

CONTENTS

Strategies for Achieving Climate Governance in Cameroon: A Legal Appraisal	1-15
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Felix Fung Kum

An Appraisal of the Application of the Principle of Complementarity in the Functioning of the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights Within the African Human Rights System	16-38
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Fritz Lifoko Mokake

Forensic Audit Practice and Occurrence of Fraud in Public Sector Organization: A Study of University of Douala, Cameroon	39-48
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Kengne Fotsing Prosper, Molem Christopher Sama, Ebai John Egbe

Systematic Reflection and Optimization of Digital Empowerment in Procuratorial Supervision	49-59
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Lingjie Jiang

China’s Participation in Global Climate Governance: From Paris Agreement to Carbon Neutrality	60-66
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Rui Wang, Yuting Zhang

Strategies for Achieving Climate Governance in Cameroon: A Legal Appraisal

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Abstract

Climate governance over the last decades has occupied the minds of many scholars who are much concerned with ensuring appropriate protection of the environment. Because of the hazards and negative impact of climate change, many scholars think that climate governance is an unavoidable issue that society must seek to achieve. The article addresses the crucial need for effective climate governance amidst growing environmental and socio-economic challenges caused by climate change in Cameroon. Despite its commitment to international climate agreements, Cameroon faces significant legal and institutional gaps that hinder the integration of climate change considerations into national policies and sectoral plans. The research problem focuses on the absence of a comprehensive and enforceable legal framework that mandates public institutions to incorporate climate adaptation and mitigation measures into their operations, resulting in weak policy implementation and limited climate action effectiveness. The main objective is to appraise existing legal frameworks and propose strategic legal reforms that can enhance climate governance in Cameroon for sustainable development. Employing a qualitative methodology, the study reviews climate-related laws, policy documents, and stakeholder consultations to analyze gaps and opportunities in Cameroon's climate governance architecture. Major findings reveal that while Cameroon has ratified key international conventions and developed some sectoral strategies, its legal framework remains fragmented and non-binding, with poor enforcement mechanisms. Institutional weaknesses, insufficient public participation, corruption, and lack of climate mainstreaming into budgets are prominent challenges. The study concludes that Cameroon's climate governance can only be strengthened through comprehensive legal reforms that institutionalize climate obligations, improve coordination among ministries, and promote transparency and inclusiveness. It recommends enacting binding climate legislation, enhancing institutional capacities, ensuring public participation, and integrating climate considerations into all development policies and budgets to achieve effective climate governance aligned with sustainable development goals.

Keywords: strategies, climate, governance, climate governance

1. Introduction

The recognition of climate change as a global issue began in the late 20th century. Early conferences and accords, such as the Earth Summit in Rio de Janeiro in 1992, laid the foundation for international cooperation on

climate change¹. The Convention was formulated with the primary objective of instituting an international environmental accord to address the multifaceted challenges presented by climate change, emphasizing its ramifications on both natural and anthropogenically influenced ecosystems and the consequential implications for human health and societal well-being². An empirical observation central to the Convention was the notable disparity in per capita emissions between developed and developing nations. However, it also projected a surge in emissions from developing nations, a trajectory that aligns with their inherent socio-economic and developmental trajectories³. In light of these disparities and forecasts, the Convention underscored the imperative for a collaborative international approach. This approach predicates on the principle of ‘common but differentiated responsibilities,’ taking into account individual national capacities and the socio-economic paradigms within which they operate.⁴ The evolution of climate governance initially stems from diplomatic efforts between countries and later expanded through the involvement of transnational networks and non-governmental actors. The timeline above marks significant milestones in this progression. Pinpointing the exact origin is challenging, but a pivotal moment is the 1992 United Nations Framework Convention on Climate Change (UNFCCC) held in Rio, often regarded as the first major landmark in climate diplomacy.⁵ This conference brought together nations worldwide and aimed to replicate the success of the Montreal Protocol in eliminating ozone-depleting substances.⁶

As international climate governance has advanced, numerous transnational public and public-private networks have emerged to pursue its objectives within their respective domains. Examples include the C40 Cities Climate Leadership Group, the Global Cities Covenant on Climate (also known as the Mexico City Pact), and the Cities for Climate Protection Programme (CCPP). The 1992 United Nations Conference on Environment and Development (UNCED) served as a catalyst for this development. Regional and local networks embraced the emissions reduction targets set by the convention and explored ways to implement them locally. For instance, ICLEI – Local Governments for Sustainability committed to the UNFCCC framework to align local initiatives with global climate goals.⁷

Climate governance, meaning the effective management of the Earth’s climate system, is critically important. However, establishing strong collective frameworks to oversee and address climate impacts on a global scale faces unique challenges.⁸ These include the complexity of climate science, the ongoing evolution and refinement of scientific understanding about our planet’s systems, and the difficulty of effectively communicating this information to both the public and policymakers. Additionally, there is an urgent need to act quickly; the Intergovernmental Panel on Climate Change (IPCC) emphasizes that the world has a limited timeframe to prevent dangerous increases in global temperatures.⁹ Contemporary international climate governance is structured around three main pillars: mitigation, adaptation, and means of implementation. Each of these pillars encompasses numerous issues and policies, reflecting the diverse ways climate change influences society.¹⁰

As one of the country’s most vulnerable to climate-related risks in sub-Saharan Africa, Cameroon faces significant threats to its economy, environment, and social fabric, including agricultural disruption, infrastructure damage, increased poverty, and population displacement. Despite existing climate policies and commitments such as the updated Nationally Determined Contributions (NDCs), Cameroon’s progress has been hampered by

¹ Jiang, Y., & Li, X., (2002). Sustainable Development: 30 Years Since the Rio de Janeiro Earth Summit. *ACS Environmental Journal*, 2(6), pp. 480-481:480. Also available at <https://doi.org/10.1021/acsenvironau.2c00065> (Accessed on 18/1/2025)

² Lebeda, A.-M., & Chasek, P., (2021). Do Mega-Conferences Advance Sustainable Development? Still Only One Earth: Lessons from 50 years of UN sustainable development policy. International Institute for Sustainable Development. Available at <https://www.iisd.org/articles/deep-dive/do-mega-conferences-advance-sustainable-development> (Accessed on 18/1/2025)

³ *Ibid.*

⁴ Stavi, I., (2022). Rio (1992) to Glasgow (2021): Three decades of inadequate mitigation of climate change and its slow onset effects. *Frontiers in Environmental Science*, 1(2), pp. 90-130:121. Also available at <https://doi.org/10.3389/fenvs.2022.999788> (Accessed on 18/1/2025)

⁵ Yergin, D., (2020). *The New Map*. New York: Penguin Press, p. 12.

⁶ Bulkeley, H.; Newell, P., (2009). *Governing climate change*. New York: Routledge, p. 22.

⁷ ICLEI ‘Local Governments for Sustainability’. “AboutICLEI”. Archived from the original on 2009-08-13. Retrieved 15 May 2025.

⁸ Jagers, S.C.; Strippel, J., (2003). Climate Governance beyond the State. *Global Governance*, 9(3), pp. 385–400:389.

⁹ Bulkeley, H., (2010). Climate Policy and Governance: an editorial essay. *Wiley Interdisciplinary Reviews: Climate Change*, 1(3), pp. 311–313:310.

¹⁰ *Ibid.*

institutional weaknesses, limited financial resources, and coordination challenges among government agencies. This chapter explores strategic approaches to strengthen Cameroon's climate governance by enhancing institutional capacity, improving policy integration, mobilizing climate finance particularly from the private sector—and fostering multi-stakeholder collaboration. It emphasizes the importance of aligning climate action with sustainable development goals to build resilience and ensure inclusive growth.

2. Main Strategies Taken by Cameroon in Ensuring Fair Climate Governance

Cameroon has been actively involved in international climate negotiations since 1994 when the country became a party to the United Nations Framework Convention on Climate Change (UNFCCC). The country's engagement in these negotiations is crucial for preparing Cameroon for the impacts of climate change.

Cameroon has implemented a range of strategies for climate governance aimed at both adaptation and mitigation of climate change impacts, embedded within its national development framework and international commitments. The strategies stems from the legal, institutional and policy frameworks put in place to achieve climate governance.

2.1 The Ratification and Enactment of Various Legal Instruments on Climate Related Issues

Creating framework laws, regulations or public policies on climate change: these processes can generate dialogue and consultations that may inform the development and regulation of standards. They regulate climate governance at the national level and set out duties and rights that people can claim on climate action. For example, to create Peru's framework law on climate change and its regulations, dialogues (promoted by the Ministry of the Environment and different organizations) were held with multiple actors and sectors, including young people. The content of the bill was discussed in these spaces and put out for public consultation. The public's input was then included in the draft texts that were discussed. However, at the international level, Cameroon have signed and ratified different international treaties and conventions on climate related issues¹ as well as laws touching on climate. At the national level climate governance frameworks take the form of climate change policies that define how climate change will be addressed at national level and the roles and responsibilities of different stakeholders, including government, private sector, civil society and affected citizens. These goes a long way as part of the strategies adopted to achieve climate governance in Cameroon.

2.1.1 United Nations Framework Convention on Climate Change (UNFCCC)

The Earth Summit in Rio de Janeiro in 1992 culminated in the adoption of the United Nations Framework Convention on Climate Change (UNFCCC). The UNFCCC is a landmark international agreement that has played a crucial role in global climate change governance². It has provided a framework for international cooperation and action on climate change, bringing together countries from around the world to address this pressing issue. The convention has facilitated the negotiation and adoption of subsequent agreements, which have further advanced global efforts to combat climate change.³ The UNFCCC has also established a platform for ongoing dialogue and collaboration among parties, enabling the sharing of knowledge, experiences, and best practices in climate change mitigation and adaptation⁴. The primary objective of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Under the UNFCCC, every Party is obligated to submit their national Greenhouse Gas (GHG) inventories⁵. Its annual Conference of the Parties (COP) meetings lead to various

¹ By virtue of article 45 of Law No.96/06 of 18 January 1996 to amend the Constitution of 2 June, 1972. States that duly approved or ratified treaties and international agreements, upon publication, have authority superior to national laws, provided the other party implements the agreement. This means that if Cameroon enters into an international agreement that conflicts with existing national law, the treaty or agreement will take precedence as long as the other party also adheres to it.

² Finlayson, C., (2018). Climate change: United Nations Framework Convention on Climate Change (UNFCCC) and Intergovernmental Panel for Climate Change (IPCC). In *The wetland book I: Structure and function, management and methods* (pp. 1-5). Springer. https://doi.org/10.1007/978-90-481-9659-3_127 (Accessed on 18/4/2025)

³ Iwueke, N. T., & Alagoa, H. E., (2018). United Nations Framework Convention on Climate Change (UNFCCC) National Level Reporting of Greenhouse Gas Emissions for Nigeria 1990 to 2014. *SSRN Electronic Journal*, available at <https://doi.org/10.2139/ssrn.3239155> (Accessed on 18/4/2025)

⁴ González, S. C., & Numer, E., (2020). What is climate governance? UNICEF, <https://www.unicef.org/lac/media/19651/file/what-is-climate-governance.pdf> (Accessed on 20/4/2024)

⁵ Above, M. A., & Bankole, S. I., (2018). Petroleum industry activities and climate change: global to national perspective. In *The political ecology of oil and gas activities in the Nigerian aquatic ecosystem*, (pp. 277-292). Academic Press. <https://doi.org/10.1016/B978-0-12-809399-3.00018-5> (Accessed on 18/5/2025)

agreements, with the Kyoto Protocol and the Paris Agreement being the most notable.¹

2.1.2 The Kyoto Protocol 1997

The Kyoto Protocol is an international agreement that was adopted in 1997 as an extension of the United Nations Framework Convention on Climate Change (UNFCCC)². It aimed to address the issue of greenhouse gas emissions and combat climate change. It placed mandatory targets on industrialized countries, recognizing their role in the current levels of greenhouse gases³. The Kyoto Protocol delineates explicit and quantifiable measures for the Parties. One of its most ambitious mandates is the reduction of global GHG emissions by a minimum of 5% during the commitment span of 2008 to 2012. This pivotal accord underscores the imperative of constraining global warming to a range of 1.5–2.0°C relative to pre-industrial benchmarks.⁴

The 1997 Kyoto Protocol, which sets industrialised countries binding targets for emissions reductions, is one of the monumental achievements of the UNFCCC. Currently, no African country is required to take up emission targets although some, for example South Africa, have voluntarily set targets for themselves.

2.1.3 The Paris Agreement of 1998

The Paris Agreement represents a crucial step in international efforts to combat climate change and promote sustainable development. It is a significant international treaty that aims to address climate change and limit global warming to well below 2 degrees Celsius above pre-industrial levels⁵. It includes key provisions such as nationally determined contributions, a global stocktake, a transparency framework, and support for adaptation and finance. The agreement highlights the need for financial resources to support developing countries in their climate actions, including mitigation and adaptation efforts⁶. It sets a goal of mobilizing \$100 billion per year by 2020 from a variety of sources⁷. The agreement has been ratified by 197 countries including Cameroon, demonstrating global commitment to addressing climate change. Unlike the Kyoto Protocol, the Paris Agreement requires all countries to outline their plans for climate change.⁸

Cameroon, in its proactive approach to addressing climate change, has earnestly sought international partnerships to amplify its climate governance efforts. Recognizing the multifaceted nature of the challenges posed by climate change, the nation understands the need to draw upon the collective intelligence, resources, and experiences of the global community.⁹ These collaborations with international bodies, non-governmental organizations (NGOs), and other nations have not only served as platforms for dialogue and knowledge exchange but have also facilitated the transfer of vital technology, mobilization of funds, and the sharing of specialized expertise. Such synergies are invaluable, especially when crafting policies and strategies that are both locally relevant and globally informed. Through these partnerships, Cameroon is positioning itself to be both a beneficiary and a contributor in the global quest to combat and adapt to the ever-evolving threats of climate change.

2.1.4 Law No. 2011/022 Governing the Electricity Sector in Cameroon, 14th December 2011

The legislation addresses the electricity sector, aiming to promote its modernization and growth. Part IV outlines broad objectives to encourage renewable energy use and improve energy efficiency, particularly within the scope

¹ Maslin, M. A., Lang, J., & Harvey, F., (2023). A short history of the successes and failures of the International climate change Negotiations, UCL Open Environment, 5. <https://doi.org/10.14324/111.444/ucloe.000059> (Accessed on 19/5/2025)

² *Ibid.*

³ Maizland, L. Global Climate Agreements: Successes and Failures. Council on Foreign Relations. <https://www.cfr.org/backgrounder/paris-global-climate-change-agreements> (Accessed on 20/4/25)

⁴ Fawzy, S., Osman, A. I., Doran, J., & Rooney, D. W., (2020). Strategies for mitigation of climate Change., a review of Environmental Chmistres, 2020, pp. 2069-2094:2075. <https://doi.org/10.1007/s10311-020-01059-w> (Accessed on 18/11/2025)

⁵ Teo, D. Y. Y., (2023). Was COP26 Critical for the Implementation of the 2015 Paris Agreement?. In *Climate and Energy Governance for a Sustainable Future* (pp. 29-41). Singapore: Springer Nature Singapore. https://doi.org/10.1007/978-981-19-8346-7_3 (Accessed on 6/5/2025)

⁶ Denchak, M., (2021). Paris Climate Agreement: Everything You Need to Know Natural Resources Defense Council. <https://www.nrdc.org/stories/paris-climate-agreement-everything-you-need-know> (Accessed on 30/4/2025)

⁷ Kozul-Wright, R., (2023, June 14). A climate finance goal that works for developing countries.

⁸ *Ibid.*

⁹ Climate change / Cameroon | Interactive Country Fiches. <https://dicf.unepgrid.ch/cameroon/climate-change> (Accessed on 18/12/2024)

of expanding rural electrification.¹ It mandates the government to support nationwide rural electrification, either through connection to a centralized grid or via distributed generation. Priority is given to distributed generation from renewable sources, except when these are limited, insufficient, or costly. The law permits the transmission system operator or local distributors to purchase excess electricity produced from renewable energy.²

Furthermore, the law commits the State to fostering renewable energy development by establishing regulations for research, development, equipment manufacturing, and project financing. It also allows for the creation of an agency dedicated to renewable energy promotion when needed. Electricity utilities are required to connect renewable energy sources to the grid, with connection fees paid by the applicant, while the terms for energy purchase by utilities are determined by decree. Additionally, the law advocates for energy efficiency initiatives across industrial, transportation, commercial, and residential sectors and authorizes the government to set regulations defining the responsibilities, conditions, and resources necessary to implement these measures.

2.1.5 Forestry Code 2024

The Cameroon Forestry Code of 2024³ is a strategic legal framework aimed at achieving climate governance by promoting sustainable forest management, enhancing community rights, and regulating forest use to mitigate deforestation and forest degradation, which are critical drivers of climate change in Cameroon. The 1994 law mandates detailed forest management plans for logging companies to ensure ecological, economic, and social sustainability of production forests. This aims to balance timber production with conservation; thereby reducing unsustainable harvesting that contributes to carbon emissions⁴. The law classifies forests into Permanent Forest Estate (PFE), which includes protected forests where logging is prohibited, and Non-Permanent Forest Estate, which can be used for production or conversion under strict guidelines⁵. This zoning supports conservation efforts and sustainable use, critical for maintaining forest carbon stocks⁶. The Code recognizes community forests, granting local communities rights to manage and benefit from forest resources under approved management plans. This decentralization promotes local stewardship, which is essential for effective forest conservation and climate mitigation.⁷

The law incorporates principles like the “Polluter Pays Principle” and “Responsibility Principle,” holding polluters accountable for environmental harm. This supports climate governance by enforcing environmental responsibility in forest exploitation⁸. The Code aims to improve transparency and efficiency in allocating harvesting rights, which is crucial to combat illegal logging a major cause of deforestation and carbon emissions.

However, despite these strategic provisions, challenges remain. Studies indicate that enforcement has been weak, with many logging operations not fully adhering to sustainable management plans, limiting the law’s effectiveness in reducing deforestation and enhancing climate governance. Additionally, benefit-sharing mechanisms and forest rights for some stakeholders are inadequate, hindering incentives for sustainable practices and climate mitigation.

Cameroon, enriched by a mosaic of cultural diversity and set against the backdrop of varied landscapes, holds a distinct position in the African continent due to its socioeconomic and environmental intricacies. These dynamics, ranging from its expansive economy to its extensive natural resources, give it a unique edge in taking a leadership role in climate governance within the region. Recognizing the delicate interplay between global obligations and localized necessities, Cameroon has continuously sought to harmonize its international

¹ Cameroon Ramps Up Climate Action with Multi-Agency Agreement <https://www.stopblablacam.com/society/0805-12314-cameroon-ramps-up-climate-action-with-multi-agency-agreement> /Accessed on the 15/5/2025)

² Progress, Challenges and Prospects for Climate Policy in Cameroon. <https://camepi.org/agriculture-and-trade/progress-challenges-and-prospects-for-climate-policy-in-cameroon/> (Accessed on 15/5/2025)

³ Law No. 2024/008 of 24th July 2024 to lay down Forestry and Wildlife Regulations.

⁴ Sustainable forest management in Cameroon needs more than... https://www.cifor-icraf.org/publications/pdf_files/articles/ACerutti0801.pdf (Accessed on 18/4/2025)

⁵ Cameroon Case Study – AquaDocs. <https://aquadocs.org/server/api/core/bitstreams/485b7d24-2378-4f1d-8d43-2a015b319464/content> (Accessed on 17/4/2025)

⁶ Overview and Analyses of Key National Policies, Strategies and... https://www.proforest.net/fileadmin/uploads/proforest/Documents/Publications/Overview_and_Analyses_-_Cameroon_June_2021.pdf (Accessed on 18/9/2025)

⁷ Community forestry in Cameroon. <https://www.iied.org/sites/default/files/pdfs/migrate/G04191.pdf> (Accessed on 18/5/2025)

⁸ *Ibid.*

commitments with its domestic priorities. This approach not only ensures alignment with the broader goals of international climate conventions but also addresses the pressing needs of its populous and diverse citizenry. By judiciously balancing these global responsibilities with inherent national needs, Cameroon is strategically positioning itself to delineate a future marked by sustainability, resilience, and inclusive growth. As the nation embarks on this journey, its strategies and successes can serve as a template for other African countries aiming to bolster their climate governance frameworks.

2.2 The Creation of Various Implementing Institutions

The Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED) leads climate governance, supported by the National Observatory on Climate Change (ONACC).¹ Cameroon has developed key policy documents such as the National Climate Change Adaptation Plan (PNACC) 2015-2019 and updated its Nationally Determined Contribution (NDC) in 2021, committing to a 35% reduction in greenhouse gas emissions by 2030, conditional on financing.²

2.2.1 The Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED)

MINEPDED is the key government authority responsible for coordinating Cameroon's climate agenda, including policy formulation, implementation, and evaluation of climate strategies such as the National Adaptation Plan for Climate Change (NAPCC) and the Nationally Determined Contribution (NDC)³. MINEPDED led the development and adoption of the NAPCC, a strategic plan with 20 adaptation programmes targeting sectors like agriculture and water⁴. It is responsible for coordinating implementation and annual evaluation, strengthening institutional capacity for climate resilience⁵. The Ministry works with other ministries (Economy, Finance, Planning) and local governments to implement climate policies, although formal definitions of roles and coordination mechanisms need strengthening.⁶ MINEPDED is tasked with coordinating climate change policies and activities. While MINEPDED leads climate governance, it faces resource and capacity constraints that limit its effectiveness. There is also insufficient inter-ministerial coordination, which hampers integrated climate action across sectors.⁷

The First National Communication to the UNFCCC, submitted in 2005, identifies health, agriculture and coastal zones as the three main areas of vulnerabilities. The National Communication established the *Cellule Nationale des Changements Climatiques* (CNCC) within the Ministry of the Forests and Environment. In 2004, this Ministry was divided into the Ministry of Forests and Wildlife and the Ministry of Environment and Nature Protection (MINEP), and in 2012 MINEP became the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED), reflecting an increased focus on sustainable development issues. The CNCC's goals include creating a GHG inventory, establishing adaptation measures, implementing an information system and database, designing sectoral projects addressing priority climate actions and evaluating climate change impacts and policies.⁸

2.2.2 National Observatory on Climate Change (ONACC)

In 2009, a Presidential Decree created the National Climate Change Observatory (ONACC) under the supervision of MINEP (now part of MINEPDED). This Decree established the National Climate Change Observatory (ONACC) as a national legal implementing body of climate change policies (though not yet in operation as of 2014). The Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED) is responsible for the supervision of the ONACC, and overall co-ordination of climate change

¹ ONACC | Observatoire National sur les Changements Climatiques. <https://onacc.cm> (Accessed on 17/4/2025)

² Climate change / Cameroon | Interactive Country Fiches. <https://dicf.unepgrid.ch/cameroon/climate-change> (Accessed on 14/4/2025)

³ Cameroon: Request for an Arrangement under the Resilience and ... <https://www.elibrary.imf.org/view/journals/002/2024/053/article-A001-en.xml> (Accessed on 15/4/2025)

⁴ 2 plan national climate du Cameroun – Minepded. <https://minepded.gov.cm/wp-content/uploads/2025/06/PNC-APRIL-2025-EN-1.pdf> (Accessed on 18/4/2025)

⁵ Cameroon – on the Road to Climate Resilience through its First National Adaptation Plan for Climate Change <https://www.gwp.org/en/we-act/change-and-impact/Impact-Stories/cameroon--on-the-road-to-climate-resilience-through-its-first-national-adaptation-plan-for-climate-change/> (Accessed on 17/4/2025)

⁶ *Ibid.*

⁷ National Observatory on Climate Change (Cameroon) - Wikipedia [https://en.wikipedia.org/wiki/National_Observatory_on_Climate_Change_\(Cameroon\)](https://en.wikipedia.org/wiki/National_Observatory_on_Climate_Change_(Cameroon)) (Accessed on 17/4/2025)

⁸ *Ibid.*

activities and policies within the country. It is supervised by the Ministry of Finance for the financial matters.¹

The responsibilities of the ONACC are to: establish relevant climate indicators for monitoring environmental policy; carry out prospective analyses to provide a vision on climate change, to provide weather and climate data to all sectors concerned and to develop annual climate balance of Cameroon;² educate and promote studies on the identification of indicators, impacts and risks of climate change; collect, analyse and provide policy makers, national and international organisations information on climate change in Cameroon; initiate activities to promote awareness on and provide information to prevent climate change; serve as operational instrument in the context of other activities to reduce greenhouse gas emissions; propose to the government preventive measures for GHG reduction as well as mitigation and/or adaptation to the adverse effects and risks of climate change; serve as an instrument for cooperation with other regional and international observatories operating in the climate sector; to facilitate the achievement of consideration to payment for ecosystem services provided by forests through the management, conservation and restoration of ecosystems; and to strengthen the capacity of institutions and bodies responsible for collecting data on climate change to create a nation-wide, reliable network for collecting and transmitting the data.³

The Board of Advisers formulates general policies of the ONACC. The Board consists of following members: the President of the Republic; the Prime Minister; a representative from the relevant ministries (MINEPDED, Ministries of Forests, Finance, Technical Cooperation, Scientific Research Agriculture, Water and Energy, and Meteorology); and elected members. The Board members are appointed by Presidential Decrees. Members and the chair of the Board are appointed for the term of three year, which is renewable once.⁴

ONACC's wide-ranging responsibilities include establishing climate indicators, monitoring and forecasting climate change, and providing climate data to the government and all sectors impacted by climate change. It also advises the government on mitigation and adaptation strategies, acts as a liaison for regional and international cooperation, and supports other organizations in developing their capacity to gather climate-related information.⁵

ONACC is a governmental body established in 2009 to monitor and evaluate the socioeconomic and environmental impacts of climate change in Cameroon. It collects, analyzes, and disseminates climate data and indicators critical for informed decision-making⁶. ONACC produces annual climate reports, greenhouse gas inventories, and carbon sequestration assessments, which are essential for Cameroon's compliance with international agreements like the Paris Agreement and for accessing climate finance.⁷

The Observatory proposes preventive and adaptive measures to the government to mitigate adverse climate effects. It also promotes awareness and education on climate change risks and adaptation strategies. ONACC supports capacity building for climate data collection and collaborates with national and international partners. It also fosters synergy among government agencies and local authorities to enhance climate resilience.⁸

2.2.3 The Intergovernmental Panel on Climate Change (IPCC) and Non-Governmental Organizations (NGOs)

Beyond the UNFCCC, a myriad of other organizations actively shaped the global response to climate change, offering diverse perspectives, resources, and expertise. The World Bank, for instance, dedicates substantial financial resources and technical knowledge to aid countries in their adaptation and mitigation efforts. Through funding for infrastructure projects, capacity-building initiatives, and research, the World Bank ensures that nations, especially those most vulnerable, are equipped to address climate-induced challenges.⁹

The Intergovernmental Panel on Climate Change (IPCC) is another cornerstone in the global climate effort. It

¹ African Development Bank Group (AFDB), *Études de développement des énergies renouvelables et d'efficacité énergétique*, 2014. [URL: <http://www.afdb.org/en/projects-and-operations/project-portfolio/project/p-cm-fa0-007/>]. (Accessed 31 March 2025)

² Africa Adaptation Programme (APP), Cameroon, 2014. [URL: <http://www.undp-aap.org/countries/cameroon/>]. (Accessed 26/4/2025)

³ Prime Minister's Office, Official Website, 2019. [URL: <http://www.spm.gov.cm/en.html>]. (Accessed 31 March 2025)

⁴ Republic of Cameroon, Presidency of the Republic, 2014. [URL: <https://www.prc.cm/en/>] Accessed 31 March 2025)

⁵ Presidential Decree No. 2009/410 establishing the creation ...
https://climate-laws.org/document/presidential-decree-no-2009-410-establishing-the-creation-organization-and-functions-of-the-national-observatory-on-climate-change_5e00 (Accessed on 17/4/2025)

⁶ Observatoire National sur les Changements Climatiques – ONACC. https://onacc.cm/pages/news_detail.php?news_id=43 (Accessed on 17/4/2024)

⁷ *Ibid.*

⁸ Equipe – ONACC. https://onacc.cm/pages/dg_onacc.php (Accessed on 18/4/2025)

⁹ *Ibid.*

consolidates scientific research from around the world to provide objective insights into the state of the climate and potential future scenarios. By offering evidence-based recommendations and drawing attention to critical areas of concern, the IPCC shapes policy decisions at both national and international levels, ensuring they are grounded in the latest scientific understanding.

