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Automated Teller Machine Transactions and Performance of Deposit Money Banks in Nigeria: A Multivariate Approach

Okpunor Loveth[1], Etap Cyprine Besong[2], Nkamare Stephen Ekpo[2], Eze Prince Obiora[3] & Ajaba Agnes Agbaje[3]

[1] Department of Banking and Finance, Nnamdi Azikiwe University, Awka, Nigeria

[2] Department of Banking and Finance, University of Calabar, Nigeria

[3] Department of Business Management, University of Calabar, Nigeria

Correspondence: Nkamare Stephen Ekpo, Department of Banking and Finance, University of Calabar, Nigeria.

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Abstract

This study examined Automated Teller Machine transactions and performance of deposit money banks in Nigeria. To achieve this objective, the estimated model was to examine the impact of volume, value and number of ATMs on performance of deposit money banks in Nigeria. Adopting the OLS multiple regression technique, secondary data was obtained from Central Bank of Nigeria (CBN) statistical database on CBN website. The OLS regression results indicated that volume of ATM transactions has no significant influence on bank performance. While value of ATMs transaction and numbers of ATMs positively and significantly impacts on the performance of DMBs in Nigeria. The study concludes that ATM transactions are on the increase since its inception in Nigeria. To some extent, the outcomes of our study have justified the implementation of this initiative and ATMs has sufficiently impacted banking performance. It is recommended among other things that monetary authorities and managers of deposits money banks should increase the spread of ATMs terminals across the country since the efficient utilization of ATMs ultimately enhance bank performance in Nigeria.

Keywords: Automated Teller Machine (ATM), volume, value and number of ATMs, performance

1. Introduction

The two major services of banks in every economy are receiving deposits and advancing loan. These two services generate other services in the bank such as payments, withdrawal, transfers, etc. (Gichungu & Oloko, 2015). The effectiveness of any bank in providing these services depends very much on matching them with customers' needs in terms of ease at which customers are satisfied and time required to provide the service (Komai, 2009). In the past few years, Nigerian banks and the financial services industry in particular, have embraced the concept of e-money to offer superior services in order to improve customer satisfaction, competitiveness and profitability (Onyango, 2022). Innovations are beginning to take place in the Nigerian financial landscape and customers are increasingly raising the hope of expectations for quality customer services (Gwama, 2024). One of the notable innovations is the introduction of Self-Service Technologies such as the Automated Teller Machines (ATMs).

Automated Teller Machine (ATM), also known as an automated banking machine (ABM) or Cash Machine and by several other names, is a computerised telecommunications device that provides the clients of a financial institution with access to financial transactions in a public space without the need for a cashier, human clerk or bank teller (Fagan, 2017). According to Kahgan, Kharit and Chatham (2022), Automated teller machine (ATM) is an electronic banking outlet that allows customers to complete basic transactions without the aid of a branch representative. Using an ATM, customers can access their bank accounts in order to make cash withdrawals, credit card cash advances, and check their account balances as well as purchase prepaid cellphone credit. Since

the introduction of Automated Teller Machines (ATM) into the Nigerian market in 1989, there is no contesting the fact that the introduction of ATM has changed the face of electronic payment in Nigeria (Olumide, 2024). The use of ATMs attracts benefits to both the banks and customers in respect of time and place utility, reduction of service cost of depositors' demands, and increase in market share (Gichungu & Oloko, 2015). The ATM has made it possible for bank customers to access cash at any time irrespective of bank business hours (Ogunsemor 2022; Akrani 2024). According to Solomon (2016), the numerous benefits associated with the provision of ATM services in Nigeria are: that ATM allows for speedy completion of transaction, especially withdrawal even outside the country where the banker does not have a branch. It also reduces the number of customers' visit to their banks and it makes it possible for a customer to withdraw from any bank close to him 24/7. This benefit has tremendously enhanced bank performance and the country's move into cashless economy (Obiri, Kyere, & Kwarteng, 2023).

However, Mohammed (2020) in his study opined that ATM deployments and its use by customers is just gaining ground and it has also been characterized with some disadvantages such as fraud perpetration, network failure in time of dire need of money, ignorance in terms of services provided by ATM and large queue on ATM in the designated places. The recent removal of service charge pose another challenge, causing more patronage (Spur, 2022). With nearly 12,000 Automated Teller Machines, 131,000 point of sales machines, several internet payment portals and 25 million bank cards in circulation, the number of people with bank accounts grew from 18.3 million in 2008 to 28.6 million in 2012, 63.5 million in 2016 and currently around 134 million in 2021 (WDI, 2022). Furthermore, since CBN introduced Cashless Policy in 2012 and the Financial Inclusion Strategy in 2012, the reliance on ATMs for cash withdrawal have persisted.

This is reflected in CBN's data on electronic payment transactions, which shows persistent increase in the number, volume and value of ATM transactions between 2011 and 2020 (CBN, 2020). According to the CBN, the value of ATM transactions rose by 650 per cent to 12 trillion at the end of August 2020 from 1.6 trillion in 2011 (Adegbesan, Akinsanmi & Ariyo, 2020). During this period the volume of ATM transactions rose by 347.6 million to 968.4 million from 2011 to 2020. In spite of the rising prominence of electronic payment channels and the wide acceptance of ATM banking services by the citizenry, the performance of banks has continued to experience slow decline in revenues, reflected by the risks, reliance and associated cost of using ATM banking services (Okoro, 2024; Jegede, 2024, Minskey, 2020). It is against this backdrop that this paper tends to investigate the effect of Automated Teller Machine transactions on the performance of banks in Nigeria. The motivation for this study stems from the fact that only limited empirical studies in this area have so far been carried out in most emerging countries, particularly in Africa. Conducting research of this nature using the Nigerian environment will reduce the knowledge gap to the barest level.

The specific objectives are:

1) To examine the extent to which a number of ATM machines affect bank performance in Nigeria.
2) To investigate the volume of ATM transactions and its impact on bank performance in Nigeria.
3) To investigate the effect of the value of ATM transactions on bank performance in Nigeria.

2. Theoretical Framework

The theory underpinning this study is the technology acceptance theory, other supporting theories are Diffusion theory and unified theory of acceptance and use of technology.

2.1 Technology Acceptance Theory

The technology acceptance theory (TAT) was first proposed by Davis, Bagozzi and Warshaw in 1989. The theory suggested that using an information system is directly determined by two factors: perceived usefulness (PU) and perceived ease of use (PEOU) of the new technology. Perceived usefulness of technology suggests the personal conviction to better the degree of work performed by a specific new technology or information system. While perceived ease of use of new technology implies how easy a person can learn the way to use or run a new technology or information system (Scott & Davis, 2015). The theory is relevant in the study because it is used to explain how banks adopt electronic banking. To understand, predict and explain why people accept or reject information systems; researchers have developed and used technology acceptance theory (TAT) to understand the acceptance of users of the information systems. Hence, the technology acceptance theory is a key theory that underpins the current study on how e-banking impacted on the performance of deposit money banks in Nigeria.

2.2 The Theory of Consumption Value (TCV)

The Theory of Consumption Value explains consumer's behavior as regards making choices between various products/services (Sheth et al., 1991). It provides a theoretical foundation for payment technology use. Payments are no longer about transacting with cash but also about the consumer's behavior towards payment choices and their perceptions of the various technologies. We will discuss below 4 consumption values in the context of

payment technology use:

1) Functional value: This is based on economic utility theory, it assumes the economic rationality of the consumer and relates the attributes of a product or service such as performance, price, quality, and reliability that would influence this rationality (Humphrey, 2020).

2) Social value: This involves highly visible products, services and/or objects and how they are perceived by consumers. Under this, a product or service is chosen more for the perceived social image or symbolic importance it is assumed to convey than for functional performance. For example, ATM card payments or a stack of banknotes.

3) Emotional value: In this situation, the consumers' decisions are influenced by the product's potential to arouse emotions (positive or negative) with its use. An example of this is the emotional value attached to beauty and artistry products like manicure, pedicure, massages, painting etc.; their values are usually tied to how the customer felt. In the context of payment, the emotion that can be aroused is the so-called "pain-of-paying" which is associated with the transparency of the paying process (Soman, 2021).

4) Conditional value: This applies to products or services, whose value is dependent on a specific context like location or time. It answers the question — "it depends". This means that the choice to pay in a certain way can be influenced by for instance, the location (on the street, in-store or online) or the time (at the end of the month when salaries are paid or mid-month).

3. Literature Review

Several studies attest to the positive and negative impact of e-banking on the performance of banks in both developing and developed countries (Boyd, Graham & Hewitt, 2023; Rime & Stiroh, 2023; Osamuony & Emeni, 2017). However, only a few of such literature focus solely on ATMs in Nigeria. For instance, Furst, Lang and Nolle (2022) examined the influence of electronic banking on profitability amongst United States national banks using regression and correlation for analysis. Findings revealed that bank profitability has a strong correlation with e-banking in all US national banks. However, the study emphasized that in large banks in the urban areas, bank profitability has no relationship with e-banking because those banks merely use e-banking for competition purposes and not for profit making. Hagan, Maccario and Zazzara (2015) investigate the impact of e-banking on the performance of commercial banks in Italy. The study adopted the panel data analytical methodology. Return on asset (ROA) and return on equity (ROE) were used as dependent variables while internet banking, mobile banking, agency banking and Volume of POS were used as independent. Findings showed that e-banking has significant effect in both ROA and ROE of commercial banks in Italy. Hence, the study concluded that e-banking significantly affects commercial banks performance in Europe.

Josiah and Nancy (2022) investigated the effect of e-banking on performance of 27 commercial banks in Kenya using the person product moment correlation coefficient test as the analytical tool. The study adopted return on asset (ROA) as the dependent variable while investment in electronic banking, number of card issued by the banks and ATM installed by the banks served as the independent variables. Findings revealed that e-banking has a strong positive effect on return on asset (ROA) of banks in Kenya. DeYoung, Lang and Nolle (2017) identified 424 community banks which adopt e-banking and 5,157 banks without e-banking in the United States and compared the changes between 1999 and 2001. They examined the banks from three aspects: income statement items (ROA and ROE), asset and liability in balance sheet. The results found that bank's profitability can be enhanced by adding the electronic delivery channels and can especially increase income through charging deposits services and additional fee-based services. In addition, electronic banking could be a product innovation to improve the quality of traditional banking products and innovation that has changed the way of checking accounts and deposit.

Akhisar, Tunay and Tunay (2015) investigated the effects of electronic-based banking service on the profitability of 23 commercial banks in both developed and developing countries from 2005 to 2013. The study adopted the panel data analytical methodology. Number of branches to number of ATM ratio, point of sale (POS) and web (internet) banking service as the explanatory variable while return on equity (ROE) and return on asset (ROA) were the dependent variables. Finding revealed that ratio of number of branches to number of ATM has positive and significant effect on banks profitability in both developed and developing countries. However, POS and web (internet) banking have negative relationship with banks profitability. Yunus and Waidi (2011) investigated the nexus between electronic banking employees and customers responses, and bank performance in Nigeria using a sample of fifteen (15) commercial banks. The questionnaire descriptive research design was adopted using as sample of 123 respondents. Findings indicate that technological innovation has a strong influence on bank employees and customer satisfaction thereby having a strong effect on banks' profitability in Nigeria. Similarly, Abaenewe, Ogbulu and Ndugbu (2023) examined the relationship between electronic banking and bank performance in Nigeria using a descriptive analytical methodology. Four (4) banks were randomly selected using

the preadoption and post adoption era of electronic banking in Nigeria as the scope of the study. Return on asset and return on equity both served as the dependent variables. Findings revealed that electronic banking has a positive and significant effect on return on equity (ROE) of Nigerian banks but has no significant effect on return of asset (ROA).

Shehu, Aliyu, and Musa (2023) investigated the effect of electronic banking products on the performance of Nigerian listed deposit money banks (DMB) using six (6) Deposit Money Banks (DMB). The dependent variable was return on equity while the independent variables include E-Direct, SMS alert, E-mobile and ATM. Findings revealed that E-Direct has a negative and insignificant relationship with the profitability of Deposit Money Banks (DMB) in Nigeria. Adewoye (2023) investigated the impact of mobile banking on service delivery in the Nigerians commercial banks using a sample of 125 respondents. The study adopted frequency tables, percentages, mean score and chi-square test as analytical tools. Findings revealed that mobile banking improves bank service delivery in the form of transactional convenience, savings of time, quick transaction alert and savings of service. Cost among others. The study concluded that mobile banking has improved customers satisfaction thereby increasing the profitability of the commercial banks in Nigeria.

Obiekwe, and Mike (2017) investigated the effect of electronic payment method (EPM) on the profitability of commercial banks in Nigeria. A total sample of five (5) banks was considered for the period of 2009 to 2015 and the study adopted the panel least squares (PLS) estimation technique as the analytical tool. Findings revealed that automated teller machine (ATM) and mobile phone payment have significant effect on the profitability of commercial banks in Nigeria. While point of sale (POS) has an insignificant effect on commercial banks profitability in Nigeria. The study recommended among others, that commercial bank in Nigeria should sponsor media campaigns in order to boost the awareness on Automated Teller Machine (ATM) payment and mobile phone payment methods so as further increase their profitability.

4. Research Methodology

The research design adopted in this study is ex-post facto and descriptive research design. According to Cohen, Manionard and Morison (2020), the ex-post facto research design is the type of design used in examining possible antecedent of events that have already occurred which cannot be manipulated. The data used in the estimation of the model were obtained from secondary sources from the CBN statistical bulletin and bank financial statements.

4.1 Model Specification

The econometric model to consider in this study takes the number of ATMs, the value of ATMs and the volume of ATMs transactions the independent variables, while bank profitability was the proxy for bank performance, being the dependent variable. It is given by the equation:

$$\text{Formula: } Y = f(X)$$

Where,

Y = dependent variable.

X = independent variable.

The equation is thus:

$$Bperf = f(NATM, VAATM, VOATM) \text{----------(i)}$$

Thus, the econometric model of this study is:

$$Bperf = go + ßl\ NATM + ß2PVAATM + ß3VOATM + e \text{ ----------(ii)}$$

Represented in their log form

Where:

BPRF = Bank performance (bank credit as percent of bank deposits)

NATM = Number of Automated teller machines per 100,000 adults

VAATM = value of ATM transactions in circulation

VOATM = volume of ATM transactions

Ln = Natural log of numbers; e = Error term; B_0 = Interception; $\beta_1 - \beta 3$ = Slope coefficient

4.2 Description of Variables.

BPF = is used in this study to measure bank performance, it is the financial resources provided to the public by deposit money banks as a share of total deposits. DMBs are commercial banks that accept transferable deposits and make withdrawals through ATMs.

NATM = is the number of automated teller machines (ATMs) per 100,000 adults.

VAATM = is the price to be paid or actually paid for using ATM terminals.

VOATM = is the total number of transactions processed from, to or through the services and platform by ATMs service provider during any applicable period.

5. Data Analysis

The variables for value of ATMs and volume of ATMs transactions were transformed to their log form to address the problem of large values and avoid heteroskedasticity.

5.1 Descriptive Statistics

The result of the descriptive statistics is presented in Table 1. The analysis revealed that the bank performance (BPRF) has a mean value of 64.35154 with a standard deviation of 10.70505 having its minimum value as 45.98000 in 2012 and its maximum value of 83.75000 in 2016. The total volume of automated teller machine (ATM) transactions shows its minimum value as 17.91208 in 2015 and maximum of 20.59033 in 2020; with a mean volume and standard deviation of 19.83687 and 0.825014 respectively. Further analysis of the descriptive statistics revealed that total value of automated teller machine transactions (VAATM) shows its minimum value as 5.990739 in 2015 and maximum of 8.820106 in 2020; with a mean value and standard deviation of 8.01626 and 0.956314 respectively. Finally, the total number of ATMs per 100,000 (NATM) revealed its mean value as 16.01462 with a standard deviation of 0.8955560 having its minimum value in 2012 as 13.76000 and its maximum value of 17.19000 in 2020. From the descriptive analysis, the standard deviation for the volume of ATMs, value of ATMs and number of ATMs are all showing lower percentages of 0.82, 0.95 and 0.89 respectively compared to higher percentage of 10.70 for bank performance. Hence, bank performance with higher positive value shows wide dispersion from the average.

Table 1. Descriptive statistics

	BPERF	**LN_VOATM**	**LN_VAATM**	**NATM**
Mean	64.35154	19.83697	8.010626	16.01462
Median	63.35000	19.88760	8.286585	16.15000
Maximum	83.75000	20.59033	8.820106	17.19000
Minimum	45.98000	17.91208	5.990739	13.76000
Std. Dev.	10.70505	0.825014	0.956314	0.895560
Skewness	0.133498	-1.202873	-1.094974	-1.272498
Kurtosis	2.224164	3.518331	2.932761	4.360305
Jarque-Bera	0.364654	3.280484	2.600215	4.510696
Probability	0.833329	0.193933	0.272503	0.004837
Sum	836.5700	257.8807	104.1381	208.1900
Sum Sq. Dev.	1375.177	8.167784	10.97445	9.624323
Observations	13	13	13	13

Source: E-views 11.0 statistical software.

