investigative tool. The emphasis shifts from solving past crimes to anticipating and preventing future threats. While this preventive orientation aligns with contemporary security thinking, it also raises constitutional concerns, as preventive measures tend to justify broader and more intrusive state powers.

4.4 Does National Security Justify Compulsory DNA Profiling of Convicts over Rights?

National security has emerged as the dominant justification for DNA profiling of convicts in Nigeria. Proponents argue that persistent jailbreaks, terrorism and organised crime necessitate exceptional identification measures capable of enhancing offender tracking and intelligence gathering.⁶⁵ Convicts particularly those convicted of violent or terrorism-related offences are constructed as continuing security risks whose identification through DNA profiling is essential for public safety. However, constitutional justification requires a demonstrable nexus between the proposed measure and the security objective. The mere existence of insecurity does not automatically validate intrusive policies. As Nigerian courts have emphasised, restrictions on rights must be reasonably justifiable in a democratic society. The Constitution of the Federal Republic of Nigeria 1999 (as amended),⁶⁶ which permits derogation from certain fundamental rights only where such restrictions are reasonably justifiable in the interest of defence, public safety, public order, public morality, or public health. This standard requires evidence that compulsory DNA profiling will

criminality using network analysis of DNA matches' (2022) *Forensic Science International* 331:111142

⁶⁵ Aaron Amankwaa, 'Trends in forensic DNA database: transnational exchange of DNA data', *Forensic Sciences Research*, (2019) 5(1), pp. 8–14.

⁶⁶ Constitution of the Federal Republic of Nigeria, 1999 as amended, Section 45 (1)

materially contribute to addressing the identified security threats and that less intrusive alternatives are insufficient.

It is noteworthy that in the Nigerian context, the primary drivers of jailbreaks and recidivism lie not only in the absence of DNA databases but also in the systemic failures such as poor custodial centre security, corruption, underfunding and inadequate personnel training. These structural deficiencies need to be addressed alongside the DNA profiling of convicts in order not to risk becoming a symbolic response that prioritises surveillance over institutional reform. Moreover, the policy rationale must distinguish between categories of convicts. A blanket approach that profiles all convicted persons, irrespective of offence type or risk level, is difficult to justify. A more defensible policy would limit compulsory profiling to categories of offenders whose crimes demonstrably implicate national security or serious violence.

5. BALANCE BETWEEN NATIONAL SECURITY AND RIGHTS

Balancing national security and convicts' rights does not require choosing one over the other. Rather, it demands a principled framework that recognises security as a legitimate objective while insisting on constitutional discipline. Such a framework must reject blanket justifications and insist on evidence-based, narrowly tailored measures accompanied by robust oversight. In Nigeria, this balance is particularly delicate. On the one hand, the security challenges are real and pressing. On the other, the constitutional commitment to dignity, privacy and the rule of law must not be sacrificed on the altar of expediency.⁶⁷ DNA profiling of convicts can only be justified where it

⁶⁷ *Director of State Security Service v Agbakoba* (1999) 3 NWLR (Pt 595) 314, the court stated that action affecting fundamental rights must be lawful, reasonable, and justifiable in a democratic society.

operates within a rights-respecting legal architecture that preserves constitutionalism while enhancing security. The deployment of DNA profiling must balance security needs with constitutional rights. The principle of proportionality requires that any intrusion into individual rights must be necessary and justified.⁶⁸ Judicial oversight and legislative safeguards are essential to prevent abuse.

Comparatively there are jurisdictions which demonstrate that effective DNA regimes operate within strict legal frameworks that protect civil liberties.⁶⁹ Nigeria must adopt similar safeguards to ensure that DNA profiling does not become a tool for oppression. The tension between national security and individual rights is a central issue in the regulation of DNA profiling. While the state has a legitimate interest in ensuring security, this interest must be pursued within the bounds of constitutionalism.

The principle of proportionality provides a useful framework for resolving this tension. Any intrusion into individual rights must be necessary, suitable, and proportionate to the objective pursued. Judicial oversight, legislative clarity, and institutional accountability are essential to maintaining this balance. Comparative jurisprudence demonstrates that DNA profiling regimes can be both effective and rights-compliant when properly regulated. The central normative challenge posed by compulsory DNA profiling of convicts in Nigeria lies in achieving an appropriate balance between national security imperatives and the protection of residual constitutional rights. While national security is undeniably a legitimate state objective, its

⁶⁸ Aharon Barak. *Proportionality: Constitutional Rights and Their Limitations* (Cambridge Studies in Constitutional Law). Cambridge: (Cambridge University Press. 2012)