Meanwhile, non-governmental organizations (NGOs) bring a grassroots dimension to the global climate movement. Through advocacy, research, and on-the-ground projects, NGOs bridge the gap between local concerns and global discussions. They highlight the voices of those most affected by climate change, ensuring that global strategies are both inclusive and effective. Furthermore, NGOs often pioneer innovative solutions, collaborate across borders, and act as watchdogs, holding governments and corporations accountable for their environmental commitments. Collectively, these organizations contribute layers of expertise, advocacy, and action, making the global response to climate change multifaceted and robust.

2.2.4 The Steering Committee for Activities Relating to Climate Governance

In 2012, a Prime Ministerial Decree No.103/CAB/PM regarding the creation, organization and operation of the Steering Committee for activities to reduce emissions from deforestation, degradation, sustainable management and conservation of forests, REDD+, 13th June 2012 was passed.

This Decree established the Steering Committee for REDD+. The Committee is headed by the Ministry of Environment, Nature Protection and Sustainable Development (MINEPDED). The Committee is responsible for formulating proposals for REDD+ strategy options, providing feedbacks regarding the implementation of the strategies, developing selection criteria for REDD+ projects, evaluating REDD+ pilot project proposals, promoting REDD+ activities and validating the work of the Technical Secretary.¹ The Technical Secretary is chaired by MINEPDED and assisted by the Minister of Forests and Fauna (MINFOF). Other members include the Focal Point of the UNFCCC and the National coordinator of REDD+.²

2.2.5 Courts for Sanctions

Researchers have highlighted the growing role of courts in climate governance. Their influence can be seen across five interconnected areas: holding parties accountable, reshaping power dynamics, addressing vulnerabilities and injustices, expanding the scope and effectiveness of international climate law, and using climate science to resolve legal disputes. Through their innovative actions in these fields, courts are emerging as key players in global climate governance.³

For instance, courts support climate governance by empowering stakeholders and affected groups, ensuring climate change is prioritized on political agendas, raising public awareness about the need for climate action, interpreting and enforcing a wide range of climate-related laws at domestic, regional, and international levels, and settling disputes involving climate-related injustices. In doing so, courts provide diverse stakeholders with a legal platform to address and resolve conflicts connected to climate change.⁴

2.3 Adoption and Enforcement of Policy Frameworks

The Cameroon government, recognizing the imminent threats of climate change, launched several policies and initiatives like the Cameroon Vision 2035, June 2009, National Development Strategy (SND30), the National Adaptation Plan for Climate Change (NAPCC) and host of others.

2.3.1 Cameroon Vision 2035

This document outlines Cameroon's broad policy framework aimed at national development. Its main goals include drastically reducing poverty, achieving middle-income status, becoming a newly industrialized country, and strengthening democracy and national unity. The Ministry of Economy, Planning and Regional Development prepared the document.

Vision 2035 recognizes climate change as one of the two primary economic challenges facing Cameroon. It highlights the risks posed by overexploitation of natural resources and environmental degradation, which contribute to climate change impacts. Given Cameroon's partial location in the Sahel region, the country already experiences adverse effects such as desertification, rising temperatures, unpredictable seasons, sea-level rise, floods, volcanic activity, landslides, rockfalls, and toxic emissions. The document emphasizes reducing

¹ United Nations Development Programme (UNDP), AAP Knowledge Management Needs Survey Report 2012: April 2012, 2012. URL: http://undp.adaptationlearning.net/sites/default/files/KMNS%20Report%20-%20English_0.pdf. (Accessed 31 July 2024)

² *Ibid.*

³ Kotzé, J.; Mayer, B; Harro V; Setzer, J; et al., (2024). Courts, climate litigation and the evolution of earth system law. *Global Policy*, 15(1), pp. 5–22:15.

⁴ *Ibid.*

greenhouse gas emissions as a crucial regional strategy to combat climate change. The government commits to pursuing high economic growth while meeting the Millennium Development Goals. According to the proposed timeline for Vision 2035, the first phase (2010–2019) includes drafting and implementing major environmental policies to address climate change impacts.¹ Climate change mitigation is also one of three key objectives for the second phase (2020–2027). Planned actions involve protecting and sustainably managing forest ecosystems, combating desertification, and supporting regional initiatives such as the Niger Basin and Lake Chad Basin projects. The document also mentions diversifying energy sources and replacing fossil fuels with clean energy, though it does not specify quantitative targets.²

2.3.2 National Development Strategy (SND30)

Climate change is recognized as a critical challenge, with adaptation and mitigation integrated as core objectives to achieve sustainable and inclusive growth.³ The government commits to incorporating climate concerns into sectoral policies, strengthening natural resource management, and developing waste management strategies promoting corporate social responsibility.⁴

2.3.3 National Adaptation Plan for Climate Change (NAPCC)

Adopted in 2015, the NAPCC outlines 20 adaptation programs across sectors like agriculture, water, and sanitation, emphasizing improved climate monitoring, early warning systems, and capacity building.⁵ It promotes coordination among sectoral administrations, decentralized authorities, civil society, and international partners. Implementation is structured in two five-year action plans, with MINEPDED responsible for coordination and evaluation.⁶

2.3.4 Cameroon's Engagement to REDD+ and LULUCF

Since 2005, Cameroon has been actively involved in REDD+, with its REDD+ Readiness Plan (RPP) approved in 2013. That same year, the country secured a readiness grant of USD 3.6 million⁷. The Ministry of Environment, Protection of Nature and Sustainable Development (MINEPDED) is responsible for overseeing REDD+ initiatives. Cameroon participates in various international and national programs focused on improving forest management and addressing land use challenges⁸. Notably, it was among the first countries to sign the European Union's Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA). The country is also engaged in global REDD+ discussions.⁹

In 2012, Cameroon established the REDD+ Steering Committee, led by MINEPDED, which approves and guides activities aimed at reducing emissions from deforestation and forest degradation. The Forest Carbon Partnership Facility funded Cameroon's Readiness Preparation Proposal (R-PP) in 2013.

Collaboration with non-governmental organizations (NGOs) plays a key role in shaping forestry and land use policies. For example, in 2011, MINEPDED organized a workshop bringing together domestic and international stakeholders including civil society organizations (CSOs), government officials, and private sector representatives to explore ways for civil society to contribute more effectively to the national REDD+ process. This event led to the creation of a National CSO Platform on REDD and Climate Change, designed to serve as a

¹ Republic of Cameroon, Growth and Employment Strategy Paper: Reference Framework for Government Action over the Period 2010-2020, 2009. <http://www.imf.org/external/pubs/ft/scr/2010/cr10257.pdf>. (Accessed 4 January 2025)

² *Ibid*

³ Climate Change in Cameroon: Key Challenges and Reform ... <https://www.elibrary.imf.org/view/journals/002/2024/052/article-A003-en.xml> (Accessed on 14/4/2025)

⁴ Cameroon: Selected Issues; IMF Country Report No. 24/52; December 7, 2023 <https://www.elibrary.imf.org/downloadpdf/view/journals/002/2024/052/article-A003-en.pdf> (Accessed on 14/4/2025)

⁵ Cameroon – on the Road to Climate Resilience through its First National Adaptation Plan for Climate Change <https://www.gwp.org/en/we-act/change-and-impact/Impact-Stories/cameroon--on-the-road-to-climate-resilience-through-its-first-national-adaptation-plan-for-climate-change/> (Accessed on 14/4/2025)

⁶ Cameroon: Preparing National Adaptation Plan for Climate Change... <https://iwrmaactionhub.org/node/649/printable/pdf> (Accessed on 14/4/2025)

⁷ Jänicke M., (2017). The multi-level system of global climate governance—the model and its current state. *Environmental Policy and Governance*, 27(2), pp.108-121:114.

⁸ Phuong M, Kathryn D, Gleeson B., (2018). Metropolitan strategies and climate governance: Towards new evaluative approaches. *International Journal of Urban and Regional Research*, 42(5), pp. 934-951:950.

⁹ *Ibid*.

bridge between the government and other stakeholders.

2.3.5 African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)

This 10-year strategic framework sets out the continent's collective approach to climate governance, aiming to build climate resilience, promote low-emission development pathways, and enhance cooperation among African countries.¹ It aligns with Africa's Agenda 2063 and the UN's Sustainable Development Goals to support sustainable, climate-resilient development across the continent.²

This Strategy provides harmonized priorities and actions for adaptation, mitigation, resource mobilization, technology development, and inclusive climate governance. It also complements existing regional initiatives such as the Africa Adaptation Initiative and the Great Green Wall.³ The African Union Commission coordinates its implementation alongside regional economic communities and member states to ensure effective regional collaboration on climate change.

The Action Plan (2022-2032) seeks to achieve climate governance through Strengthening governance and policy frameworks by enhancing climate policy coherence, multi-scalar governance, and institutional coordination across national, regional, and continental levels.⁴ This includes improving the roles and coordination among the African Union, regional economic communities (RECs), member states, and other stakeholders to ensure harmonized climate action; Coordinated regional climate action to unify efforts across countries, facilitating joint planning, implementation, and monitoring of climate initiatives.⁵ This helps in addressing transboundary climate risks and leveraging regional synergies for mitigation and adaptation; anticipatory governance and long-term planning by promoting proactive, forward-looking strategies that integrate climate risks into development planning and policy-making, ensuring resilience and sustainability over the next decade and beyond; and establishing robust monitoring, evaluation, and learning (MEL) systems to track progress,⁶ enhance transparency, and improve climate governance effectiveness through feedback mechanisms and stakeholder engagement, building climate-resilient capacities by supporting adaptation and mitigation efforts that reduce vulnerability to climate impacts while promoting low-emission development pathways aligned with Africa's socio-economic goals and Agenda 2063.⁷

3. Other Strategies

Beyond the efforts of nation-states to collaborate internationally on climate governance, a growing number of nation-states, non-state actors, and private entities are engaging in various simultaneous global climate governance partnerships. These participants include cities, regions, non-governmental organizations (NGOs), and corporations.⁸ Their rising involvement has prompted scholars to rethink the dynamics of power within climate governance and the interplay between public and private authority.

To better understand the different types of climate governance networks, it is helpful to categorize their components.⁹ Research on climate governance identifies different modes of governance such as self-governing, enabling governance, provision-based governance, and authority-based governance along with distinctions based on the types of actors involved and the political scale (supranational, national, regional, local). For this discussion, partnerships are classified based on the actors involved into three groups: public climate governance partnerships, public-private climate governance partnerships, and private climate governance partnerships. Although modes of governance and scale are also valid ways to categorize these networks, grouping them by

¹ Ayodeji O, Oluwatayo B., (2023). Climate Governance, Resilience and Entrepreneurship in Nigeria: An Empirical Review. *Disaster Risk Reduction for Resilience: Climate Change and Disaster Risk Adaptation*, 5, pp. 445-454:452.

² Amobi D., Onyishi T., (2015). Governance and climate change in Nigeria: A public policy perspective. *Journal of Policy and Development Studies*, 9(2), pp. 199-209:203.

³ *Ibid.*

⁴ Onwusameka S, Gladson L, Ugbebor J., Orikpete F., (2023). Developing climate governance strategies in Nigeria: An emphasis on methane emissions mitigation. *The Journal of Engineering and Exact Sciences*, 9(9), 173-183.

⁵ Sippel M, Jenssen T., (2009, November 27). What about local climate governance? A review of promise and problems. *A Review of Promise and Problems*, 2009, pp. 89-106:101.

⁶ Wolfram M, Jeroen V, et al, (2019). Learning in urban climate governance: concepts, key issues and challenges. *Journal of Environmental Policy & Planning*, 21(1), pp. 1-15:9.

⁷ Kern K, Gotelind A, Sustainable E, Climate P., (2008). Governing climate change in cities: modes of urban climate governance in multi-level systems. *Competitive Cities and Climate Change*, 171, pp. 171-195:190.

⁸ Bulkeley, H., Newell, P., (2009). *Op.cit.*

⁹ Bailey I., (2007). *Op.cit.*

participating actors is considered to provide the clearest differentiation, despite some overlap among approaches.¹

3.1 Establishment of Partnerships

This takes the form of either public or private partnership.

3.1.1 Public Partnerships

Multilateral Environmental Agreements (MEA's): MEA's can take the form of non-legally binding declarations, or legally binding treaties. Treaties between nations include framework conventions like the Rio Declaration on Environment and Development, signed at the 1992 United Nations Framework Convention on Climate Change (UNFCCC). There are four main criticisms of MEAs. First, their policies have been weakened by successive compromises between bargaining nations.² Second, where one nation refuses to participate (as occurred with the United States withdrawal from Kyoto), they can still benefit from measures taken by participating nations (for example measures to reduce their GHG emissions), even though they have not had to take action themselves.³ Third, developing country governments lack the capacity to shape and influence negotiating processes, giving developed countries disproportionate power to influence proceedings.⁴ Fourth, the number of countries involved in international meetings inevitably leads to conflicts of interest between nations that can make it difficult to reach legally binding agreements.⁵

Global city and regional partnerships: Beyond the local scale, the success of urban climate governance depends on horizontal and vertical collaboration between regions and cities.⁶ Global city and regional partnerships have been identified as showing particular promise.⁷ These can be built into public non-state networks, for example the C40 network, the Global Cities Covenant on Climate, the Cities for Climate Protection Programme (CCPP) and the International Council for Local Environmental Initiatives. The Under 2 Coalition aims to foster action among subnational governments. Through these networks, mitigation measures and adaptation strategies can be adopted by participating cities worldwide. A criticism of global city and regional partnerships is that their exclusive nature limits influence to participating cities and regions which risks drawing resources away from less powerful city and regional actors.⁸

3.1.2 Private Partnerships

Self-Regulating Private Networks: Recently, multinational corporations have formed partnerships within private networks designed to promote industry self-regulation. These networks are frequently coordinated by NGOs and receive government funding.⁹ Examples include the Global Gas Flaring Reduction Partnership and the Carbon Disclosure Project, highlighting the critical role NGOs play in integrating market participants into environmental and climate governance¹⁰. While these networks have the potential to drive behavioral changes conducive to effective global climate governance, they currently operate with minimal regulation and face criticism regarding their legitimacy, accountability, and transparency.¹¹

3.1.3 Public-Private Partnerships

- **Type II Partnerships**

¹ Betsill, M. M.; H. Bulkeley, (2006). Cities and the multilevel governance of global climate change. *Global Governance*, 12(2), pp. 144-159:150.

² James Evans, (2011). *Environmental Governance*. London: Routledge, 67.

³ *Ibid.*

⁴ Bulkeley, H.; Newell, P., (2009). *Op.cit.*

⁵ James E, (2011). *Op.cit.*

⁶ Alber, G.; K. Kern, Governing climate change in cities: modes of urban climate governance in multi-level systems (Accessed on 18/4/2025)

⁷ Pattberg, P., J. Strippel, (2008). Beyond the public and private divide: remapping transnational climate governance in the 21st century. *International Environmental Agreements: Politics, Law and Economics*, 8(4), pp. 367–388:380.

⁸ *Ibid.*

⁹ Pattberg, P., O. Enechi, (2009). The business of transnational climate governance: legitimate, accountable, and transparent. *St Antony's International Review*, 5(1), pp. 76–98:90.

¹⁰ James Evans, (2011). *Environmental Governance*. London: Routledge., *Op.cit.*

¹¹ Pattberg, P., J. Strippel, (2008). Beyond the public and private divide: remapping transnational climate governance in the 21st century. *International Environmental Agreements: Politics, Law and Economics*, 8(4), pp. 367–388:270.

These are collaborative efforts involving public, private, and civic organizations that arise from international treaties. The term “Type II” distinguishes these partnerships from “Type I” partnerships, which are traditional multilateral agreements directly stemming from such treaties. A notable example of Type II partnerships includes the roughly 300 collaborations established during the 2002 World Summit on Sustainable Development.

- **Vertical “Supply Chain” Public-Private Partnerships**

These partnerships focus on implementing internationally agreed goals, like the Millennium Development Goals, by fostering cooperation along supply chains. This is done by facilitating interactions among private sector stakeholders and encouraging constructive dialogue between public and private entities to develop and execute government policies, regulations, programs, and initiatives. The UK’s Energy Efficiency Partnership for Homes exemplifies this model.¹

- **Targeted Phaseout Initiatives**

The Powering Past Coal Alliance is a global coalition of both governmental and non-governmental actors working to expedite the worldwide phase-out of coal. Similar networks, such as the ZEV Alliance and the Global Drive to Zero, aim to eliminate combustion engine vehicles in light-duty and heavy-duty categories, respectively.²

3.2 Creating Public Awareness

Creating public policies and making decisions that directly relate to the international climate governance processes of the United Nations Framework Convention on Climate Change (UNFCCC): for example, the national communications that each country must present to the UNFCCC may be a starting point for climate activists to request spaces for accountability regarding climate ambition in their countries.³ These communications include a national inventory of GHG emissions and other details on climate action implementation.

4. Conclusion

Cameroon’s climate governance strategy is multi-faceted, combining national policy integration, institutional capacity building, sectoral adaptation programs, and stakeholder engagement, but it faces challenges in financing, regulatory enforcement, and local implementation that require ongoing attention to ensure effective climate action.

Effective climate governance requires clear goal-setting, innovative policy frameworks, and the integration of climate strategies across all sectors and levels of government. This includes adopting market-based mechanisms like carbon pricing, regulatory measures such as green building codes, and investing in climate-resilient infrastructure to both mitigate emissions and adapt to climate impacts. Crucially, governance must be inclusive and collaborative, engaging state and non-state actors—governments, businesses, civil society, and local communities—to foster shared responsibility and coordinated action. Multilevel governance that enhances coordination vertically (across government tiers) and horizontally (across sectors and stakeholders) is essential to maximize synergies and address trade-offs effectively. Institutional capacity building and long-term commitment are vital for sustaining climate action through changing political cycles. Establishing legal frameworks, independent advisory bodies, and transparent accountability mechanisms ensures credible and sustained climate governance.

As part of it Recommendations to the Government of Cameroon, there is the need to establish a comprehensive climate change legal framework that mandates integration of climate considerations into all public policies, planning, and budgeting processes to ensure sustained and coordinated climate action across sectors, strengthen institutional capacity and coordination by operationalizing climate governance bodies like the Ministry of Environment and the National Observatory on Climate Change, and create a national technical committee to oversee synergies between mitigation and adaptation efforts.

To the Local Communities, increase local awareness and education on climate change impacts and adaptation strategies to empower communities to participate effectively in climate governance and resilience building and engage actively in local climate action plans by collaborating with local governments to develop and implement adaptation and mitigation measures tailored to community needs.

¹ Pattberg, P., J. Striiple, (2008). Beyond the public and private divide: remapping transnational climate governance in the 21st century. *International Environmental Agreements: Politics, Law and Economics*, 8(4), pp. 367–388:380.

² International Zero-Emission Vehicle Alliance (ZEV Alliance) - Climate Initiatives Platform. climateinitiativesplatform.org (Accessed on 18/4/2025)

³ *Ibid.*

To the International Community, support Cameroon in developing and implementing a robust climate legal and institutional framework through technical assistance, capacity building, and knowledge transfer, and increase climate finance flows with flexible, long-term funding mechanisms that prioritize adaptation and resilience projects, particularly at local and community levels.

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An Appraisal of the Application of the Principle of Complementarity in the Functioning of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights Within the African Human Rights System

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Abstract

The principle of complementarity is a very vital principle in international law. The principle of complementarity promotes respect for national sovereignty, encourages domestic accountability, prevents impunity, ensures efficient allocation of resources, and strengthens international-domestic cooperation. This article examines or makes an appraisal on the application of the principle of complementarity in the functioning of the African Human Rights Commission and the African Human Rights Court system. The study uses a qualitative research methodology, employing primary data sources from vital conventions like the Rome Statute, African Charter on Human and Peoples' Rights, and a host of others. Secondary data came from textbooks, journal articles, reports, and newspapers. The study is underpinned or anchored by the natural law theory and the functional theory. The findings in the study reveals blatantly like that the principle of complementarity is crucial to the African human rights system, fostering a cooperative and mutually reinforcing relationship between the Commission and the Court but however, its effectiveness in practice has been characterized by variability, with both successful instances and significant challenges. And as result of this, there is need to enhance cooperation between the commission and the court, increase awareness and visibility, develop clear guidelines and to improve access to the court.

Keywords: appraisal, principle of complementarity, African commission on human and peoples' rights, African court on human and peoples' rights, and functioning

1. Introduction

Complementarity is a fundamental concept in international law, which refers to the relationship between international institutions and national institutions in achieving common goals. The concept of complementarity is a development that builds upon the post-World War II era, when the international community came together to establish the United Nations (UN) and other international institutions. The UN Charter, adopted in 1945, emphasizes the importance of cooperation between the UN and its member states in achieving common goals, including the promotion and protection of human rights.¹ The principle of complementarity is based both on the respect for the primary jurisdiction of States and on considerations of efficiency and effectiveness, since States generally have the best access to evidence and witnesses and the resources to carry out proceedings.²

In the context of human rights law, complementarity holds that international human rights institutions and

¹ United Nations, Charter of the United Nations, 24, October 1945, IUNTS XVI.UN, Article 1.

² Informal Expert Paper, *The Principle of Complementarity in Practice*, ICC-OTP, 2003, p. 3.

national human rights institutions should work together to promote and protect human rights. This is reflected in the Universal Declaration of Human Rights (UDHR)¹, which provides that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”². The UDHR’s emphasis on national remedies reflects the principle of complementarity, which holds that international institutions and national institutions should work together to promote and protect human rights.³

Within the context of International Criminal Law, complementarity principle has its roots in the early days of international criminal law. The concept of complementarity originated in the International Law Conference draft but was substantially remodeled during the negotiation. It was crucial for the success of the negotiations that the complementarity principle be settled at an early stage before they could agree to support the establishment of a new international court. States which were content with their own administration of justice had to be satisfied that the new court would not be able to take over cases which were being dealt with perfectly at home. The provision which is now Article 17 was therefore substantially agreed before the conference even began.⁴

The Rome Statute, which was adopted in 1998, marked a significant turning point in the development of the complementarity principle. The Statute provides that the ICC will only exercise jurisdiction over international crimes where national courts are unable or unwilling to investigate or prosecute.⁵ The Rome Statute also sets out the criteria for determining whether a state is unable or unwilling to investigate or prosecute. These criteria include: the State is unable to investigate or prosecute due to a lack of capacity or resources;⁶ the State is unwilling to investigate or prosecute due to a lack of political will or because the state is shielding the perpetrator;⁷ the State’s investigation or prosecution is not impartial or independent⁸.

This principle has a different preview within the context of African Human Right System where complementarity can be linked to different forms of institutional relationships in the AU framework. This is because apart from the traditional continental human rights supervisory bodies, several other organs of the AU are involved in the business of human rights realization.⁹ Furthermore, with the growing involvement of African sub-regional institutions in the field of human rights, complementarity and related issues can be raised in relation to the relationship between such sub-regional institutions and the traditional continental human rights supervisory bodies.¹⁰ New regional human rights documents and documents relevant to human rights in Africa have also been adopted, including a Protocol to merge the African Court on Human and Peoples Rights with the African Court of Justice to form an African Court of Justice and Human Rights.¹¹ However, the main focus of

¹ United Nations, Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations, 10 Dec. 1948.

² Universal Declaration of Human Rights, Article 8.

³ C. Heyns and M. van der Linde, (2022). *International Human Rights Law in Africa and Domestic Human Rights Law in Africa*. Brill, p. 381.

⁴ R. Cryer, H. Friman, D. Robinson, E. Wilmshurst, (2007). *An Introduction to International Criminal Law and Procedure*. Cambridge University Press, p. 127.

⁵ The principle of complementarity is enshrined in paragraph 10 of the Rome Statute’s Preamble in which States Parties to the Rome Statute were “emphasizing that the international criminal court established under this statute shall be complementary to national jurisdictions.” Article 1 also provides: “An international criminal court (the Court) is hereby established...and shall be complementary to national criminal jurisdictions.” The principle is also embodied in article 17 (rules of admissibility) which refers to article 1 and paragraph 10 of the preamble of the Rome Statute and gives States primary jurisdiction. See The Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 U.N.T.S. 90.

⁶ Rome Statute, Article 17(1)(a).

⁷ Rome Statute, Article 17(1)(b).

⁸ Rome Statute, Article 17(2)(c). See also, *Prosecutor v. Thomas Lubanga Dyilo* (2012) ICC-01/04-01/06: In this case, the ICC held that the Democratic Republic of Congo was unable to investigate or prosecute Thomas Lubanga Dyilo, a Congolese national accused of war crimes; *Prosecutor v. Uhuru Muigai Kenyatta* (2014) ICC-01/09-02/11: In this case, the ICC held that Kenya was unwilling to investigate or prosecute Uhuru Muigai Kenyatta, the President of Kenya, accused of crimes against humanity and; International Criminal Court Rules of Procedure and Evidence, ICC-ASP/1/3, 2002, Rule 51 which sets out the procedure for determining whether a State is unable or unwilling to investigate or prosecute.

⁹ S.T. Ebobrah, (2011). Towards a Positive Application of Complementarity in the African Human Rights System: Issues of Functions and Relations. *European Journal of International Law*, 22(3), pp. 663-688, p. 670.

¹⁰ *Ibid*.