Furthermore, the analysis indicated that the measurement of skewness showed that only the volume of ATMs (VOATM) was rightly skewed (positively skewed) while BPRF, VAATM and NATM were found to be left skewed (negatively skewed). The coefficient of the kurtosis of VOATM and NATM indicated that the variable was found to be peaked (3.00 and above) (Leptokurtic) relative to the normal distribution while BPRF and VAATM were found to be below 3.00. The Jarque-Bera (JB) test measures the difference of skewness and kurtosis of the series with those from the normal distribution. The JB value of 4.51069 for NATM with corresponding probability values of greater than or equals to 0.05 percent confirms the normality of the series and suitability for generalization.

5.2 Residual Diagnostic Test Results

Diagnostic tests were conducted to know whether the model is valid or not and determine if the result of the regression is suitable for policy recommendations.

5.2.1 Residual Diagnostic Test Results

Diagnostic	Observed values	p-values
Breusch-Godfrey serial correlation LM Test	1.715929	0.2475
Breusch-Pagan-Godfrey Heteroskedasticity test	0.585120	0.6397
Ramsey RESET test	0.292990	0.7770

Source: E-views 12.0 statistical software.

The result of the diagnostic tests above showed that the model was free from serial correlation because the Breusch-Godfrey serial correlation LM test accepted the null hypothesis of no serial correlation in the residual. Similarly, the Breusch-Pagan-Godfrey Heteroskedasticity test both had their probability values to be greater than the 5% level, indicating that the model was normally distributed and free from Heteroskedasticity, respectively. Further, the Ramsey specification reveals that the model is well specified with f-stats probability value greater than 5%.

5.3 Summary of Findings

This study examined the Automated Teller Machines (ATM) transactions and performance of deposit money banks in Nigeria. To achieve this objective, the estimated model was to examine the impact of volume, value and number of ATMs on performance of deposit money banks in Nigeria. Adopting the OLS multiple regression technique, the following findings were made:

1) Volume of ATM transactions showed a negative and insignificant impact on bank performance in Nigeria. Hence, the null hypothesis that volume of ATM transactions has no impact on bank performance in Nigeria is accepted.
2) Value of ATM transactions showed a positive and significant impact on bank performance in Nigeria. We therefore accepted the alternative hypothesis that value of ATM transactions significantly affect bank performance in Nigeria.
3) Number of ATMs per 100,000 showed that there was a positive and significant impact of number of ATM transactions on bank performance in Nigeria. We therefore accepted the alternative hypothesis that Number of ATMs per 100,000 does affect bank performance in Nigeria.

6. Conclusion

This study investigates the impact of Automated teller machine (ATM) on bank performance in Nigeria. The study concentrates only on ATMs bank performance. Hence, the data for the econometric analysis of this study are annual data series of the volume of ATMs, value of ATM transactions, and number of ATMs per 100,000 and bank performance (measured as bank credit to deposits). The data were obtained from Central Bank of Nigeria (CBN) statistical database on CBN website. The study concludes that ATM transactions are on the increase since its inception in Nigeria. To some extent, the outcomes of our study have justified the implementation of this initiative, and ATMs has sufficiently impacted banking performance. One can say with some degree of certainty that the ATM transactions is impacting positively on the performance of banks in Nigeria.

7. Recommendations

From the findings, the study makes the following recommendations for policy and practice:

1) Managers of deposits money banks should look for ways to increase the volume and usage of automated teller machines that will significantly influence bank performance. Efforts should be geared towards the increased use of ATMs and installation of modern ones in line with the objectives of the cashless policy.
2) Monetary authorities and managers of deposits money banks should increase the spread of ATMs terminals across the country since the efficient utilization of ATMs ultimately enhance bank performance in Nigeria.
3) Since the number of ATMs had a positive significant impact on bank performance, it is recommended for deposit money banks to continuously increase the number of automated teller machines in the country especially to rural areas.
4) Banks should provide increase in customer education on usage of ATM machine through mass media such as television, bill board and radio as well as paste directive posters at every ATM centres across the country.

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An Appraisal of the Concept and Nature of Diplomatic Immunity Under International Law

Albert Chei Lysinge Jr[1]

[1] L.LM in International Law, University of Buea, Cameroon

Correspondence: Albert Chei Lysinge Jr, L.LM in International Law, University of Buea, Cameroon.

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Abstract

This article focuses on the concept and juridical contours of diplomatic immunity as enshrined within the corpus of international law. It interrogates the doctrinal underpinnings, normative justifications, and evolving interpretive paradigms governing the immunities and privileges accorded to diplomatic agents, particularly within the framework of the 1961 Vienna Convention on Diplomatic Relations. Rooted in the principles of functional necessity and sovereign equality, diplomatic immunity is here appraised not merely as a pragmatic tool of diplomatic intercourse, but as a *sui generis* manifestation of international legal personality and intersubjective state comity. The paper analytically deconstructs the bifurcation between *ratione personae* and *ratione materiae* immunities, while critically evaluating the tension between the inviolability of diplomatic personnel and the imperatives of host state jurisdiction, accountability, and human rights obligations. Furthermore, the article explores emergent state practices and judicial pronouncements that challenge or reinforce the orthodoxy of absolute immunity, thereby revealing the dialectical nexus between customary international law, treaty law, and the shifting matrix of geopolitical realities. The inquiry contends that while diplomatic immunity remains an indispensable tenet of international diplomatic relations, its contours demand recalibration to reconcile the foundational objective of sovereign representation with the imperatives of justice, legal certainty, and international accountability.

Keywords: appraisal, concept, nature, diplomatic immunity and international law

1. Background

Diplomatic immunity is a cornerstone of modern international relations, tied to the fabric of state sovereignty, international cooperation, and legal reciprocity. Rooted in ancient customs and later codified in international treaties, the concept refers to the legal protections afforded to diplomats[1] and diplomatic missions from the jurisdiction of host states. These protections are not personal privileges but functional necessities aimed at ensuring the unimpeded performance of diplomatic duties. The essence of diplomatic immunity lies not in conferring personal advantage but in safeguarding the principle of sovereign equality and the orderly conduct of international affairs.[2]

Historically, diplomatic immunity traces its lineage to ancient civilizations such as Mesopotamia, Greece, and Rome, where envoys were granted inviolability as sacred intermediaries. These early practices were later

[1] A diplomat is a person who officially represents their nation's interests in another (host) country. See Diplomatic Status Individuals Policy, October 2008, p. 2, available at https: //www.thamesvalley.police. uk/ SysSiteAssets/ foi-media/ thames-valley-police/policies/policy---diplomatic-status-individuals.pdf, visited,20/007/2025

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systematized by European powers and culminated in the landmark Vienna Convention on Diplomatic Relations (1961), which serves today as the foundational legal instrument governing diplomatic privileges and immunities.[1] Article 29 of the Convention, for instance, affirms the inviolability of diplomats by stating that "the person of a diplomatic agent shall be inviolable" and must not be liable to any form of arrest or detention.

The nature of diplomatic immunity is both legal and functional. According to Nnamdi Akani, diplomatic immunity derives its legitimacy from the need to allow foreign representatives to operate without coercion or interference by the receiving state.[2] Immunity, in this context, is not absolute, it is tethered to the diplomat's official functions. This functional necessity theory has replaced the earlier personal inviolability theory, which was based on the person of the sovereign being reflected in their envoy.[3] As such, the modern international legal order treats immunity not as an individual right but as an extension of the sending state's sovereignty. Scholars such as Nehaluddin Ahmad emphasize that diplomatic immunity serves the "functional necessity" of ensuring that states can maintain international relations without undue interference.[4] This perspective reinforces that the inviolability of the person, premises, and correspondence of diplomats is crucial for maintaining international peace and mutual respect. However, critics argue that the doctrine can lead to abuse when diplomats engage in criminal or unlawful behavior and invoke immunity to evade accountability, a dilemma that has sparked debates on reforming the doctrine, particularly in cases involving serious crimes.[5]

Modern jurisprudence reflects the dualistic nature of diplomatic immunity: a safeguard for state functions on one hand and a potential shield for individual misconduct on the other. Cases such as *Democratic Republic of the Congo v. Belgium* (Arrest Warrant Case) at the International Court of Justice (2002) depicts the tension between immunity and the quest for justice, particularly in matters involving allegations of international crimes.[6] The ICJ held that incumbent ministers for foreign affairs enjoy full immunity from criminal jurisdiction and inviolability even when suspected of war crimes, reaffirming the doctrine's evincing strength but also highlighting its controversial implications. As international law evolves, diplomatic immunity remains a symbol of state dignity and a practical tool for diplomacy. Yet, its continued legitimacy depends on a balance between respect for state sovereignty and accountability to international norms. The challenge for the 21st century lies not in dismantling this doctrine but in refining its contours to ensure that it remains a just and functional component of global legal order. This paper therefore explores the depth and width of the concept and its relevance in contemporary times.

2. Conceptualising Diplomatic Immunity

Diplomatic immunity pertains to the juridical safeguards and privileges conferred upon diplomatic agents of a sending State while stationed within the territorial jurisdiction of a receiving State, by virtue of their official status under the corpus of international law. The legal personality and inviolable character of such diplomatic functionaries, together with the immunities and exemptions attendant to their office, are governed primarily by codified and customary principles of international diplomatic law. This section undertakes a comprehensive exposition of the doctrinal underpinnings of diplomatic immunity, elucidating its conceptual foundations and rationale within the framework of inter-State relations and sovereign equality.

2.1 Meaning of Diplomatic Immunity

Diplomatic immunity refers to a set of legal protections and privileges afforded to diplomats and their families, enabling them to perform their duties without fear of coercion, harassment, or legal action by the host country. These protections are rooted in the principle of sovereign equality and the necessity for smooth international relations. Diplomatic immunity allows envoys to operate without interference, ensuring that their home state's interests can be effectively represented abroad. This concept is neither a modern invention nor a privilege of convenience.

Diplomatic immunity is a rule of international law that shields diplomatic agents of the sending State from (most

[1] United Nations, (1961). *Vienna Convention on Diplomatic Relations*.

[2] Akani, N., (2024). A Critical Analysis of Diplomatic Immunity in International Relations: Myth or Reality. *Journal of International Trade Law & Policy*.

[3] Frey, L., & Frey, M. L., (2020). Diplomatic Immunity. In *The SAGE Handbook of Diplomacy*, 236–251.

[4] Ahmad, N., Lilienthal, G. I., & Ali, S. I., (2023). Diplomatic Immunity under Islamic Tradition and Practices.

[5] Wanyela, C. S., (2014). Diplomatic Privileges and Immunities: A Critical Analysis of the Vienna Convention on Diplomatic Relations (1961).

[6] International Court of Justice, (2002). Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium). ICJ Reports 2002, p. 3.

of) the jurisdiction of the foreign State in which they perform their functions.[1] The purpose of diplomatic privileges and immunities is 'not to benefit the individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.'[2] As the International Court of Justice (ICJ) put it:

There is no more fundamental prerequisite for the conduct of relations between States […] than the inviolability of diplomatic envoys and embassies, so that throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose […]. The institution of diplomacy, has proved to be "an instrument essential for effective cooperation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means."[3]

There exist two categories of immunities that may, in principle, come into play and be relied upon.[4] There are those immunities accruing under international law. These may relate to the conduct of a state agent acting in their official duty and are entitled functional immunities (*ratione materiae*) or they may be constructed to protect the private life of the state official, so-called personal immunities (*ratione personae*).[5] The functional immunities, on the strength of the so-called "Act of State Doctrine", to all states discharging their official duties and only the state may be held responsible at the international level and, in principle, individual performing acts on behalf of a sovereign state may not be called to account for any violations of international law he or she may have committed while acting in an official function.[6]

Personal immunities are instead granted by international customary or treaty rules to some categories of individuals on account on their functions and are intended to protect both their private and their public life. The individuals of whom these privileges comprise are Head of State, prime ministers or foreign ministers, diplomatic agents and other high-ranking agents of various international organizations.[7]

Functional immunity focuses primarily on the 'what', rather than the 'who'.[8] Draft article 2(e)[9] adopts a functional definition of 'State official' to mean 'any individual who represents the State or who exercises State functions.' However, the commentary to draft article 2(e) emphasizes that 'the definition of 'State official' has no bearing on the type of acts covered by immunity. Consequently, the terms 'represent' and 'exercise State functions' may not be interpreted as defining in any way the substantive scope of immunity.'[10]

Similarly, draft article 5 on 'persons are enjoying immunity *ratione materiae*' delineates the 'who', not the 'what', of functional immunity. Draft article 5 provides that: 'State officials acting as such enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction.' The commentary states that draft article 5 is 'intended to define the subjective scope of this category of immunity' that is, the 'who'.[11] Thus, in order to enjoy functional immunity for a given act, an individual must be a State official who was acting 'as such'. According to the commentary, this phrase 'says nothing about the acts that might be covered by such immunity, which are to be covered in a separate draft article.'[12]

Diplomatic immunity has a nexus with the equality of states in international law. The principle of equality of states was recognised in the 1970 Declaration on Principles of International Law. This provides that: All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international

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[1] M., Gogna, *et al.*, (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, Report, available at https://www.epsu. org/sites/default/files/ article/files/Final_reportAmsterdamlawclinic.pdf, visited, 30/07/2025.

[2] *Ibid.*

[3] *United States and Diplomatic and Consular Staff in Teheran (US v Iran)* [Judgment of 24 May 1980] [91].

[4] E., Munoz, (2012). Diplomatic Immunity: A Functional Concept in the Society of Today. Human Rights Studies Lund University, p. 18.

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] C., Keitner, (2015). Functional Immunity of State Officials Before the International Law Commission: The 'Who' and the 'What'. *QIL*, 17, pp. 51-57:52.

[9] ILC, (2014). 'Report of the International Law Commission on the Work of its 66th Session' (5 May–6 June and 7 July–8 August 2014) UN Doc A/69/10 231.

[10] *Ibid.*

[11] *Ibid*. para.236, para 1.

[12] *Ibid.*

community, notwithstanding differences of an economic, social, political or other nature. In particular, sovereign equality includes the following elements: (a) States are juridically equal; (b) Each state enjoys the rights inherent in full sovereignty; (c) Each state has the duty to respect the personality of other states; (d) The territorial integrity and political independence of the state are inviolable; (e) Each state has the right freely to choose and develop its political, social, economic and cultural systems; (f) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

2.2 The Rationales for Diplomatic Immunity

Diplomatic immunity is a cornerstone of international relations, rooted in the necessity of ensuring the effective functioning of diplomatic missions between sovereign states. Its rationale is myriad drawing from legal tradition, functional necessity, customary international law, and the need for reciprocity and mutual respect among nations.

2.2.1 The Functional Necessity Argument

The primary rationale is the functional necessity doctrine, which posits that diplomats must be free from the jurisdiction of the host state to carry out their duties effectively and without interference. This was codified in the 1961 Vienna Convention on Diplomatic Relations, which emphasized that such immunities are "not for the benefit of the individual but to ensure the efficient performance of the functions of diplomatic missions".[1] Without this protection, diplomats may face legal harassment or coercion, undermining their state's ability to maintain international relations.

At its core, the functional necessity doctrine holds that diplomatic agents represent their sovereign states and must operate independently of the host country's legal or political interference. If diplomats were subject to local jurisdiction, there would be the risk of harassment, coercion, or prosecution based on politically motivated charges. Such vulnerability would undermine the diplomat's ability to negotiate, report accurately, and represent the sending state without fear of reprisal.[2] In this way, immunity serves as a protective shield that preserves the integrity of diplomatic communication and negotiation channels.

Importantly, the doctrine applies not just to criminal jurisdiction, but also to civil and administrative jurisdictions of the host state. This broad scope reflects the necessity of creating an atmosphere where diplomats are not entangled in local legal disputes that could impair their mission. For instance, a diplomat preoccupied with court appearances or legal defense would not be in a position to fulfill diplomatic responsibilities effectively.[3]

Despite its foundational status, the functional necessity principle has faced contemporary challenges, particularly in cases involving serious crimes committed by diplomats. Critics argue that the doctrine is sometimes exploited for impunity rather than necessity. In response, some scholars and policymakers advocate for a more restrictive interpretation of immunity limiting its scope to acts performed in an official capacity, or encouraging the waiver of immunity in cases involving criminal offenses.[4] Nevertheless, the principle remains central to international diplomatic practice, offering a stable and universally accepted legal foundation. States continue to view it as an essential mechanism to protect the delicate fabric of diplomacy, especially in politically volatile regions where trust and cooperation are fragile.