⁶⁹ European Court of Human Rights, *S and Marper v UK* (2008) ECHR 1581 (4 December 2008)

invocation must not operate as a talisman that automatically overrides constitutional safeguards. In a constitutional democracy, security measures must themselves be subjected to legal discipline, ensuring that they remain consistent with principles of legality, proportionality and accountability.⁷⁰

Analysing from a comparative point demonstrates that DNA profiling can be deployed as a security measure, but only within carefully regulated legal frameworks. In the United Kingdom, the National DNA Database (NDNAD) operates under statutory regulation, primarily the Protection of Freedoms Act 2012.⁷¹ Earlier expansive retention policies were curtailed following the decision of the European Court of Human Rights in *S and Marper v United Kingdom*, where indefinite retention of DNA samples of unconvicted persons was held to violate the right to privacy. The UK regime now differentiates between categories of offenders and imposes retention limits, oversight mechanisms and destruction requirements.⁷² This demonstrates that even in a security-conscious jurisdiction, DNA profiling is subject to rights-based constraints. In the United States, DNA profiling of convicts is widespread and supported by federal and state legislation. The Supreme Court's decision in *Maryland v King* upheld the constitutionality of DNA collection from arrestees, characterising it as a legitimate booking procedure serving identification and security purposes.⁷³ However, the decision has been

⁷⁰ *Dokubo-Asari v Federal Republic of Nigeria* (2007) 12 NWLR (Pt 1048) 320, the Court recognised that although national security is a weighty consideration, any limitation of rights must still conform to constitutional standards of reasonableness and justification within a democratic framework.

⁷¹ Home Office, *Protection of Freedoms Act 2012: DNA and Fingerprint Provisions* (2019)

<https://www.gov.uk/government/publications/protection-of-freedoms-act-2012-dna-and-fingerprint-provisions--2> accessed 9 May 2026

⁷² Protection of Freedoms Act 2012 *Protection of Freedoms Act 2012*, ss 1–25 (UK).

⁷³ 569 US 435 (2013) (US Supreme Court).

criticised for diluting Fourth Amendment protections and expanding surveillance powers. Importantly, US courts continue to emphasise statutory safeguards and procedural compliance.

In South Africa, the Criminal Law (Forensic Procedures) Amendment Act⁷⁴ establishes a National Forensic DNA Database, including a convicted offenders index. The Act incorporates oversight mechanisms, defines permissible uses of DNA information and provides for destruction of samples under specified conditions. This is particularly instructive for Nigeria, given similarities in constitutional structure and rights jurisprudence. South African courts have underscored that forensic technologies must operate within constitutional boundaries grounded in dignity, privacy and equality. These comparative experiences illustrate that DNA profiling as a security measure is neither inherently unlawful nor automatically rights-violating. Its legitimacy depends on the existence of clear legislation, proportional application and robust safeguards.

6 DATA PROTECTION AND HUMAN RIGHTS INTEGRATION

DNA profiling policy must be harmonised with Nigeria's data protection regime. Though the Nigeria Data Protection Act 2023 provides a foundation, but forensic-specific safeguards are required.⁷⁵ Such would aid in rebuilding public trust in the criminal justice system.⁷⁶

These include secure storage protocols, breach notification obligations and enforceable rights of redress by way of a legislation to make such

⁷⁴ Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 (South Africa).

⁷⁵ Nigeria Data Protection Act, 2023 (Act No. 4 of 2023)

⁷⁶ Olusegun Michael Osinibi and Tayewo Adetiboye Adewu , 'The Imperative of a Regulatory Framework for the Establishment of a National Crime DNA Database in Nigeria' 2023, *UCC Law Journal*, 3(1), pp. 182–210.

provisions. Although the Nigeria Data Protection Act of 2023 provides a basic framework for controlling the gathering and storage of genetic data, sector-specific laws are required to handle the specifics of forensic data management in criminal justice procedures. Human rights education within security agencies is equally important.⁷⁷ While the Nigeria Data Protection Act 2023 introduces general data protection principles, it does not specifically address forensic DNA governance.

Without statutory limits, DNA data may be retained indefinitely, repurposed beyond criminal justice objectives or accessed without accountability, thereby undermining constitutional guarantees of human rights. Accordingly, while DNA profiling holds significant promise as a security-enhancing measure, its deployment in Nigeria must be critically examined through a constitutional lens.⁷⁸ The collection and use of DNA samples should be subject to judicial authorisation, particularly where profiling extends beyond routine post-conviction identification.⁷⁹ Judicial involvement enhances accountability and ensures compliance with constitutional standards.