¹¹ The Protocol on the Statute of the African Court of Justice and Human Rights was adopted on 1 July 2008. Available at: www.africa-union.org/root/au/Documents/Treaties/list. (Consulted on 25th February 2023).

this research will be to express the complementary relationships between the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights.

The African Commission was established by Article 30 of the African Charter, which provides that "an African Commission on Human and Peoples' Rights shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa"¹. The African Commission was created with quasi-judicial functions and not with full judicial mandate.² The rationale for this was to avoid the confrontational style of dispute resolution which is associated with the received judicial systems in Africa. In the process of establishing the Charter, a Commission was chosen over a Court because it was compatible with the reconciliatory nature of disputes resolution entrenched in African culture.³ In addition, having a judicial body was considered a premature task partly because the principle of non-interference had been the bedrock of the OAU and states were not ready to give away part of their sovereignty.⁴ Besides, during the drafting process of the African Charter, the drafters envisioned that Africa is not ready for a supranational judicial institution at the time.⁵

While the African Commission plays a crucial role in promoting and protecting human rights in Africa, it has been lambasted as ineffective.⁶ One of the major drawbacks of the African Commission was its lack of binding decisions. The African Commission, for one, is not a judicial body and does not have status that is equal to continental court of law. It is only a quasi-judicial body and its decisions and recommendations often are conceived of as not binding on state parties. This reality evidences many a scenario where state parties found culpable under the African Charter and supplementary instruments do not comply with its decisions and recommendations and do so without the slightest consequence.⁷ This limitation is rooted in the African Charter, which establishes the African Commission on Human and Peoples' Rights as a quasi-judicial body that can only make non-binding recommendations. However, it's worth noting that these recommendations can become binding if adopted by the African Union Assembly of Heads of State and Government.⁸ The lack of binding decisions undermined the African Commission's credibility and effectiveness in promoting and protecting human rights in Africa.

The African Commission also lacked enforcement powers. The Commission's lack of enforcement power has rendered it ineffective in holding states accountable for human rights violation. Consequently, and notably, without the requisite enforcement mechanisms to ensure states' implementation of such recommendations, human rights protection on the continent remains elusive and the lack of implementation calls for an evaluation of the system in practice.⁹

The African Commission was also dependent on state cooperation. The African Commission relied on states parties to provide information and cooperate with its investigations.¹⁰ This limitation made it difficult for the African Commission to investigate and address human rights violations in states that were not cooperative. For

¹ Article 30 African Charter, 1981, OAU Doc. CAB/LEG/67/3 rev. 5. See also OAU Council of Ministers Resolution CM/Res. 519 (XXVII) Establishing the African Commission on Human and Peoples' Rights. See also, R. Crawshaw and L. Holmstrom, (2006). *Essential Cases on Human Rights for the Police: Reviews and Summaries of International Cases*. Leiden/Boston, Martinus Nijhoff Publishers, p. 24.

² C. Okoloise, (2018). Circumventing Obstacles to the Implementation of Recommendations by the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal*, 18(1), pp. 27-57, p. 31.

³ E. Bondzie-Simpson, (1988). A Critique of the African Charter on Human and Peoples' Rights. *Howard Law Journal*, 31(4), pp. 643-665, p. 650.

⁴ M. A. Sanchez, (2023). The African Court on Human and Peoples' Rights: Forging a Jurisdictional Frontier in Post-Colonial Human Rights. *International Journal of Law in Context*, 19(3), pp. 352-366, p. 356.

⁵ F. Ouguergouz, (2003). The Establishment of an African Court of Human and Peoples' Rights: A Judicial Premier for the African Union. *African Yearbook of International Law Online*, 11(1), pp. 79-141, pp. 82-83.

⁶ E. P. Mendes, (2022). *Global Governance, Human Rights and International Law*. Taylor and Francis, p. 15.

⁷ C. Okoloise, (2018). Circumventing Obstacles to the Implementation of Recommendations by the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal*, 18(1), pp. 27-57, p. 31.

⁸ R. Murray and D. Long, (2015). *The Implementation of Findings of the African Commission on Human and Peoples' Rights*. Cambridge University Press, p. 55. See also, African Charter, Articles 54 and 59.

⁹ G. M. Wachira, (2006). Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Possible Remedy. *African Human Rights Law Journal*, 6(2), pp. 465-493, p. 470.

¹⁰ Rachel Murray, (2004). *Human rights in Africa: From the OAU to the AU*. Cambridge University Press, p. 122.

example, the Commission “heard statements from a Burundi government envoy on the tragic events which took place in that country” before it had ratified the Charter. The Chairman was instructed by the Commission to meet with the current Chair of the OAU to consider in cooperation with the government of Burundi on sending a delegation to the country to conduct an in depth study of the human rights situation.¹ Some states often refuse rapporteurs to carry out promotional and fact finding missions. This resistance limits the ability of the Commission to effectively monitor the implementation of its decisions and assess human rights situation on the ground.² Thus, reliance on State cooperation limits the promotional and protective mandate of the Commission.

The African Court on Human and Peoples’ Rights (African Court/the Court) was established by the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (Protocol/Court’s Protocol).³ The Protocol was adopted by the OAU Assembly of Heads of State and Government on June 10, 1998.⁴ The idea of creating an African human rights court dates back to the 1960s.⁵ However, it was not until the 1990s that the idea gained momentum. The 1990s saw African states move towards establishing a human rights court due to various factors. The end of the Cold War enabled Western nations to tie development aid to Africa to human rights improvements.⁶ Meanwhile, there was development of a new constitutionalism which coincided with a new democratic order in the early 1990s.⁷ NGOs, particularly those engaged with the Commission championed the Court’s creation. For example, at the symposium organized in Mombasa, Kenya by World Organization against Torture and the Kenyan section of the International Commission of Jurists in 1993.⁸ The establishment of an African human rights court was also a recurring theme in the discourse at a succession of seminars convened by the Friedrich-Naumann-Stiftung, focusing on regional mechanisms for safeguarding human rights.⁹

2. Conceptual Clarifications

This section shall give clarity to key concepts associated to this study.

2.1 Complementarity

The word complementarity is defined as ‘the state or quality of being complementary’¹⁰.

Within the context of international criminal law, the complementarity states that, the International Criminal Court is complementary to national jurisdiction in prosecuting core international crimes set out in article 5 of the Rome Statute of the International Criminal Court.¹¹ The doctrine in international law also entails that, a country with control of a person accused of violating international criminal law has the jurisdiction to charge and try the person. Because the jurisdiction of the International Criminal Court is Complementary to the criminal jurisdiction of countries, that tribunal can assert jurisdiction over the accused person only if the country is unable or unwilling to undertake a genuine investigation and prosecution.¹² This principle is embodied in Article 17 of

¹ R. Murray, (2000). *The African Commission on Human and Peoples Rights and International Law*. Bloomsbury Academic, p. 116.

² L. W. Kembabazi, (2024). The Role of the African Commission in Enhancing Compliance with its Decisions on Communications. *African Human Rights Law Journal*, 24, pp. 781-803, pp. 794-795.

³ K. Parlett, (2011). *The Individual in the International Legal System*. Cambridge University Press, pp. 330-331.

⁴ Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, June 10, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT(III).

⁵ M. A. Sanchez, (2023). The African Court on Human and Peoples’ Rights: Forging a Jurisdictional Frontier in Post-Colonial Human Rights. *International Journal of Law in Context*, 19(3), pp. 352-366, p. 356.

⁶ G. Bekker, (2007). The African Court on Human and Peoples’ Rights: Safeguarding the Interests of African States. *Journal of African Law*, 51(1), pp. 151-172, p. 159.

⁷ J. C. Mubangizi, (2006). Some Reflections on Recent and Current Trends in the Promotion and Protection of Human Rights in Africa: The Pains and the Gains. *African Human Rights Law Journal*, 6(1), pp. 146-165, p. 156.

⁸ N. Udombana, (2013). Toward the African Court on Human and Peoples’ Rights: Better Late than Never. *Yale Human Rights and Development Law Journal*, 3, pp. 45-111, p. 76.

⁹ G. Oestreich, (1992). “Conference Report” in W. Heinz (ed.) *The System of Human Rights Protection in Africa and Europe: An Exchange of Experience and Perspectives, Afro-European Conference*, (26-31 March 1990, Strasbourg, Proceedings of the Conference) Friedrich-Naumann-Stiftung, p. 8.

¹⁰ B. A. Garner and Henry Campbell Black, (2009). *Black’s Law Dictionary*, 9th edn, St. Paul, MN, West, p. 324.

¹¹ See J. T. Holmes, (2002). “Complementarity: National Courts versus the International Criminal Court” in A Cassese, P Gaeta and J Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, 1, pp. 667-672.

¹² B. A. Garner and Henry Campbell Black, (2009). *Black’s Law Dictionary*, 9th edn, St. Paul, MN, West, p. 324.

the Rome Statute. The principle requires that the ICC defer to national judiciaries when crimes against humanity, genocide, aggression and war crimes have been committed and a Member State has asserted its criminal jurisdiction over those crimes.¹

Complementarity as it is used in this context should not be taken in the technical sense provided in the Rome Statute. Here, it is used in its ordinary and plain meaning referring to “a relationship or situation in which two or more different things improve or emphasize each other’s qualities.”²

2.2 African Commission on Human and Peoples’ Rights

The African Commission on Human and Peoples’ Rights is the foremost human rights organ of the African Union established under the African Charter on Human and Peoples’ Rights with the mandate to promote and protect human rights through examining state reports on the implementation of their obligations under the African Charter, receiving and adjudicating on complaints of human rights violations from State Parties, individuals and non-governmental organizations and providing guidance to Member States through elaborations on the African Charter provisions in the form of resolutions, guidelines, general comments among others.³

Welch,⁴ defined the African Commission on Human and Peoples’ Rights as a quasi-judicial body tasked with promoting and protecting human rights and collective peoples’ rights throughout the African continent as well as interpreting the African Charter on Human and Peoples’ rights and considering individual complaints of violation of the Charter. This includes investigating human rights violations, creating and approving programs of action towards encouraging human rights, and set up effect.

The 2020 Rules of Procedure of the African Commission on Human and Peoples’ Rights defined the African Commission as an autonomous treaty body working within the framework of the African Union to promote human and peoples’ rights and ensure their protection in Africa.⁵ Thus, the above definition used is adopted in the study.

2.3 African Court on Human and Peoples’ Rights

The African Court on Human and Peoples’ Rights is a continental court established by the African states to ensure the protection of human and peoples’ rights in Africa. It complements the functions of the African Commission on Human and Peoples’ Rights.⁶ Hence, the study adopts this definition throughout.

2.4 Applicability

Applicability is the process of implementing the law to a particular subject matter.⁷ The Webster Dictionary defines applicability as: “capable of or suitable for being applied.”⁸ Applicability as used in this research entails the manner in which laws or doctrines are capable of being applied to an issue under discussion.

2.5 Principle

Principle is a basic rule or a doctrine.⁹ The Webster dictionary defines it as: “a comprehensive and fundamental law, doctrine, or assumption.”¹⁰ Thus, this usage is employed in this research.

2.6 Functioning

As per the Black’s Law Dictionary¹¹, functioning is the carrying out of a particular activity that is appropriate to an institution or organization. In Miriam Webster Dictionary, functioning means to carry out an operation or be in action. This research will employ the definitions discussed above.

¹ See article 17 of the Rome Statute.

² *Oxford English Dictionary*, available online at: <http://dictionary.cambridge.org/dictionary/english/complementarity> (Consulted on 6th April, 2023).

³ See Articles 45 to 59 of the African Charter on Human and Peoples’ Rights adopted in 1986.

⁴ C. Welch, (1991). Organization of African Unity and the Promotion of Human Rights. *Journal of Modern African Studies*, 29(4), 533-548.

⁵ See Rule 3 (1) of the 2020 Rules of Procedure of the African Commission on Human and Peoples’ Rights.

⁶ See Articles 1 and 2 of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples Rights, adopted by Member States of the OAU in June 1998 and entered into force on 25th January 2004.

⁷ B. A. Garner and Henry Campbell Black, (2009). *Black’s Law Dictionary*, 9th edn, St. Paul, MN, West, p. 116.

⁸ *Merriam-Webster’s Dictionary of English Usage*, Springfield, Mass, Merriam-Webster, Inc., 1994, p. 145.

⁹ B. A. Garner and Henry Campbell Black, (2009). *Black’s Law Dictionary*, 9th edn, St. Paul, MN, West, p.1313.

¹⁰ *Merriam-Webster’s Dictionary of English Usage*, Springfield, Mass, Merriam-Webster, Inc., 1994, p. 1185.

¹¹ Garner and Black, *op.cit.*, p.742.

3. Methodology

This research employs the qualitative research methodology.¹ Qualitative research refers to a scientific method of observation to obtain non-numerical data. In legal research, this is doctrinal in nature. It adopts an in-depth content analysis and interpretation of both primary and secondary sources of data related to human rights systems. In essence, it adopts an analytical approach in the interpretation of relevant statutes at the regional and international levels such as the Statute of the International Criminal Court, the African Charter, the European Court of Human Rights, the Inter-American Court of Human Rights just to name a few. This research also collects and analyses primary data in the form of decided cases, treaties and statutes. Also, this study involves the collection and analysis of secondary sources of data, principally from text books, journals, encyclopedias and periodicals like human rights reports, as well as internet sources (such as West Law, JSTOR and Google). In so doing, the University of Buea libraries and other public libraries were used. In support of these primary data, the research adopts direct unstructured interviews with representatives of human rights bodies and NGOs. The reason for interviewing these groups of people is based on their role they play in the functioning of human rights bodies such as the African Commission and African Human Right Court. This constitutes primary data.

Case law as a source of primary data incorporates constitutions, statutes and regulations. The review of primary sources in an in-depth manner is to better appreciate the dynamics of the complementary relationship between the Commission and the Court. More so, interviews of personnel engaged in the activities of the Commission and the Court is to clarify views earlier held by researchers in this area of the law.

Secondary data comprise the use of textbooks, journal articles, internet sources, reports, theses and newspaper articles. The review of these sources informs the study the functioning of the principle of complementarity between the Commission and the Court. It further stimulates a better understanding of the context of the study and also formulates and guides the research. Besides, it is from a review of these secondary sources that the research draws insights from other jurisdictions such as the European and Inter-American human rights systems. The qualitative research brings out the functioning of the principle of complementarity and its influence on the African Human Rights System, and what accounts for the effectiveness and ineffectiveness of the principle.

4. Theoretical Framework

To achieve the aim of this study, the research used two major theories that is, the natural law theory and the functional theory. Each of the theories shall be examined seriatim.

4.1 Natural Law Theory

This theory has a crucial place in this research because it provides the platform to evaluate the effectiveness of the mandates of the Commission and the Court through its laws and implementation mechanisms and to ascertain that those they aim to protect benefit from it. Natural law theory posits that there exists a universal moral code, inherent in nature that guides human behavior and informs human laws.² This theory asserts that certain principles and values are inherent in human nature and should be reflected in the laws and institutions of society.

One of the earliest proponents of Natural Law Theory was Aristotle, who argued that humans have a unique potential for rational thought and that this potential should be cultivated through education and the development of virtuous habits.³

Thomas Aquinas, a medieval philosopher and theologian, further developed Natural Law Theory, arguing that natural law is a participation in the eternal law of God.⁴ John Locke, an enlightenment philosopher, also drew on Natural Law Theory, arguing that individuals have inherent rights to life, liberty, and property, which are protected by natural law.⁵ In modern times, Natural Law Theory has been influential in the development of

¹ Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretative, material practices that make the world visible. It involves an interpretative, naturalistic approach to the world. It attempts to make sense of, or to interpret phenomena in terms of the meaning people bring to them. See N. K. Denzin and Y. S. Lincoln, Introduction: The Discipline and Practice of Qualitative Research, in N.K. Denzin and Y.S. Lincoln (eds), *The Sage handbook of qualitative research*, Sage Publications Ltd, 2008, pp. 1-32, 3.

² T. Aquinas, (1920). *Summa Theologica*, translated by Fathers of the English Dominican Province, Christian Classics Ethereal Library, pp. 113-114.

³ Aristotle, (1999). *Nicomachean Ethics*, translated by Terence Irwin, Hackett Publishing, pp. 13-15.

⁴ T. Aquinas, (1920). *Summa Theologica*, translated by Fathers of the English Dominican Province, Christian Classics Ethereal Library, p. 113.

⁵ J. Locke, (1988). *Two Treaties of Government*, Peter Laslett (eds). Cambridge University Press, pp. 13-14.

human rights law and international justice.¹

This theory has a crucial place in this research because it provides the platform to evaluate the effectiveness of the mandates of the Commission and the Court through its laws and implementation mechanisms and to ascertain that those they aim to protect benefit from it.

4.2 Functional Theory

Functional theory grew out of the writings of English philosopher, Herbert Spencer², who saw similarities between society and the human body. He argued that just as the body functioning, the various parts of organizational structures in the society work together to keep society functioning.³ The parts of society that Spencer referred to were institutions or patterns of beliefs and behaviors focused on meeting social needs such as government, education, economy, and the family. Emile Durkheim applied Spencer's theory to explain how societies change and survive over time. Durkheim believed that society is a complex system of interrelated and independent parts that work together to maintain stability. Each of these facts has different functions within an organizational set up in the society.⁴

Within the context of this research, functional theory is relevant as it explains how the Commission and Court, being organs, work together as a system of interconnected parts to maintain stability and order, thereby fulfilling the mandates set out for them in the Charter and Protocols establishing them.

5. Mandate of the African Commission and the African Court

The first regional institution that was set up with the aim to protect human rights on a regional level in Africa was the African Commission.⁵ Since it was limited to making recommendations, its enforceability was a significant setback due to the fact that the Charter does not provide for a specific provision or mechanism to ensure that Commission's decisions are binding.⁶ As a result, the African Court on Human and Peoples' Rights was established to specifically support the African Commission's protective role.⁷ Both the African Commission's and the African Court's mandates are outlined in Article 45 of the African Charter and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, respectively.⁸ Below is a more detailed explanation of these two mandates.

5.1 Mandate of the African Commission

The Commission was created with two main goals as stated in Article 30 of the African Charter, which calls for its creation: to advance and defend human and peoples' rights throughout the African continent. The Commission's duties are listed in Article 45 of the Charter as follows:⁹

- Promoting and defending human and peoples' rights;
- Interpreting the Charter's provisions; and
- Carrying out any other duties delegated to it by the OAU Assembly.

5.2 The Commission's Promotional Mandate

With the primary mandate of advancing and safeguarding human rights across the continent¹⁰, the African

¹ J. Finnis, (1980). *Natural Law and Natural Rights*. Oxford University Press, pp. 23-25.

² H. Spencer, (1896). *The Principles of Sociology*. Williams and Norgate, Vol. 3, p. 26.

³ *Ibid.*

⁴ E. Durkheim, (1895). *The Rules of Sociological Method*. Sage Publications, pp. 60-81.

⁵ K. Deichmann, (2020). *Regional Integration, Human Rights and Democratic Participation in Africa*. Gottingen University Press, p. 35.

⁶ B. T. Nyanduga, (2006). Conference Paper: Perspective on the African Commission on Human and Peoples' Rights on the Occasion of the 20th Anniversary of the Entry into Force of the African Charter on Human and Peoples' Rights. *African Human Rights Law Journal*, 6(2), pp. 255-267, p. 261.

⁷ Court's Protocol, Article 2. See also, C. Heyns, *Human Rights Law in Africa 1999*, Springer, 2002, p. 251.

⁸ *Ibid.*

⁹ OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) entered into force 21 October, 1986. Available at www.achpr.org/files/instruments/achpr/banjul_charter.pdf (Consulted on 16 January, 2024). See also, George M. Wachira, *African Court on Human and Peoples' Rights: Ten Years and Still No Justice*, Minority Rights Group International, 2008, p. 8; and Mandate of the African Commission, available at <https://achpr.au.int/index.php/en/abput/mandate> (Consulted on 17 January 2024).

¹⁰ African Charter, Article 30. See also, L. W. Kembabazi, (2024). The Role of the African Commission in Enhancing Compliance with its Decisions on Communications. *African Human Rights Law Journal*, 24, pp. 781-803, p. 782.

Commission continues to be a crucial organization within the African human rights system. The promotional mandate, as stated in the African Charter, is essential to fostering a human rights culture and guaranteeing that the Charter's provisions are widely understood and applied.¹ States have a primary role in promoting human rights through various means such as education² and the establishment of human rights research institutes.³ The scope, workings, and effects of the African Commission's promotional mandate are further examined in this sub-section, which shed more light on the relevance of the Commission.

Article 45(1) of the African Charter serves as the cornerstone of the Commission's promotional mandate, which specifically calls on the Commission to promote Human and Peoples' Rights and in particular: to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights.⁴ This clause offers a comprehensive framework for a multipronged strategy of promoting human rights that includes teaching, research, awareness-building, and interaction with both state and non-state actors.⁵

Undertaking studies and research is one of the main ways the African Commission carries out its promotional mandate.⁶ These academic pursuits greatly advance a sophisticated comprehension of the human rights issues facing Africa. General Comments, which give authoritative interpretations of the provisions of the African Charter and advice nations on how to implement them, are frequently adopted as a result of the Commission's study. These General Comments are important interpretive instruments that influence how the rights outlined in the Charter are understood and they also serve as reference for international tribunals. For example, in the case of *Democratic Republic of the Congo v Uganda*⁷, the International Court of Justice referenced the African Commission's General Comment No. 4, on the right to redress for victims of torture when interpreting the Geneva Conventions and determining the laws and customs of war. Also, General Comment No. 3 on the Right to Life offers a thorough examination of Article 4 of the African Charter that goes beyond a limited interpretation of the ban on willful killing.⁸

In addition, the African Commission regularly participates in conference, symposium, and seminar organization. Diverse stakeholders, including as governmental leaders, academics, civil society organizations, and foreign partners, can communicate and exchange knowledge more easily thanks to these platforms. The Commission has held a number of Seminars in collaboration with the UNESCO, the International Commission of Jurists, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law as part of its promotional activities.⁹ The Commission also carries out information distribution. Through its website, publications¹⁰, and outreach initiatives, the Commission makes the African Charter, its rulings, and other pertinent human rights resources

¹ C. Heyns and M. van der Linde, (2022). *International Human Rights Law in Africa Volume Two: Domestic Human Rights Law in Africa*. Brill, p. 567.

² Recommendation on some Modalities for Promoting Human and Peoples Rights, Second Annual Activity Report of the African Commission on Human and Peoples' Rights 1988-1989, ACHPR/RPT/2nd, Annex IX (Documents of the African Commission, p. 185).

³ M. D. Evans and R. Murray, (2000). *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*. Cambridge University Press, p. 349.

⁴ *Ibid*, Article 45 (1) (a), (b) and (c) African Charter. See also, N. Rubner, (2023). *The African Charter on Human and Peoples' Rights Volume 2: The Political Process*, James Curry, pp. 358-359.

⁵ African Commission on Human and Peoples Rights, Working Group of Experts on Indigenous Populations/Communities, African Commission on Human and Peoples' Rights, International Work Group for Indigenous Affairs, *Rapport Du Groupe de Travail de la Commission Africaine Sur Les Populations/Communaute Autochines: Mission en Republique de Namibie 26 Juillet – 5 Aout 2005*, African Commission on Human and Peoples' Rights, 2008, pp. 28-29.

⁶ African Charter, Article 45 (1) (a). See also, Articles 75-76 of the Rules of Procedures of the African Commission, 2020.

⁷ *Armed Activities on the Territory of the Congo, the Democratic Republic of Congo v Uganda*, Judgment, reparations, ICJ GL No. 116 (2022), ICJ Rep 13, ICGJ 558 (ICJ 2022), 9th February 2022.

⁸ Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa, General Comment No. 3 on the Right to Life (Article 4 of the African Charter on Human and Peoples' Rights) African Commission on Human and Peoples' Rights, December 12, 2015.

⁹ U.O. Umzurike, (2023). *The African Charter on Human and Peoples' Rights*. Brill, p. 70.

¹⁰ In order to fulfill the human rights mandate, the Commission introduced so-called documentation Centre, which published several books that deal with human rights. See Karim Deichmann, (2020). *Regional Integration, Human Rights and Democratic Participation in Africa*. Gottingen University Press, p. 41.

widely available, enabling people and communities to comprehend and assert their rights.¹ The Commission also probes into human rights issues in Africa and makes recommendations to governments that require implementation at the national level.²

Supporting local and national organizations that are concerned with human and peoples' rights is another important function of the African Commission.³ This entails cooperating with national and local civil society organizations, including National Human Rights Institutions (NHRIs).⁴ The Commission's adopted Principles Relating to the Status of National Institutions (the Principles) highlight the vital role that NHRIs play in bridging the gap between national realities and regional norms, and they offer a framework for the efficient establishment and operation of NHRIs.⁵ The Commission is further empowered by Article 45(2) of the African Charter to "formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation."⁶ This clause emphasizes how the Commission actively shapes the African legal environment for human rights protection.

The African Commission on Human and Peoples' Rights' Rules of Procedure provide additional details about the promotional mandate. The Commission's dedication to its promotional efforts is reaffirmed in the 2020 Rules of Procedure.⁷ Rule 77, for example, outlines the steps for conducting country visits, highlighting their goal of obtaining information and conversing with state officials and other interested parties in order to advance human rights.⁸ Additionally, the nomination and operation of Special Rapporteurs and Working Groups, which are crucial in carrying out in-depth research and increasing awareness of certain human rights situations throughout the continent, are also outlined in the Rules.⁹ Their technical aspects are detailed in the recently concluded Standard Operating Procedures on the Special Mechanisms of the African Commission.¹⁰

The Commission's continuous attempts to address new human rights issues under its promotional mandate are demonstrated by the creation of new Special Mechanisms in line with the provisions of Rules 23 and 97 of the Rules of procedures and Article 45(1) African Charter, which include: the Special Rapporteurs established by the Commission are Special Rapporteurs on Prison and Conditions of Detention,¹¹ Special Rapporteur on the Rights of Women,¹² Special Rapporteur on Freedom of Expression and Access to Information,¹³ Special Rapporteur on Human Rights Defenders,¹⁴ and Special Rapporteur on Refugees, asylum Seekers, Migrants and Internally

¹ See, for example, African Commission on Human and Peoples' Rights, *Examination of State Reports: Ghana, 14th Session, December 1993* (Copenhagen: Danish Centre for Human Rights, 1995).

² C. Okoloise, (2018). Circumventing Obstacles to the Implementation of Recommendations by the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal*, 18(1), pp. 27-57, p. 31, p. 40.

³ African Charter, Article 45 (1) (c).

⁴ M. Ssenyonjo, (2011). *The African Regional Human Rights System: 30 Years After the African Charter on Human and Peoples' Rights*. Brill, p. 208.

⁵ African Commission on Human and Peoples' Rights, *Guidelines for the Establishment and Strengthening of National Human Rights Institutions in Africa (the Principles Relating to the Status of National Institutions)*, Banjul, 2002.