The argument has gained acceptance since the 16th century to modern practice.[5] Diplomats need to be able to move freely and not be obstructed by the receiving State. They must be able to observe and report with confidence in the receiving State without the fear of being reprimanded.[6] The argument finds support in the case of *Empson v. Smith*,[7] wherein it was stated that diplomatic immunity is not immunity from legal liability rather immunity from suit, and diplomatic agents are not above the law and are obligated to respect the laws and regulations of the receiving state. In the United Kingdom, the House of Commons Foreign Affairs Committee has put the case this way:

For the application of the functional necessity argument, a determinative issue is the distinction between official and private acts which lies on the premise of whether the alleged illegality stems from the official function or

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[1] Vienna Convention on Diplomatic Relations, Article 29-31. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961 (visited on the 20/07/2025)

[2] Tunks, M. A., (2002). Diplomats or Defendants: Defining the Future of Head-of-State Immunity. *Duke Law Journal*, *52*(3), 651-682.

[3] Wilson, R. A., (1984). Diplomatic Immunity from Criminal Jurisdiction: Essential to Effective International Relations. *Loyola of Los Angeles International and Comparative Law Review*, *7*(1), 77-90.

[4] Aphael, A., (2019). Retroactive Diplomatic Immunity. *Duke Law Journal*, *69*, 1375-1416.

[5] M., Moutzouris, *op cit*., p. 24.

[6] *Ibid.*

[7] *Empson v. Smith* [1966] 1 QB 426.

private activity of the concerned diplomat. For example, a diplomat cannot be sued for rejecting a visa as the act falls within the ambit of official functions. However, if the applicant is verbally attacked or abused by the diplomat during the assessment of the visa application, the question that would remain is whether the attack is inclusive of the performance of the official functions being essentially a private act of the diplomat.[1] If yes, then the private act would be protected by diplomatic immunity, and if no, then the act shall fall under the unprotected private act category.

In the 1977 case of *Ministère Public and Republic of Mali v Keita*,[2] the Court had to decide whether the murder of the Ambassador of Mali by a chauffeur came within the ambit of official duties or acts or functions. The Court observed that even though the act was performed during work hours on Embassy grounds, the act was done in connection with a personal dispute between the Ambassador and the chauffeur. The Court, therefore, held that murder by the chauffeur was not a natural consequence of or connected to the performance of or exercise of official duties as diplomatic immunity is granted extends only to the abovementioned instances.

2.2.2 Sovereignty and Equality Reinforcing the Independence, Equality and Sovereignty of States

The principle of state sovereignty and the corollary notion of sovereign equality constitute foundational pillars of the international legal system and operate as core rationales for the doctrine of diplomatic immunity. Modern international law has its roots in the monarchies of pre-French Revolution Europe, and it is from the archaic identification of the sovereign with his state that the modern law of immunity has developed.[3] The first justification for immunity stems from this time, when the sovereign was the embodiment of the state. The sovereign and the state were perceived as one and the same thing. The state, that is the territory and the persons on that territory, were the property of the sovereign, and the attributes of the sovereign were that of the state. A sovereign personified the state; his dignity was that of the state; an affront to the state was also an affront to the sovereign, and likewise an action which offended a sovereign caused offence to the state.[4]

Immunity later developed as a matter of privilege and finds support in earlier caselaw and the writings of jurists. In the classic case on state immunity, the *Schooner Exchange v. McFaddon*,[5] decided in 1812, the United States Supreme Court found that, “One sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory only under an express license, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserve d by implication, and will be extended to him.” The principle of sovereign equality, enshrined in Article 2(1) of the United Nations Charter, mandates that all states irrespective of size, power, or political structure are equal in legal status and enjoy equivalent rights and duties under international law.[6]

In this regard, immunity becomes an instrument of reciprocity, allowing states to engage in diplomacy without fearing that their envoys will be prosecuted or otherwise constrained by the legal systems of the receiving state.[7] The concept also reinforces mutual respect for sovereign functions, as immunity shields not merely the person of the diplomat, but the dignity and inviolability of the state they represent. This doctrine was strongly reaffirmed in the International Court of Justice (ICJ) decision in the *Tehran Hostage Case*[8], where the Court held that the “rules of diplomatic law... are firmly established and widely recognized as indispensable to the maintenance of normal international relations”. In other words, the immunity afforded to diplomats is an affirmation of the respect due to the sovereign equality of the sending state.

3. Approaches to Diplomatic Immunity

The evolution of immunity in international law has historically oscillated between two doctrinal poles: the

[1] A. Chowdhury, (2021). Applying the Functional Necessity Test to the Immunity of Diplomats’ Family Members: Dunn-Sacoolas Incident between the UK and USA. *SCLS Law Review*, *4*(3), pp. 8-21:17.

[2] Ministère Public and Republic of Mali v Keita (1977) Journal des Tribunaux 678; 77 ILR 410.

[3] E., Franey, (2009). Immunity, Individuals and International Law. Which Individuals are Immune from the Jurisdiction of National Courts under International Law?, PhD Thesis, London School of Economics, p. 55.

[4] *Ibid.*

[5] *The Schooner Exchange v. McFaddon*, 11 US 116; 7 Cranch. 116 (1812) at 137.

[6] *Charter of the United Nations*, 1945, Article 2(1). https://www.un.org/en/about-us/un-charter (visited on the 29/07/2025)

[7] Ahmad, N., Asmad, A. H., & Zulkiffle, N. B., (2022). Evolution and Practices of Diplomatic Immunity under Islamic Traditions and International Law. *J. Int’l L. Islamic L.*, 18.

[8] *United States Diplomatic v. Consular Staff in Tehran* (U.S. v. Iran), ICJ Reports 1980, p. 3.

absolute and restrictive approaches. These paradigms are especially salient in the discourse on state immunity and have informed debates surrounding diplomatic immunity, particularly in contexts where immunity is invoked to shield acts that allegedly contravene *jus cogens* norms or domestic criminal statutes. These approaches will be treated in turn.

3.1 Absolute Approach

The absolute theory of immunity posits that a foreign state and its agents are entirely immune from the jurisdiction of the courts of another state, irrespective of the nature or context of their actions. Rooted in the maxim *par in parem non habet imperium* (an equal has no power over an equal), this approach perceives immunity as an essential derivative of sovereign equality and non-intervention, meaning that any attempt by one state to subject another or its agents to its domestic legal processes is inherently unlawful.[1] This view predominated during the 19th and early 20th centuries, a period when states operated primarily as public entities with limited commercial involvement. The U.S. Supreme Court case of *The Schooner Exchange v. McFaddon* (1812) remains a landmark articulation of the absolute doctrine, wherein Chief Justice Marshall held that foreign sovereigns and their instrumentalities were not subject to U.S. jurisdiction.[2] The same immunity applies to "members of the family of a diplomatic agent forming part of his household" (Article 37(1) VCDR).[3] When a diplomatic agent's function ends, his or her personal immunity ends as well. However, immunity for acts performed in an official capacity subsists even after function (immunity *ratione materiae* or functional immunity).[4]

The immunity from the criminal jurisdiction of the receiving State has an absolute character: there are no exceptions.[5] This absolute immunity concerns all possible minor offences as well as grave crimes, such as the crimes against humanity. In the *Arrest Warrant case*[6] the ICJ ruled that there is no exception for international crimes. Although, in this case the ICJ was dealing with the immunity of a minister of foreign affairs, the outcome has direct consequence for diplomatic immunity as the protection of the functioning of the office is a prime reason for granting both immunities.

3.2 Restrictive Approach

The restrictive theory of immunity emerged as a response to the increasing participation of states in commercial and private transactions (*acta jure gestionis*) alongside their traditional sovereign activities (*acta jure imperii*). Under the restrictive doctrine, immunity is confined to acts performed by a state in its sovereign capacity, whereas immunity does not extend to acts of a private or commercial nature. This theory reflects a more functional application of immunity, aiming to prevent states from evading liability for activities that are not inherently governmental.[7] The European Convention on State Immunity (1972) and national laws such as the UK State Immunity Act (1978) and US Foreign Sovereign Immunities Act (1976) formally codified this doctrine, marking a shift toward greater accountability in international relations. A central argument for proponents of the restrictive view is that Article 39(2) of the VCDR, which uses the formula of "in the exercise of functions", is the practical equivalent of Article 38(1) of the VCDR, which protects a serving diplomat with the nationality or permanent residency of the receiving State for "official acts performed in the exercise of his functions".[8]

Thus, by the restrictive approach, immunity from civil and administrative jurisdiction is near absolute, yet subject to three exceptions as provided in Article 31(1) VCDR:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

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[1] Denza, E., (2016). *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations,* 4th ed., Oxford University Press.

[2] *The Schooner Exchange v. Mc Faddon*, 11 U.S. (7 Cranch) 116 (1812).

[3] 37(1) VCDR.

[4] Article 39 (2) VCDR.

[5] Article 31(1) VCDR.

[6] Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v Belgium) ICJ, 41 ILM 536.

[7] Fox, H. & Webb, P., (2015). *The Law of State Immunity,* 3rd ed., Oxford University Press, pp. 40–45.

[8] S., Xinxiang, (2019). Official Acts and Beyond: Towards an Accurate Interpretation of Diplomatic Immunity Ratione Materiae under the Vienna Convention on Diplomatic Relations. *Chinese JIL*, p. 5.

Similarly, in the *Paredes v. Vila*[1] case claims of Paraguayan domestic worker brought against an Argentinean diplomat and his wife for breach of contract and unjust enrichment were dismissed by the United States District Court on the ground that:

When diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, including the employment of domestic workers, they are not engaging in 'commercial activity' as that term is used in the Diplomatic Relations Convention. Thus, contracts for goods and services incidental for daily life concluded in the receiving State are outside of the exception and are covered by the immunity. The exception sees to remunerated services by diplomats or members of their family, or an employment outside of the mission.[2]

4. Categories of Objects Subjected to Diplomatic Protection

Diplomatic immunity is not an abstraction. It applies to specific objects which are the subject of immunity. They include: diplomatic personnel, diplomatic bag and the diplomatic premises. These objects will be treated in turn.

4.1 Diplomatic Personnel

Article 1(e) of the Vienna Convention on Diplomatic Relations 1961 defined a diplomatic agent as: "…the head of the mission or a member of the diplomatic staff of the mission". According to Munoz [3] "…diplomatic agents are those persons so designated by the sending State and the receiving State simply receives". In the context of this research, a diplomatic personnel is a person designated by a state to represent the state in another country. The diplomatic personnel make up the diplomatic mission. It thus incumbent upon the research to elaborate on the diplomatic mission.

The diplomatic agents are part of the diplomatic mission[4]. It therefore becomes important to elaborate on the diplomatic mission. The diplomatic mission consists of a diplomatic representative duly nominated by one state and accepted by another, together with his staff and established in the diplomatic capital of the state. As far as the receiving state is concerned there is only one person who may represent another state, and he is head (or acting head) of that mission who, as such, is entirely responsible for its activities; his staff, strictly speaking, have no direct representative function and merely assist their head.

The 1961 Vienna Convention on Diplomatic Relations (article 1) usefully defined the staff of a diplomatic mission (with the French expression in brackets) as follows: (a) The 'head of the mission' (chef de mission) is the person charged by the sending state with the duty of acting in that capacity; (b) The 'members of the mission' (membres de la mission) are the head of the mission and the members of the staff of the mission; (c) The 'members of the staff of the mission' (membres du personnel de la mission) are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission; (d) The 'members of the diplomatic staff' (membres du personnel diplomatique) are the members of the staff of the mission having diplomatic rank; (e) A 'diplomatic agent' (agent diplomatique) is the head of the mission or a member of the diplomatic staff of the mission;[5] (f) A 'member of the administrative and technical staff' (membre du personnel administratif et technique) is a member of the staff of the mission employed in the administrative or technical service of the mission; (g) A 'member of the service staff' (membre du personnel de service) is a member of the

[1] *Gonzales Paredes v Vila* [2007] 479 F.Supp.2d 187 [2007].

[2] M., Gogna *et al*., (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, Amsterdam International Law Clinic Report, p. 7, available at https://www.epsu.org/sites/default/files/article/files/Final_reportAmsterdamlawclinic.pdf, visited 27/07/2025.

[3] E., Munoz, (2012). Diplomatic Immunity: A Functioning Concept of the Society Today, Human Rights Studies Lund University, p. 21, available at https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId, visited, 21/05/2025.

[4] The Vienna Convention on Consular Relations provides for members of the consular posts. Members of Consular Posts (Normal and Special Bilateral) Consular personnel perform a variety of functions of principal interest to their respective sending countries (for example, issuance of travel documents, attending to the difficulties of their own nationals who are in the host country, and generally promoting the commerce of the sending country). Countries have long recognized the importance of consular functions to their overall relations, but consular personnel generally do not have the principal role of providing communication between the two countries that function is performed by diplomatic agents at embassies in capitals. The 1963 Vienna Convention on Consular Relations grants a very limited level of privileges and immunities to consular personnel assigned to consulates that are located outside of capitals. Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities, United States Department of State Office of Foreign Missions, available at https://www. state.gov/wp-content/uploads/2019/07/2018-DipConImm_ v5_Web. pdf, visited,09/07/2025.

[5] The term 'diplomatic agent', which formerly referred only to the head of a mission, now includes the members of the diplomatic staff of the mission; and 'the members of the diplomatic staff' are not only members of a diplomatic service, but also attachés, advisers and members of other ministries, provided that they hold diplomatic rank. G., Feltham, *op cit.* p. 13.

staff of the mission in the domestic service of the mission; (h) A 'private servant' (domestique privé) is a person who is in the domestic service of a member of the mission and who is not an employee of the sending state.

Pursuant to article 14(1) of the VCDR 1961, Heads of mission are divided into three classes, namely: (a) That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank; (b) That of envoys, ministers and internuncios accredited to Heads of State; (c) That of chargés d'affaires accredited to Ministers for Foreign Affairs.[1]

Once accepted as a head of mission, the diplomat must present his credentials to the receiving state and from the date and hour of this credentials ceremony, his or her status as head of mission begins.[2] The VCDR states: "the head of the mission is considered as having taken up his functions in the receiving state either when he has presented his credentials or when he has notified his arrival. But the privileges will normally begin on arrival; in some cases the presentation of credentials will not be arranged for several days or weeks."[3]

Generally, the VCDR does not discriminate between a head of a mission and other diplomatic staff.[4] All are treated the same. Some reduced level of immunities and privileges may be accorded to administrative and technical staff and service staff. All are treated the same. Some reduced level of immunities and privileges may be accorded to administrative and technical staff and service staff who are not nationals of the receiving state. The VCDR is specific that the immunities and privileges shall not apply to acts of such staff performed in their official duties.[5]

The person of a diplomatic agent is inviolable under article 29 of the Vienna Convention and he may not be detained or arrested.[6] This principle is the most fundamental rule of diplomatic law and is the oldest established rule of diplomatic law.[7] In resolution 53/97 of January 1999, for example, the UN General Assembly strongly condemned acts of violence against diplomatic and consular missions and representatives, while the Security Council issued a presidential statement, condemning the murder of nine Iranian diplomats in Afghanistan.[8] States recognize that the protection of diplomats is a mutual interest founded on functional requirements and reciprocity.[9] The receiving state is under an obligation to 'take all appropriate steps' to prevent any attack on the person, freedom or dignity of diplomatic agents.[10]

Article 30(1) provides for the inviolability of the private residence of a diplomatic agent, while article 30(2) provides that his papers, correspondence and property are inviolable. Concerning criminal jurisdiction, diplomatic agents enjoy complete immunity from the legal system of the receiving state, although there is no immunity from the jurisdiction of the sending state. This provision noted in article 31(1) reflects the accepted

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[1] Article 14(2) however states: "except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class". Article 15 states that the class to which the heads of their missions are to be assigned shall be agreed between States.

[2] Who are the Diplomats and How do the Operate?, available at https://uk. sagepub. com/sites/default/files/upm-assets/71510_book_item_71510.pdf, visited,05/07/2025.

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.* The head of mission is responsible for all matters connected with his mission. He may, and does, delegate various functions to his staff, but he alone is responsible both to his own government and to the government to which he is accredited for the conduct of the mission. Irrespective of the size of his staff there are certain basic priorities to which a head of mission normally devotes his personal attention: (a) the formulation of diplomatic policy; (b) transmitting to the host government the views of his own government on important matters of common interest and common policy, and acting as the channel of communication between the two in such matters; (c) reporting to his Ministry on events of political or economic significance, whether they are of direct significance (for example, the national budget or ministerial changes) or of indirect significance (for example, changes and trends in social or economic conditions), and commenting on the views of third parties in the country (for example, articles from the local press, opinions of other diplomats); (d) being aware of the people of influence and the sources of national power in the state in which he is serving; (e) conducting himself in his official and personal behaviour in such a way as to bring credit to his country; (f) cultivating as wide and as varied a circle of friends as is possible in order to be able to fulfil (a), (c), (d) and (e) above. G., Feltham, *op cit*., p.14.