7 RECOMMENDATIONS AND CONCLUSION

The recommendations below are presented based on the findings of this study, for the effective, lawful and rights-compliant implementation of DNA profiling of convicts and inmates in Nigeria;

⁷⁷ United Nations Human Rights Office of the High Commissioner, *Human Rights and Law Enforcement: A Trainer's Guide* (OHCHR 2017) 9–15.

⁷⁸ Arwin Ralf, Martin Zieger and Manfred Kayser, 'Considerations on Expanding Criminal Offender DNA Databases with Y-STR Profiles' (2024) 11 *Journal of Law and the Biosciences* 15ae017.

⁷⁹ *Gaughran v United Kingdom* (2020) 70 EHRR 6 (ECtHR).

a. Enactment of a DNA Profiling Act

In the light of findings in this study, it is necessary for the legislature to enact an Act for the DNA profiling of Convicts. Any policy on DNA profiling of convicts must be anchored in statute rather than administrative discretion. Such legislation should, at a minimum, address the scope and categories, its purpose limitation; restrict the use of DNA data strictly to criminal justice and defined national security purposes retention and destruction; to specify retention periods and conditions for destruction of DNA samples and profiles. Access and sharing; to regulate access by law enforcement and intelligence agencies, with clear prohibitions against unauthorised use. It will form a dedicated statute which would regulate all aspects of DNA profiling, including collection, storage, and use. The Nigeria Data Protection Act 2023 provides a baseline framework, but forensic-specific rules are necessary to address issues such as access control, data sharing, breach notification and retention limits.

The justificatory basis for compulsory DNA profiling, the constitutional thresholds for lawful rights limitation, and the institutional safeguards are required to prevent abuse.

b Establishment of an independent forensic oversight body.

This should be established to regulate DNA databases. Such a body should be empowered to set standards, conduct audits, investigate complaints and order destruction of unlawfully retained samples. It is also imperative to establish a National DNA Database which will serve as a centralised database⁸⁰ created for convicted persons, with strict

⁸⁰ Orabueze, Augustine, A Legal Overview of National Forensic DNA Database Governance For Crime Solving In Nigeria, UK and USA Vol. 2 No. 1 (2026): *Journal Of Law, Language, Literature, And Gender Studies*, <https://www.nigerianjournalonline.org/index.php/JLLLGs/issue/view/415> accessed May 10, 2026

access controls. Compliance with data protection laws and firm integration with Data Protection Frameworks must be ensured to enhance privacy and security. It is important for the court to provide judicial oversight by authorising and reviewing DNA collection and use from convicts leading to the promotion of inter-agency collaboration.

c Capacity Building and Public engagement

Very importantly, capacity building, infrastructure development as well as investment in forensic laboratories and training are essential for effective implementation. The absence of adequate capacity building could breed the compromise of the reliability and integrity of DNA profiling. Public engagement is necessary for acceptance. Engaging civil society organisations, human rights and the media groups in promoting public education will foster transparency and reduce resistance to reform.

d Training of Judicial officers.

It is pertinent for both Judicial officers and legal practitioners to be adequately equipped to understand the workings of DNA evidence and evaluate same. Periodic judicial trainings, workshops tailored specifically to address concerns on DNA profiling should be institutionalised and established to enhance the understanding of forensic science, its evidentiary weight, admissibility standards, and statistical interpretation.⁸¹ Judicial officers' Improved forensic literacy promotes consistency in decisions, safeguarding the right to fair hearing guaranteed under the Constitution.

⁸¹ National Research Council (2009) *Strengthening Forensic Science in the United States: A Path Forward*. Washington, DC: National Academies Press. <https://doi.org/10.17226/12589>, 2(2), 188-195.

e Regional and International Cooperation

There is the need for Nigeria to actively engage in regional and international cooperation on forensic science and DNA databanking. Collaboration with organisations like ECOWAS, INTERPOL and other regional bodies would facilitate information sharing and extradition, cross-border criminal tracking, specifically in cases involving transnational crime. This cooperation however, must be governed by strict data protection standards for the prevention of misuse of genetic information or unlawful transfer.

In conclusion, DNA profiling represents a critical tool for enhancing criminal justice administration in Nigeria. However, its adoption must be guided by a comprehensive legal framework that balances security imperatives with constitutional safeguards. DNA profiling represents a transformative tool for enhancing criminal justice administration in Nigeria. Its potential to improve offender identification, support investigations, and strengthen post-conviction management is undeniable. However, its adoption must be accompanied by robust legal safeguards to protect constitutional rights. This study makes both theoretical and practical contributions. Theoretically, it advances Nigerian legal scholarship on the securitisation of criminal justice and the rights of convicts in the age of forensic technologies. Practically, it offers policy-oriented recommendations for legislative reform and institutional safeguards capable of reconciling security objectives with constitutional guarantees.