⁶ *Ibid.*

⁷ African Commission on Human and Peoples' Rights, Rules of Procedure of the African Commission on Human and Peoples' Rights, Banjul, 2020.

⁸ *Ibid.*

⁹ Rules of Procedure of the African Commission, 2020, Rule 93.

¹⁰ Adopted during the 27th extraordinary session of the African Commission, held from 19 February to 4 March 2020 in Banjul, The Gambia. https://www.achpr.org/public/Document/file/English/SOP%20on%20the%20Special%20Mechanisms%20of%20the%20African%20Commission%20on%20Human%20and%20Peoples%E2%80%99Rights_ENG.pdf (Consulted on 22 May 2025). See also, K. Kariseb, (2021). Understanding the Nature, Scope and Standard Operating Procedures of the African Commission Special Procedure Mechanisms. *African Human Rights Law Journal*, 21(1), pp. 149-175, p. 155.

¹¹ This was established in October, 1996. See Final Communiqué of the Twentieth Ordinary Session of the African Commission, 21-31 October, Grand Bay, Mauritius, Para. 18

¹² This was established in April, 1998. See Final Communiqué of the Twenty-third Ordinary Session of the African Commission, 20-29 April, Banjul, The Gambia at Para.11.

¹³ Established in December, 2004. See Resolution on the Mandate and Appointment of a Special Rapporteur on Freedom of Expression in Africa, ACHPR/Res. 71 (XXXVI) 04.

¹⁴ Established in June 2004. See Resolution on the Protection of Human Rights Defenders in Africa, ACHPR/Res.69 (XXXV) 04.

Displaced Persons.¹ The Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions² was created in April, 1994 and was the first special mechanism to be established within the Commission.³ Aside these Special Rapporteurs there are also working groups. The working groups are the Working Group of Experts on Indigenous Populations/Communities in Africa;⁴ the Working Group on Economic, Social and Cultural Rights in Africa;⁵ the Working Group on Specific Issues Relevant to the Work of the African Commission on Human and Peoples' Rights,⁶ the Working Group on the Question of the Death Penalty,⁷ Working Group on the Rights of Older Persons and people with Disabilities, Working Group on Extractive Industries and Human rights Violations and the Working Group on Communications.⁸

By submitting and reviewing State Reports⁹ in accordance with Article 62 of the African Charter, the African Commission engages with member states and demonstrates its promotional efforts.¹⁰ The process of examining state reports offers a chance for productive discussion and for the Commission to offer suggestions to states on how to enhance their human rights records, even if it is essentially a monitoring instrument.

Numerous examples demonstrate the influence of the African Commission's promotional mandate. For instance, the Commission's persistent lobbying and the efforts of its Special Rapporteur on the Rights of Women in Africa have helped some African nations pay more attention to and implement legal reforms pertaining to issues like advancement in education, promotion of women's rights and protection against Gender-Based Violence.¹¹ The impact of the Commission's advocacy work in promoting women's rights in this area is demonstrated by the 2003 ratification of the Maputo Protocol¹². The Special Rapporteur on the Rights of Women in Africa has also formulated several Guidelines and General Comments as part of its contribution to the promotional mandate of the African Commission.¹³

Succinctly, the African Commission on Human and Peoples' Rights' promotional mandate is an essential component of its activities. The Commission's dedication to these endeavours is further reinforced by the revised 2020 Rules of Procedure. Notwithstanding ongoing obstacles like inadequate funding and non-collaboration by some state collaboration, the Commission's persistent work and expanding impact on national legislation and the

¹ This was established in December, 2004. See Resolution on the mandate of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa, ACHPR/Res.72 (XXXVI) 04.

² Final Communiqué of the Fifteenth Ordinary Session of the African Commission, 18-27 April, 1994 Banjul, The Gambia at paragraph 20.

³ Final Communiqué of the 15th Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, 18-27 April 1994, ACHPR/FIN/COM/XIV. See also M. D. Evans and R. Murray, (2000). *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*. Cambridge University Press, p. 268.

⁴ Established in November 2003, see the Resolution on the Adoption of the Report of the African Commissions Working Group on Indigenous Populations/Communities, ACHPR/Res.65 (XXXIV) 03.

⁵ Established in December 2004, see Resolution on Economic, Social and Cultural Rights in Africa, ACHPR/Res. 73 (XXXVI) 04.

⁶ Established in May 2005, see the Resolution on the Creation of a Working Group on Specific Issues relevant to the Work of the African Commission on Human and Peoples Rights, ACHPR/Res.77 (XXXVII) 05.

⁷ Established in December 2005, see the Resolution on the Composition and the Operationalization of the Working Group on the Death Penalty as adopted at the 38th Session, December 2005.

⁸ Established on November 2011. See Resolution 194 on the Establishment of a Working Group on Communications available at www.achpr.org/sessions/50th/resolutions/194 (Consulted on 17 January, 2024).

⁹ This constitutes the core of the Commission's promotional mandate. See, F. Viljoen, *International Human Rights Law in Africa*, 2nd edn., Oxford University Press, 2012, p. 349.

¹⁰ *Ibid*.

¹¹ ACHPR, *Statement by the Special Rapporteur on the Rights of Women in Africa on the Occasion of International Women's Day*, Banjul, The Gambia, 8 March 2025.

¹² African Union: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, Mozambique, 11th July 2003, entry into force 25th November 2005.

¹³ For example, African Commission General Comment 1 on article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted during the 52nd Ordinary Session of the African Commission held in Yamoussoukro, Ivory Coast, 9-22 October 2012. See C. N. Musembi and T. M. Makunya, *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary*, Pretoria University Law Press, 2023, p. 86; ACHPR, Guidelines on Combating Sexual Violence and its consequences in Africa, Nov. 05, 2017, available at <https://achpr.au.int/index.php/en/documents/2017-11-05/guidelines-combating-sexual-violence-and-its-consequences-africa> (Consulted 25 July 2024).

African Court's case law highlight how crucial its promotional mandate is to advancing human and peoples' rights throughout Africa.

5.3 Protective Mandate of the African Commission

The protective mandate of the African Commission finds its principal legal basis in the African Charter, which entered into force on 21 October 1986, is now ratified by all member states of the AU.¹ Specifically, Article 45(2) explicitly mandates the Commission to ensure the protection of human and peoples' rights under conditions laid down by the present Charter.² This core provision empowers the Commission to take concrete actions aimed at preventing and addressing human rights violations within the African continent. Furthermore, other clauses within Article 45 contribute to the protective capacity of the Commission, including the authority to interpret the provisions of the Charter at the request of State Parties, African Union institutions, or recognized African organizations³, and to undertake any other tasks entrusted to it by the Assembly of Heads of State and Government of the African Union.⁴ The Commission itself emphasizes the intrinsic link between the promotion and protection of human rights, recognizing that they are two interrelated and indistinguishable functions of the Commission because the objective of promoting human and peoples' rights is mainly to reduce the likelihood of their violation.⁵

The primary goal of the protective mandate is handling individual communications that allege human rights violations by states.⁶ This competence aims to ensure the enjoyment of the rights and freedoms of the Charter through the collaboration with several stakeholders, such as governments and human rights organizations.⁷ Thus, in complying with the protective mandate of the Commission, an interview conducted on April 2024 at the head office of the Cameroon Women's Peace Movement (CAWOPEM), Yaoundé, the co-founder, Madam Yvonne Muma Bih, expressed the active role the institution has played in protecting human rights in Cameroon. As part of this, the CAWOPEM together with eighty one organizations wrote an open letter to the African Commission on Human and Peoples' Rights, urging the Commission to address serious and systematic human rights violations in Cameroon carried out in the Northwest and Southwest Regions as a result of the ongoing Anglophone crisis.⁸ The communications procedure and the state reporting process are essential to this protective role.

6. Functional Application of Complementarity in Accessing the African Commission

The operability of complementarity in the access to the African Commission is examined under two sub-heads which are: the commission's access to the court and complementarity within the context of cases referred by the Commission.

6.1 The Commission's Access to the African Court on Human and Peoples' Rights

The Protocol to the African Charter establishes a clear legal framework governing the African Commission's access to the African Court. Several key articles delineate the scope and conditions of this access. Article 2, as previously noted, lays the foundation by establishing the complementary relationship between the two bodies.⁹ The purpose of this article is for the Court to build upon and enhance the protective mandate already entrusted to the Commission.¹⁰

The Court's jurisdiction as defined in the Protocol extends to "all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument

¹ The last State to ratify the African Charter was Eritrea. Morocco is not a member state of the AU, but the Sahrawi Arab Democratic Republic is. See, F. Viljoen, (2000). State Reporting Under the African Charter of Human and Peoples' Rights: A Boost from the South. *Journal of African Law*, 44(1), pp. 110-118, p. 110.

² *Ibid.*

³ Article 45(3).

⁴ Article 45(4).

⁵ S. Gumede, (2003). Bringing Communications Before the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal*, 3(1), pp. 118-148, p. 119.

⁶ L. W. Kembabazi, (2024). The Role of the African Commission in Enhancing Compliance with its Decisions on Communications. *African Human Rights Law Journal*, 24(2), pp. 781-803, p. 781.

⁷ K. Deichmann, (2020). *Regional Integration, Human Rights and Democratic Participation in Africa*. Gottingen University Press, p. 42.

⁸ Interview No.1, conducted on April 2024.

⁹ *Ibid.*

¹⁰ C. Heyns, (2002). *Human Rights Law in Africa 1999*. Springer, p. 239.

ratified by the States concerned”.¹ The phrase “cases and disputes submitted to it” is broad and implicitly encompasses those brought before the Court by entities authorized to do so, including the African Commission.² This provision ensures that the Court has the legal competence to hear matters referred to it by the Commission, as these cases invariably involve the interpretation and application of the African Charter or other relevant human rights instruments.

Also, Article 5 of the Protocol explicitly addresses access to the Court and unequivocally states that the Commission is one of the entities that can bring cases before the Court.³ This provision grants the Commission direct and unfettered access to the Court, enabling it to bring cases of alleged human rights violations that it has considered to the judicial body for a binding decision. This access is not contingent upon any further conditions or declarations from member states, highlighting the central role envisioned for the Commission in the two-tiered protective system as it is entrusted to submit cases directly to the court.⁴

In contrast, Article 34(6) of the Protocol introduces a conditional element for the direct access of individuals and NGOs. It stipulates that: “At the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol”.⁵ Article 5(3) refers to the Court potentially entitling relevant NGOs with observer status before the Commission, and individuals to institute cases directly before it.⁶ This creates a two-track system for accessing the Court. While the Commission enjoys direct access upon ratification of the Protocol, individuals and NGOs face a significant hurdle in the form of the Article 34(6) declaration. To the present date, whereas 12 states have ever made the Article 36 (4) declaration, regrettably, Tunisia’s withdrawal on third March 2025 increases to five the number of states that have since withdrawn the declaration.⁷

6.2 Complementarity within the Context of Cases Referred by the African Commission

Article 5 of the Protocol lays the legal foundation for the referral of cases from the African Commission to the African Court, granting the Commission the explicit power to submit cases to the judicial body.⁸ This mechanism is a critical component of the complementarity principle in action. Under the former Rules of the Commission, there exist three primary stages at which the African Commission may initiate a referral to the African Court. Firstly, a referral can occur at any time after the Commission receives a communication but before it has completed its examination on admissibility and merits. This is particularly relevant in situations where a State party fails to comply with provisional measures⁹ requested by the Commission, highlighting the need for the Court’s binding authority to ensure immediate protection.¹⁰ Secondly, the Commission may refer a case during its examination of a communication, whether at the admissibility or merits stage, but before delivering a final decision.¹¹ This avenue is deemed suitable for cases where the Commission identifies serious or massive violations of human rights, recognizing the Court’s capacity to provide more robust remedies in such

¹ African Court’s Protocol, Article 3.

² See African Court Protocol, Article 5. See also F. Ouguergouz, (2003). *The African Charter on Human and Peoples’ Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*. Kluwer Law International, p. 715.

³ African Court Protocol, Article 5(1)(a).

⁴ R. Murray, (2019). “The Human Rights Jurisdiction of the African Court of Justice and Human and Peoples’ Rights”, in Charles C. Jalloh, Kamari M. Clarke and Vincent O. Nmeihelle (eds) *The African Court of Justice and Human and Peoples’ Rights in Context: Development and Challenges*. Cambridge University Press, p. 984.

⁵ *Ibid.*

⁶ See also S. Kahl, (2019). *African Court of Human and Peoples’ Rights Development and Procedural Problems*. GRIN Verlag, p. 6.

⁷ Centre for Human Rights, Faculty of Law, “Press Statement: Centre for Human Rights Expresses Concern About Tunisia’s Withdrawal of Access to the African Court by Individuals and NGOs”, Centre for Human Rights, University of Pretoria, 20 March 2025. For the 12 States, they are Burkina Faso, Malawi, Mali, Tanzania, Ghana, Rwanda, Cote D’Ivoire, Benin, Tunisia, Gambia, Niger, Guinea Bissau. For the 5 withdrawals they are Tanzania, Rwanda, Cote D’Ivoire, Benin and Tunisia. See AfCHPR, *Declarations*, available at <https://www.african-court.org/wpafc/declarations/> (Consulted on June 15, 2025).

⁸ *Ibid.*

⁹ A provisional (‘precautionary or interim’) measure is issued to prevent irreparable harm to a victim while the case he or she has submitted to the relevant monitoring body is still under consideration. They aim to prevent the deterioration of the situation or the specific targeting of the victims. See G. Zyberi, (2013). *An Institutional Approach to the Responsibility to Protect*, Cambridge University Press, p. 493. See also Rule 100 of the 2020 Rules of Procedure of the African Commission.

¹⁰ Rules of the African Commission, 2010, Rule 98 (4).

¹¹ Rules of the African Commission, 2010, Rule 118 (4).

grave situations.¹ Thirdly, a referral can take place when the African Commission concludes that a State party has not complied or demonstrates an unwillingness to comply with its final recommendations.² This type of referral occurs later in the communication process, aiming to provide an avenue for the Court to complement the Commission's protective mandate by enforcing its findings.³

The Principle of Complementarity finds practical expression in the jurisprudence and working relationship between the African Commission and the African Court. A key case that exemplifies the intended complementarity is *African Commission on Human and Peoples' Rights v. Republic of Kenya*.⁴ This case concerned the rights of the Ogiek community, an indigenous group in Kenya, who alleged violations of their rights to property, culture, and non-discrimination due to evictions from their ancestral lands.⁵ The African Commission, after receiving and considering the communication from the Ogiek community and failing to achieve a resolution at the Commission level, referred the case to the African Court for a binding judicial determination.⁶ This referral demonstrates the operational aspect of complementarity, where the Commission, having fulfilled its quasi-judicial role, referred a human rights violation to the Court for a final legal judgment.⁷ The Court accepted the case and ultimately found that the evictions amounted to violations of several rights under the African Charter.⁸ This instance demonstrated the Commission's utilization of its direct access to the Court to bring important human rights matters before it.

However, it is important to consider the more recent developments in the Commission's procedural rules. Rule 130 of the African Commission's 2020 Rules of Procedure has introduced a narrowing of the circumstances under which the Commission can refer cases to the Court compared to the 2010 Rules.⁹ The four scenarios under Article 118 no longer exist and have been replaced by just one which reads: The Commission may, before deciding on the admissibility of a communication submitted under Articles 48, 49 and 55 of the African Charter, decide that the communication should be referred to the Court, provided that the respondent State has ratified the Protocol Establishing the African Court on Human and Peoples' Rights.¹⁰ Referral to the African Human Rights Court is a question which is 'prima facie' be raised at the beginning of the process.¹¹ However, this scenario is far from being incongruous with actual practice, still seems to clash head-on with the way the Court envisages its own relationship with the quasi-judicial body (the Commission).¹² The article also provides that in cases where the Commission refers a matter due to non-compliance with its recommendations or provisional measures, the Commission is expressly recognized as a party to the proceedings before the Court.¹³

7. Effectiveness of the Principle of Complementarity

The effectiveness of the principle of complementarity in the African human rights system can be evaluated by examining instances where it has been applied in practice through the case law of the African Court, as well as

¹ African Charter, Article 58 (2); Rules of the African Commission, Rules 84 (2) and 118 (3).

² Rules of the African Commission, 2010, Rule 118 (1).

³ Pan African Lawyers Union, *Guide to Complementarity Within the African Human Rights System*, PALU, 2014, p. 12.

⁴ Application 006/2012, judgment of the African Court of Human and Peoples' Rights, issued 26 May 2017 (the Ogiek Judgment).

⁵ *Ibid*, paras. 114-119.

⁶ Minority Rights Group and Lucy Claridge, (2017). *Victory for Kenya's Ogiek as African Court Sets Major Precedent for Indigenous Peoples' Land Rights*, Minority Rights Group, p. 3.

⁷ See Article 5 (1)(a) Court's Protocol.

⁸ Minority Rights Group and Lucy Claridge, (2017). *Victory for Kenya's Ogiek as African Court Sets Major Precedent for Indigenous Peoples' Land Rights*. Minority Rights Group, p.6.

⁹ *Ibid*. The 2010 Rules of Procedure of the African Commission were amended at the 27th Extra-Ordinary Session of the African Commission which was held in Banjul, Gambia, between 4th February and 4th March 2020. It entered into force on June 2020 in accordance with Article 145 of the text.

¹⁰ Rules of the African Commission 2020, Rule 130 (1).

¹¹ A. Gattini, (2024). *Time and International Adjudication: The Temporal Factor in Proceedings Before International Courts and Tribunals*. Brill, p. 137.

¹² M. Ssenyonjo, (2018). Responding to Human Rights Violations in Africa: Assessing the Role of the African Commission and Court on Human and Peoples' Rights (1987-2018). *International Human Rights Law Review*, 7(1), pp. 1-42, p. 38.

¹³ Rules of the African Commission, 2020, Rule 130 (3); *African Commission (Saif Al-Islam Gadafi) v Libya*, Application 2/2013, Order of Provisional Measures (15 March 2013); *African Commission (Ogiek Case) v Kenya*, Application 6/2012, Order for Provisional Measures (15 March 2013).

cases where its application has faced challenges or limitations.

One prominent example of the successful application of complementarity is the case of *African Commission on Human and Peoples' Rights v. Republic of Kenya* (the *Ogiek case*).¹ In this landmark case concerning the rights of the indigenous Ogiek community in Kenya, the African Commission, having received a communication alleging violations of the African Charter, ultimately referred the application to the African Court pursuant to Article 5(1)(a) of the Protocol. This referral followed a period of inaction by the State in relation to provisional measures ordered by the Commission.² The Commission's decision to bring the case before the Court allowed the latter to exercise its binding judicial authority and issue a judgment on the merits, finding that the Kenyan government had violated several rights of the Ogiek people, including their rights to property, culture, religion, development, and non-discrimination. Subsequently, the Court also issued a judgment on reparations, ordering Kenya to take specific measures to remedy the violations, including restitution of their ancestral lands and financial compensation.³ This case serves as a significant illustration of how the Commission can effectively utilize its mandate to investigate human rights situations and then leverage the Court's binding powers through referral, leading to a more impactful outcome for victims and demonstrating a positive aspect of complementarity in action. The Commission's initial engagement with the Ogiek community's grievances, followed by a thorough assessment and the strategic decision to refer the case to the Court, showcases a sequential and coordinated approach where the Commission's fact-finding and admissibility assessment paved the way for the Court's authoritative judgment on the substantive issues and the provision of remedies.

While specific examples of the Court requesting the opinion of the Commission on admissibility are not many, the Court's Protocol and Rules of the Court establish this mechanism.⁴ This provision allows the Court to draw upon the Commission's extensive experience and specialized knowledge in human rights matters within the African context when considering the admissibility of cases, particularly those brought by individuals and NGOs under Article 5(3) of the Protocol.⁵ The Commission's long history of receiving and reviewing a wide range of communications alleging human rights violations across the continent equips it with valuable insights into the specific challenges and legal contexts of different African states. By seeking the Commission's opinion on admissibility, the Court can potentially make more informed decisions, ensuring that cases are properly vetted before proceeding to the merits stage.⁶ This collaborative approach reflects a recognition by the Court of the Commission's unique expertise and contributes to a more nuanced and effective application of the admissibility criteria within the African human rights system.

However, the principle of complementarity has also encountered challenges in its application, as evidenced by cases where admissibility has been contested based on the "exhaustion of local remedies" rule. Article 56 of the African Charter, which outlines the criteria for admissibility of communications to the Commission, is made applicable to the Court through Article 6(2) of the Protocol.⁷ The case of *Urban Mkandawire v. Republic of Malawi*⁸ provides an example where the Court, acting *proprio motu*, found an application inadmissible due to the applicant's failure to exhaust local remedies, even though the respondent state had reportedly declared before the African Commission that it did not dispute the exhaustion of local remedies.⁹ This instance highlights a potential tension where the Court, while aiming to complement the protective mandate of the Commission, may independently and strictly apply admissibility criteria, potentially limiting access to the Court despite the Commission's initial consideration of the matter. The requirement for the exhaustion of local remedies, while a fundamental principle of international law intended to give states the first opportunity to address alleged

¹ App. No. 006/2012, AfCHPR, 28 November 2012. The Ogiek are a community of hunter-gatherers living mostly in Kenya's Mau forest "since time immemorial." See R. Rosch, (2017). Indigenous and Peoples' Rights in the African Human Rights System: Situating the Ogiek Judgment of the African Court on Human and Peoples' Rights. *Verfassung Und Recht in Uebersee/Law and Politics in Africa, Asia and Latin America*, 50(3), pp. 242-258, p. 245.

² Minority Rights Group and Lucy Claridge, (2017). *Victory for Kenya's Ogiek as African Court Sets Major Precedent for Indigenous Peoples' Land Rights*. Minority Rights Group, p. 3.

³ *Ibid.* pp. 5-8.

⁴ Article 6 of the Court's Protocol and Rule 37 of the Rules of Court.

⁵ *Ibid.*

⁶ See African Charter, Article 56; Rules of Procedure of the African Court, Rules 39 and 40; Rules of Procedure of the African Commission, Rule 131.

⁷ *Ibid.*

⁸ *Urban Mkandawire v. Republic of Malawi*, App. No. 003/2011, (Merits), AfCHPR, 21 June, 2013.

⁹ *Ibid.*, para. 37.

violations within their domestic legal systems, can sometimes become a barrier to accessing the regional court if domestic remedies are ineffective, unduly prolonged, or unavailable.¹ The Court's independent assessment of this criterion, even when differing from the Commission's view or a state's admission, emphasizes the Court's role as the ultimate arbiter of its own jurisdiction and admissibility, which can sometimes lead to divergences in the application of the principle of complementarity in practice.²

On June 4, 2025, a compliance hearing was convened to assess the measures taken by Kenya to implement the Court's 2017 and 2022 judgments.³ The hearing was a direct application of the Court's supervisory jurisdiction over the implementation of its own judgment.⁴ It demonstrated the effectiveness of the principle of complementarity as it showed that the Court's role does not end with the delivery of a judgment but actively monitors compliance, ensuring its decisions lead to tangible remedies for victims. It also demonstrates the continuous role of the Commission as it remains a key party in the compliance phase, having been the original applicant. It further allows for a direct dialogue between the State-party, the Commission and the Court.

In addition, the case of *Victoire Ingabire Umuhoza v The Republic of Rwanda*⁵ before the African Court on Human and Peoples' Rights also stands as a significant example of the effectiveness of complementary relationship between the Commission and Court. While the case was primarily adjudicated by the Court, the spirit of their collaborative functions was evident through the direct application of the Court's jurisdiction and its reliance on the normative guidance developed by the Commission. At the heart of the African human rights system lies the principle of complementarity, where the African Court was established to complement and reinforce the protective mandate of the African Commission.⁶ This relationship allows for a dynamic interaction between the two institutions, ensuring a more robust protection of human rights on the continent. The *Ingabire case*, though not following a linear path from the Commission to the Court, showcases this synergy in action.

Ms. Ingabire, a prominent opposition figure in Rwanda, was convicted by Rwandan courts on charges including genocide denial and threatening state security.⁷ Following the exhaustion of domestic legal remedies, her case was directly filed with the African Court on Human and Peoples' Rights as Application 003/2014.⁸ This direct seizing of the Court is a crucial aspect of the complementary framework. The Protocol establishing the Court allows for direct access by individuals and NGOs from countries that have made a specific declaration under Article 34(6), as Rwanda had at the time.⁹ This provides an alternative and often faster route to judicial remedy, complementing the Commission's quasi-judicial process of considering communications.

While the Commission did not issue a specific ruling on a communication from *Ingabire's case* that was then transferred to the Court, its influence was profoundly felt in the Court's deliberations. In its 2017 judgment, the African Court extensively referenced and applied the African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.¹⁰ This demonstrated a clear instance of judicial dialogue and deference to the normative work of the Commission. The Court, in assessing the fairness of Ingabire's trial, utilized the standards and principles meticulously developed by the Commission over the years.¹¹ This reliance on the Commission's outputs not only strengthened the Court's legal reasoning but also underscored the coherence and consistency of the African human rights system.

Furthermore, the very existence of the Court as a judicial body with the power to issue binding judgments complements the Commission's mandate.¹² The Commission's recommendations, while carrying significant

¹ L. Chenwi, (2019). Exhaustion of Local Remedy Rule in the Jurisprudence of the African Court on Human and Peoples' Rights. *Human Rights Quarterly*, 41(2), pp. 374-398, p. 378.

² *Ibid.*

³ *African Commission on Human and Peoples' Rights v Republic of Kenya*, App. No. 006/2012 (Compliance Hearing), AfCHPR, 4 June, 2025.

⁴ See African Court's Protocol, Articles 28 (3), 29 (2) and 31 (1).

⁵ *Victoire Ingabire Umuhoza v The Republic of Rwanda*, App. No. 003/2014, (Judgment) AfCHPR, Nov. 24, 2017.

⁶ Articles 2 and 8 and Preamble, paragraphs 4 and 5 of the Court's Protocol.

⁷ *Ingabire case*, para. 10.

⁸ *Ibid.*

⁹ Court's Protocol, Article 5 (3) and 34 (6).

¹⁰ *Victoire Ingabire Umuhoza v The Republic of Rwanda*, App. No. 003/2014, (Judgment) AfCHPR, Nov. 24, 2017, paras. 103 and 104.

¹¹ Yakare-Oule Nani and J. Reventlow, (2018). Introductory Note to Ingabire v Rwanda (Afr.Ct.HPR). *International Legal Materials*, 57(3), pp. 373-404, p. 391.

¹² See Articles 2 and 30 of the Court's Protocol.

moral and political weight, are not inherently legally binding in the same way as a court judgment.¹ The mandate of the Commission has a quasi-judicial character, and hence the Commission's recommendations are not binding upon the violating State unless they are adopted by the AU Assembly of Heads of States and Government.² By providing a forum for a legally binding resolution, the Court reinforces the work of the Commission and offers a more definitive avenue for justice for victims of human rights violations.