[6] It should be noted that by article 26 the receiving state is to ensure to all members of the mission freedom of movement and travel in its territory, subject to laws and regulations concerning prohibited zones or zones regulated for reasons of national security.

[7] M., Shaw, (2008). *International Law*. Cambridge University Press, 6th edition, p. 764.

[8] *Ibid.*

[9] See for example, the US Supreme Court in *Boos* v. *Barry* 99 L Ed 2d 333, 346 (1988); 121 ILR, pp. 499, 556.

[10] M., Shaw, *op cit.,* p. 764.

position under customary law.

Article 31(1) VCDR 1961 also specifies that diplomats are immune from the civil and administrative jurisdiction of the state in which they are serving, except in three cases: first, where the action relates to private immovable property situated within the host state (unless held for mission purposes); secondly, in litigation relating to succession matters in which the diplomat is involved as a private person (for example as an executor or heir); and, finally, with respect to unofficial professional or commercial activity engaged in by the agent.[1]

A typical case where the inviolability of the diplomatic personnel was not respected is the *The Occupation of the U.S. Embassy in Tehran*.[2] This case concerns the occupation of the U.S Embassy in Tehran by Iranian students in 1979, during the year of the Iranian Revolution. They held staff hostage and demanded the handing over of Mohammad Reza Pahlavi, the former Shah of Iran. The United States filed a case with the ICJ. It requested the court to oblige Iran to release the hostages. In light of events following the occupation, the court ruled in 1980 that the Iranian state bore responsibility for the actions of those who had seized the complex. It also ordered the release of the hostages. Iran refused, and it took Algerian mediation before all 52 hostages were released, in 1981, after 444 days in captivity.[3]

4.2 Diplomatic Premises

According to Article 1 of the Vienna Convention on Diplomatic Relations 1961 the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission. Article 30 provides that "the private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission" and that "his papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability".

Article 22 of the Vienna Convention on Diplomatic Relations 1961 confirms the inviolability of mission premises barring any right of entry by law enforcement officers of the receiving State and imposing on the receiving State a special duty to protect the premises against intrusion, damage, disturbance of the peace or infringement of dignity. Even in response to abuse of this inviolability or emergency, the premises may not be entered without the consent of the head of mission. Article 24 of the Vienna Convention on Diplomatic Relations 1961 ensures the inviolability of mission archives and documents even outside mission premises so that the receiving State may not seize or inspect them or permit their use in legal proceedings.

By article 23, a general exception from taxation in respect of the mission premises is posited. The Court in the Philippine Embassy case explained that, in the light of customary and treaty law, 'property used by the sending state for the performance of its diplomatic functions in any event enjoys immunity even if it does not fall within the material or spatial scope' of article 22.[4] It should also be noted that the House of Lords in *Alcom Ltd v. Republic of Colombia*[5] held that under the State Immunity Act 1978 a current account at a commercial bank in the name of a diplomatic mission would be immune unless the plaintiff could show that it had been earmarked by the foreign state solely for the settlement of liabilities incurred in commercial transactions.[6]

With regard to the duration of the protection of the diplomatic premises, while the 1961 Vienna Convention contains a host of elaborate provisions for determining person's entitlement to immunities and privileges and the time when said entitlement begins; this convention fails to provide any analogous provisions as regards the premises of the diplomatic mission.[7] It seems reasonable to suggest that if the sending State has notified the receiving State of the location of its premises and the date when the building shall commence usage, it must be deemed inviolable from that moment onwards even during the time they are being prepared for that use.[8]

4.3 Diplomatic Bag

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[1] M., Shaw, *op cit*., p. 766.

[2] *United States v.* Iran **[**1980**]** ICJ Rep.

[3] *Ibid.*

[4] *Ibid*., p. 762.

[5] [1984] 2 All ER 6; 74 ILR, p. 180.

[6] *Ibid.*

[7] J., d'Aspremont, Diplomatic Premises, R. Wolfrum (ed.), (2009). *Max Planck Encyclopedia of International Law* (OUP, 2009) p. 3.

[8] *Ibid.*

For centuries, governments and their envoys stationed abroad have used diplomatic bags.[1] The diplomatic bag, which is usually a canvas sack, is intended for the confidential conveyance of documents between a government and its missions abroad.[2] Eventually, diplomats used the bag to convey articles as well as documents; thus, the bag became the smuggling diplomat's perfect means by which to transport contraband as valuable as jewels and as lethal as machine guns across international borders. At first glance, subjecting the bag to metal detectors, electronic scanning, or canine sniffing without opening or detaining the bag would appear to be a simple solution to the worldwide problem of abuses of the diplomatic bag.[3]

The regime that is devised by the Vienna Conventions does away with all exceptions enshrined in customary international and strengthened the protection of the diplomatic bag. Under the 1961 Vienna Convention on Diplomatic Relations[4] as well as the 1969 Convention on Special Missions[5] and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character,[6] the bag shall not be opened nor detained by the receiving State, with no exception whatsoever. Inviolability requires further positive measures to prevent interference by individuals.

Article 27 of the VCDR 1961 provides that the receiving state shall permit and protect free communication on behalf of the mission for all official purposes. Such official communication is inviolable and may include the use of diplomatic couriers and messages in code and in cipher, although the consent of the receiving state is required for a wireless transmitter. Article 27(3) and (4) of the VCDR 1961 deals with the diplomatic bag,[7] and provides that it shall not be opened or detained 338 and that the packages constituting the diplomatic bag 'must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use'.[8]

5. Exclusion from Diplomatic Immunity

It has already been noted that diplomatic immunity is not indefinite. There are instances of exclusion of diplomatic immunity. These exclusions comprise waiver of diplomatic immunity, persona non grata, after function and commencement of lawsuit by a diplomatic agent.

5.1 Waiver of Diplomatic Protection

While the Vienna Convention does allow the sending state to waive the immunity of its diplomats, this seldom happens.[9] The Vienna Convention's reliance on the sending state to waive the immunity of its own diplomat creates an inherent conflict of interest. The situations in which a diplomat's immunity may be waived are usually politically charged, and therefore are not available for average offenses which harm others.[10]

Pursuant to article 32 VCDR, the receiving State could request the sending State to waive the immunity of the offending diplomat so that the latter could be tried in court for the offences committed by foreign diplomatic agents where admonition is not considered a satisfactory punishment. This would possibly strain the political relations between the two States less than when the receiving State would declare the diplomatic agent persona non grata under article 9(1) VCDR.[11] Waiver has to be express and the possibility to revoke a waiver once it has

[1] C., Nelson, (1998). "Opening" Pandora's Box: The Status of the Diplomatic Bag in International Relations. *Fordham International Law Journal*, *12*(3), pp. 494-519:494.

[2] *Ibid.*

[3] *Ibid.*

[4] Article 27.

[5] Article 28.

[6] Article 27.

[7] Defined in article 3(2) of the Draft Articles on the Diplomatic Courier and the Diplomatic Bag adopted by the International Law Commission in 1989 as 'the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communication referred to in article 1 and which bear visible external marks of their character' as a diplomatic bag: see *Yearbook of the ILC*, 1989, vol. II, part 2, p. 15.

[8] Article 27(4).

[9] V., Maginnis, (2003). Limiting Diplomatic Immunity: Lessons Learned from the 1946 Convention on the Privileges and Immunities of the United Nations. *Brook. J. Int'l L.*, *28*, pp. 989-1023:1021.

[10] *Ibid.*

[11] M., Gogna, *et al*., (n.d.). Diplomatic and State Immunity in Respect of Claims of Embassy Employees and Domestic Workers: Mapping the Problems and Devising Solutions, p. 16, available at https://www.epsu.org/sites/default/files/article/files/Final_reportAmsterdamlawclinic.pdf, visited 10/07/2025.

been given does not exist. Immunity can only be waived by the sending State, not by the diplomatic agent himself.[1]

In general, waiver of immunity has been unusual, especially in criminal cases.[2] In a memorandum entitled Department of State Guidance for Law Enforcement Officers With Regard to Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel the point is made that waiver of immunity does not 'belong' to the individual concerned, but is for the benefit of the sending state.[3] While waiver of immunity in the face of criminal charges is not common, 'it is routinely sought and occasionally granted'. However, Zambia speedily waived the immunity of an official at its London embassy suspected of drugs offences in 1985.[4]

In *Fayed v. Al-Tajir*, [5]the Court of Appeal referred to an apparent waiver of immunity by an ambassador made in pleadings by way of defence. Kerr LJ correctly noted that both under international and English law, immunity was the right of the sending state and that therefore 'only the sovereign can waive the immunity of its diplomatic representatives.'

5.2 Personal Non Grata

When a diplomatic agent commits a serious criminal breach of law, she/he may be declared persona non grata, but can never be prosecuted by the host State.[6] According to article 9 VCDR, the receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata or that any other member of the staff of the mission is not acceptable.[7] Once a declaration of persona non grata has been made, the sending State should either recall the diplomat or terminate his or her function with the mission in the receiving State. If the sending State refuses to do so, the receiving State may refuse to recognize the diplomat as a member of the diplomatic mission.[8]

Persona non grata means an unacceptable or unwelcome person. A diplomat who is no longer welcome to the government to which he is accredited.[9] Diplomats have been declared *persona non grata* for making disparaging remarks against the host government, violating its laws, interfering with its politics, meddling with its domestic affairs, using offensive language and criticizing its head of state. "Usually the appended host government requests for sending diplomats to recall the offending diplomat. This request is normally complied with."[10]

In their International Law Dictionary, Bledsoe and Boleslaw define the term as follows: "The term *persona non grata* indicating that a diplomatic agent of a state is unacceptable to the receiving state. This can take place either before the individual is accredited, indicating that the proposed appointee is unacceptable to the host state and will not be received, or after the accreditation process in response to some real or alleged impropriety by the diplomatic agent".[11]

The above definition reflects article 9 of the VCDR which provides that the receiving state may at any time declare any member of the diplomatic mission persona non grata without having to explain its decision, and thus obtain the removal of that person.

5.3 After Function

The immunity from jurisdiction of diplomatic agents as provided in Article 31(1) VCDR applies as long as

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[1] *Ibid.*

[2] M., Shaw, *op cit.,* p. 771.

[3] *Ibid.*

[4] *Ibid.*

[5] [1987] 2 All ER 396.

[6] Robert Longley, (2019). How Far Does Diplomatic Immunity Go? THOUGHT CO (Sept. 2, 2019), available at https://www.thoughtco.com/diplomatic-immunity-definition, visited,29/07/2025.

[7] M., Gogna, *et al op cit.*

[8] *Ibid.*

[9] N., Ahmad and G., Lilienthal, (2021). Abuse of Diplomatic Immunities and Its Consequences Under the Vienna Convention: A Critical Study. *Transnational Law & Contemporary Problems*, *30*, pp. 166-190:165:169.

[10] R., Higgins, (1985). The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience., *AM. J. INT'L L.*, *79*, 645, p. 645.

[11] N., Ahmad and G., Lilienthal, *op cit*., p. 169.

diplomatic agents exercise their official function and ends when their function ends.[1] After function their immunity in the receiving State is limited to that set forth in Article 39(2) VCDR. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict.

However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.[2] This so-called residual immunity is limited to official acts performed by the diplomatic agents within their official capacity because such acts are the acts of the sending State.[3] Therefore, ex-diplomats can only rely on the functional immunity for protection covering official acts performed during his or her time in office. The rationale behind this is to prevent that an official in the receiving State is held responsible for acts that are those of the sending State.[4] The residual immunity is therefore not intended to shield the diplomats, but rather the State that they represent in their official capacity.[5]

As far as functional immunity of former diplomats is concerned, tort claims concerning abuse of human and labour rights of domestic workers are normally unrelated to the function,[6] as illustrated by the *Swarna v Al-Awadi case.*[7] Vishranthamma Swarna, an Indian national, had come to work for Al-Awadi, Third Secretary to the Permanent Mission of the State of Kuwait to the United States, in New York City. Swarna was sequestered in the diplomat's house, denied access to the outside world, forced to work long hours with no privacy and little food, beaten and raped. After her escape, she managed to bring a default judgement in the United States against the diplomat after he had left to take up a posting in France. When Al-Awadi responded to the case, he argued that he enjoyed jurisdictional immunity as a result of his diplomatic function. However, the District Court rejected this argument by pointing out that diplomats lose much of their immunity upon leaving their post, but where residual immunity did persist, it related only, in the words of the Vienna Convention, to 'acts performed […] in the exercise of this function as a member of the mission.' As far as the notion of 'official act' is concerned, the Court explained that it encompasses the functions of the diplomatic mission as given in Article 3(1) VCDR.[8] However, if an act is 'entirely peripheral to the diplomat's official duties.'[9]

5.4 Other Grounds for Waiver of Diplomatic Immunity

Article 31(1) provides that a diplomatic agent shall enjoy immunity from civil jurisdiction of the receiving State, except in the case of: (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission; (b) an action relating to succession in which the diplomatic agent is involved as an executor, administrator, heir or legatee as a private person and not on behalf of the sending State; (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions. These exceptions do not, indeed, reflect established customary international law, but they are necessary or reasonable, at least, for three reasons.[10] Firstly, if the receiving State did not have jurisdiction over such cases, the latter would probably remain unexamined as it would be virtually impossible for any court elsewhere to examine the cases. Secondly, such cases are not connected with the official duties of a diplomatic agent, but are purely private in nature. Thirdly, such cases do not usually involve the possibility of criminal proceedings or imprisonment, which can hinder the performance of official duties.[11]

There is also an indirect exception to immunity from civil jurisdiction of the receiving State. If a diplomatic agent initiates proceedings in a court of the receiving State, that is, invokes himself the jurisdiction of the latter, he precludes himself from the possibility to invoke immunity in respect of any counter-claim directly connected

[1] *Ibid.*

[2] Article 39(2) VCDR.

[3] *Ibid.*

[4] M. Gogna *et al., op cit.,* p. 11.

[5] *Ibid.*

[6] M., Gogna *et al., op cit.,* p. 12.

[7] *Swarna v. Al-Awadi* 607 F.Supp.2d 509 – Dist. Court, SD New York (2009).

[8] *Ibid.*

[9] *Ibid*, 518.

[10] *Ibid*. p. 30.

[11] *Ibid.*

with the principal claim.[1]

Article 32(3) of the VCDR contains another exception to immunity in civil jurisdictions. It states: "The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly concerned with the principal claim". It follows that the diplomatic agent has to take into account that the defendant must also have the same rights in defending his interest and such defence may include the submission of a counter-claim. In the case of *High Commissioner for India v. Ghosh*[2] where the High Commissioner for India, the Union of India and the Government of West Bengal sued Dr. Satya Ranjan Ghosh for money lent. In this situation, the High Commissioner cannot rely on immunity for a counter claim on a civil matter. On this case the defendant brought a counter claim against the High Commissioner for defamation. An English court held that when the diplomatic agent claimed for money or damages from the defendant, he did not submit himself to a counter-claim for defamation (especially because the latter was a criminal offence).[3]

6. Conclusion and Recommendations

This research has elucidated the concept and enduring significance of diplomatic immunity as a cornerstone of the international legal order. As evidenced through doctrinal analysis and comparative jurisprudential perspectives, the concept of diplomatic immunity is neither an arbitrary vestige of antiquity nor a gratuitous indulgence afforded to state agents, but rather a meticulously crafted mechanism grounded in the principles of functional necessity, reciprocity, and sovereign equality. The 1961 Vienna Convention on Diplomatic Relations as the cardinal legal instrument codifying these immunities, embodies an equilibrium between the inviolability of diplomatic agents and the sovereign interests of receiving states.

However, the absolute nature of certain immunities particularly those *ratione personae* has engendered legitimate normative disquiet, especially when invoked to shield manifestly egregious conduct, including infractions against the criminal laws of host states or violations of fundamental human rights norms. The jurisprudence of international and domestic tribunals reveals a nascent but discernible trend toward recalibrating the contours of immunity in line with the imperatives of accountability, proportionality, and jus cogens norms.