In the *Ingabire case*, the African Court ultimately found that Rwanda had violated several of Ms. Ingabire's rights under the African Charter on Human and Peoples' Rights, including the right to freedom of expression and the right to an adequate defence.³ This landmark decision, while later leading to Rwanda's withdrawal of its declaration allowing direct individual access to the Court, highlighted the collaboration between the two institutions in their complementarity functions.

Additionally, the Commission and the Court jurisprudence has under-take a comprehensive analysis in the domain of environmental rights explicitly recognized in Article 24 of the African charter thus: "All peoples shall have the right to a general satisfactory environment favorable to their development." The Charter does not define what "the right to satisfactory environment" entails and this has given room to a barrage of individual interpretations.⁴ However, the African Commission has interpreted this right broadly, recognizing the interdependence between environmental degradation and violations of other rights such as health, dignity and life, notably, in *SERAC v Nigeria*, where it was held that the right to a healthy environment enshrined in Article 24 of the African Charter obliges states to refrain from directly threatening the environment of their citizens, for instance, through practices, other policies, or legal measures and states must take reasonable measures to prevent pollution and ecological degradation, to promote conservation and to secure an ecologically sustainable development and use of natural resources.⁵ The Commission stated that these measures are supposed to protect the environment and human rights in a mutually reinforcing manner, as evidenced by the fact that a right to clean and safe environment is closely linked to economic and social rights insofar as the environment affects the quality of life and safety of the individual.⁶ Consequently, the Commission found Nigeria liable for failing to take these measures, hence, in breach of Article 24 of the Charter.⁷

On the other hand, the African Human Rights Court confirmed the right to a healthy environment in *Ligue Ivoirienne des Droits de l'Homme and Others v Cote d'Ivoire*⁸ wherein the Court found the Respondent State responsible for violating Article 24 of the Charter by failing to prohibit the importation of hazardous waste, inadequately managing its disposal, and not promptly cleaning up polluted sites, thereby breaching its obligation to protect the environment and ensure a satisfactory environment favorable to development.⁹

A comparative analysis of the *SERAC v Nigeria* and the *Ligue Ivoriense* cases highlight the complementarity roles of the Commission and the Court in interpreting Article 24 of the Charter. The Commission's decision in *SERAC* laid the groundwork for the Court's judgment in *Ligue Ivoirienne*, demonstrating how both institutions can work together to strengthen environmental human rights protection in Africa.

Furthermore, based on the shared mandate of the Commission and the Court in the interpretation of the Maputo Protocol¹⁰, both bodies have interpreted the Protocol in light of women rights, consequently enhancing their

¹ African Charter, Articles 30 and 59.

² A. Smagadi, (2008). *Sourcebook of International Human Rights Materials*, British Institute of International and Comparative Law, p. 70.

³ *Victoire Ingabire Umuhoza v The Republic of Rwanda*, App. No. 003/2014, (Judgment) AfCHPR, Nov. 24, 2017, paras. 98 and 134.

⁴ E. P. Amechi, (2009). Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment Under the African Charter on Human and Peoples' Rights. *Law, Environment and Development Journal*, 5(1), p. 58-72, p. 63.

⁵ *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, Comm. No. 155/96, 2001, paras. 5 and 10.

⁶ *Ibid.*, paras. 1, 2, and 52.

⁷ *Ibid.*, para. 54.

⁸ *Ligue Ivoirienne des Droits de l'Homme and Others v Cote d'Ivoire*, App. No. 041/2016, Judgment on Merits and Reparations, AfCHPR, 5 September, 2023.

⁹ *Ligue Ivoirienne des Droits de l'Homme and Others v Cote d'Ivoire*, App. No. 041/2016, Judgment on Merits and Reparations, AfCHPR, 5 September, 2023, paras. 184-186.

¹⁰ F. Viljoen and M. Kamunya, (2023). "Articles 27 and 32: The Interpretative Mandate Under the Maputo Protocol", in C. N. Musembi and T. M. Makunya (eds.), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary*, Pretoria University Law Press, p. 538.

normative complementarity. The African Charter provides for the protection of human dignity and prohibition of all forms of exploitation and degradation in Article 5. These rights have been examined extensively by the Commission and the Court.¹ In the domain of women's right, the Niamey Guidelines² developed by the African Commission, addresses violence as flowing from numerous rights protected by treaties such as those under Article 3 (4) of the Maputo Protocol.³ Additionally, the Commission adopted Resolution 522 on the Protection of Women against Digital Violence in Africa, drawing attention to online violence corresponding to Article 3 of the Maputo Protocol which protecting women against exploitation and all forms of violence.⁴

On the other hand, the African Human Rights Court, in *Association pour le Progres et la Defense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa v Mali*⁵, examined harmful practices in the context of the Maputo Protocol but failed to find violation to the right of human dignity as it adopted a broad understanding of what constitutes harmful practices. These various human rights instruments (The African Commission, African Human Rights Court and the Maputo Protocol) together create overlapping and connecting ... layers of protection and also provide patchwork of mechanisms for victims to vindicate their rights.⁶

In essence, it can be argued that the Commission, the Court and the Maputo Protocol constitute integral elements of a comprehensive human rights architecture aimed at protecting women's rights in Africa, exemplifying a cohesive relationship that, although still evolving in practice, holds considerable potential for promoting gender equality and justice on the continent through the complementary functions of promotional and quasi-judicial mechanisms alongside a judicial organ, all grounded in a comprehensive treaty to promote women's rights.

8. Challenges of the Principle of Complementarity

Several challenges and limitations impede the effective application of the principle of complementarity in the functioning of the African Commission and Court on Human Rights. These challenges encompass a range of issues, including inadequate institutional autonomy, restrictive access for individuals and NGOs, the absence of clear guidelines for case referrals between the Court and the Commission, insufficient human and financial resources, divergent interpretations of their material jurisdictions, and political interference.

8.1 Limited Decision-Making Power in Prioritizing Cases

Given its interactive relationship with states, the African Commission is well-positioned to act as a filter for cases and shield the Court from applications likely to spark significant controversy. However, challenges related to leadership and institutional preservation have hindered the realization of effective adjudicatory complementarity, which would have benefited the African human rights system.⁷ For example, the Commission declined to consider four cases referred by the Court, citing the transfer mechanism as the reason specifically that these cases were transferred through judicial decisions rather than administrative channels. For a significant period in exercising their complementarity relationship, the African Commission has submitted only three cases to the Court.⁸ This limited engagement has also meant that the system failed to leverage the perception that institutional litigation by the Commission is viewed by states as less personalized and more neutral compared to

¹ See, *Institute for Human Rights and Development in Africa v Republic of Angola*, (2008) ACHPR 83 (22 May 2008); *Guehi v United Republic of Tanzania*, (merits and reparations) (2018) 2AfCLR 477.

² African Commission on Human and Peoples' Rights Guidelines on Combating Sexual Violence and its Consequences in Africa adopted during the 60th Ordinary Session held in Niamey, Niger from 8-22 May 2017 (Niamey Guidelines).

³ Niamey Guidelines, 12.

⁴ C. Kreuser, (2023). "Article 3: Right to Dignity" in C. N. Musembi and T. M. Makunya (eds.), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary*. Pretoria University Law Press, p. 82.

⁵ *Association pour le Progres et la Defense des Droits des Femmes Maliennes and the Institute for Human Rights and Development in Africa v Mali*, Merits, 2018, 2 AfCLR 380, para. 135. See also, C. Kreuser, (2023). "Article 3: Right to Dignity" in C. N. Musembi and T. M. Makunya (eds.), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary*, Pretoria University Law Press, p. 84.

⁶ E. Boshoff, (2020). "Women's Environmental Rights Under the African Charter", in M. Addaney and A. O. Jegede (eds.) *Human Rights and the Environment under African Union Law*. Springer, p. 133.

⁷ S. T. Ebobrah, (2011). Towards a positive application of complementarity in the African human rights system: Issues of functions and relations. *European Journal of International Law*, 2(3), pp. 663-688, p. 672.

⁸ *African Commission on Human and Peoples' Rights v Libya* (Provisional Measures) (2011) 1 AfCLR 17; *African Commission on Human and Peoples' Rights v Libya* (Merits) (2016) 1 AfCLR 153; *African Commission on Human and Peoples' Rights v Kenya* (Merits) (2017) 2 AfCLR 9.

proceedings initiated by national political actors or civil society organizations.

Furthermore, the Commission's reluctance to submit cases to the Court may stem from concerns that the Court would conduct a *de novo* examination, potentially reopening settled issues.¹ This apprehension likely contributed to the Commission's failure to invoke Rule 118(1) of its 2010 Rules, which governs the submission of decided cases to the Court.² Additionally, the two institutions did not demonstrate solidarity in their complementary roles when the Commission faced threats from AU policy organs or when these organs demanded that the Court remove the names of non-compliant states from its Activity Report.³

8.2 Limitations on Access for Individuals and NGOs

Restrictions on accessing regional complaint mechanisms in two-tier systems hinder case transfer practices, as barriers to access determine the feasibility and frequency of case transfers.⁴ Within the African system, the African Commission permits individuals, NGOs, and state parties to access its mechanisms when the respondent state is a party to the African Charter.⁵ In contrast, the African Court's access is limited to the African Commission, state parties to the African Charter involved in a matter before the Commission or with an interest in a case before the Court,⁶ and individuals and NGOs with observer status before the Commission, provided their state of nationality has deposited a declaration accepting the Court's competence under Article 34(6) of the Court Protocol.⁷ Complementarity between the African Court and Commission offers a potential solution to the restrictions on direct access to the Court, provided both institutions actively facilitate access to regional justice through their shared mandates.⁸

8.3 Absence of Clear Guidelines for Case Transfers Between the Court and the Commission

The lack of clear criteria guiding case transfers between the Court and the Commission remains a pressing issue in their complementary relationship. Although the Court's Protocol and the institutions' Rules of Procedure provide for case transfers, they inadequately outline the criteria or procedures for such transfers. In cases such as *Soufiane Ababou v Algeria*⁹, *Daniel Amare and Mulugeta Amare v Mozambique*¹⁰, and *Ekollo Moundi v Cameroon and Nigeria*¹¹, the Court lacked jurisdiction due to the respondent states' failure to deposit the required declaration under Article 34(6) of the Court Protocol.¹² Invoking Article 6(3) of the Court Protocol to transfer cases to the Commission was deemed incompatible with the provision's purpose and risked arbitrary case transfers.¹³ The 2020 Court Rules reform did not address the criteria for case transfers to the Commission¹⁴, and the omission of Rule 118 from the 2010 Commission Rules in the 2020 version, which specified circumstances for transferring cases to the Court, was a step backward.¹⁵ However, changes in the 2020 Commission and Court Rules regarding victim participation in case transfers mark a positive development,

¹ Ebobrah, *op.cit.*, p. 664.

² *Ibid.*

³ Decision on the consideration of the 2017 Activity Report of the African Court, adopted by the Executive Council during its 32nd ordinary session (25-26 January 2018) Doc EX.CL/1057(XXXII).

⁴ A complaint mechanism should be easily accessible by people and should be set up so as to prevent barriers to access, including language, literacy, awareness of the mechanism, poverty, distance, or fear of reprisal. See, Transparency International, *Complaint Mechanisms Reference Guide For Good Practice*, Transparency International, 2016, p. 3.

⁵ V. O. Nmehielle, (2021). *The African Human Rights System: Its Laws, Practice and Institutions*. Brill, p. 204.

⁶ Court Protocol Article 5(1) and (2).

⁷ Court Protocol Article 5(3).

⁸ R. Murray, (2002). A Comparison between the African and European Courts of Human Rights. *African Human Rights Law Journal*, 2, pp. 195-208, p. 204.

⁹ (Jurisdiction) (2011) 1 AfCLR 24.

¹⁰ (Jurisdiction) (2011) 1 AfCLR 26.

¹¹ (Jurisdiction) (2011) 1 AfCLR 86.

¹² *Soufiane Ababou v Algeria* para. 11; *Ekollo Moundi v Cameroon and Nigeria* para. 10 and *Daniel Amare and Mulugeta Amare v Mozambique* para. 8 and 10(1).

¹³ *Ekollo Moundi v Cameroon and Nigeria* (Jurisdiction) (2011) 1 AfCLR 86. Dissenting opinion of Judge Fatsah Ouguergouz, paras 16 and 17.

¹⁴ 2020 Court Rules, Rule 38.

¹⁵ 2020 Commission Rules, Rule 130(1).

emphasizing the importance of victim consent and consultation in the transfer process.¹ Ensuring victim participation is crucial, as the discretion for referrals currently lies with the Court and Commission, regardless of the interests of justice or the victim.²

8.4 Inadequate Human and Financial Resources

The African Commission and the African Court face significant challenges due to limited resources. The primary issue stems from the restricted budget allocated to these institutions by the African Union (AU). For instance, the African Commission and Court receive only 2% of the AU's total budget.³ Consequently, they rely heavily on voluntary contributions from member states, national, and multinational entities to supplement their funding. The financial constraints faced by the Commission and the Court necessitate their dependence on international partners to achieve their mandates. While the AU provides some funding based on contributions from member states and international donors, the institutions must seek additional support from external partners. According to Abebe, the Court is less dependent on external aid compared to the Commission, which relies significantly on extra-budgetary sources.⁴ This is because, the Court's budgetary allocation from the outset far exceeded that of the Commission.⁵ The Commission's financial challenges were highlighted in 2019 when it expressed the need for the AU to fully fund its activities following a reduction in funding.⁶ This has led to criticism that its agenda is dictated by non-African governments.⁷ These financial limitations hinder the practical application of complementarity, particularly in case transfers, due to the shortage of human capital and legal expertise within the Commission.⁸

8.5 Discrepancy in the Application of Material Jurisdiction Between the Court and the Commission

A notable discrepancy exists in how the African Court and the African Commission apply their material jurisdiction in relation to other human rights instruments. According to Articles 3(1) and 7 of the Court Protocol, the African Court's jurisdiction extends to interpreting and applying any relevant human rights instrument ratified by the states concerned, beyond just the African Charter. In contrast, the Commission's mandate under Article 60 of the African Charter is more limited, allowing it only to draw inspiration from other regional and international human rights instruments.⁹ This distinction results in a broader material jurisdiction for the Court compared to the Commission, particularly in matters involving the interpretation and application of international human rights instruments other than the African Charter. However, the Court has referenced Article 60 of the African Charter in its jurisprudence to inform its material jurisdiction.¹⁰

As Naldi¹¹ points out, the Court's reliance on Article 60 serves a dual purpose: it can enhance the Court's interpretive capacity by allowing it to consider a wide range of human rights instruments, but it can also limit the Court's jurisdiction by constraining it to merely drawing inspiration from these instruments, rather than applying

¹ 2020 Commission Rules, Rule 130(2).

² R. Murray, (2002). A Comparison between the African and European Courts of Human Rights. *African Human Rights Law Journal*, 2, pp. 195-208, p. 203.

³ See the Executive Council Decision on the 2020 African Union Budget EX.CL/Dec.1069(XXXV) 2 in the Decisions of the Executive Council during its Thirty-Fifth Ordinary Session held on 4-5 July 2019 in Niamey Niger.

⁴ D. Abebe, (2017). Does International Human Rights Law in African Courts Make a Difference? *Virginia Journal of International Law*, 56, pp. 527, 561, p. 560.

⁵ F. Viljoen, (2012). *International Human Rights Law in Africa*, 2nd edn., Oxford University Press, p. 294.

⁶ AU Executive Council Decision on the 2020 AU budget. 47th Activity Report of the African Commission on Human and Peoples' Rights 14 May – 10 November 2019 para. 63.

⁷ See for example the comments of the then Zimbabwean Minister of Information in reaction to a resolution adopted by the Commission on Zimbabwe: "What do you expect from them? They are looking for money and what better way to make money than to vilify Zimbabwe" ("Mugabe Trashes New AU Resolution on Human Rights", <https://www.wmnews.com>, Consulted on 12 January 2024).

⁸ N. Udombana, 'Meaningful Complementarity/Cooperation between the African Court and the African Commission, in Comparative Perspectives', (2016) published conference paper presented in a Conference on the First Decade of the Creation of the African Court on Human and Peoples' Rights (2016) in Arusha, Tanzania, November 2016 10 available at <https://www.researchgate.net/publication/331330403> (Consulted on 14-05-2024).

⁹ *Ibid.*

¹⁰ *Tanganyika Law Society Legal and Human Rights Centre and Reverend Christopher R. Mtikila v Tanzania* (merits) (2003) 34 para. 105; *Frank David Omary and Others v Tanzania* (Admissibility) (2014) 1 AfCLR 358, para. 73.

¹¹ G. J. Naldi, (2014). Observations on the Rules of the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, 14, pp. 366-369, p. 367.

and interpreting them directly as permitted under Articles 3(1) and 7 of the Court Protocol. This approach by the Court may imply a self-limitation on its competence. Nonetheless, the Court's jurisprudence reflects its mandate as outlined in the Court Protocol, navigating the complexities of its material jurisdiction in relation to other human rights instruments.¹

9. Findings

The finding in this study reveals that the principle of complementarity is crucial to the African human rights system, fostering a cooperative and mutually reinforcing relationship between the Commission and the Court. However, its effectiveness in practice has been characterized by variability, with both successful instances and significant challenges. It has faced successes in the application and interpretation by the Court and commission of the various Rules of Procedures. It also finds successes in the jurisprudence of the Court and the Commission in upholding human rights in the continent. Nonetheless, both institutions face challenges such as limited decision-making power, restrictions on accessing regional complaint mechanisms, absence of clear guidelines for case transfers, inadequate human and financial resources, and political interference.

10. Conclusion

This research/paper makes a review of the application of the principle of complementarity in the functioning of the African human rights commission and the Africa human rights court system. The findings of the study shows that the principle of complementarity in the functioning of the African human rights commission and the Africa human rights court system has faced successes in the application and interpretation by the Court and commission of the various Rules of Procedures. It also finds successes in the jurisprudence of the Court and the Commission in upholding human rights in the continent. Nonetheless, both institutions face challenges such as limited decision-making power, restrictions on accessing regional complaint mechanisms, absence of clear guidelines for case transfers, inadequate human and financial resources, and political interference. This research makes important contributions to strengthening of the principle of complementarity especially in the setting in the jurisprudence of the Court and the Commission in upholding human rights in the African continent.

Based on implications, the findings of this study can guide the African Union, state parties, and the two institutions in refining their operational frameworks to ensure better synergy and avoid jurisdictional overlaps. Based on some of the challenges enumerated in this study, there is need for reforms in the Court and Commission relationship to improve case referral efficiency and enforcement of judgments. Legal practitioners, NGOs, and human rights defenders can use this to navigate the complementary roles of the Commission and Court more effectively, knowing which body to approach first and under what circumstances.

Establishing the functions of the African Commission and Court on Human Rights necessitated some movements and acquisition of some relevant materials to the topic which needs finances which were not very easy to obtain. There were equally some difficulties to access written materials due to very limited text books in the university library on the topic and difficulties to access written materials online due to restrictions and limited access to online journals and books. Equally, conducting interviews were challenging as some participants were not willing to participate and those that were willing, scheduling an appropriate time was not easy due to various activities they were engaged in.

However, these limitations did not affect the overall quality of the thesis because some relevant text books were purchased, persisted in getting necessary information by maximizing the use of open access journals and relevant textbooks found online and in the library and also persistent in meeting the interviewers at their preferred scheduling time.

11. Recommendations

From the findings discussed above, this research provides the following recommendations as discussed below.

11.1 Strengthen the African Human Rights System

Strengthening the African human rights system is essential in enhancing its effectiveness in promoting and protecting human rights in Africa. This can be achieved by providing sufficient resources, including funding, technical assistance, and capacity-building programs. States should prioritize strengthening the system by increasing funding, providing technical assistance, and promoting awareness and visibility of the system.

The African Commission and Court should also be given more autonomy to carry out their mandates effectively. This can be achieved by granting them more independence and flexibility in their operations. Additionally, the Commission and Court should be provided with adequate resources, including staffing, equipment, and infrastructure, to enable them to carry out their functions effectively.

¹ See, *African Commission of Human and Peoples' Rights v Kenya (Ogiek Case)* (merits) (2017) 2 AfCLR 9 para. 51.

Also, the African human rights system should be strengthened by fostering greater cooperation and collaboration between the Commission, Court, and other stakeholders, including civil society organizations, national human rights institutions, and governments. This can be achieved through regular meetings, joint training programs, and development of joint policies and guidelines on human rights protection.

11.2 Improve Access to the Court

States should consider making declarations under Article 34(6) of the Protocol, allowing individuals and NGOs to access the Court directly. This will enhance access to justice for victims of human rights abuses and promote accountability. The Court should also develop clear guidelines and procedures for accessing the Court, including rules on admissibility, jurisdiction, and procedure. This will enable individuals and NGOs to access the Court more easily and effectively. The Court should also consider implementing virtual hearings, and online case management platforms to increase accessibility and efficiency.

11.3 Enhance Cooperation Between the Commission and Court

The Commission and Court should continue to work together, sharing expertise and coordinating efforts to enhance human rights protection in Africa. The Commission and Court should develop joint programs and activities to promote human rights protection, including joint training programs, joint research projects, and joint promotional activities. This will enable them to share expertise and coordinate efforts more effectively.

Furthermore, the Commission and Court should develop clear guidelines and procedures for cooperation, including rules on referrals, evidence assessment, and decision-making. This will enable them to work together more effectively and enhance human rights protection in Africa.

11.4 Develop Clear Guidelines

The Commission and the Court should develop and adopt a binding self-regulating mechanism for case management and information sharing. This would establish clear, non-discretionary criteria for when a case should be transferred from the Commission to the Court, and from the Court to the Commission. This mechanism should also provide provision for a binding Advisory Opinion which would be a crucial tool for avoiding friction and promoting a unified approach. The mechanism should also enhance the role of each body as *amicus curiae* (friend of the court) in the other's proceedings. For example, the Commission would have an automatic right to provide written and oral submissions in any case before the Court that it had previously considered. Similarly, the Court could appoint an observer to attend key sessions of the Commission's work. This would increase efficiency by avoiding jurisdictional disputes and strengthen legal certainty through clearer understanding of the procedural path for petitioners' cases.

11.5 Increase Awareness and Visibility

Efforts should be made to increase awareness and visibility of the Commission and Court's roles and functions. This can be achieved through outreach programs, social media, and partnerships with civil society organizations. The Commission and Court should also develop educational materials and programs to promote awareness and understanding of the African human rights system. Additionally, the Commission and Court should engage with the media and other stakeholders to promote awareness and visibility of the African human rights system. This will enable them to reach a wider audience and promote human rights protection in Africa more effectively.

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Forensic Audit Practice and Occurrence of Fraud in Public Sector Organization: A Study of University of Douala, Cameroon

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Abstract

The study examined forensic audit practice and occurrence of fraud in public sector organization. A study of University of Douala, Cameroon. The specific objectives were to: examine the effect of substantive technique on fraud control, determine the effect of statistical principle on fraud control and to ascertain the effect of data mining application on fraud control. The study adopted primary sources of data using questionnaire instruments. Ordinary least square of multiple regression was adopted in this study. The major findings revealed thus: there was a significant effect of substantive technique on fraud control, there was a significant effect of statistical principle on fraud control and data mining application had a significant effect on fraud control. On the basis of these findings, the study recommended; thus, Eradication of economic and financial crime through the adoption of forensic accounting in the system will improve the image of university under review. Also, detection and prevention of corruption have given rise to the profession of forensic accounting. Due to this fact, the most important thing University has to do with regard to fraud is to prevent crime from being committed. Finally, government and regulatory authorities should ensure the provision of standards and guidelines to regulate forensic activities and above all educational sectors should embrace integrity, objectivity, fairness and accountability in their day-to-day activities.

Keywords: forensic audit, occurrence of fraud, substantive technique, fraud control, data mining application

1. Introduction

The growing demand for forensic accounting is a known characteristic of most companies in the world. Forensic accounting arises from the effect and cause of fraud and technical errors made by humans. Forensic accounting is quite new in Nigeria as companies have realized that the service of a forensic accountant is needed as fraud cases have substantially increased in number. Forensic accounting is the application of financial skills and investigative mentality to unsettled issues, conducted within the context of the rules of evidence. Sarkar (2020) asserts that forensic accounting as a discipline encompasses fraud knowledge, financial expertise, and a sound knowledge and understanding of business reality and the working of the legal system. Forensic accounting may be one of the most effective and efficient ways to decrease and check accounting fraud. Presently, forensic accounting is gaining popularity worldwide. It has been taught as a major course in many educational institutions in various countries.

According to Sarkar (2020), forensic accounting generally involves the application of specialized knowledge and investigative skills possessed by CPAs to collect, analyze and evaluate data and evidential matter, forensic accounting services utilize the CPA's specialized accounting, auditing, economic, tax, fraud detection and other

skills to perform various types of investigations and to communicate findings in a courtroom or administrative setting. Forensic accounting services include litigation support, bankruptcy support, fraud and special investigations, dispute resolution, among many other services (Sarkar, 2020).

Forensic accounting is perceived to have evolved in response to certain emerging fraud-related cases. The scandals that recently rocked the corporate world with classical examples being the often cited Enron and WorldCom cases have also brought the field of forensic accounting to the forefront. Forensic accounting is seen as encapsulating all other investigation related areas in uncovering financial fraud. The increasing sophistication of financial fraud requires that forensic accounting be added to the tools necessary to bring about the successful investigation and prosecution of those individuals involved in criminal activities.

Forensic accounting is the tripartite practice of utilizing accounting, auditing and investigative skills to assist in legal matters. It is a specialized field of accounting that describes engagements that result from actual or anticipated disputes or litigation. Forensic accounting can therefore be seen as an aspect of accounting that is suitable for legal review and offering the highest level of assurance. There is an alarming increase in the number of fraud and fraudulent activities in Nigeria, requiring the visibility of forensic accounting services. According to the Centre for Forensic Studies (2020) report, the increasing need for forensic and investigative accounting in the manufacturing firms' results from the complexities of modern day manufacturing activities with large volume of complex data. This makes it difficult to monitor transactions by applying manual audit processes. This in turn makes the control utility of auditing ineffective.

The general expectation is that forensic accounting may offer some respite to the seeming vulnerability of conventional accounting and audit systems to financial fraud. Consequently, the incorporation of modern forensic auditing techniques in audit in Nigeria is seen as timely in order to prepare the accounting profession to deal effectively with the problem of unearthing ingenious fraud schemes arising from audit failure to detect frauds in Nigeria. Centre for Forensic Studies (2020) report in Nigeria states that if well applied, forensic accounting could be used to reverse the leakages that cause corporate failures. This can be attributed to the fact that proactive forensic accounting practice seeks out errors, operational vagaries and deviant transactions before they crystallize into fraud (Huber, 2022; Sarkar, 2020).