There is therefore a pressing need for a progressive development and possible supplementary protocol to the Vienna Convention that provides clearer demarcations between acts performed in an official capacity (*acta jure imperii*) and those of a private or egregiously unlawful nature (*acta jure gestionis)*, thereby enabling a more principled invocation of *ratione materiae* immunity. We further recommend that the international community, under the auspices of the United Nations International Law Commission or the International Court of Justice explores the establishment of a sui generis tribunal or oversight mechanism to adjudicate disputes and allegations involving diplomatic abuse, particularly in cases where the sending state declines to waive immunity or fails to prosecute.

In all, while diplomatic immunity remains indispensable to the unimpeded conduct of international relations, its application must evolve to reflect the contemporary imperatives of legality, justice, and mutual accountability. Immunity must not metamorphose into impunity. A calibrated, principled approach, anchored in both legal realism and juridical integrity, is necessary to preserve the legitimacy of this foundational doctrine under the ever-shifting paradigm of global diplomacy.

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[1] Article 32(3) VCDR 1961.

[2] (English Court of Appeal), 1 QB 134 (1960).

[3] *Ibid.*

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The Effectiveness of the Measures Put in Place Protecting Consumers Against Dangerous Goods in Cameroon

Felix Fung Kum[1,2,3]

[1] PhD Research Fellow, Department of English Law, Faculty of Laws and Political Science, University of Buea, Cameroon

[2] Graduate Teaching Assistant, Department of Business Law, University of Buea, Cameroon

[3] Advocate-in-Training of the Cameroon Bar Association, Cameroon

Correspondence: Felix Fung Kum, PhD Research Fellow, Department of English Law, Faculty of Laws and Political Science, University of Buea, Cameroon; Graduate Teaching Assistant, Department of Business Law, University of Buea, Cameroon; Advocate-in-Training of the Cameroon Bar Association, Cameroon.

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Abstract

Over the years, consumer protection has been driven by increasing concerns about public health and safety due to the circulation of hazardous and substandard products, necessitating legislative responses. The research problem focuses on the gaps and inefficiencies in legal frameworks and enforcement mechanisms that undermine consumer protection against dangerous goods, exposing consumers to significant health and safety risks. The main research objective is to evaluate the adequacy and effectiveness of existing protective measures, legal instruments, and enforcement practices in Cameroon. The study adopts a qualitative methodology involving a review of relevant laws, policies, legal cases, and interviews with stakeholders in consumer protection agencies and industry regulators. Major findings reveal that while Cameroon has established legal provisions such as the Penal Code and Consumer Protection Law to deter the circulation of dangerous goods, enforcement remains weak due to institutional deficiencies, lack of public awareness, and limited regulatory oversight. The study concludes that these challenges compromise consumer safety and hinder the full realization of protective laws. The research recommends strengthening regulatory institutions, enhancing public education campaigns on consumer rights, increasing monitoring and enforcement of safety standards, and improving coordination among agencies to ensure more effective protection of consumers against dangerous goods.

Keywords: consumer, dangerous goods

1. Introduction

This article seeks to examine the effectiveness of the regulatory measures on the protection of the consumer against the sale of dangerous goods in Cameroon.

The word consumer has been offered varied definitions by legislation and scholars. Law No 2011/012 of 06 May, 2011 Framework on Consumer Protection in Cameroon define a consumer as: “any person who uses products to meet his own needs and those of his dependents rather than to resell, process or use them within the context of his profession, or any person enjoying the services provided.”[1] On the other hand, Section 2 of the 2010 law on Electronic Commerce in Cameroon defines a consumer as “any natural or corporate body benefitting from the services or using commercial products to satisfy his personal needs or those of his dependents”. Article 4 of Law No. 2015/018 of 21 December 2015 that modified the Law of 1990 regulating

[1] Section 2 of the Framework Law on Consumer Protection.

commercial activity in Cameroon, defines a consumer as: "any person who uses a property to satisfy his own needs and those of his dependents and not to resell them, transform or use them in the course of his profession, or any person who benefits from the provision of services." This statutory definition of a consumer, which excludes persons who acquire goods or services for business or professional purposes, is evocative of the definition of a consumer under the English Consumer Protection Act of 1987.[1] Equally, the above definition in the English statute cited above, distinguishes between a consumer of goods and a consumer of services. Guideline 3 of the United Nations Guideline for Consumer Protection (UNGCP) set out a conventional definition while recognizing the need for flexibility. The term consumer generally refers to a natural person, regardless of nationality, acting primarily for personal, family, or household purposes.[2]

Alvine Longla Boma[3] opines that three important elements must be unite for any person to acquire the *locus* as a consumer. Firstly, a close scrutiny of this definition reveals that the law ties a consumer to a user of products or services for the satisfaction of his needs as well as the needs of his dependents.[4] Hence, emphasis is on private use.[5]

Secondly, a consumer is any person who needs products to meet his own needs and those of his dependents rather than resell, process or used them within the context of his professions, or any person enjoying the service provided. The text does seize to apply once the person is acting under a professional capacity but what if the goods procured are such as can be used for both private and business purposes?[6] The typical Cameroonian experience suggests that a good number of products can serve a dual purpose: private and business.[7] Lastly, just like the second criteria, the person is bound to use the product to meet his own needs and not as a professional.

The United Nations Conference on Trade and Development (UNCTAD) defines it as the sale or purchase of goods or services over computer mediated networks (broader meaning) or the internet (narrow meaning). It can be further defined as that kind of trade that takes place over the internet with a buyer visiting the seller's website and it includes business to business (B2B) and Business to customer (B2C), customer to business (C2B) and customer to customer (C2C) trade.

From the above definitions, first, in relation to any goods, a consumer means any person who might wish to be supplied with the goods for his own private use or consumption; secondly, in relation to any services or facilities, a consumer means any person who might wish to be provided with the services or facilities otherwise than for the purposes of any business of his; and thirdly, in relation to any accommodation, a consumer means any person who might wish to occupy the accommodation otherwise than for the purposes of any business of his.[8] Furthermore, the Molony committee on the consumer protection defines the consumer as one who purchases goods for private use or consumption. This definition includes anyone who consumes goods or services at the end of the chain of production.

According to the CEMAC legislator, A dangerous good is a product which, under normal or reasonably foreseeable conditions of use, presents a risk that is not compatible with the use of the product or service and is considered unacceptable in compliance with a high level of protection of the health and safety of people, pets, property or the environment.[9] Thus, goods maybe considered dangerous if they do not meet the required standard or purpose which they are meant for, or by their nature they are dangerous. Thus, dangerous goods refer to substances or materials that can pose a risk to health, safety, property, or the environment when they are being transported, stored, handled, or used. These goods may have inherent physical, chemical, or biological properties that make them hazardous under certain conditions. The potential risks associated with dangerous goods can

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[1] Section 10 (7) and 20 (6) of the Consumer Protection Act 1987.

[2] Guideline 3 of the United Nations Guideline for consumer protection (UNGCP).

[3] A. Longla Boma, (2011). Contemporary challenges in consumer protection discourse: identifying the consumer under Cameroonian law. *Juridis Periodique*, N^0 87, p. 69. See also A. Longla Boma, (2021). *Principles of Consumers Protection in Cameroon*. Ultranet House, Baffoussam.

[4] *Ibid*, p. 73.

[5] *Ibid.*

[6] A. Longla Boma, (2011). Contemporary challenges in consumer protection discourse: identifying the consumer under Cameroonian law. *Juridis Periodique*, N^0 87, p. 74.

[7] *Ibid.*

[8] *Ibid.*

[9] Article 104 DIRECTIVE No. 02/19/UEAC/639/CM/33 of 8 April 2019 Harmonizing the protection of consumers within the CEMAC ZONE.

vary widely depending on the nature of the substance or material.[1] These goods can cause harm through various means, such as fire, explosion, contamination, or other forms of damage.[2]

2. Achievements in Regulating Dangerous Goods in Cameroon

This section seeks to present the successes recorded as far the attempt the regulate the sale of dangerous goods is concerned in Cameroon.

2.1 Compliance to Rules of Regulating Sales of Dangerous Goods by the Operators or Seller of Dangerous Goods

The legislators have provided for rules which must be complied with by vendors and manufacturer of dangerous goods.[3] This implies that for the products or categories of products, safety requirements must be complied with. However, some vendors of dangerous goods in Cameroon have made efforts to comply to such rules. These safety requirements relating in particular to: the composition, conditions of production, assembly, installation, use, maintenance, reuse of the product as well as its name, presentation, packaging, wrapping, labelling and marking; (ii) the conditions of provision, use and presentation of the service; (iii) the nature, form and presentation of the information that must accompany the product or service and intended to reduce the risks presented by their use, such as warnings or precautions for use; (iv) the hygiene conditions that must be observed in the places of production and distribution of the product or provision of the service, as well as the persons working there; (V) the traceability of the product; (Vi) the assessment of the conformity of the product to the safety requirements applicable to it.[4]

However, the above requirement is considered as a specific general rule. In this light, specific technical regulations may be issued that include in particular the essential safety requirements, the technical specifications, including the reference to the applicable standards, the procedures to be followed to assess the conformity of the product to the safety requirements applicable to it, the technical documentation to be collected and kept to establish proof of the safety of the product, and any rules for mandatory marking of the product.[5]

Some efforts have been made to comply to such safety requirements. For instance, sellers of some inflammable liquids with authorisations and well-known business stations endeavours to respects the safety standards prescribed by the legislator. However, illegal traders of some dangerous goods fail to comply to such regulations leading to dominancy in sells of some dangerous goods in the streets of Cameroon.

One of the achievement or successes recorded by the attempts to regulate the sale of dangerous goods in Cameroon has been the imposition of some obligations on the producers and vendors of dangerous goods. The safety obligation imposed on the producer or importer of products to assess the risks presented by a product before they are placed on the market. The safety obligation also obliges the producer or importer of products to provide the consumer with useful information enabling him to assess the risks inherent in a product during its normal or reasonably foreseeable period of use and to protect himself against them, when these risks are not immediately perceptible to the user without adequate warning.[6]

Again, the safety obligation obliges the producer or importer of products to adopt measures to keep informed of the risks that the product may present, and to take the necessary actions to control these risks, including withdrawal from the market, adequate and effective warning of consumers, recall from consumers of products already made available to the consumer on the market. In compliance to this, some vendors of dangerous goods have been able to be (i) carrying out tests on marketed products; (ii) indicating on the product or its packaging the identity and address of the producer, its representative or the importer, as well as how to contact them to report a problem or submit a complaint; (iii) indicating on the product or its packaging the reference of the product or batch of products to which it belongs; (iv) examining complaints received from users and, where

[1] Some examples of dangerous goods include explosives, flammable liquids, toxic substances, corrosive materials, and radioactive materials.

[2] H. Yuan, E. Hofmann, A., Daniel, (2009). Hazardous Substances And Waste, Other Than Nuclear. *Yearbook of International Environmental Law,* 20(1), pp. 331-348:333.

[3] The Carriage and handling of dangerous goods. https://www.cncc.cm/en/article/the-carriage-and-handling-of-dangerous-goods-59 (Accessed on 16/3/2022); The Legal Framework for the Safe Transportation of Dangerous ... https://www.pioneerpublisher.com/slj/article/view/1199

[4] Article 106 DIRECTIVE No. 02/19/UEAC/639/CM/33 of 8 April 2019 Harmonizing the protection of consumers within the CEMAC ZONE.

[5] *Ibid*, article 107.

[6] *Ibid*, 109.

appropriate, keeping a register of complaints; (v) informing distributors about the monitoring of these products.[1] In this light, producers or importers of products is under an obligation to cooperate with the competent administration, at the request of the competent authority, in the actions taken to prevent, reduce or eliminate the risks posed by products or services that they place or have placed on the market.[2]

On the part of the distributors, they are required to act diligently to contribute to compliance with the applicable safety obligations, in particular by not making available to the consumer products that they know or should have considered, on the basis of the information in their possession and as professionals, that they do not meet those obligations.[3] Thus, within the limits of their respective activities, they have been participating in monitoring the safety of products placed on the market, in particular by transmitting information concerning the risks of the products, by keeping and providing the documents necessary to trace the origin of the products, as well as by collaborating in the actions undertaken by producers or importers and the competent administration in order to prevent, reduce or eliminate risks.[4]

For certain products, categories or groups of products which are likely, because of their characteristics or the conditions of distribution or use, to present a serious risk to the health and safety of persons, domestic animals, property or the environment, economic operators may be required to set up a traceability system or to adopt an existing traceability system.[5] The traceability system has been provided for by some economic operators and it has permit the collection of and storage of data allowing the identification of the product and of the economic operators involved in its supply chain. This is evident as there is the affixing of a data storage device on the product, on its packaging or on the documents accompanying it and which allows consultation of this data.

2.2 There Has Been Progressive Regulations of the Sale of Dangerous Goods in Cameroon

One great achievement of the regulating the sale of dangerous goods in Cameroon has been the progressive and continual regulation in line with changes in time and operations of sales of goods in Cameroon. As far back as the 1970s, the Government of the United Republic of Cameroon signed a Decree to put in place regulations for instituting establishments considered dangerous and inconvenient to the public. This Decree was amended and supplemented by other Decrees in 1998 and 1999 respectively.[6] In the latest version of its amendment in 1999, Articles 3 and 2 of Section 1 and Article 14 of Section 2 of this Decree spelled out perspicuously the conditions to be fulfilled by individuals wishing to create establishments considered in the same Decree as dangerous, unhealthy and inconveniencing to the public. These Laws and Decrees did not exclude installations having to do with the distribution of inflammable liquid products considering that they fall in the category of products considered dangerous, unhealthy and inconveniencing to the public. In spite of this prime ministerial edict, the practice in the sale of dangerous good like informal petrol[7] trading generally still leaves much to be desired. The muddle that reins in this sector seems to suggest that this decree is far from being implemented. Makeshift petrol vendors mushroom on major streets in the major towns and cities of some regions in the country, imported fuel are stored in domiciles and living quarters which exposes the inhabitants to risk of fire disasters.

2.3 The Specificity in Regulating the Sale of Inflammable Liquid

In 1997, a Decree[8] was passed to clarified issues around involvement in petrol trading activities in the country. The Decree spelled out that the right to be involved in petroleum activities would be granted by the Ministry in charge of petroleum products to any Cameroonian for a period of five (5) years renewable.[9] Besides, the Decree further clarified the processes of transporting, storing and sales of petroleum products in Cameroon. The Decree was followed up by another Order of the Minister of Mines Water and Energy on July 13, 1995[10] which explained the procedures to be involved in trading in petroleum activities in Cameroon. Among the issues raised in these texts, were quality controls, storage of petroleum products and transportation in designated vehicles.

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[1] *Ibid*, article 110.

[2] *Ibid.*

[3] *Ibid*, article 112.

[4] *Ibid*.

[5] *Ibid*, article 114.

[6] Decree N° 76/372, 1999; Law N° 98/015, 1998; Prime Ministerial Decree N° 99/81/PM, 1999.

[7] Apart from being flammable, the petroleum products especially that which is imported from Nigeria generally produces very exasperating malodor and also had the potential capacity of causing health hazards to those who were exposed to it.

[8] Decree N°95/135 /PM, 1993; Decree N° 77/528, 1977.

[9] *Ibid*, article 19.

[10] Order N° O16/95 MINMEE, 1995.

In another administrative move to check excesses in the informal petrol trade sector, the Head of State in a Law in 1998[1] prescribed the regulations for the types and conditions for putting in place of equipment for the pumping of gas and other such liquid and vapor. The various sections of this Law elaborate the procedures for the Construction, Use, Maintenance and Repairs of such pumps; Administrative and Technical supervisions, Administrative Sanctions among others[2]. This Law was definitely passed with the risk of poor handling of gaseous and petroleum products in mind. By the spirit of this Law, the sale of flammable Liquids or Gas must not only be done with the use of prescribed pumps but such pumps must be constructed and rendered effectively functional according to laid down rules. Like other laws and regulations, this Law is also almost completely flouted by the very practice of informal sale of dangerous inflammable liquids in Cameroon towns and cities. Consequently, the practice is antithetic to the prescriptions in this Law. Actors in the informal sale of such liquid goods do not use pumps in the sale of the product. The product is sold in gallons which are scaled down in smaller containers of at least One (1) liter with the use of funnels. This exposed both the sellers and the buyers to direct skin contact with the product with attendant far reaching health ramifications.

Apparently, the high point of the regulatory measures taken by the government to regulate petrol trade in Cameroon was the Petrol Code[3] passed in 1999.[4] Though the Law encompasses activities dealing with the exploitation of crude oil and natural gas, it equally touches on the sale of petroleum products in the entire Cameroonian territory. The Law defined the processes of prospecting, exploration exploitation, transportation, storage and processing activities of petroleum products in the country. As far as petrol trade is concerned, the salient point of this Code is that it spelled out the conditions under which an individual could carry out petrol trade in the country. According to this Law, any individual wishing to invest in the petrol trade must be duly authorized by the competent authorities before such business could be engaged. Thus, the non-compliance with the terms of this Law especially as far as the obtainment of authorization to carry out petrol trade was largely disrespected. Most of the actors in the informal petrol trade in Cameroon possessed no such authorization. It followed that makeshift kiosks were set up by individuals at strategic places in Cameroonian cities to carry out the business.

In 2008 another Prime Ministerial Decree[5] was passed which fixed modalities for the designation of Agents for the control of petroleum products in Cameroon. This Decree laid down conditions to be respected by the Ministry in charge of Energy Resources to appoint Inspectors and Deputy Inspectors for the control of the quality of petroleum products in Cameroon. The duties of the Inspectors and Deputy Inspectors were to visit possible installations and petrol filling stations as well as manufacturing sites and vehicles transporting the petroleum products to check and determine the quality of the product before they were put on the market.[6] While this Law in practice was applied in the formal petrol trade sector in the country, it was never applied in informal petrol trade sector. The quality of fuel sold along the streets in Cameroonian towns and cities was never checked and most often was doubtful due to deliberate adulteration by the sellers or accidental adulteration emanating from poor handling, transportation and storage.

Ministerial Decree of 2009 which modified certain dispositions of the Decree No. 2002/2044 of November 20, 2002 which created a committee for the fight against fraud in the petroleum products in the country.[7] The Committee that was created by the Ministry in charge of petroleum products was charged with the responsibility of fighting against the importation, exportation, detention, transportation and consumption of petroleum products in the country. It was also to propose to the government the measures that could be taken to eradicate the trade in illicit petroleum products in the country. In 2001, the Minister of Mines, Water and Energy signed another Order[8] which fixed the levels and geographical zones for the storage and control of petroleum products in Cameroon and in 2004, a joined Order of the Ministers of Mines, Water and Energy and the Industrial and Commercial

[1] Law N° 98/020, 1998.

[2] Ibid, chapter 2, 3, and 4.

[3] Law n°.99/13 of 22 December 1999 to Institute the Petroleum Code.

[4] This law was followed up by the Prime Ministerial Decree No. 2000/ 485 of June 30, 2000 which fixed the modalities for the application of the Petroleum Code in Cameroon. As a result, the Petroleum Code went into effect in the year 2000. As a follow up to the Petroleum Code the Law N° 2002/013 of December 30, 2002 to Institute the Gas Code was passed to govern the downstream gas sector comprising transportation, distribution, processing, storage, importation, exportation and marketing of natural gas within the national territory.

[5] Decree No. 2008/0149, 2008.

[6] *Ibid*.

[7] Decree No. 2009/1593, 2009.

[8] Order N°023/MINMEE, 2001.

Development hinging on the specification of the quality of some petroleum products to be sold in Cameroon.[1]

The legal instruments duly deliberated and signed by the respective authorities were either largely unknown to the actors in the petrol trade in Cameroon or are disregarded with impunity by same. This led to the growth and illicit practices in the informal petrol trading activities in many Cameroonian towns and cities with attendant far reaching implications.

3. Challenges for Effective Regulation of the Sale of Dangerous Goods in Cameroon

The regulation of the sale of goods in many countries and Cameroon has often been associated with several upheavals that render an effective control over this activity a problem. Ensuring effective regulation has never been an easy task in any given sector. The porous nature of the country's borders, amongst other challenges, makes it impossible to control the entry of every good. These inadequacies in the control of commercial dealing in Cameroon therefore accounts for the ineffectiveness in regulating this activity.

3.1 Ineffective Enforcement of Laws in Cameroon

There exist several pieces of legislation on the regulation of sales of goods in Cameroon. These laws regulate the production, importation and distribution of goods as well as control the personnel handling the goods for the prescription and purchase for consumption. It is however frustrating that the law itself poses a challenge for proper regulation. This is so in that; the implementation of the law is poor and slow.

In spite of the numerous official texts taken to contain the sale of dangerous goods in Cameroon, it continued to thrive in the markets. This indicated some setbacks in the measures taken to contain or regulate the sale of such goods. However, the ineffectiveness of the regulatory measures taken by government could be accounted for partly by the prevalence of corrupt practices and the lack of political will on the part of government. The fight against sale dangerous goods like inflammable liquids-petrol in Cameroon is shrouded in corrupt circumstances which greatly hampered the process. This account for the illegal sale of petroleum products in the streets of Cameroon.

While the existing legal framework regulated the process of importation, transportation and sale of goods in Cameroon, many actors capable to literally "buy their way" through with the products. Even within the Cities, the vendors paid money to the control teams to keep selling. This indicated the double standard posture of the officials involved in the fight against sale of dangerous goods. This rendered the regulation of sale of dangerous goods ineffective in Cameroon. This poor implementation of regulations has in Cameroon led to the soaring of and expansion of illicit practices in Cameroonian towns and cities, which is also associated with attendant adverse consequences on the populations.

Also, these pieces of legislation are lacking in many aspects which if provided would help in protecting consumers more as well as deterring defaulters. The OHADA Uniform Act on General Commercial Law for example has provisions dealing with the sale of goods. It is however frustrating that this piece of legislation is limited only to commercial sales and does not handle consumer problems. The 2011 Law on consumer protection on its part is only a framework law and not a law per se thereby requiring other pieces of legislation for its proper implementation. It focuses on protecting the consumer against destructive sales, fraudulent maneuvering and reticence, illegal practices, subordination of contracts to game conditions, lottery and other product subscription. The law refers only to restrictive business practices, unfair business practices, the repairs of goods and services of the merchant. The above argument in itself proves the inadequacy of the Consumer protection Law as it does not efficiently protect consumers by regulating prices of goods and services.[2]

Another argument for the non-implementation of regulatory instruments in the informal petrol trade sector was the general lack of political will on the part of the government. While the need for regulation is indisputable and the legal instruments available, follow up for implementation has remained a mirage. This situation is largely blamed on the lack of political will on the part of the government. The non-implementation of official texts is a common practice in many sectors of national life. The gap between regulation and implementation remained gulfing and a veritable cause for concern in Cameroon. For instance, this has been the case the sale of plastic papers, the importation and sale of drugs along the streets as well as other products considered by the government as contraband.[3]

These loopholes identified from the laws allows the consumer to only one remedy which is litigation which

[1] Order N° 000012/ 2004/MINMEE/MINDIC, 2004.

[2] D. L. Ngaundje, (2021). An Appraisal of the Law on Consumer Protection in Cameroon with Respect to Technology Products. *International Journal of Science and Research (IJSR)*, 10(2), pp. 828-835.

[3] R. Njingti Budi, (2019). Growth And Illicit Practices in Informal Petrol Trade in Cameroon: Assessing the Level of Implementation of Official Texts. *Afro Asian Journal of Social Sciences,* X(II), pp. 1-21.

cannot serve the consumer of dangerous goods well in due time considering the long and time-consuming court processes.[1] This makes the protection of consumers not to be considered as a matter of utmost importance. In laying more emphasis, there is no permanent body charged with the responsibility to enforce the laws on sale of dangerous goods.

3.2 Excessive Bureaucracy and Corruption

The public administration in Cameroon is characterized by strict hierarchical structures, which are infiltrated to a large extent of corruption.[2] There is excessive bureaucracy and the complex nature of acquiring a marketing authorization for the opening and sale of some goods considered as dangerous in Cameroon and it is discouraging. This has therefore led to the increase in corruption as illegal business dealers or sellers of dangerous goods wanting to open up within the shortest time possible engage in corrupt activities to get their approvals signed. One of the most corrupt sectors engage in dangerous goods control are the police and customs.

Custom officers sometimes allow the smuggling of fake and illicit goods into the country when given huge sums of money. Also, sometimes importers ask for lower import fees and therewith initialize corruption. The complex and sometimes corrupt import procedures often cause long delivery times in the ports. There exist a variety of possibilities to hinder import and transport by apparently legal bureaucratic procedures for example, incorrect and manipulated documents, lengthy questions, roadside checks with additional charges, etc.[3] Where custom officials get paid to facilitate the importation of goods which are not safe and effective, this poses a serious problem.[4] It becomes very difficult to stop circulation as most of the drugs are already made available to retailers and informal dealers.[5]

3.3 Poor Quality Control Systems

Ordinance No. 50/78 of 21 August 1978 on the quality control of some products include the protection of consumers. The Ordinance applies to both goods and services. It prohibits any misleading of consumers as to the essential qualities, composition and useful content of goods and the type, origin, quality and identity of items delivered. It also requires compliance with national standards where they exist, and regional standards where these have been adopted by the Government. There are some goods that are not ordinary consumer products as they directly affect the lives of people who take them[6]. They are thus complex products and their quality cannot be seen by merely looking at them. This means that consumers need guidance on how to use them. Even professionals selling them need special training and access to specialized information to safely deal with them at all stages of their development, production, distribution and dispensing.[7]

Cameroon is more of a consumer than a producer of many products, with dangerous goods inclusive. Reasons why consumers of dangerous goods depend on products imported into the country. This is another point to prove the ineffectiveness of the law in regulating the sale of dangerous goods in Cameroon. The permissive import of low-quality products some of which are dangerous goods leads to the free flow and sale of dangerous products thus, putting the consumers of goods at risk which they cannot identify by the judgment of an ordinary man detect. In Cameroon, most of the dangerous goods are sold without user manuals and guarantees. This is in contravention with section 16 of the 2011 Law.[8] More so, the vendors of such dangerous goods do not have the skills in determining the extent of the wear and tear or damage of the products which they sell. This is the case with second hand vehicles imported into the country. This makes the efforts of Standards and Quality Agency (ANOR)[9] questionable as it has failed to place standards for protecting consumers by allowing the sell of

[1] D. L. Ngaundje, *op. cit*.

[2] A. Schumann and L. Streit-Juotsa, (2013). Distributing medical products in Cameroon – status quo and measures to enhance logistic performance. Technische Hochschule Mittelhessen – University of Applied Sciences, Germany, p. 6.

[3] *Ibid*.

[4] J. Braithwaite, (1993). Transnational Regulation of the Pharmaceutical Industry. *The Annals of the American Academy*, p. 27.

[5] The United Nations Guidelines for Consumer Protection (UNGCP). https://fra.europa.eu/fr/law-reference/united-nations-guidelines-consumer-protection-ungcp-revised (Accessed on 15/2/2025)

[6] Like drugs.

[7] The Challenge of Protecting consumers from Unsafe Products. https://www.consumersinternational.org/media/155104/productsafetyreport-full.pdf (Accessed on 15/2/2025)

[8] Law No. 98/013 of 14 July 1998 Against Anti-Competitive Business Practices.

[9] Regulation No. 1/99/UEAC-CM-639 of 25 June 1999, against Anti-Competitive Business Practices.

dangerous products into the country, whose prices are determined by the rate of import tariffs.[1]

Hence, money spent on poor quality goods is not only wasted but it causes damages that results in human suffering and additional cost. This goes to undermine the confidence in professionals, manufacturers, distributors of such goods. Using the case of pharmacists as an example, they appear to be the most informed about drugs. This may be due to the fact that from their basic training, they are the most implicated in drugs as well as the fact that they have a day-to-day contact with patients where they are involved in delivery, preparation and explaining to the patients.[2] But these pharmacists sometimes overlook certain things and since they know consumer preferences and full knowledge of control systems and how they work, they can easily evade control authorities.

3.4 Lack of Awareness by Consumers

It is commonly said that *ignorantio jus non excusa*.[3] It is however baffling and surprising that even officers who are supposed to uphold the law with regards to marketing of goods are unaware of the existing law. It then becomes difficult to regulate sales within the state. On the part of consumers, most of them are unaware of the adverse effects counterfeit goods may cause. Most consumers see such goods as cheaper. Also, most of them are unawareness to the fact that most stores operate in illegality.

3.5 Porous Borders control in Cameroon

The challenges facing African states to manage their borders are compounded by globalization that is tearing down traditional borders through advancement in technology and transformation of international relations.[4] Trans-border crimes represent a number of illegal and notorious activities carried out by individuals and groups across national and international borders, either for financial or economic benefits. These crimes are manifested through individuals, groups and traders who smuggle goods including medical drugs into the country using similar techniques such as legitimate traders,[5] though some legitimate traders engage themselves in the trafficking of medical drugs into the country. Border security is critical and a necessity for the protection of lives in every territory.[6]

Cameroon borders have become free entry and exit points for smugglers of all manner of contraband goods who carry out their illicit activities with little or no reservation. The security challenges have become very difficult only because of unhindered influx of criminals through the country's very porous borders.[7] Funteh posits that, the Cameroon-Nigeria border is very permeable and so encourages many economic activities including smuggling and this is so because indigenes of the border villages for example are able to evade customs officers given that they cooperate with their actions as well as being familiar with the terrain.[8]

3.6 Problems Associated with Imports

Most goods existing and consumed in Cameroon are imported due to the low level of research, poor infrastructure as well as other constraints. The limited numbers of manufacturing companies are out-numbered by the numerous numbers of exporters of goods. As such, it is very easy upon the importation of goods since there exist no quality control of imported goods as to the composition, regulatory authorities rely on the information on the quality of the goods provided by importers as requested. Another situation arises when other types of goods such as clothes, foodstuffs, household equipment, are being imported. It is very usual to find dangerous goods wrapped in containers that do not have a marketing authorization amongst the goods of general traders.

3.7 Illegal Distribution Chain of Dangerous Goods

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[1] D. L. Ngaundje, (2021). An Appraisal of the Law on Consumer Protection in Cameroon with Respect to Technology Products. *International Journal of Science and Research (IJSR)*, 10(2), pp. 828-835.

[2] F. Nde, *et al*., (2015). State of knowledge of Cameroonian drug prescribers on pharmacovigilance. *The Pan African Medical Journal*, at http://www.panafrican-med-journal.com/content/article/20/70/full/ (Accessed on 15/4/2025)

[3] Meaning ignorance of the law is no excuse.

[4] G. U. Osimen, *et al*., (2017). The Borderless-Border and Internal Security Challenges in Nigeria. *International Journal of Political Science* (IJPS), 3(3), p. 17.

[5] P. Addo, (2006). Cross-Border Criminal Activities in West Africa: Options for Effective Responses. KAIPTC Paper No.12, Ghana.

[6] *Ibid*

[7] S. A. Adewoyin, (2019). Porous Borders, Small Arms Proliferation, and Insecurity in Oke-Ogun Area of Oyo State, Nigeria. *International Journal of Research and Innovation in Social Science* (IJRISS), III(I), p. 84.

[8] M. B. Funteh, (2015). The Paradox of Cameroon-Nigeria Interactions: Connecting between the Edges of Opportunity/benefit and Quandary. *International Journal of Peace and Development Studies*, *6*(3), p. 33.

Due to the lack of adequate infrastructure to host certain goods, poor roads and inaccessibility to many parts of the country, the distribution of dangerous goods to all areas becomes a problem. This has therefore made it possible for the establishment of an illegal distribution chain to emanate within the country. Unauthorized and even licensed wholesale companies have seized the opportunity to make more profits. Since workers or agents of these companies are known, they take advantage to import their own goods from unknown sources to add to supply which they make to retailers, who sale in rural areas.

There is the continuous importation of dangerous goods[1] into the country by unauthorized persons, some of which are traders and others who are not traders. It is a very common phenomenon to find in containers carrying goods of different nature stocked with cartons and barrels of dangerous good. Most of these goods do not have any marketing authorization in Cameroon and the importers themselves do not have the special license to import them. Sometimes when some of these goods are apprehended by custom officers at the different ports of entry, the owners bribe their way. Most often, owing to time constraint as well as improper checks, these illegally imported goods are not found by regulatory authorities at the ports of entry as they are often hidden amongst other goods. Some authors[2] has noted that, there is the constant exportation of unsafe goods (such as pharmaceutical drugs) to Cameroon by multinational companies. Some of these drugs which have either reached or are closed to their shelf life are repackaged and exported into Cameroon.[3] some of such dangerous goods come in through donations are so are hardly suspected to be defective. Manufacturers from jurisdictions with stricter laws continue to export goods that have been banned in their home country into Cameroon, thereby making it difficult to combat the problem of dangerous goods.

3.8 The Implication of Poor Control of Dangerous Goods

The growth of sale of dangerous good which in most cases are always illegal is in an increase. Anywhere in the world, it invariably affects official trade deal. Such effects are usually far reaching as the relations between the informal and the formal trade deals are usually a disproportion. The phenomenon of illegal sale of dangerous goods has been expanding in the African continent since the demise of colonial rule despite efforts to reduce it.[4] Our towns are made up of weak economies but strong informal sectors. For instance, the buoyant informal petrol sale in Cameroon has tended to produce unpleasant outcomes on the official economy. It trades robbed the state of millions of Francs CFA of revenue and helped to inhibit some of those involved in the formal trade sector.[5]

Worse still it is one of the goods classified as dangerous goods by its nature and need special regulations for its transportation and storage. However, the poor regulation of such illegal sale of petrol in Cameroon proves that consumers of such of goods are not properly protected.[6] It is evident that, some dangerous goods need special transportation services, some imported petrol especially from Nigeria is usually transported in ordinary cars rather than specialized cars designed for this purpose like petrol tankers. Even the manner in which the product is stored also posed great danger to life in some neighborhoods in the country. Some of the vendors store the product in their houses for fear of burglary. This situation exposes the wholesaler and his neighbors to risk of fire disaster but as it is, most of them claimed they have no choice as far as storage of the product is concerned.