2. Literature Review

In discussing forensic audits as regards to fraud prevention in organizations, the following theories are adopted:

2.1 Fraud Triangle Theory

This theory is credited to American Criminologist Donald Cresset (1950). The fraud triangle is what the forensic accountant relies on to identify suspected fraud, the causes and the weakness in the system that prompted the fraud. Based on the fraud triangle concept, the three factors that cumulate into the triangle are pressure, opportunity and Opportunity-Employees use their position to commit fraud when internal controls are weak, or where there is poor management oversight on internal control Implementation. Most employees who commit fraud do so, because they have the opportunity to access Assets and information that allows them obscure their fraudulent deeds. It is true that employees need access to certain platform to perform their jobs. The same access can provide the employee with opportunity to commit fraud.

Pressure/Incentive-Pressure can make a staff commit fraud. Pressure does not only mean financial pressure. Sarkar (2020) states that there are three types of motivation or pressure; personal pressure to pay for lifestyle, employment pressure from continuous compensation structures, or management's financial interest, and external pressure such as threats to the Business Financial stability, financial covenants, and market expectations. Rationalization — This is an attempt by an employee to justify why they commit fraud. For instance, an employee who is about to be evicted from his/her home can be used to justify fraudulent act. The employee may say "I deserve to have a place to call my home", so also an employee who feels he/she is underpaid may say it is a way of augmenting the payment due to him/her. As such, the rationalization is an act of employee who commits fraud to give reasons for his action.

2.2 The Fraud Diamond Theory

This theory considers the four elements by Wolf and Hermanson (2004). This theory is an improvement in the existing fraud triangle. They believe that the fraud triangle could be enhanced to improve both fraud prevention and detection by considering a fourth element. In addition to addressing incentive, opportunity and rationalization, the Wolf and Hermanson's four sided fraud diamond also considers an individual's capability personal traits and abilities that play a major role in whether fraud may actually occur even with the presence of the other three elements.

2.3 Fraud Scale Theory

The fraud scale theory was developed by Albrecht, Howe, and Romney (1984), as an alternative to the fraud

triangle model. The fraud scale is very similar to the fraud triangle; however, the fraud scale uses an element called “personal integrity” instead of rationalization. This personal integrity element is associated with each individual’s personal code of ethical behavior. Albrecht et al. (1984) also argued that, unlike rationalization in the fraud triangle theory, personal integrity can be observed in both an individual’s decision and the decision-making process, which can help in assessing integrity and determining the likelihood that an individual will commit fraud. Experts agree that fraud and other unethical behaviors often occur due to an individual’s lack of personal integrity or other moral reasoning. Hence, to forestall the occurrence of such fraud, the service of a trained and experienced investigator like the forensic auditor is highly required.

2.4 Forensic Accounting

According to Ozkul and Pamukc (2022) forensic accounting is the specialty area of the accountancy profession which describes engagements that result from actual or anticipated disputes or litigation. “Forensic” means “suitable for use in a court of law,” and it is to that standard and potential outcome that forensic accountants generally have to work. Forensic accounting is recognized as a particular form of professional expertise and endowed with specific attributes; the recognition comes from possessing a formal certification in forensic accounting which provides symbolic value. Forensic accounting is a science dealing with the application of accounting facts and concepts gathered through auditing methods, techniques and procedures to resolve legal problems which requires the integration of investigative, accounting, and auditing skills. Dhar & Sarkar (2020), Stanbury & Paley-Menzies (2020) state that forensic accounting is the science of gathering and presenting information in a form that will be accepted by a court of jurisprudence against perpetrators of economic crime. Dhar and Sarkar (2020) argued that forensic accounting is the application of investigative and analytical skills for the purpose of resolving financial issues in a manner that meets standards required by courts of law. Forensic investigation is about the determination and establishment of fact in support of legal case. That is, to use forensic techniques to detect and investigate a crime is to expose all its attending features and identify the culprits. Forensic accounting is the process of interpreting, summarizing and presenting complex financial issues clearly, succinctly and factually often in a court of law as an expert. It is concerned with the use of accounting discipline to help determine issues of facts in business litigation (Okunbor & Obaretin, 2020).

Forensic accounting is a discipline that has its own models and methodologies of investigative procedures that search for assurance, attestation and advisory perspective to produce legal evidence. It is concerned with the evidentiary nature of accounting data, and as a practical field concerned with accounting fraud and forensic auditing; compliance, due diligence and risk assessment; detection of financial misrepresentation and financial statement fraud; tax evasion; bankruptcy and valuation studies; violation of accounting regulation (Dhar & Sarkar, 2020). The America Institute of Certified Public Accountants (AICPA) defines forensic accounting as services that involve the application of specialized knowledge and investigative skills possessed by Certified Public Accountants... Forensic accounting services utilize the practitioner’s specialized accounting, auditing, economic, tax, and other skills (AICPA, 2020). Singleton and Singleton (2020) said forensic accounting is the comprehensive view of fraud investigation. It includes preventing frauds and analyzing antifraud control which includes the gathering of nonfinancial information.

Dhar and Sarkar (2020) noted that the objectives of forensic accounting include: assessment of damage caused by an auditors’ negligence, fact finding to see whether an embezzlement has taken place, in what amount, and whether criminal proceedings are to be initiated; collection of evidence in a criminal proceedings; and computation of asset values in a divorce proceedings. He argues that the primary orientation of forensic accounting is explanatory analysis (cause and effect) of phenomenon including discovery of deception (if any), and its effects introduced into the accounting domain.

According to Dhar and Sarkar (2020), forensic accountants are trained to look beyond the numbers and deal with the business realities of situations. Analysis, interpretation, summarization and the presentation of complex financial business related issues are prominent features of the profession. He further reported that the activities of forensic accountants involve: investigating and analyzing financial evidence; developing computerized applications to assists in the analysis and presentation of financial evidence; communicating their findings in the form of reports, exhibits and collections of documents; and assisting in legal proceedings, including testifying in courts, as an expert witness and preparing visual aids to support trial evidence.

In the same vein Dhar and Sarkar (2020) stated that forensic accountants provide assistance of accounting nature in a financial criminal and related economic matters involving existing or pending cases as specified by the Alliance for Excellence in Investigation and Forensic Accounting (Alliance) of Canada: assisting in obtaining documentation necessary to support or refute a claim; review of the relevant documentation to form an initial assessment of the cases and identify areas of loss; assistance with the examination for discovery and the formulation of questions to be asked regarding the financial evidence; attendance at the examination from discovery to review the testimony; assist with understanding the financial issues and to formulate additional

questions; reviewing of the opposing expert's damaging report, and reporting on both the strengths and weaknesses of the position taken; and attendance at trial, to hear the testimony of the opposing expert and provide assistance with cross-examination.

2.5 Fraud Detection

Defining fraud is as difficult as identifying it. No definite and invariable rule can be laid down as a general proposition in defining fraud as it includes surprise, trick, cunning and unfair ways by which another is cheated. Fraud is a legal term that refers to the intentional misrepresentation of the truth in order to manipulate or deceive a company or individual. Fraud is to create a misjudgment or maintain an existing misjudgment to induce somebody to make a contract. It involves enriching oneself intentionally by reducing the value/worth of an asset in secret. When companies undergo severe financial problems and end up in bankruptcy, fraud by senior management may be involved. Gottschalk (2020) states that fraud is not a possibility but a probability. He also explains that fraud can be better prevented if decisions are made by a group and not an individual.

However, this is not the case if the group has the same interest in mind. Then fraud may not be prevented. Conversely, the group is influenced by the dominant decision maker who ends up deciding everything. Fraud assumes so many different degrees and forms that courts are compelled to context themselves with only few general rules for its discovery and defeat. It is better not to define the term lest men should find ways of committing frauds which might evade such definitions. Gottschalk (2020) also reported that fraud is a generic term and embraces all the multifarious means which human ingenuity can devise, which are resorted to by one individual to get advantage over another in false representation. Fraud is an act or course of deception, deliberately practiced gaining unlawful or unfair advantage; such deception is directed to the detriment of another. Accounting fraud is an act of knowingly falsifying accounting records, such as sales or cost records, in order to boost the net income or sales figures; accounting fraud is illegal and subjects the company and the executives involved to civil lawsuits. Company officials may resort to accounting fraud to reverse loss or to ensure that they meet earning expectations from shareholders or the public.

According to Ozkul and Pamukc (2022), the following are the objective of financial statement fraud: Increasing the market value of the business, making financial statements consistent with budgets and obtaining unfair earnings by presenting falsely the value of the business. When business frauds are analyzed, it is ascertained that three components come together when committing the crime. These are pressure, opportunity, and justification that constitute the fraud triangle. Components of the fraud triangle are similar to the fuel, spark, and oxygen which together cause fire. When the three come together, inevitably fire breaks out. Pressure factors could be gathered into three groups: pressures with financial content, pressures stemming from bad habits and pressures related with job. Opportunity factors are the second component of the fraud triangle. They directly involve top management and owners of the business in particular.

Providing the opportunity to commit fraud is one of the most important factors arising from frauds. Since the business could greatly influence opportunity factor, this point should receive particular attention for fraud prevention. The third component of the fraud triangle is fraudster's developing defence mechanisms in order to justify his/her action. Some efforts of the fraudsters to justify themselves and the excuse they made up are: (a) I had borrowed the money, I would pay back, (b) This is in return for my efforts for the business (c) Nobody has suffered as a result of this and (d) I have taken the money for a good purpose. In order to overcome these justifying excuses, business should explain ethic rules to employees, inform them that fraudsters would definitely be penalized, establish moral code in the organization, and provide training on them. Over time, the importance of initial detection of fraud has increased because the number of fraudulent events has increased.

2.6 Forensic Audit and Fraud Detection

The symptoms do not necessarily mean fraud is being undergone as it may be caused by mistakes. The writer advises are mainly to be cautious when fraud is reported as it may be false allegations. Fraud is not easily proven since frauds have themselves at a safe line where authority could not convict them. This shows that the author is explaining that the fraud defaulters are getting smarter due to the possible mistakes human can cause. This has made detecting and proving fraud a hard work for a forensic accountant. There is a need for deeper understanding on how these defaulters work their fraudulent act. Without constant involvement of the public and improvement in forensic accounting, fraud cases will be hard to detect and thus lead to greater success in financial fraud, which also translates into the failure to meet the expectations of the public, shareholders or even other stakeholders. Forensic accounting is considered as one of the factors in fraud prevention.

Okoye and Gbegi (2023) carried out a study on the evaluation of forensic accountants to planning management fraud risk detection procedures. The study reveals that forensic accountants effectively modify the extent and nature of audit test when the risk of management fraud is high, forensic accountants propose unique procedures that are not proposed by auditors when the risk of management fraud is high, forensic accountants can make to

the effectiveness of an audit plan when the risk of management fraud is high, involving forensic accountants in the risk of management fraud assessment process leads to better results than simply consulting them (Efiong, 2022; Stanbury, 2020; Zysman, 2019).

3. Techniques and Methods of Forensic Accounting

Signs of financial crime can be initially detected in a variety of ways by whistle-blowing, by accident, by auditors, by data-mining, by controls and testing or by the organization's top management requesting an inspection on the basis of mere suspicion. Ideally, fraud detection ought to be recognized as an important responsibility within every organization and every employee within an organization ought to be familiar with the disciplinary consequences for breach of trust, as well as to report criminal misdeeds against the organization. On a practical level, however, there are steps to the investigating methods used in an organizational context that are far from these ideas and reaching the "breakthrough" point is more an art than a science. There are certain investigative measures which needs to be taken that may violate employee workplace rights or people's constitutional rights. There are also special procedures for the gathering and handling of financial crime evidence. Fraud detection and prevention is a highly complex area of crime fighting where an investigation can easily backfire and one might be exposed to possibly more harm (Ozkul, 2022).

It is hard to define what it means to be "suspicious" of somebody or something, but it is an important element of investigation, nonetheless. Obviously, going on a hunch, rumor, whim or guess is "mere suspicion" and this violates everything that the principles of criminal procedure stand for. We can, however, talk sensibly about being reactive and being proactive. Pattern is the key word here and there is a maxim in forensic accounting called Benford's law which states that fabricated figures (an indicator of fraud) possesses a different pattern from random (or valid) figures.

Narrowing down the suspect

Give some initial thought to whether you have a conspiracy on your hands, a small group acting independently, or a solo offender, but be prepared to use a variety of approaches to narrow down the list of usual suspects. The "usual suspects" will be those who occupy key positions identified in the risk assessment or those who occupy positions that have historically been involved in fraud. If the organization you are investigating has a history of past fraud, use your knowledge of that history to provide a clue to future frauds that you can set up observation of (Singleton, 2020).

Gathering the evidence

The formal investigation is a follow-up to your preliminary investigation which essentially established that you acted upon a whistle-blowing or complaint by exercising "due care". Due care should not be confused with "due diligence" which is another type of forensic accounting investigation that checks out the background, reputation and integrity of a prospective business partner. However, a due diligence investigation may be necessary if dealing with more than one organization or subsidiaries of a parent company. Before you begin gathering evidence, care must be taken to conform to the standard procedures or at least the best practices in this newly emerging field.

Direct and indirect technique

The direct method is also called the transaction method. When using the direct method of forensic accounting, the accountant examines cancelled cheques and invoices, contracts, agreements and public records and notices. The accountant may also interview management and employees. The indirect method has many forensic accounting techniques that fall under its name including the cash T-method, the source and application of funds method, the net worth method and the bank deposit method. Each one assists a forensic accountant in understanding what happened to the income or cash coming in for the specific litigious matter.

Cash T-method and source and application of funds method

The cash T-method compares cash received to the amount of cash spent. It is used to determine if an organization or individual had understated income. Similarly, the source and application of funds method examines the amount spent on lifestyle versus assets and investments. Both the cash T-method and source and application of funds method are easily understood as they compare cash coming in with cash going out.

Net worth method

The net worth method calculates total assets and subtracts total liabilities of an individual or a company. The resulting number represents net worth. Net worth is compared to reported income over several periods. When there are un-reconciled differences, a forensic accountant may pursue investigation of these differences.

4. Empirical Literature

Many studies were conducted on this study, similarly, Okoye and Gbegi (2023), conducted a research titled

“Forensic Accounting: A tool for fraud detection and prevention in the public sector of Kogi state”. The population consists of 5 ministries with a total of 5015 respondents of which 370 formed the sample size. The use of ANOVA was used in testing the hypotheses. It was discovered that Forensic Accounting significantly reduces occurrence of fraud in the public sector and there is significant difference between Professional forensic Accountants and traditional Auditors.

Okafor and Agbiogwu (2016) conducted a study on the effect of forensic accounting skills on the management of Bank fraud in Nigeria. In their research work, they adopted non-probability sampling technique to select the five (5) commercial Banks used as population for the study. Based on the analysis of variance (ANOVA) the findings of their study reveals that possession of basic forensic skills significantly reduces the occurrence of fraud cases in the banking sector and that there is a significant difference between services of forensic accountants and External auditors, and that the presence of forensic accountants in Banks can aid in reducing fraud cases.

Zachariah, Masoyi, Ernest and Gabriel (2024), work on the topic titled “application of forensic auditing in reducing fraud cases in Nigeria money deposit Banks”. The study analyzed the trend in fraud cases from 2001-2012, included are the amounts involved in fraud, the most frequent types of fraud, and the losses sustained by Banks. The descriptive analysis revealed that there are up and down movements in fraud cases. Since Banks continually lose huge sums of money as a result of the inability of the auditors and the supervisory regulators to curtail the trend, there is therefore the need to devise different means of tackling frauds in the Banks. According to the authors, Nigerian Banks over the past decades had suffered from the menace of fraud which resulted to distresses and liquidation which hamper the roles of Banks in the economy. The study therefore suggested employment of forensic auditing in Nigerian Banks by amending the existing status, in such a way that forensic auditors are included in the audit team.

Onodi, Okafor and Onyali (2025) examined the effect of forensic investigation methods in corporate fraud deterrence in Nigerian Banks. This study adopted a survey research design and data from primary source were collected through interviews and administration of questionnaires, while secondary source consists of reports on fraud and forgery in the banking sector. Statistical tools used to analyze the data include percentages, mean score, frequency tables, regression analysis and Z-test. The result revealed that there is a significant relationship between the forensic investigative methods and corporate fraud deterrence. The finding revealed that expert services of forensic investigators are normally required in the prosecution of fraud, but majority of the audit and accounting personnel in Nigeria are suffering from poor perception and knowledge of forensic investigative methods.

Okoye and Gbengi (2023) conducted a research titled “forensic accounting: a tool for fraud detection and prevention in the public sector of Kogi State”. The population consists of 5 ministries with a total of 5,015 respondents of which 370 formed the sample size. The use of ANOVA was used in testing the hypotheses. It was discovered that forensic accounting significantly reduces occurrence of fraud in the public sector.

Akhidime and Uagbala-Ekatah (2024), in their exploration of the growing relevance of forensic accounting in Nigeria, found that though forensic accounting in Nigeria have helped fraud detection, it is lacking statutory back up. Hence, it has no significant impact in tackling corruption in Nigeria.

Pamuke and Ozkul (2022), in their investigation into fraud detection and forensic accounting concluded that forensic accounting will be one of the best careers in the future and urge companies and government around the world to make material and moral investment for this profession, in order to ensure better world economy free of fraud.

Enofe, Okpako and Atube (2023) conducted a study on the impact of Forensic Accounting on fraud detection. In their research work, they adopted ordinary least square method. The choice of this technique arises as a result of the fact that it is subject to some crucial assumption of the error term and this provides the best of the parameter estimates of a single equation model. Based on the findings, their study reveals that forensic accounting services provide firms with the necessary tools to determine fraudulent activities but does not curb fraudulent activities.

5. Methodology

The study adopted primary sources of data. The population of the study was two hundred and fifty (200) staff. Taro Yamane formula was used to determine the sample size of one hundred and thirty-three (133). Data from research questions were analyzed using frequencies and percentages. To test the formulated hypotheses, multiple regression statistical tool was adopted in this study. For the purpose of this study, the empirical model for this study is specified thus;

$$FC=f(ST, SP, DMA)$$

Where

FC = Fraud control

ST = Substantive technique

SP = Statistical Principle

DMA = Data mining Application

To obtain the ordinary least square model:

$$FC = b_0 + b_1ST + b_2SP + b_3DMA + e$$

Where

b_0 = Regression Constant

$b_1 - b_3$ = Regression Parameters to be estimated

6. Results

Hypothesis one

H_0 : There is no significant effect of substantive technique on fraud control.

Independent variable: Substantive technique

Dependent variable: Fraud control

Test statistic: Least square regression statistic

Data on Table 1 was used to test hypothesis one. The analysis shows coefficient of determination (R-square) of 0.728, which implies that 73 percent of the response variation in the dependent variable was explained or caused by the explanatory variable; while 16 percent was unexplained. Thus, remaining 27 percent unexplained response could be caused by other factors or variables outside the model. The value of R-square was high enough to indicate a good relationship between the dependent and independent variable. The Durbin Watson value was 0.325 which implies that the test fell within the range of autocorrelation 2.879 in conclusive region of D.W partition curve. In testing for statistical significance of the model, the F-statistic was adopted at 5 percent significant level. The computed value of the f-statistic was 8274 far greater than the tabulated value of f-statistic of 3.84 at $df_1 = 1$ and $df_2 = 133$. Also, as confirmation, the calculated t-statistics of 54.38 was greater than the critical value of 1.64. With these it is concluded that there is a significant effect of substantive technique on fraud control.

Table 1. Least square regression result of effect of substantive technique on fraud control

Dependent variable – Fraud control

Variable		B	Standard error		B	T	Sig.		
Constant		.852	.176			4.840	.000		
ST		.765	.026		.918	29.42	.000		
R	R ²	Adj. R ²	Std.Error	DW	Cal. F*	Cri. F*	df ₁	df ₂	Sig.
.718	.728	.871	.482	.325	8274.595	3.84	1	133	P<0,05

Source: SPSS output.

Hypothesis two

H_0 : There is no significant effect of statistical principle affect fraud control.

Independent variable: Statistical principle

Dependent variable: Fraud control

Test statistic: Least square regression statistic

Data on Table 2 was used to test hypothesis two. The analysis shows coefficient of determination (R-square) of 0.918, which implies that 92 percent of the response variation in the dependent variable was explained or caused by the explanatory variable; while 15 percent was unexplained. Thus, remaining 8 percent unexplained response could be caused by other factors or variables outside the model. The value of R-square was high enough to indicate a good relationship between the dependent and independent variable. The Durbin Watson value was 1.35 which implies that, the test fell within the range of autocorrelation 2.879 in conclusive region of D.W partition curve. In testing for statistical significance of the model, the F-statistic was adopted at 5 percent significant level. The computed value of the f-statistic was 1.588 far greater than the tabulated value of f-statistic of 3.84 at $df_1 = 1$ and $df_2 = 133$. Also, as confirmation, the calculated t-statistics of 58.90 were greater than the

critical value of 1.64. With this, it was then concluded that there is a significant effect of statistical principle on fraud control.

Table 2. Least square regression result of statistical principle on fraud control

Dependent variable – Fraud control

Variable		B	Standard error		B	T	Sig		
Constant		.783	.073			1.072	.000		
SP		.638	.021		.921	3.038	.000		
R	R ²	Adj. R ²	Std. error	DW	Cal. F*	Cri. F*	df ₁	df ₂	Sig.
.791	.918	.879	.674	1.35	1.588	3.84	1	133	P<0,05

Source: SPSS output.

Hypothesis three

H₀: There is no significant effect of data mining application affects fraud control.

Independent variable: data mining application

Dependent variable: Fraud control

Test statistic: Least square regression statistic

Data on Table 3 was used to test hypothesis three. The analysis shows coefficient of determination (R-square) of 0.749, which implies that 75 percent of the response variation in the dependent variable was explained or caused by the explanatory variable; while 15 percent was unexplained. Thus, remaining 15 percent unexplained response could be caused by other factors or variables outside the model. The value of R-square was high enough to indicate a good relationship between the dependent and independent variable. The Durbin Watson value was 0.732 which implies that the test fell within the range of autocorrelation 2.879 in conclusive region of D.W partition curve. In testing for statistical significance of the model, the F-statistic was adopted at 5 percent significant level. The computed value of the f-statistic was 325.9 far greater than the tabulated value of f-statistic of 3.84 at df₁ = 1 and df₂ = 133. Also, as confirmation, the calculated t-statistics of 256.56 was greater than the critical value of 1.64. With this, it was then concluded that there is a significant effect of data mining application on fraud control.

Table 3. Least square regression result of data mining application on fraud control

Dependent variable – Fraud control

Variable		B	Standard error		B	T	Sig		
Constant		89.738	.090			997.1	.000		
DMA		56.452	.022		.926	256.6	.000		
R	R ²	Adj. R ²	Std. error	DW	Cal. F*	Cri. F*	df ₁	df ₂	Sig.
.978	.749	.657	.458	.112	2105.872	3.84	1	133	P<0,05

Source: SPSS output.

7. Discussion of Findings

Based on the analysis of the result, it was revealed that forensic audit has a significant relationship on fraud detection. The finding conforms to the works of scholars who posit that forensic accounting is the application of financial skills and investigative mentality to unsettled issues. It also revealed that forensic accounting has a positive impact on reporting quality. It conforms to the works of Gray (2018) who posit that forensic accounting may be one of the most effective and efficient ways to decrease and check accounting fraud. The finding revealed that forensic audit has a positive effect on fraud control. The major findings are:

- (1) There is a significant effect of substantive techniques on fraud control.
- (2) There is a significant effect of statistical principles that affect fraud control.
- (3) There is a significant effect of data mining application affecting fraud control.

8. Conclusion and Recommendations

On the basis of this finding, the study concludes that forensic audit services provide educational sector with the necessary tools to deter fraudulent activities but does not curb fraudulent activities. The gap can be filled by introducing and adapt forensic audit as financial strategy to curb economic and financial crime: Forensic audit techniques will provide litigation support service with appropriate provision of professional services in the banking sector. Forensic Accounting will institute good corporate governance in the educational sector which will install public confidence in the government and the entire system. Traditional auditing has limitations in detecting fraudulent practices which the forensic accountants will effectively fill. They have the professional ability back up by law to break into the organization system and examine the books, make discoveries and present the documentary evidences in educational sector. This has effect on development, employment and the standard of living of the people. The study therefore recommended thus.

- 1) Eradication of economic and financial crime through the adoption of forensic accounting in the system will improve the image of the university under review.
- 2) Detection and prevention of corruption have given rise to the profession of forensic accounting. Due to this fact, the most important thing University has to do with regard to fraud is to prevent the crime from being committed.
- 3) Regulatory authorities should ensure the provision of standards and guidelines to regulate forensic activities and above all educational sector should embrace integrity, objectivity, fairness and accountability in their day-to-day activities.

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Systematic Reflection and Optimization of Digital Empowerment in Procuratorial Supervision

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Abstract

This study employs a holistic approach to examine the theoretical and practical dimensions of digital procuratorate, aiming to refine its foundational framework within China's legal context. Digital empowerment has significantly advanced procuratorial work by enabling structured progress, diversifying supervision models, and innovating case-handling methodologies. Compared to traditional oversight, it enhances five key dimensions: supervision time (extended coverage), supervision modes (diversified approaches), supervision conditions (improved technical support), supervision functions (expanded scope), and supervision means (advanced tools). Despite these advancements, persistent challenges include underdeveloped digital supervision concepts, fragmented institutional systems, inadequate integration of digital tools, shortages of interdisciplinary talent, and enduring data silos. To systematically propel digital empowerment and foster the legalization, standardization, and institutionalization of digital procuratorate, this study proposes comprehensive optimization strategies: digital proactive supervision, institutional standards systems, the "Three-in-One Inspection" approach, application platforms & models, data-sharing channels, integrated work mechanisms, and interdisciplinary talent development. These recommendations aim to bridge gaps between theory and practice while aligning with China's modernization goals for judicial and social governance.

Keywords: digital prosecution, prosecutorial supervision, digital empowerment, social governance, Chinese-style modernization

1. Introduction

On December 4, 2024, the Supreme People's Procuratorate (SPP) promulgated the Opinions of the Supreme People's Procuratorate on Comprehensively Deepening Procuratorial Reform and Further Strengthening Procuratorial Work in the New Era, mandating the technological empowerment of legal supervision through the in-depth implementation of the digital prosecution strategy. This initiative aims to modernize procuratorial work by achieving comprehensive digitization across all prosecutorial functions, thereby enabling unified legal oversight (Sheng, 2025). Existing scholarship has examined digital prosecution from macro-level perspectives-including its reform imperatives (Jia, 2023), functional dimensions (Wang, 2023), value objectives (Gao, 2022), relational dynamics (Weng & Shen, 2023), paradigm shifts (Bai & Xu, 2022), and conceptual, technological & methodological transformations (Yu, 2023), while micro-level studies have focused on applications such as smart procuratorial services (Xiang, 2022), digital tools for public interest litigation (Jin & Zhang, 2022), prosecutorial investigations (Wang, 2022), civil execution supervision (Fang, 2023), and juvenile legal supervision (Chen & Cong, 2023). Although these contributions have laid the foundational framework for digital prosecution, their practical systematization remains incomplete, resulting in persistent theory-practice gaps. This paper investigates the operational realities of digital prosecution, seeking to bridge these disparities by proposing actionable solutions to its implementation challenges.