However, there have been attempts to regulate it sale and also calls to denounced such illegal acts to the authorities. This has been evident in the North West where the government explained that[7]:

> *Petroleum products are extremely dangerous. Their manipulation exposes mankind to illnesses and several security risks such as fire outbreak or explosion with a lot of consequences (loss of lives, loss of property etc.). To this effect, the Governor hereby invites the population of the North West Region to denounce to the Authorities of the Ministry of Water Resources and Energy the premises used by smugglers as stores of these products in order to preserve their lives. Therefore,*

[1] Among which are pharmaceutical drugs which have been banned because of their dangerous nature.

[2] S. D. Galega, (2002). In the Wilderness at Dawn of the Millennium: The Untold Truth about Cameroonian Consumers and the Global Change. *The African Society of International and Comparative Law*, pp. 319-336:320.

[3] *Ibid*.

[4] S. Golub, (2015). Informal cross-border trade and smuggling in Africa. *Research Gate*, p. 179.

[5] R. Njingti Budi, (2019). Growth and Illicit Practices in Informal Petrol Trade in Cameroon: Assessing the Level of Implementation of Official Texts. *Afro Asian Journal of Social Sciences,* X(II), pp. 1-21.

[6] *Ibid*.

[7] In a Radio Announcement Ref. No. 019/L/E/GNWR/IG/RS, 2016, signed by Governor LeleLafriqueTchoffo Deben Adolphe of the North West Region.

anyone involved in this illicit activity exposes himself to sanctions by the laws in force.[1]

The Order of the Minister of Mines Water and Energy on July 13, 1995[2] which explicated the procedures to be involved in trading in petroleum activities in Cameroon. Among the issues raised in these texts, were quality controls, storage of petroleum products and transportation in designated vehicles.[3] Nonetheless, practices largely spurn these regulations. While the question of quality of the goods remains moot, the manner in which the product is transported and stored increases public risks around it practices. For instance, fuel imported from Nigeria is usually transported in ordinary vehicles and sometimes on motorbikes and stored in living homes or warehouses located in living quarters at the risk of the population.[4]

It is a well-known fact that, Petrol is flammable liquid and is very dangerous and this explains why government has been taking some regulatory mechanism like the case of petrol tanks which must be buried in the ground so that there is security and safety on the lives of people. But unfortunately, the illicit fuel and its proliferation along the streets and at nearly all the corners of our towns and villages can cause terrible damages on lives and property if proper care is not taken. Examples abound of fire accidents resulting from such carelessness in fuel management by untrained private individuals. With this illicit fuel, which is being sold and kept in the houses, it is very dangerous especially when you consider the fact the business is in the hands of mostly young ones.[5] The poor storage method of the product was further compounded by the manner in which the product was handled. Sometimes, unsuspecting children of tender ages are involved in the handling of the product.

4. Conclusion

All actors involve in the regulation of sale of dangerous goods in Cameroon face certain challenges. For the Government, one major challenge is that of transposing the development of a unique law which aims at regulating dangerous goods in Cameroon. For public agencies, the main challenges relate to independence and interministerial cooperation. Companies face the challenge of self-regulation. Consumer associations are confronted with the challenges of professionalization and accountability. The ability of product safety regulation to protect consumers from harm depends on the extent to which it can keep pace with evolving product markets. People increasingly buy goods from different markets and platforms which creates different risks from goods sold on the high street. Changing product types also create new risks. Many consumer goods are imported, and new trading relationships with the country and the rest of the world may mean changes to regulatory framework applicable and create difficulties in effective regulating the sale of dangerous goods.

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[1] *Ibid*.

[2] Order N° O16/95 MINMEE, 1995.

[3] *Ibid*.

[4] R. Njingti Budi, (2019). Growth And Illicit Practices in Informal Petrol Trade in Cameroon: Assessing the Level of Implementation of Official Texts. *Afro Asian Journal of Social Sciences,* X(II), pp. 1-21.

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Review of Procuratorial Recommendations as a Mechanism for Environmental Administrative Public Interest Litigation

Wenping Yuan[1]

[1] Guangxi University of Foreign Languages, Nanning, Guangxi 530222, China

Correspondence: Wenping Yuan, Guangxi University of Foreign Languages, Nanning, Guangxi 530222, China.

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Abstract

The prosecutorial recommendation system for environmental administrative public interest litigation represents a significant innovation in the procuratorial organs' fulfillment of their legal supervisory responsibilities. This article reviews relevant research and analyzes its development and challenges from the perspectives of institutional attributes, procedural rules, and practical difficulties. The research concludes that while this system combines pre-litigation procedural and independent oversight, it has become a relatively complete system. However, it still faces challenges such as insufficient rigidity, ambiguous standards, and poor coordination. Future efforts should strengthen its legalization, refinement, and coordination to promote its greater role in the rule of law for ecological civilization.

Keywords: environmental administrative public interest litigation, prosecutorial recommendations, legal supervision, system improvement

1. Introduction

The prosecutorial recommendation system for environmental administrative public interest litigation, a major innovation within the socialist judicial system with Chinese characteristics, plays an increasingly important role in advancing the modernization of national governance and the development of an ecological civilization. It serves as a core tool for procuratorates to fulfill their legal oversight responsibilities and safeguard environmental public interests. It also serves as a crucial link between administrative and judicial powers, achieving a virtuous interaction between law-based administration and fair justice. Since its formal establishment in 2017 through amendments to the Administrative Litigation Law, the system has rapidly developed in practice, achieving remarkable results. Numerous environmental public interest damage cases have been effectively resolved in pre-litigation proceedings, demonstrating its unique institutional value. However, as an emerging system, it still faces numerous challenges and unresolved issues in theoretical understanding, procedural development, and practical operation, sparking widespread attention and in-depth discussion within the legal community. A systematic review and evaluation of existing research findings is fundamental for accurately grasping the system's development trajectory, core issues, and future direction. This literature review aims to systematically sort out and integrate existing research, and outline the overall picture of research in this field around the three core themes of institutional positioning and legal attributes, procedural rules, and practical difficulties and institutional improvement, in order to provide a clear academic reference for the deepening of theory and the optimization of institutions.

2. Research on the Institutional Positioning and Legal Attributes of Procuratorial Recommendations in Environmental Administrative Public Interest Litigation

By reviewing existing literature, the main viewpoints on the positioning and legal attributes of the prosecutorial recommendation system for environmental administrative public interest litigation are as follows:

Lü Tao (2010) conducted a foundational analysis of prosecutorial recommendations from a legal perspective, arguing that they are a typical "factual prosecutorial behavior" with a non-compulsory nature. Their characteristics are the generality of their legal basis, the subordination of their legal status, and the negotiable nature of their legal effects. This early research provides a theoretical framework for understanding the flexible nature of prosecutorial recommendations, which distinguishes them from rigid supervisory methods such as appeals[1]. Han Chengjun (2014) focused on the effectiveness of prosecutorial recommendations, arguing that their essence is a manifestation of legal supervisory power and that their rigid binding force must be enhanced through institutionalization and standardization[2]. Zhang Zhihui (2009) also pointed out the need to transform the "soft constraints" of recommendations into "hard effectiveness" by improving legal basis and procedural safeguards[3]. Huang Wenyi (2021), from the broad perspective of national governance modernization, argued that the prosecutorial recommendation system is a crucial component in improving national governance effectiveness[4]. Its development should serve the overall goal of modernizing the national governance system and governance capacity, and play a greater role within the framework of the rule of law. Early researchers such as Liu Qiaoer (2018) and Xu Yinglan (2018) took an empirical approach[5][6].

This paper affirms the legitimacy of the procuratorate as the plaintiff in environmental administrative public interest litigation and provides a preliminary analysis of the "buffering" role of pre-litigation prosecutorial recommendations in balancing judicial and administrative power, providing practical material for subsequent research. Liu Yi (2018) emphasizes that the essence of environmental administrative public interest litigation is "objective litigation," whose core purpose is to maintain objective legal order and public interests, rather than to remedy the subjective rights of specific individuals. Within this paradigm, prosecutorial recommendations, as a pre-litigation procedure, should function to supervise administrative agencies in administering according to law and ensure the uniform and correct implementation of environmental laws[7]. Feng Weiran (2020) systematically expounds on the dual nature of this system: its "pre-litigation procedural nature" and "independent legal oversight." She points out that prosecutorial recommendations are not only a stepping stone to initiating litigation but also an important means for procuratorates to fulfill their constitutional legal oversight responsibilities. They possess relatively independent value and can effectively urge self-correction within the administrative system[8]. Wu Kaijie (2021) extends his research perspective to "preventive" environmental administrative public interest litigation, arguing that to address the irreversibility of ecological and environmental damage, the function of prosecutorial recommendations should expand from ex post remedy to ex ante prevention. When administrative actions pose significant environmental risks, the procuratorate should immediately issue recommendations, shifting the focus of protection forward. This reflects the principle of risk prevention[9]. Xiao Feng and Zhan Haoran (2021) conducted empirical analysis, revealing the complex functions of ecological and environmental prosecutorial recommendations in practice. These include not only a prejudicial function within litigation (laying the foundation for subsequent litigation) but also spillover effects such as handling similar cases, resolving jurisdictional conflicts, and promoting the rationality of administrative actions. This highlights their value as a tool for social governance[10]. Qin Qianhong and Wang Yuting (2022) proposed an

[1] Lü Tao, (2010). Legal Analysis of Procuratorial Recommendations. *Legal Forum*, (2), 108-114.

[2] Han Chengjun, (2014). The Essential Attributes and Legal Regulation of Procuratorial Recommendations. *China Legal Science*, (2), 279-295.

[3] Zhang Zhihui, (2009). On the effectiveness of prosecutorial recommendations. *People's Procuratorate*, (17), 50-51.

[4] Huang Wenyi, (2021). Research on the Procuratorial Recommendation System in the Perspective of National Governance Modernization. *China Legal Science*, (4), 45-63.

[5] Liu Qiaoer, (2018). Legal Approach to Prosecutorial Recommendations in Environmental Administrative Public Interest Litigation. *Journal of China Environmental Management Cadres College*, *28*(5), 10-13.

[6] Xu Yinglan, (2018). Research on improving the environmental administrative public interest litigation system: Taking the plaintiff qualification of the procuratorate as the starting point. *Administration and Law*, (10), 90-96.

[7] Liu Yi, (2018). Constructing an objective litigation mechanism for administrative public interest litigation. *Journal of Legal Studies*, (3), 39-50.

[8] Feng Weiran, (2020). Improvement of the system of prosecutorial recommendations in administrative public interest litigation. *Jiangxi Social Sciences*, *40*(8), 145-153.

[9] Wu Kaijie, (2021). On the Nature and Positioning of Preventive Environmental Administrative Public Interest Litigation. *Journal of China University of Geosciences (Social Sciences Edition)*, *21*(1), 30-44.

[10] Xiao Feng, Zhan Haoran, (2021). On the compound functions of ecological environmental prosecution recommendations. *Journal of Central South University of Forestry and Technology (Social Sciences Edition)*, *15*(3), 52-58.

innovative classification model. Based on the operational characteristics of procuratorial power, they categorized procuratorial recommendations into "closed" and "open" types. The former, while protected by subsequent substantive disposition power, emphasizes coordination with litigation; the latter, without mandatory safeguards, prioritizes consultation with administrative agencies and joint problem-solving. This provides new insights for precise institutional design[1]. Li Lijing (2022) introduced the theory of "cooperative empowerment," arguing that procuratorial recommendations in the new era should shift from the traditional one-way exercise of power to a collaborative model involving multiple actors, including the procuratorate and administrative agencies. By building a dialogue and consultation mechanism, we can empower each other and achieve the best results in public welfare protection[2].

3. Research on the Procedural Rules for Procuratorial Recommendations in Environmental Administrative Public Interest Litigation

Having clarified the institutional positioning and legal attributes of prosecutorial recommendations in environmental administrative public interest litigation, how to construct scientific and sophisticated procedural rules to ensure their effective operation has become a focus of theoretical and practical attention. Procedural rules bridge the gap between institutional ideals and practical effectiveness, directly impacting the standardization, operability, and ultimate effectiveness of prosecutorial recommendations. As pre-litigation procedures, procedural rules encompass the entire process, from case discovery, case filing and investigation, the issuance and delivery of prosecutorial recommendations, to feedback from administrative agencies on their performance, procuratorate review and judgment, and ultimately, the connection to the litigation process. Each link in this chain presents specific challenges: how to ensure the adequacy and effectiveness of investigation and evidence collection? How to establish scientifically sound deadlines and assessment criteria for performance? How to ensure the accuracy of prosecutorial recommendations and their coherence with subsequent litigation requests? In-depth exploration of these procedural issues aims to transform principled legal provisions into enforceable, rigid operational guidelines, thereby truly fulfilling the core functions of pre-litigation procedures in diverting cases, enforcing performance, and protecting the public interest. This section will review the key perspectives of existing literature on the specific procedural rules for prosecutorial recommendations in environmental administrative public interest litigation.

Shen Kaiju and Xing Xin (2017) revealed the great effectiveness of pre-litigation procedures in case diversion through empirical analysis of early pilot data, and the vast majority of cases can be resolved in the pre-litigation stage. They emphasized the key role of the clarity of procedural rules in improving the response rate and rectification rate of administrative agencies, and provided an empirical basis for procedural construction[3]. Hu Weilie and Chi Xiaoyan (2017) also based on pilot experience, deeply analyzed the value of pre-litigation procedures as a "buffer zone", which effectively eased the direct confrontation between procuratorial power and administrative power. They pointed out that the design of procedural rules should fully reflect the respect for the administrative power's first judgment power, and pay attention to the continuous tracking and effectiveness evaluation after the issuance of procuratorial recommendations[4]. Liu Chao (2018) conducted a systematic "reflection" on pre-litigation procedures, and profoundly pointed out that there is a risk of them becoming a "formality". He criticized the overly lax standards for determining "administrative agencies' failure to perform their duties in accordance with the law" in practice, advocating for the adoption of both "behavioral standards" and "results standards," rigorously examining the substantive effects of performance rather than simply focusing on formal responses[5]. Yu Wenxuan (2019) systematically discussed the independent value of pre-litigation procedures and their connection to litigation procedures from a legal hermeneutic perspective. He emphasized that procedural rules should clarify the specific circumstances under which pre-litigation procedures terminate and transition to litigation, and established standards for initiating proceedings based on elements such as

[1] Qin Qianhong, Wang Yuting, (2022). Institutional Reflection and Functional Reconstruction of Procuratorial Recommendation Types. *Journal of Legal Studies*, *44*(3), 102-117.

[2] Li Lijing, (2022). Collaborative empowerment: Paradigm transformation and reconstruction of procuratorial recommendations in China in the new era. *China Legal Science*, (2), 245-263.

[3] Shen Kaiju, Xing Xin, (2017). An empirical study on the pre-litigation procedures of administrative public interest litigation initiated by the procuratorate. *Administrative Law Research*, (5), 39-51.

[4] Hu Weilie, Chi Xiaoyan, (2017). Pre-litigation procedures of administrative public interest litigation: a review from the pilot program. *Journal of the National Prosecutors College*, *25*(2), 30-48.