2. The Development Context of Digital Empowerment in Prosecutorial Supervision

Reviewing the development context of digital prosecution reveals its current status as a strategic initiative aligned with the era's informatization, digitization, and intelligentization trends. Serving as a cornerstone for strengthening procuratorial legal supervision, this approach empowers nationwide procuratorial organs to leverage the digital revolution. Through transformative innovations in prosecutorial concepts, methodologies, mechanisms, and practices, digital prosecution has emerged as a catalytic force in modern legal oversight. By digitizing legal supervision processes, institutions are actively pioneering new paradigms for prosecutorial modernization, systematically cultivating a digital-driven ecosystem for prosecutorial development. At the macro level, nationwide digital prosecution infrastructure planning is being implemented through phased deployment; at the meso level, case-type supervision scenario modeling applications are undergoing systematic expansion; and at the operational level, legal supervision case-handling frameworks are progressively integrating advanced digital solutions.

2.1 Systematic Advancement of Digital Prosecution Construction

In June 2022, the SPP convened a landmark national conference on digital prosecution, formulating a strategic roadmap to accelerate procuratorial digital transformation. This pioneering initiative seeks to revolutionize legal supervision efficiency through systematic digitalization, establishing advanced procuratorial practices as a cornerstone for high-quality economic and social development. Deeply embedded within the national Digital China framework, digital prosecution has organically integrated its guiding principles, strategic objectives, and technological infrastructure, ensuring procuratorial work makes substantive contributions to the Five-sphere Integrated development paradigm. The SPP has spearheaded the formulation of the Outline for Digital Prosecution Construction, a comprehensive blueprint delineating implementation objectives, operational tasks, and institutional safeguards while identifying priority areas. Complementing this, the Digital Prosecution Case Handling Guidelines have curated exemplary case models, serving as standardized references for procuratorial organs nationwide to conduct digital supervision with consistency and efficacy.

Leading procuratorates in Zhejiang, Beijing, Sichuan, and other provincial jurisdictions have implemented progressive policy frameworks to accelerate digital prosecution adoption, including the establishment of dedicated digital prosecution divisions and strategic optimization of human capital. Across China, a comprehensive digital transformation initiative is unfolding through multi-pronged approaches: specialized capacity-building programs, next-generation data application platforms, innovation-driven big data legal supervision competitions, and standardized digital case management protocols. This systematic implementation has yielded measurable outcomes, with big-data-assisted legal supervision cases demonstrating remarkable year-on-year growth that validates the model's scalability. Concurrently, prosecutors nationwide have achieved paradigm shifts in their operational methodologies, collectively signaling the maturation of China's digital prosecution infrastructure and its accelerating trajectory toward modernized legal oversight (Ma, 2023).

2.2 Expanding Application of Case-Type Supervision Scenario Modeling

In the realm of digital prosecution, case-type supervision scenario modeling operates through an integrated mechanism combining big-data analytics with prosecutorial review to systematically identify legal oversight opportunities. Nationwide procuratorial organs have institutionalized big-data-driven legal supervision, with particular emphasis on developing scenario-based models in strategic domains to holistically transform the institutional architecture, operational methodologies, and procedural standards of the "Four Major Prosecutions" framework. Through advanced techniques including semantic analysis, keyword clustering, and multidimensional data correlation, prosecutors can efficiently detect batch supervision leads from legal documents and judicial databases. Regional procuratorates are actively deploying AI-powered digital prosecution tools to develop localized scenario applications that address specific governance challenges, thereby establishing automated lead identification, centralized case analysis, and precision-oriented disposition systems. Building upon their dual mandate of judicial oversight and social governance, procuratorates are progressively converting case-type supervision outcomes into actionable "governance scenarios." By implementing standardized model templates and targeted supervision initiatives, they effectively pinpoint intervention points for enhanced societal governance, yielding transformative improvements in priority sectors. Representative achievements include: Beijing Procuratorate's successful filing of 13,000+ cases through big-data supervision models, and Zhejiang Province's mature supervision frameworks (e.g., the "Predatory Lending Fraud Litigation Model" and "Medical Insurance Fraud Monitoring System") that have realized the "pioneering breakthrough-provincewide replication" paradigm, generating significant scaling effects in digital prosecution model deployment (Xu, 2025).

2.3 Innovation in Legal Supervision Case-Handling Models

Digital prosecution signifies a comprehensive transformation of traditional legal supervision methodologies, representing not only a disruptive innovation in supervision means but also a systemic reshaping of prosecutorial

workflows, organizational structures, and institutional mechanisms. The conventional paradigm of “passive case acceptance and individual case handling” is undergoing fundamental change: shifting from isolated cases to class-action oversight, from reactive post-facto intervention to proactive governance, and from mere case processing to integrated societal governance. Currently, driven by digital transformation, procuratorial organs leverage technological empowerment to integrate data, models, applications, and platforms. By activating the functional role of “data as a key element” within daily prosecutorial operations, they synergize prosecutorial functions with social governance, achieving significant advancements in supervision efficacy.

Zhejiang’s pioneering digital approach to combating false litigation exemplifies this progress. By analyzing massive civil judgments using criteria such as plaintiff concentration and defendant absence, its procuratorates effectively uncovered numerous “loan sharking” false litigation leads. This resulted in the handling of 2,861 false litigation cases involving over 1.2 billion CNY. The model has since been extended to labor disputes, corporate bankruptcies, insurance claims, and judicial confirmation of mediation/arbitration outcomes. Furthermore, in recent years, Zhejiang procuratorates have applied big data supervision to areas including fiscal subsidy oversight, shell company regulation, and medical insurance fraud, achieving significant outcomes.

3. The Mechanisms of Digital Empowerment in Prosecutorial Supervision

Digital prosecution centers on digitizing core prosecutorial functions, accelerating the development of key scenario-based applications to systematically reshape case-handling mechanisms, methodologies, and tools. By transforming supervision models through digital means, it drives comprehensive reforms in prosecutorial work—enhancing the timing, modes, conditions, functions, and methods of legal oversight.

3.1 Supervision Timing: Terminal Intervention and Front-End Monitoring

Digital prosecution expands supervisory capabilities from terminal intervention to front-end monitoring, facilitating comprehensive process-wide oversight. While prosecutorial authority, as an exercise of judicial power, inherently maintains restraint and typically focuses on cases with established outcomes, its traditional position at the terminal stage of the legal process chain has limited effectiveness in early case intervention. Big data technology overcomes these temporal constraints by enabling procuratorates to aggregate cross-departmental and cross-sectoral data, thereby identifying supervision leads and monitoring illegal activities in real-time across specific domains. This technological advancement allows for supervision of pre-litigation cases, emerging criminal trends, and systemic issues revealed through data analysis, effectively shifting prosecutorial oversight forward in the legal process.

3.2 Supervision Modes: Passive Oversight and Proactive Enforcement

Digital empowerment enhances prosecutorial agencies’ proactive capacity, transforming traditionally reactive supervisory models. Whereas most supervisory leads historically originated from post-incident reports or transfers from public security organs—resulting in predominantly passive case acceptance—resource constraints (including imbalanced caseload-to-staff ratios) have limited prosecutors’ ability to conduct comprehensive, proactive oversight. Big data now offers a paradigm shift for proactive enforcement. As a strategic production factor, data inherently contains latent supervisory leads. By applying big data analytics aligned with the “Four Major Prosecutorial Functions,” prosecutors can systematically screen cross-domain datasets to identify actionable oversight clues. These data-derived leads are then refined to a manageable scale for targeted manual verification, significantly enhancing oversight precision and enabling the crucial transition from passive case acceptance to proactive legal enforcement (Zhang, 2024).

3.3 Supervision Conditions: Constrained Resources and Collaborative Data Governance

Digital empowerment creates an interoperable data ecosystem that strengthens internal-external coordination in prosecutorial oversight. In this “Internet of Everything” era, multi-source data resources provide prosecutorial bodies with novel case-handling perspectives and operational advantages, signifying the transition from mere “digitized operations” to true “operationalized data.” The supporting data infrastructure now extends beyond internal departmental sharing or inter-jurisdictional exchanges within judicial authorities, fostering a cross-sectoral legal data environment that systematically breaks down traditional silos based on institutional functions. Digital case processing requires both prosecutorial system data and externally managed datasets from partner agencies, demonstrating the interdisciplinary nature of data interoperability and its inherent operational synergies—facilitating both data integration and workflow harmonization across departments. Through data-driven supervision protocols, prosecutorial organs establish operational consensus with supervised entities and data providers. These protocols are embedded within digital collaboration frameworks to proactively identify, warn against, and mitigate recurring violations, ultimately achieving coordinated governance effectiveness.

3.4 Supervision Function: Case Handling and Social Governance

Digital empowerment elevates prosecutorial supervision from individual case resolution to comprehensive social governance. Through big data analytics, prosecutors can detect systemic patterns across similar cases—patterns that frequently uncover underlying societal issues demanding collaborative interventions. As empowered by the Provisions on Prosecutorial Suggestions by People's Procuratorates, prosecutorial oversight now transcends isolated case handling to address root causes via systemic case management. This data-driven approach significantly expands the jurisdictional scope of supervisory authority, creating cross-sector societal impacts that move beyond traditional case-by-case adjudication. Digitally enhanced prosecutorial supervision enables prosecutors, as state actors, to actively engage in social governance. Their role transforms from discrete case interventions to holistic systemic oversight, thereby improving administrative efficiency, optimizing public service delivery, and enhancing social stability—ultimately accelerating the development of a rule-of-law society.

3.5 Supervision Methods: Digital Models and Information Technology

Digital empowerment provides prosecutorial supervision with innovative, multi-dimensional tools. The Digital Procuratorate initiative represents the modernization of prosecutorial work for the digital age, strategically employing data analytics and digital technologies to enhance both operational efficiency and supervisory effectiveness. Rather than constituting a standalone prosecutorial category, it serves as an integrated methodology that aligns technological solutions with core legal functions—ensuring technology serves substantive justice needs rather than operating in isolation. By synthesizing internal prosecutorial data with external datasets, prosecutors develop sophisticated big data supervision frameworks that combine cutting-edge information technology with specialized management platforms. These systems employ advanced data aggregation, correlation analysis, and pattern recognition to identify systemic legal issues across caseloads. Such digital transformation emancipates prosecutors from labor-intensive manual case reviews while resolving persistent challenges including workflow fragmentation and supervisory lead detection limitations. Ultimately, this technological integration creates transformative mechanisms for proactive execution of prosecutorial mandates.

4. Practical Constraints in Digitally Empowered Prosecutorial Supervision

Digitally empowered prosecutorial supervision faces significant practical challenges that impede the effective advancement of Digital Procuratorate initiatives. Subjectively, prosecutorial personnel lack a fully developed digital oversight mindset. Structurally, the institutional framework for digital prosecutorial supervision remains underdeveloped. Operationally, existing implementations of digital prosecution models operate superficially with limited substantive depth. Personnel constraints reveal an acute shortage of multidisciplinary talent proficient in both legal practice and technological application. Objectively, persistent digital barriers—manifested through data silos and systemic interoperability deficits—continue to impede progress across all fronts.

4.1 Incomplete Formation of Digital Supervision Mindset

The advancement of digitally empowered prosecutorial supervision continues to face constraints from traditional operational paradigms, where prosecutors predominantly maintain passive case acceptance and reactive oversight approaches, demonstrating limited initiative in leveraging digital technologies for legal supervision. Many prosecutorial professionals neither fully grasp the functional transformation required for digital procuratorial work nor adequately appreciate the profound societal adaptations necessitated by rapid technological evolution. This cognitive deficit translates into insufficient historical urgency to develop big data competencies. When combined with the lack of external support systems and performance incentives, these factors result in weak motivation for adopting digital workflows, including resistance to mastering data modeling and supervision algorithm applications. The cumulative effect manifests in suboptimal data utilization, inadequate cross-domain implementation, and a paucity of high-impact innovations—revealing systemic deficiencies in aligning prosecutorial functions with contemporary social governance frameworks.

4.2 Institutional Deficiencies in Digital Procuratorial Supervision

The deepening implementation of digital procuratorial reforms has exposed systemic deficiencies, where undefined institutional frameworks and inadequate legal foundations have led to borderline-compliant data practices, generating ongoing debates about the legitimacy of data acquisition and utilization methods. While local procuratorates have actively explored digital transformation in response to the Supreme People's Procuratorate's strategic directives, current practices lack a cohesive, scientifically-validated regulatory system that includes: standardized case-handling procedures specifically designed for digital supervision; management mechanisms supporting the "service-oriented, data-integrated, technology-driven, application-focused" operational model; and comprehensive legislative infrastructure covering development roadmaps for digital procuratorial systems, evidentiary standards for data-based prosecutorial work, and clear organizational accountability measures. This institutional fragmentation is further aggravated by a shortage of normative

documents to systematically guide digital procuratorial development, resulting in piecemeal policies that compromise the system's overall coherence (Li, 2023).

4.3 Insufficient Depth in Digital Procuratorial Model Implementation

The current implementation of digital procuratorial models demonstrates inadequate operational depth and significant regional disparities in development. Although procuratorial authorities have established multiple digital supervision frameworks, their practical efficacy remains constrained by three key factors: superficial departmental exploration, insufficient emphasis on core legal oversight functions, and poor interdepartmental coordination. Most models prove incapable of producing actionable supervision cases, yielding negligible legal oversight results and minimal systemic impact. While a few key supervision models have shown measurable success, their limited quantity and absence of standardized operational protocols hinder broader adoption and scalability. Additional shortcomings include passive departmental participation, ineffective external data acquisition coordination, and failure to develop high-impact digital procuratorial precedents—collectively revealing fundamental weaknesses in integrated advancement mechanisms for digital legal oversight (Zhang, 2025).

4.4 Shortage of Interdisciplinary Digital Procuratorial Talents

The persistent shortage of interdisciplinary talent in digital procuratorial work continues to pose significant operational challenges, particularly in prosecutors' data collection and analytical capacities. Technical obstacles in procuratorial data analysis primarily stem from inter-disciplinary dataset conflicts, where extracting high-value correlated information demands sophisticated IT infrastructure—a capability currently lacking in numerous jurisdictions. This “Internet and Procuratorial Work” era has created unprecedented demand for professionals equally proficient in data science and legal supervision, yet the supply of such dual-qualified experts remains critically insufficient (Shen & Lu, 2019). The current workforce composition reveals a fundamental disconnect: while most procurators possess conventional legal training but lack computational competencies, technical staff within the system typically demonstrate limited substantive legal knowledge. This professional dichotomy creates operational friction in case processing and legal oversight functions. Most critically, the talent gap directly undermines the integrated development of examination, investigation, and detection capabilities (the “three-in-one” supervisory model), urgently necessitating comprehensive reforms in talent cultivation mechanisms to bridge the growing digital-legal divide (Wang, 2023).

4.5 Data Barriers Persist Long-Term in Digital Procuratorial Work

Data barriers in procuratorial work principally emerge as institutional data-sharing challenges between procuratorial organs and external entities, typically characterized by reluctance, hesitation, or technical incapacity to share information. These barriers perpetuate fragmented data silos across information systems. At the macro level, regional data-sharing ecosystems remain immature due to the absence of standardized exchange protocols, comprehensive management frameworks, and unified technical platforms. On the micro level, institutional resistance—stemming from both subjective factors (lack of organizational initiative) and objective limitations (technological constraints)—creates uneven data accessibility, with most datasets categorized as either “restricted sharing,” “conditionally open,” or “non-sharable.” Grassroots procuratorates consequently grapple with unreliable data supply chains and operational mismatches between data needs and availability. Compounding these issues, incompatible interfaces among departmental office systems obstruct automated data transfers, necessitating labor-intensive manual processes that ultimately impede the development of interconnected data networks crucial for effective legal supervision (Hu, 2025).

5. Optimization Pathways for Digitally Empowered Procuratorial Supervision

The modernization of state and social governance necessitates a paradigm shift toward rule-of-law-based, specialized, socialized, and intelligent approaches. Under the guiding principle of “proactive procuratorial work in full compliance with legal provisions,” prosecutorial authorities must embrace digital empowerment as the cornerstone of legal supervision. This transformation requires establishing comprehensive statutory frameworks, standardized supervisory protocols, and streamlined case-handling procedures for digital procuratorial operations, coupled with accelerated development of supporting digital infrastructure. By implementing these strategic measures, procuratorial organs can achieve qualitative development and transformative efficiency gains, thereby making substantive contributions to the modernization of national governance systems.

5.1 Establishing a Digitally Proactive Supervision Doctrine

Prosecutors must fully adopt the paradigm of digitally empowered proactive supervision, actively participating in digital procuratorial initiatives to strengthen operational dynamism. Recognizing digital procuratorial work as the critical catalyst for high-quality legal oversight, practitioners must develop strategic foresight regarding the impending modernization leap in prosecutorial functions. To achieve substantive justice in law enforcement, prosecutorial organs must harness big data and emerging digital technologies to unlock the full operational

potential of legal data, moving beyond superficial approaches when addressing complex supervisory challenges. In confronting the enduring obstacles of limited evidence-collection channels and evidentiary acquisition difficulties in traditional case oversight, comprehensive improvements must be implemented: optimizing digital procuratorial platform infrastructure, building robust elemental systems, enhancing functional capabilities, and fostering innovative operational models. This systemic advancement will position data empowerment as the transformative engine driving qualitative, efficient, and dynamic evolution in prosecutorial practice.

Prosecutors must fundamentally comprehend how the digital revolution inherently transforms contemporary prosecutorial paradigms—driving innovation in conceptual frameworks, methodological approaches, and operational mechanisms. To meet digital-era imperatives, they must fully embrace the governing principle that “digital empowerment facilitates supervision, while effective supervision propels governance,” actively leveraging big data analytics to enhance legal oversight. This data-driven approach implements comprehensive pattern monitoring through five key dimensions: case analysis, element classification, model development, systematic governance, and integrated supervision. By adopting this methodology, prosecutorial practice achieves transformative breakthroughs in supervisory efficacy through strategic digital paradigm transitions.

5.2 Improving the Institutional Framework for Digital Procuratorial Standards

5.2.1 Refining Case Handling Protocols for Digital Procuratorial Work

As an emerging big-data-driven legal supervision paradigm that fundamentally transforms traditional prosecutorial methods through technological innovation, digital procuratorial practice must develop comprehensive operational guidelines rooted in conventional supervisory frameworks while emphasizing data-driven mechanisms. Current regulatory frameworks require substantive augmentation to address digital-specific characteristics and core prosecutorial principles, particularly through formalizing the legal basis for pattern supervision with explicit provisions regarding: fundamental responsibilities, jurisdictional parameters, standardized data collection protocols, evidentiary governance, and uniform workflows for analogous case processing (Li, 2024). Simultaneously, these regulatory enhancements must maintain appropriate judicial restraint by clearly delineating the boundaries of proactive prosecutorial actions, specifically defining the relationship between mandatory obligations and discretionary enforcement while instituting robust safeguards against jurisdictional overreach.

5.2.2 Developing Cross-Domain Operational Synergy Systems

To realize holistic integration of digital case management across the Four Major Prosecutorial Functions (Criminal, Civil, Administrative, and Public Interest) while embedding legal oversight throughout litigation workflows, a coordinated institutional framework must be systematically developed. This framework should incorporate: (1) interoperability standards for big-data supervision systems; (2) governance protocols for legal model applications; (3) benchmark repositories of exemplary digital oversight cases; and (4) technology-driven workflow assessment metrics. Together, these components will facilitate standardized implementation and operational excellence across all prosecutorial service domains, ensuring consistent digital transformation while maintaining rigorous legal oversight.

5.2.3 Implementing Tiered Data Security Governance Protocols

Prosecutorial authorities must implement robust data governance through a comprehensive quadruple-standardization framework, covering: (1) data sharing protocols, (2) business process regulations, (3) technical implementation standards, and (4) security operation requirements. This framework operationalizes cybersecurity accountability systems while enforcing classified data protection measures and confidential information classification schemes. End-to-end security safeguards must be strengthened, including network perimeter defense, authenticated data interchange mechanisms, encrypted transmission pathways, and terminal device protection protocols—ensuring absolute data integrity throughout all prosecutorial operations (Liang, 2024).

5.2.4 Advancing Interagency Judicial Data Interoperability

Through established interagency collaboration frameworks encompassing law enforcement agencies, judicial bodies, administrative authorities, industry associations, and corporate entities, systemic information-sharing barriers will be systematically eliminated. This will be achieved via codified regulations that clearly define: (1) data provider obligations, (2) scope limitations for shared materials, (3) authorization protocols, and (4) standardized access procedures. Parallel infrastructure development will facilitate consolidated data asset management through four key processes: standardized aggregation, quality-controlled cleansing, multi-source data fusion, and comprehensive metadata cataloging. This integrated approach creates reciprocal synergies whereby internal prosecutorial digitization simultaneously drives and benefits from external smart governance convergence across society.

5.3 Deepening the Integrated Application of Review, Investigation, and Detection Methods

The essence of digital case handling lies in leveraging technological empowerment to transform prosecutorial oversight from individual case resolution to categorical supervision and systemic governance. This paradigm shift utilizes big data analytics to identify oversight patterns across case categories, employing integrated supervision methodologies and holistic governance approaches to address persistent challenges including lead aggregation difficulties, categorical case management deficiencies, fragmented oversight mechanisms, and ineffective social governance interventions. The comprehensive implementation of the “Procuratorial Big Data Strategy” requires adherence to the “Triple-Method Fusion” principle: digital case review findings must undergo investigative verification, supplemented when necessary by detection-oriented methodologies. This intelligence-driven approach synergizes three core processes: (1) analytical review (including data examination) defining investigative scope, (2) field verification validating digital insights, and (3) forensic techniques overcoming evidentiary challenges—achieving unified integration in case-handling cognition, methodology, and resource allocation to optimize multidimensional oversight effectiveness. Consequently, big-data-identified leads demand the convergence of “data thinking” (expanding analytical parameters), “legal thinking” (identifying jurisdictional opportunities), and “detection thinking” (resolving evidentiary complexities). Prosecutorial organs conducting big-data casework must fully integrate internal departmental functions, harnessing combinatorial advantages through cross-departmental coordination and multi-tier collaboration. Data-sharing infrastructure must transcend organizational silos, institutionalizing coordinated case handling through vertical integration and joint operations, thereby requiring all prosecutorial divisions to align their mandates for unified action.

5.4 Proactively Exploring Big-Data Application Platforms and Oversight Model Development

The development of big-data legal oversight platforms should be systematically implemented through coordinated deployment of digital supervision models across procuratorial agencies, following the principles of collaborative data development, shared utilization, and integrated management. This phased implementation will establish provincial-level and higher big-data prosecutorial oversight platforms featuring unified core functions such as centralized data governance, collaborative modeling, and standardized deployment—effectively preventing redundant development and system fragmentation. The Supreme People’s Procuratorate will oversee the research, development, and administration of a national-level big-data legal oversight model management platform, adopting an open-source approach for authorized service providers to foster a sustainable ecosystem based on prosecutorial leadership, multi-party co-creation, and mutually beneficial partnerships. Provincial procuratorates will lead the construction of foundational platform architectures within their jurisdictions, providing subordinate units with comprehensive support including: data infrastructure resources, standardized development frameworks, user-friendly online modeling tools for frontline personnel, regulated external data import capabilities, and analytical algorithms to enable effective big-data prosecutorial oversight, systematic case evaluation, and comprehensive statistical analysis. While maintaining essential data interoperability standards, municipal and county-level procuratorates may conduct regulated data access and governance operations to improve both data collection efficiency and utilization precision, thereby maximizing practical application outcomes. Platform development and management must holistically incorporate internally generated prosecutorial data while progressively expanding external data resources, systematically aggregating public datasets, and strategically leveraging internet-derived information assets (Wang, 2025).

The systematic advancement of big-data legal oversight platforms requires coordinated implementation of digital supervision models across prosecutorial agencies, grounded in the principles of collaborative data development, shared utilization, and unified governance. This phased rollout will establish provincial and national-level prosecutorial oversight platforms featuring standardized core functionalities encompassing: (1) centralized data governance, (2) collaborative modeling ecosystems, and (3) modular deployment frameworks—effectively eliminating redundant development while ensuring system interoperability. The SPP shall exercise centralized oversight for the national big-data legal oversight platform, encompassing research, development, and administration responsibilities. Through regulated open-source access for authorized providers, this initiative will cultivate a sustainable digital ecosystem founded on three pillars: prosecutorial governance, multi-institutional co-creation, and value-driven partnerships.

Provincial procuratorates will spearhead foundational platform development within their jurisdictions, delivering comprehensive support infrastructure including:

- Standardized data architecture and storage solutions
- Modular platform development kits
- Intuitive online modeling interfaces for operational staff
- Secure external data integration channels
- Advanced analytical algorithms for case evaluation and statistical modeling

Municipal and county-level agencies shall maintain essential data interoperability standards while implementing localized data governance protocols to enhance both collection efficiency and analytical precision. Platform management must holistically incorporate four critical data dimensions: (1) internal prosecutorial case data, (2) expanded external legal resources, (3) systematically curated public datasets, and (4) strategically harvested internet-derived intelligence assets (Ma, 2024).

5.5 Establishing Smooth Internal and External Data-Sharing Channels

The successful implementation of big-data legal supervision fundamentally depends on establishing comprehensive mechanisms for acquiring and integrating both internal and external data sources. This necessitates systematic improvements in data source governance and the removal of institutional barriers to external data access. A rigorous assessment must first be conducted to identify and categorize the essential data types and parameters required for effective prosecutorial oversight. Procuratorial authorities should actively engage central government agencies, political-legal entities, and administrative departments to develop standardized regulations that establish clear data-sharing protocols and operational frameworks, thereby facilitating collaborative data acquisition initiatives. Furthermore, strategic partnerships must be cultivated across three critical dimensions: (1) institutional data sharing, (2) technical infrastructure development, and (3) analytical model innovation, ensuring a coordinated approach to building robust big-data supervision capabilities.

A dual-track approach must be implemented for prosecutorial data integration. Internally, prosecutorial data requires systematic consolidation through standardized collection methods and uniform quality criteria. Externally, a comprehensive data catalog must be developed to facilitate secure acquisition of authorized datasets from political-legal institutions and administrative agencies, while gradually integrating regulated public social data sources. The key to this process is the standardization of data interfaces to ensure seamless system interoperability. Through this holistic management of both internal and external data resources, legal supervision models will gain substantial analytical support. The data aggregation infrastructure requires comprehensive upgrading via three parallel initiatives: legislative framework enhancements, institutional mechanism innovations, and technical platform development—collectively enabling efficient, secure prosecutorial data sharing across all operational dimensions.

5.6 Refining the Integrated Mechanism for Digital Prosecutorial Work

Digital prosecutorial work constitutes a paradigm-shifting transformation in contemporary legal oversight, representing both a methodological revolution and technological evolution in procuratorial practice. As an emerging discipline still in its formative stage, this innovation demands robust top-down institutional governance and comprehensive coordination mechanisms to ensure systematic development. By strengthening digital prosecutorial competencies across all operational dimensions, the legal system can achieve holistic improvements in case-handling quality, oversight efficiency, and overall judicial effectiveness—ultimately realizing the full potential of technology-enhanced legal governance.

5.6.1 Refining the Integrated Organizational Leadership Mechanism

Procuratorial organs at all levels must establish specialized leadership groups and dedicated digital prosecution offices to systematically coordinate, guide, and implement digital transformation initiatives. These entities should institutionalize cross-functional communication protocols and collaborative mechanisms to strengthen centralized governance and organizational synergy. Such structural enhancements will optimize operational efficacy across key domains including data analytics management, application development, and the deployment of digital supervision models. Through this framework, procuratorial organs can reinforce integrated, comprehensive, and proactive execution of legal mandates, thereby consolidating a unified enforcement capacity that meets the demands of modern legal oversight.

5.6.2 Refining the Business-Led and Technology-Supported Collaboration Mechanism

Business units must take the lead in four critical dimensions of legal supervision modernization: (1) identifying model requirements, (2) conducting project evaluations, (3) overseeing application deployment, and (4) coordinating data integration, while simultaneously advancing data governance frameworks and model development initiatives. Concurrently, technical divisions within procuratorial authorities are responsible for establishing core platform infrastructure and providing technical safeguards for standardized models. By ensuring seamless technological interoperability, these technical teams deliver comprehensive support that empowers business units to both refine existing models and develop localized adaptations, thereby addressing region-specific operational requirements while maintaining systemic coherence across jurisdictions.

5.6.3 Refining the Digital Case Handling Command Mechanism

A centralized command-and-dispatch system must be implemented to achieve unified coordination for critical

model applications and major case processing, encompassing strategic command, operational synchronization, and resource allocation. This system will provide targeted guidance to resolve persistent bottlenecks, technical challenges, and implementation obstacles in model development and deployment, strictly adhering to integrated enforcement principles to optimize operational synergy. The command center will holistically manage four core dimensions: (1) digital transformation initiatives, (2) cross-departmental case coordination, (3) evidentiary lead distribution and supervision, and (4) standardized operational guidance across all business units. Through this framework, prosecutorial authorities will significantly strengthen interdepartmental collaboration, establish robust horizontal integration mechanisms, and ultimately elevate the overall effectiveness of legal oversight operations (Song & Sun, 2024).

5.7 Cultivating Interdisciplinary Talents for Digital Prosecutorial Work

The successful realization of digital prosecutorial strategic objectives fundamentally depends on cultivating a new generation of interdisciplinary legal-technical professionals. To ensure sustainable development of digital prosecutorial initiatives, comprehensive reforms must be implemented in talent cultivation mechanisms and human resource management systems, thereby establishing robust intellectual support frameworks and strategic human capital reserves that can meet the evolving demands of technology-driven legal oversight.

5.7.1 Enhancing Training and Education

To accelerate Digital China initiatives and advance prosecutorial modernization, comprehensive training programs and awareness campaigns must be intensified to cultivate three critical dimensions of digital proficiency among prosecutors: (1) strategic digital mindset development, (2) operational digital awareness enhancement, and (3) technical competency building. This multifaceted approach will systematically strengthen case-handling teams' adaptive capabilities, innovative problem-solving skills, and practical application competencies in digital environments, thereby bridging the gap between legal expertise and technological demands in contemporary prosecutorial practice.

5.7.2 Prioritizing the Selection and Cultivation of Interdisciplinary Digital Prosecutorial Talents

To proactively meet the evolving requirements of digital prosecutorial transformation, talent development frameworks must be strategically optimized through synergistic collaboration between three key stakeholder groups: experienced prosecutorial practitioners, technical specialists, and subject matter experts. This optimization will be achieved through multifaceted capacity-building initiatives including demonstration sessions, professional skill competitions, and hands-on training workshops—all designed to accelerate the cultivation of interdisciplinary professionals. Special emphasis will be placed on developing personnel with dual competencies in legal operations and digital technologies, while systematically establishing two critical support systems: comprehensive digital prosecutorial expert panels and specialized talent databases to sustain long-term capability development (Yuan & Wang, 2024).

5.7.3 Strengthening the Development of Digital Prosecutorial Case Handling Teams

To strengthen the cultivation of innovative, application-oriented digital prosecutorial teams, we must prioritize collaborative synergy in case-handling practices. This strategy will systematically bridge prosecutorial expertise with technological and data-driven capabilities while actively fostering the development of interdisciplinary teams specializing in innovative solutions and practical applications. The ultimate objective is to establish a sustainable talent ecosystem supporting digital prosecutorial transformation and advanced data model analytics.

6. Conclusion

This study demonstrates how digital empowerment revolutionizes China's procuratorial work by enhancing five key dimensions: temporal (front-end monitoring), modal (proactive enforcement), conditional (data collaboration), functional (societal governance), and methodological (advanced tools). Despite progress, challenges persist in digital adoption, institutional coherence, model implementation, talent development, and data integration. The proposed optimization framework includes: (1) doctrinal shift toward proactive digital supervision; (2) institutional standardization of legal protocols and cross-domain synergy; (3) methodological integration of review-investigation-detection techniques; and (4) platform development through centralized big-data governance. These strategies collectively advance China's prosecutorial modernization, bridging theory-practice gaps while strengthening rule-of-law and social governance in the intelligentization era.

Statements and Declarations

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China's Participation in Global Climate Governance: From Paris Agreement to Carbon Neutrality

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Abstract

This paper examines China's evolving role in global climate governance from the Paris Agreement to its 2060 carbon neutrality commitment. It argues that China's transformation from a defensive participant to a proactive leader reflects a deep structural integration of environmental law, economic reform, and international diplomacy. The analysis outlines six dimensions of this evolution: the historical trajectory of China's climate diplomacy, the development of domestic legal and policy frameworks, the economic restructuring toward carbon neutrality, multilateral and bilateral cooperation strategies, the tensions between development and decarbonization, and prospective pathways for sustainable governance. Drawing on data from the International Energy Agency and China's National Bureau of Statistics, the paper highlights measurable progress, including a 48% decline in carbon intensity since 2005 and global leadership in renewable energy capacity. However, challenges such as regional disparities, coal dependency, and legal enforcement gaps continue to constrain China's transition. The study concludes that China's future success will depend on institutionalizing climate law, accelerating technological innovation, and strengthening equitable international cooperation. By aligning national development with global sustainability, China is positioned to play a defining role in shaping the next phase of global climate governance.

Keywords: climate governance, carbon neutrality, environmental law, green economy, international cooperation, sustainable development

1. Evolution of China's Climate Diplomacy

China's approach to global climate governance has undergone a remarkable transformation over the past three decades, evolving from cautious participation to active leadership. This shift reflects not only changes in China's international identity but also a profound reorientation of its domestic development philosophy toward sustainability and ecological civilization.

In the early stages of international climate negotiations, particularly under the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and the Kyoto Protocol of 1997, China positioned itself primarily as a *developing country with limited obligations*. Its diplomatic strategy emphasized the principle of Common but Differentiated Responsibilities (CBDR), asserting that developed nations—historically responsible for the majority of greenhouse gas emissions—should bear the main burden of mitigation. During this period, China's engagement was largely defensive, aimed at protecting its economic growth trajectory and industrialization process from stringent emission constraints.

A gradual but notable shift began in the late 2000s. The Copenhagen Conference (COP15) in 2009 marked a turning point, where China faced growing international expectations to contribute more substantially to emission reduction efforts. In response, China began to adopt a more cooperative and constructive stance, framing climate action as compatible with its long-term development interests. This change coincided with domestic recognition

of severe environmental degradation and the emergence of ecological civilization as a national development paradigm, later enshrined in the Constitution of the People's Republic of China (2018 Amendment).

Following the Paris Agreement of 2015, China emerged as a key architect of global climate governance. Unlike the Kyoto framework's binding targets for developed countries, the Paris Agreement relies on voluntary Nationally Determined Contributions (NDCs)—a model that allowed China to shape its own commitments while demonstrating leadership. China pledged to peak carbon emissions by 2030 and achieve carbon neutrality by 2060, signaling a major shift in both diplomatic posture and policy ambition. According to data from the World Bank (2023), China's carbon dioxide emissions per unit of GDP have fallen by more than 48% since 2005, reflecting progress in decoupling economic growth from carbon intensity.

At the same time, China began to play a mediating role between developed and developing countries, emphasizing climate justice and the need for equitable technological and financial support. Initiatives such as the South–South Climate Cooperation Fund, launched in 2015, have provided assistance to over 30 developing countries in renewable energy and adaptation projects, demonstrating China's expanding soft power in global environmental diplomacy.

By the 2020s, under President Xi Jinping's leadership, China's climate diplomacy has become a cornerstone of its foreign policy identity. The carbon neutrality pledge made at the 75th session of the UN General Assembly in 2020 repositioned China as a normative leader in the global climate order. This new phase is characterized by integration—aligning domestic green transition with international commitments, and projecting governance models that blend state-led planning with market-based instruments.

In essence, China's evolution in climate diplomacy represents a strategic synthesis of developmental pragmatism and environmental responsibility. What began as defensive participation has matured into an assertive form of climate leadership, grounded in national ideology, institutional reform, and growing economic capacity. This evolution not only redefines China's role in global governance but also challenges traditional North–South divisions in international environmental politics.

2. Domestic Framework for Climate Governance

China's domestic climate governance framework has developed into a comprehensive system combining legislative, administrative, and market-based mechanisms. This framework reflects the integration of environmental protection into the core of national development strategy, aligning legal reforms with long-term policy objectives such as the “dual carbon” goals—carbon peaking by 2030 and carbon neutrality by 2060.

The legal foundation for China's climate action began to solidify in the 2010s. The Environmental Protection Law (revised 2014) introduced stricter penalties for polluters and empowered environmental authorities with enforcement tools such as daily fines and public interest litigation. This was complemented by the Energy Conservation Law, the Renewable Energy Law, and a series of administrative measures promoting cleaner production and energy efficiency. More recently, the draft Climate Change Law, released for consultation in 2022, proposes to formalize the country's carbon peaking and neutrality commitments, establishing a clear legal basis for climate policy coordination across ministries and local governments.

Policy coordination has become a central pillar of China's climate governance model. The Ministry of Ecology and Environment (MEE) assumed primary responsibility for climate change affairs in 2018, taking over from the National Development and Reform Commission (NDRC). This institutional shift symbolized the transition from an economic management model to an ecological governance model, placing climate objectives within a unified environmental supervision framework. The MEE now leads the formulation of national carbon reduction strategies, while the NDRC continues to oversee industrial and energy structure adjustments to support those goals.

The 14th Five-Year Plan (2021–2025) marks a significant milestone in embedding climate objectives within national planning. It introduces binding targets for reducing energy intensity and carbon emissions per unit of GDP, as well as explicit goals for increasing the share of non-fossil fuels in the energy mix to around 20% by 2025. According to official data from the National Bureau of Statistics (NBS, 2023), China's installed renewable energy capacity surpassed 1.45 billion kilowatts, accounting for more than 48% of total installed power generation capacity, which illustrates the depth of its domestic energy transition efforts.

China's governance framework also integrates market mechanisms to enhance efficiency. The National Emissions Trading System (ETS), officially launched in 2021, covers more than 2,200 key emitters in the power generation sector, making it the largest carbon market in the world by volume. By allowing enterprises to trade emission allowances, the ETS aims to internalize the cost of carbon emissions and incentivize technological innovation. Although the system is still expanding to other sectors such as steel, cement, and chemicals, its establishment demonstrates the Chinese government's attempt to align environmental goals with market dynamics.

In addition to legal and economic instruments, China has strengthened public participation and transparency in climate governance. The government encourages environmental NGOs, academic institutions, and enterprises to engage in policy consultation and data disclosure. Platforms like the National Carbon Emission Data System provide real-time information on carbon trading activities, increasing accountability and data reliability.

China's domestic climate governance framework illustrates a hybrid model of state-led coordination and market adaptation. The combination of legislative rigor, institutional integration, and economic instruments reflects an evolving legal-political structure capable of managing the complexity of decarbonization. By aligning its national legal framework with international commitments under the Paris Agreement, China is positioning itself as a model of "law-based climate governance" among developing economies.

3. Economic Transition Toward Carbon Neutrality

China's path toward carbon neutrality is not only a political and environmental commitment but also a profound economic transformation. The transition redefines the structure of China's energy system, industrial organization, and investment priorities. It is guided by the principles of green growth and innovation-driven development, as articulated in the 14th and 15th Five-Year Plans. This section focuses on two core dimensions of the transformation: energy restructuring and market mechanisms that drive low-carbon economic growth.

3.1 Energy Restructuring

The restructuring of China's energy system is the cornerstone of its carbon neutrality strategy. Historically, China's economic expansion relied heavily on coal, which still accounts for around 56% of the primary energy mix as of 2023 (National Bureau of Statistics, 2024). However, recent policy measures have accelerated a shift toward renewable and cleaner energy sources. The government's goal is to raise the share of non-fossil fuels to 25% by 2030 and over 80% by 2060.

Rapid growth in renewable energy capacity has become a defining feature of this transformation. According to the China Electricity Council (2024), the country's total installed capacity for solar power reached 610 GW and wind power exceeded 440 GW, both ranking first globally. Meanwhile, investment in new energy vehicles (NEVs) and battery technology is expanding under the "Made in China 2025" strategy, positioning China as a leader in clean technology supply chains. These developments not only reduce carbon intensity but also create new employment and export opportunities in green industries.

China's approach also includes upgrading its power grid infrastructure to improve efficiency and reliability. The ongoing construction of ultra-high-voltage (UHV) transmission lines enables renewable energy generated in western regions to be transmitted efficiently to industrial hubs in the east. By 2023, UHV networks exceeded 45,000 kilometers, demonstrating China's technological capability to integrate large-scale renewable energy into its national grid.

This structural transformation, however, faces persistent challenges such as regional imbalances, intermittency of renewable sources, and slow decarbonization in heavy industries. Addressing these issues requires continuous technological innovation, coordinated investment, and adaptive policy mechanisms.

3.2 Carbon Market Mechanism

Market-based mechanisms represent the second pillar of China's economic transition toward carbon neutrality. The National Emissions Trading System (ETS), officially launched in July 2021, has become a central tool for achieving emission reductions at lower economic costs. Covering the power sector initially, the ETS involves more than 2,200 enterprises and regulates about 4.5 billion tons of CO₂ emissions annually, accounting for nearly 40% of China's total emissions (Ministry of Ecology and Environment, 2023).

The ETS operates through a cap-and-trade system, where the government sets a cap on total emissions and allocates allowances to companies based on historical data and efficiency benchmarks. Firms that reduce emissions below their allowance can sell excess credits, while high emitters must purchase additional quotas. In 2023, the average carbon price in China's ETS market hovered around 60–70 RMB per ton, signaling growing market confidence and liquidity.

Beyond emissions trading, China has introduced complementary financial mechanisms such as green bonds, carbon funds, and green credit policies. The People's Bank of China reported that by the end of 2023, outstanding green loans reached 28 trillion RMB, making China the largest green finance market globally. These instruments channel capital into clean energy, low-carbon infrastructure, and energy efficiency projects, reinforcing the economic momentum behind decarbonization.

Despite these advances, China's carbon market still faces challenges of limited sectoral coverage, data transparency, and price volatility. The planned expansion of the ETS to industries like steel, cement, and chemicals is expected to enhance its effectiveness. Over time, the combination of regulatory control and market flexibility is anticipated to generate a more efficient allocation of carbon costs, encouraging continuous

innovation and sustainable industrial restructuring.

China's economic transition toward carbon neutrality represents a dual process of structural realignment and market adaptation. Through energy diversification and the establishment of an expanding carbon market, the country is gradually decoupling economic growth from carbon emissions. This process not only supports domestic development objectives but also enhances China's credibility and leadership in global climate governance.

4. International Cooperation and Climate Leadership

China's climate diplomacy has evolved into a sophisticated blend of multilateral participation and bilateral collaboration, positioning the country as a pivotal actor in shaping global environmental governance. Through active engagement in international institutions and transnational partnerships, China seeks to demonstrate leadership while balancing national interests with global responsibilities. This section highlights two core dimensions of China's international climate engagement: multilateral participation and global partnerships.

4.1 Multilateral Engagement

China's role in multilateral climate negotiations has expanded significantly since the adoption of the Paris Agreement. Within the United Nations Framework Convention on Climate Change (UNFCCC) framework, China now acts as both a bridge between developed and developing nations and a driver of consensus-building on key issues such as climate finance and technology transfer.

At major summits including COP26 (Glasgow, 2021) and COP28 (Dubai, 2023), China reaffirmed its commitment to the 1.5°C target, emphasizing principles of fairness and common but differentiated responsibilities (CBDR). It consistently advocates for developing nations' right to pursue growth while receiving support for green transitions. This balanced stance has strengthened China's image as a representative of the Global South within climate governance.

China also plays a vital role in emerging coalitions such as BRICS and the BASIC Group (Brazil, South Africa, India, and China). These platforms enable coordination among large developing economies to advocate for equitable climate policies and resist unilateral trade-related measures like carbon border taxes. Additionally, China has integrated climate cooperation into the Shanghai Cooperation Organization (SCO) and G20 agendas, promoting the inclusion of sustainable finance and low-carbon development frameworks in global economic policy dialogues.

The Belt and Road Initiative (BRI) has further become an essential vehicle for advancing international climate objectives. The Green Silk Road framework, launched in 2017, aligns infrastructure investment with sustainability goals. By 2023, over 40% of BRI energy investments were directed toward renewable and low-carbon projects, a significant shift from the earlier dominance of fossil fuel infrastructure. These initiatives not only reflect China's commitment to greening its external investments but also reinforce its diplomatic identity as a contributor to global ecological transition.

4.2 Global Partnerships

Beyond multilateral mechanisms, China engages in targeted bilateral and regional collaborations aimed at advancing green technology, financing, and policy alignment. One of the most significant developments has been the China–EU High-Level Dialogue on Environment and Climate, which focuses on carbon pricing, green finance, and sustainable supply chain regulation. The partnership has encouraged knowledge exchange on emissions trading, as the European Union's ETS provided an important reference for China's national carbon market design.

Similarly, China–United States climate cooperation has seen fluctuating but meaningful progress. The U.S.–China Joint Glasgow Declaration (2021) renewed dialogue between the two largest emitters, focusing on methane control, renewable energy, and forest conservation. Although geopolitical tensions have periodically slowed progress, the declaration symbolized the indispensability of U.S.–China collaboration for achieving global climate goals.

China has also deepened South–South cooperation through financial and technical assistance programs. The South–South Climate Cooperation Fund, with an allocation of 20 billion RMB, has supported more than 30 developing countries in deploying renewable energy and improving adaptation capacity. These initiatives expand China's diplomatic influence while addressing the structural inequality between developed and developing nations in access to climate finance and technology.

In addition, China's collaboration with international financial institutions such as the Asian Infrastructure Investment Bank (AIIB) and the New Development Bank (NDB) contributes to mainstreaming green investment. By 2023, over 50% of AIIB's total approved projects had environmental sustainability components, reinforcing the linkage between global development finance and climate goals.

Through these multi-tiered engagements, China has transitioned from a participant to a co-designer of the global climate regime. Its strategy combines multilateral legitimacy with pragmatic bilateral cooperation, enabling flexibility and influence across different governance levels. By embedding sustainability into both its diplomatic and economic outreach, China not only strengthens its international standing but also contributes to shaping a more inclusive and balanced framework for global climate governance.

5. Key Challenges and Tensions

Despite China's significant progress in both domestic and international climate governance, its path toward carbon neutrality remains fraught with complex challenges. These tensions emerge from the intersection of rapid economic development, uneven regional capacities, and evolving international expectations. Understanding these challenges is crucial to assessing the feasibility and credibility of China's climate commitments.

Domestically, China faces the persistent dilemma of balancing economic growth with emission reduction. The country's industrial structure remains heavily reliant on energy-intensive sectors such as steel, cement, and petrochemicals, which collectively contribute to nearly 70% of total CO₂ emissions (Ministry of Ecology and Environment, 2023). While the central government has set ambitious reduction targets, local governments—particularly in less developed provinces—often prioritize economic stability and employment over environmental objectives. This creates policy fragmentation between national-level directives and local-level implementation. Furthermore, the lack of a unified Climate Change Law weakens legal enforcement and accountability, leaving room for regional discretion and inconsistent compliance.

Energy security represents another tension within China's transition strategy. The country's reliance on coal as a “stabilizing” energy source during periods of high demand remains a major obstacle to rapid decarbonization. In 2022, China's coal consumption still exceeded 4.5 billion tons, accounting for 56% of primary energy consumption (National Bureau of Statistics, 2023). This dependence reflects the structural difficulty of ensuring reliable energy supply while scaling renewable alternatives. Although China is leading in renewable capacity, grid integration challenges and intermittency issues limit the displacement of fossil fuels in the short term. Policymakers must therefore balance immediate energy security with the long-term imperative of decarbonization—a trade-off that shapes the pace of the transition.

Institutionally, China's climate governance is characterized by overlapping responsibilities among agencies. While the Ministry of Ecology and Environment leads climate policy, coordination with the National Development and Reform Commission, the Ministry of Finance, and local authorities remains complex. Differences in administrative priorities can delay or dilute policy implementation. Additionally, transparency and data reliability remain concerns in both emission reporting and carbon trading, particularly in the National Emissions Trading System (ETS). Strengthening monitoring, verification, and enforcement mechanisms is essential to ensure the credibility of China's market-based climate tools.

On the international front, China encounters growing scrutiny and geopolitical tension related to its role in global emissions. As the world's largest emitter—responsible for about 30% of global CO₂ emissions in 2023 (IEA, 2024)—China faces external pressure to accelerate its decarbonization timeline. The introduction of the European Union's Carbon Border Adjustment Mechanism (CBAM) has added further strain, potentially affecting China's exports of carbon-intensive goods. This policy reflects a broader trend of linking trade regulations with environmental standards, which could challenge China's manufacturing competitiveness if domestic industries fail to meet international benchmarks.

Moreover, China's international partnerships occasionally face skepticism from developed countries, particularly regarding the transparency of its overseas green investment under the Belt and Road Initiative (BRI). Although China has increased the share of renewable energy projects in BRI investments, concerns persist about continued financing of fossil fuel projects in developing regions. This dual image—as both a green investor and a carbon exporter—complicates China's leadership narrative in global climate governance.

Socially, public participation in environmental governance is still developing. While environmental awareness has improved, mechanisms for citizen engagement, litigation, and media oversight remain limited. Expanding access to environmental justice and strengthening civic involvement will be key to sustaining the legitimacy of China's long-term climate agenda.

In summary, China's climate transition is a process of managing contradictions between economic ambition, energy stability, legal enforcement, and international responsibility. These tensions do not undermine its progress but highlight the systemic challenges of transforming a carbon-intensive economy on an unprecedented scale. How China resolves these internal and external pressures will largely determine its ability to fulfill its 2030 and 2060 climate targets and maintain credibility as a global climate leader.

6. Future Pathways for Global Climate Governance

China's future in global climate governance will be defined by its ability to consolidate legal institutions, deepen technological innovation, and promote equitable international cooperation. As the world's largest developing economy and a leading emitter, China's approach to fulfilling its carbon neutrality vision by 2060 has the potential to reshape the global climate regime. The next phase of China's climate strategy emphasizes integration—uniting environmental law, green economics, and international diplomacy into a coherent governance model that sustains both national prosperity and global ecological balance.

A key priority lies in the institutionalization of climate law. Establishing a comprehensive and enforceable Climate Change Law would strengthen the legal foundation of China's carbon goals by clarifying governmental responsibilities, enhancing corporate accountability, and embedding emission reduction targets into statutory frameworks. Such legislation would complement existing laws on environmental protection, renewable energy, and pollution control, creating a unified legal basis for monitoring and enforcement. Judicial mechanisms, including environmental courts and public interest litigation, will further reinforce compliance and provide channels for civil society to participate in climate governance.

Another strategic pathway is technological innovation. Achieving deep decarbonization requires breakthroughs in clean energy technologies such as advanced solar photovoltaics, hydrogen fuel, and carbon capture, utilization, and storage (CCUS). China already leads globally in renewable manufacturing, accounting for over 80% of the world's solar panel production (International Energy Agency, 2024). Sustaining this momentum will depend on expanding research and development incentives, integrating digital technologies like AI-driven energy management, and fostering industrial collaboration between state-owned and private enterprises. Strengthening intellectual property protection for green technologies will also enhance China's competitiveness and its role as a global provider of sustainable solutions.

Internationally, China's leadership will hinge on promoting inclusive and cooperative climate governance. As geopolitical competition intensifies, China's commitment to the principles of fairness and common but differentiated responsibilities (CBDR) remains crucial for bridging the North–South divide. By expanding the South–South Climate Cooperation Fund and enhancing green finance through institutions such as the Asian Infrastructure Investment Bank (AIIB), China can help developing countries access climate financing and clean technologies. This not only strengthens diplomatic partnerships but also consolidates China's image as a responsible and equitable global actor.

Moreover, China's Belt and Road Initiative (BRI) is likely to serve as a blueprint for “green globalization.” The continued implementation of the Green Silk Road framework—focusing on renewable energy, sustainable infrastructure, and ecological protection—will be central to aligning overseas investments with global sustainability standards. By ensuring transparency and environmental accountability in BRI projects, China can address international concerns while setting a precedent for green development cooperation.

Domestically, the success of China's long-term climate strategy will depend on embedding sustainability into social and economic governance. Expanding green finance instruments, including carbon funds and sustainability-linked bonds, will mobilize capital for low-carbon projects. Encouraging green consumption patterns and public participation through education and digital platforms will further cultivate a culture of ecological responsibility. A societal transition toward low-carbon living is essential to complement top-down legal and policy reforms.

Looking forward, China's trajectory in climate governance illustrates a vision that combines state leadership with global cooperation. By advancing legal frameworks, driving technological transformation, and championing equitable partnerships, China is positioned to play a defining role in constructing a more just and sustainable international climate order. Its experience—balancing rapid development with environmental stewardship—offers a potential governance model for other developing nations navigating the challenges of decarbonization.

Ultimately, the realization of China's carbon neutrality pledge will depend not only on national determination but also on the collective progress of the global community. Through sustained innovation, rule-based governance, and international solidarity, China can help shape the next era of global climate action—one that integrates prosperity, justice, and ecological balance at the heart of sustainable development.

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