[5] Liu Chao, (2018). Reflections on the Pre-litigation Procedures of Environmental Administrative Public Interest Litigation. *Journal of Law*, (1), 114-123.

illegality, actual danger, and the severity of damage[1]. Gao Wenying (2020) focused on the key link in initiating proceedings—investigation and evidence collection. She pointed out the challenges faced by procuratorates in environmental case investigations, such as the high level of professional expertise and the perishability of evidence. She advocated for legislation granting procuratorates the necessary, limited compulsory investigative powers and clarifying the administrative agencies' obligation to cooperate to address the difficulties in obtaining evidence[2]. Cui Jinxing (2021), using the marine environment as a specific scenario, revealed the unique challenges facing procuratorial recommendation procedures under cross-regional, multi-departmental collaborative governance, such as jurisdictional disputes and unclear roles and responsibilities. He proposed targeted innovations, such as establishing a dual pre-litigation procedural mechanism combining a "consultation process and prosecutorial recommendations"[3]. Zhan Shangang (2022) focused on the precision of litigation requests, arguing that the content of prosecutorial recommendations should be internally consistent with subsequent litigation requests. He demonstrated the necessity and limitations of specific litigation requests, emphasizing that requests must be clear and feasible, and that administrative discretion should not be excessively interfered with. This, in turn, requires that pre-litigation prosecutorial recommendations be precise[4]. Zhao Jun (2022) specifically studied the coordination mechanism between pre-litigation and litigation procedures. He analyzed manifestations of poor coordination, such as jurisdictional conflicts and inconsistent standards for evidence conversion, and proposed establishing a mechanism for information sharing and mutual recognition of results to ensure a smooth transition between the two procedures and foster a synergistic supervisory effort[5]. Xie Ling (2023) innovatively proposed a "three-dimensional" theory for determining "failure to perform duties in accordance with the law," namely, behavior, results, and causal relationship. She advocated that judicial review should comprehensively examine whether the administrative agency took action, whether the action effectively prevented the infringement of the public interest, and whether there was a causal relationship between inaction and the damage, providing a refined judgment framework for judicial practice[6]. Li Wenjing (2023) regulates the process from the entry point. She emphasizes the importance of risk assessment criteria in preventive litigation[7]. Tang Yuzhong systematically elaborates on the criteria for determining the scope of cases, advocating for principles such as maturity, judicial review capacity, and economy to clearly define the boundaries for initiating the process[8]. Tian Yiyao (2023), through big data analysis, revealed the problem of concentrated types of litigation requests and extensive content. He proposed a specific path to achieve precision across four dimensions: object, time, subject matter, and method. This has direct guiding value for improving the pertinence of pre-litigation prosecutorial recommendations[9]. Zhang Li (2023), using guiding cases as a starting point, deeply analyzed the complexity and technicalities of determining whether administrative agencies have fulfilled their duties during judicial review. He advocated for the introduction of professional institutions and standards, and the establishment of typified identification criteria, providing courts with detailed rules for

[1] Yu Wenxuan, (2019). On the Pre-litigation Procedures of Environmental Administrative Public Interest Litigation. *China Journal of Applied Jurisprudence*, (1), 68-80.

[2] Gao Wenying, (2020). Study on the Pre-litigation Procedures of Environmental Administrative Public Interest Litigation: From the Perspective of Procuratorial Investigation and Evidence Collection. *Journal of Chinese People's Public Security University (Social Sciences Edition)*, *36*(6), 1-10.

[3] Cui Jinxing, (2021). The Lack and Innovation of Pre-litigation Procuratorial Suggestions in Administrative Public Interest Litigation on Marine Environment: An Analysis Based on Typical Cases of Administrative Public Interest Litigation on Marine Environment. *Journal of Nanjing Normal University (Philosophy and Social Sciences)*, (4), 115-124.

[4] Zhan Shangang, (2022). The Concreteness and Limitation of Litigation Requests in Administrative Public Interest Litigation. China Legal Science, (5), 156-172.

[5] Zhao Jun, (2022). Research on the connection mechanism between pre-litigation procedure and litigation procedure in environmental administrative public interest litigation. *Administrative Law Research*, (4), 112-125.

[6] Xie Ling, (2023). Three Dimensions of Determining "Failure to Perform Duties in Accordance with the Law" in Environmental Administrative Public Interest Litigation. *Journal of Law*, *44*(5), 88-100.

[7] Li Wenjing, (2023). The Logical Mechanism and Normative Structure of Preventive Environmental Administrative Public Interest Litigation. *Journal of Legal Studies*, (2), 102-118.

[8] Tang Yuzhong, (2023). Clarification of the scope of environmental administrative public interest litigation. *Journal of Legal Studies*, (1), 123-139.

[9] Tian Yiyao, (2023). Research on the Precision of Litigation Requests in Environmental Administrative Public Interest Litigation: An Empirical Analysis Based on 540 Judgment Documents. *China Legal Science*, (4), 188-205.

adjudicating such cases[1].

4. Research on the Practical Dilemma and System Improvement of Procuratorial Recommendations in Environmental Administrative Public Interest Litigation

After establishing a theoretical foundation and establishing procedures, the ultimate test of the viability of the prosecutorial recommendation system for environmental administrative public interest litigation lies in its practical implementation. As the system has been widely implemented nationwide, while achieving significant success, it has also exposed numerous deep-seated practical difficulties and challenges. These difficulties not only constrain the full effectiveness of the system but also provide practical guidance for theoretical reflection and institutional refinement. Currently, core practical issues include: insufficient rigidity in prosecutorial recommendations, resulting in limited supervisory effectiveness and the frequent occurrence of "selective rectification" or "formalistic responses" by administrative agencies; a mismatch between investigative and evidence-gathering capabilities and the professional requirements of complex environmental cases; ambiguity in the criteria for determining whether administrative agencies have "performed their duties in accordance with the law," with a conflict between "behavior standards" and "result standards"; the implementation of its preventive function is hampered by insufficient legal basis and unclear initiation criteria; and the poor integration between pre-litigation procedures and litigation procedures, as well as between prosecutorial public interest litigation and ecological damage compensation litigation. This section of the paper explores these practical difficulties and explores potential avenues for institutional improvement, aiming to advance the system from "functionality" to "excellence."

Wang Xuanwei (2017) emphasized the limits of prosecutorial power in supervising administrative power, advocating that institutional design should adhere to the principle of modesty, respect the administrative power of first judgment and professionalism, avoid excessive judicial interference in administration, and ensure accurate and effective supervision[2]. Chen Xiaojing (2019) argued from a macro-strategic perspective that in the new era, public interest litigation by prosecutors in the field of environmental law should shift from "post-event relief" to a balanced emphasis on "pre-event prevention" and "in-process supervision." She emphasized that institutional optimization should focus on expanding the scope of cases, strengthening investigation and verification powers, and establishing a regularized collaboration mechanism with administrative agencies to enhance governance effectiveness[3]. Li Ying and Wang Miao (2019) systematically reviewed practical challenges, including a single source of case leads, insufficient investigation and evidence collection safeguards, weak binding force of prosecutorial recommendations, and difficulties in cross-regional and cross-departmental collaboration. They advocated addressing these challenges through optimizing internal assessment mechanisms, establishing external collaboration platforms, and legislating to clarify investigative powers[4]. Feng Jian (2019) advocated for the establishment of a public announcement system, focusing on specific measures to enhance the rigidity of prosecutorial recommendations. Through public service, media oversight, and other means, leveraging public opinion pressure and social oversight, administrative agencies are forced to pay attention to and implement prosecutorial recommendations[5]. Zhang Lu (2020) and Lü Zhongmei (2019), from the perspective of the judicial system, argue that increasing the level of specialization in environmental justice is an important external condition for ensuring the quality and effectiveness of prosecutorial public interest litigation. Establishing specialized environmental courts, cultivating professional judges, and improving evidence rules can provide a more favorable judicial environment for the operation of this system[6][7]. Xu Yixiang (2020), from the

[1] Zhang Li, (2023). Judicial Review of "Whether the Administrative Organs Performed Their Legally Mandated Duties" in Environmental Administrative Public Interest Litigation: Construction of Judicial Application Rules of Guiding Case No. 137. *Legal Application*, (10), 78-92.

[2] Wang Xuanwei, (2017). Legal Analysis and Institutional Design of Procuratorial Supervision of Administrative Power. *Journal of Law*, (9), 156-165.

[3] Chen Xiaojing, (2019). Development Positioning and Optimization of Environmental Public Interest Litigation in the New Era. *Political and Legal Forum*, (6), 126-137.

[4] Li Ying, Wang Miao, (2019). Challenges faced by procuratorates in filing environmental administrative public interest lawsuits. *Journal of North China Electric Power University (Social Sciences Edition)*, (2), 76-83.

[5] Feng Jian, (2019). Establishing a public announcement system to enhance the rigidity of procuratorial recommendations. *People's Procuratorate*, (17), 10-12.

[6] Zhang Lu, (2020). Functional Positioning and Path Selection of China's Environmental Judicial Specialization. *China Legal Science*, (4), 245-263.

[7] Lv Zhongmei, (2019). Specialization and Professional Innovation in Environmental Judicial Practices: 2017-2018 Annual Observations. *China Law Review*, (2), 194-208.

perspective of administrative law, cautions that the priority of administrative orders in remedying ecological and environmental damage should be emphasized. Procuratorial public interest litigation should serve as a supplementary means to urge administrative agencies to effectively utilize their inherent power of administrative orders, fostering a synergistic force of administrative and judicial remedies[1]. Liu Enyuan (2020) systematically reflected on the system, arguing that it suffers from structural flaws such as excessive judicial restraint, a narrow scope of plaintiffs, and a narrow scope of cases accepted. She advocates restructuring the system to moderately expand the scope of plaintiffs, incorporate abstract administrative actions into the scope of supervision, and strengthen the depth of judicial review[2]. Wang Zheng (2021) focused on the effectiveness of the implementation of prosecutorial recommendations, pointing out that the high response rate lies behind the dilemma of a low implementation rate. He proposed building a three-pronged supervision system of "legal mandatory regulation + administrative agency self-correction + social supervision" to enhance the implementation of recommendations[3]. Li Guihua (2021) and Song Fumin and Guan Jinping (2022) conducted in-depth discussions on the necessity and feasibility of preventive environmental administrative public interest litigation. They pointed out that to address the irreversibility of ecological and environmental damage, it is necessary to move beyond the "damage has occurred" premise of prosecution, clarify the criteria for identifying "significant risks", and design more forward-looking procedural rules that are different from ex post remedies[4][5]. Deng Kezhu (2021) proposed an innovative path for "cooperative" environmental administrative public interest litigation. He believes that we should go beyond the traditional adversarial supervision model and establish a consultation and collaboration mechanism between the procuratorate and the administrative authorities. Through information sharing, joint investigations, roundtable meetings, and other forms, we should jointly work to resolve environmental problems and achieve win-win and multi-win results[6]. Liu Wei (2022) provided quantitative support for the effectiveness of the system through an empirical study based on data from 287 prefecture-level cities. Their research confirmed that public interest litigation significantly improved urban environmental governance performance, but the effects varied regionally, providing empirical evidence for targeted and differentiated institutional improvements[7]. Wang Xi (2022) proposed a new paradigm, the "Environmental Governance Conceptual Model," emphasizing the holistic and systematic nature of governance. This macro perspective suggests that improvements to the public interest litigation system must be embedded within the broader national environmental governance system and coordinated with other governance tools to maximize its effectiveness[8]. Tan Zongze and Hu Xiaohang (2025) conducted an in-depth review of the practical implementation of prosecutorial recommendations, revealing issues such as insufficient binding force, unlimited issuance times, and inadequate follow-up and supervisory mechanisms. They proposed that future legislation should clarify the legal liability of administrative agencies for not adopting recommendations and establish a regular "review" mechanism to ensure effective rectification[9].

Academia has developed a profound, multi-faceted understanding of the practical difficulties and improvement paths of the prosecutorial recommendation system in environmental administrative public interest litigation. Practical difficulties can be attributed to four core issues: "lack of rigidity," "ambiguous standards," "capacity mismatch," and "poor integration." Scholars have proposed solutions to these difficulties, demonstrating a clear trend toward "combining rigidity with flexibility," "prevention first," "win-win cooperation," and "system

[1] Xu Yixiang, (2020). On administrative order relief for ecological environmental damage. *Journal of Legal Studies*, *42*(6), 163-179.

[2] Liu Enyuan, (2020). On the Reflection and Reconstruction of the Environmental Administrative Public Interest Litigation System. *Law Forum*, *35*(5), 148-156.

[3] Wang Zheng, (2021). Research on the effectiveness of the implementation of prosecutorial recommendations in pre-litigation procedures of environmental administrative public interest litigation. *Sichuan Environment*, *40*(6), 161-165.

[4] Li Guihua, (2021). On Preventive Environmental Administrative Public Interest Litigation. *Legal Science (Journal of Northwest University of Political Science and Law)*, *39*(5), 115-126.

[5] Song Fumin, Guan Jinping, (2022). On the Institutional Establishment and Specific Promotion of Preventive Procuratorial Environmental Administrative Public Interest Litigation. *Qilu Journal*, (1), 104-112.

[6] Deng Kezhu, (2021). Cooperative Environmental Administrative Public Interest Litigation: A Possible Path for the Development of Environmental Administrative Public Interest Litigation in my country. *Law Forum*, *36*(4), 139-148.

[7] Liu Wei, (2022). Does public interest litigation improve the environmental governance performance of cities? — An empirical study based on micro-data of 287 prefecture-level cities. *Chinese Industrial Economy*, (5), 155-173.

[8] Wang Xi, (2022). Conceptual model of China's environmental governance: a new paradigm tool. *Chinese Journal of Population, Resources and Environment*, *32*(1), 1-12.

[9] Tan Zongze, Hu Xiaohang, (2025). Practical Review and Normative Construction of Procuratorial Recommendations in Administrative Public Interest Litigation. *Journal of Southwest University of Political Science and Law*, *27*(1), 112-125.

integration." Specifically, they aim to strengthen rigidity through legislation clarifying rights and obligations and establishing public notice and oversight mechanisms. Second, they aim to strengthen prevention and clarify standards by introducing the "risk prevention" principle and clarifying the criteria for "significant risk" and "performance of duties in accordance with the law." Third, they aim to optimize interaction by establishing a platform for consultation and collaboration between prosecutors and administrative departments and exploring collaborative litigation models. Fourth, they aim to promote systemic coordination by streamlining relations with other litigation procedures and promoting specialization in environmental justice.

A systematic review of existing literature reveals that scholarly research on the prosecutorial recommendation system for environmental administrative public interest litigation has formed a relatively comprehensive framework, encompassing multiple dimensions, from legal foundations to procedural details, and from practical reflection to future prospects. This research has evolved along a clear trajectory, evolving from macro-value argumentation to micro-technical construction, and from institutional introduction to problem-oriented critique. In terms of its institutional positioning, research generally agrees that it organically combines the essence of legal supervision with the form of public interest litigation, possessing the dual attributes of pre-litigation procedures and independent oversight. Regarding procedural rules, scholars are committed to constructing a refined and standardized operational process, from clue discovery, investigation and evidence collection, and recommendation issuance to performance judgment and procedural coordination, emphasizing the unity of effectiveness and standardization. Regarding practical difficulties and paths for improvement, research has deeply exposed core challenges such as insufficient rigidity, vague standards, and inadequate preventive functions, and has proposed constructive solutions such as strengthening institutional rigidity, clarifying judgment standards, expanding preventive litigation, and establishing a cooperative model.

However, current research still leaves room for further exploration. First, in terms of theoretical depth, the legal interpretation of the boundaries and scales of prosecutorial intervention in administrative power, particularly the allocation of power under the risk prevention principle, requires further development. Second, in terms of research methods, large-scale empirical research and quantitative analysis are relatively scarce. Most conclusions are based on individual cases or local observations. Future efforts require strengthened effect evaluation and causal analysis based on national data. Third, in terms of breadth of perspective, there is a lack of systematic, integrated research on how this system can collaborate with other important environmental governance tools, such as the ecological and environmental damage compensation system and the Central Ecological and Environmental Protection Inspectorate, to achieve institutional synergy. Finally, with the advent of the digital age, how to deeply integrate technologies such as big data and artificial intelligence into the entire operational process of this system, achieving the fusion of "smart prosecution" and "smart environmental justice," will be a key direction for future innovation. Overall, the prosecutorial recommendation system for environmental administrative public interest litigation is a vibrant research field whose development depends on the continuous interaction and innovation between theory and practice. Future research should build on existing achievements and focus on refining theory, scientificizing methods, systematicizing perspectives, and modernizing technologies. Together, these efforts will promote the maturity and improvement of this system and contribute more wisdom to strengthening the legal foundation for ecological civilization construction.

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Author Profile

Yuan Wenping, male, teacher at Guangxi University of Foreign Studies, researcher at the Institute of Social Risk Assessment and Rule of Law of Guangxi University for Nationalities, research direction: administrative law, environmental and resource protection law.

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Application and Risk Mitigation of the "Direct Lease + Equity Pledge" Model in the Green Energy Sector

Sheng Zhang[1]

[1] Huaxia Financial Leasing Co., Ltd., Beijing 100000, China

Correspondence: Sheng Zhang, Huaxia Financial Leasing Co., Ltd., Beijing 100000, China.

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Abstract

The green energy transition faces three major financing bottlenecks: insufficient collateral, residual value volatility, and rapid technological iteration. Traditional credit and bond instruments have significant limitations in covering light-asset projects. This paper constructs a triple-layer credit enhancement structure of "direct lease + equity pledge + cash flow supervision," incorporating shareholders' residual claims into the seizable asset pool. Based on option pricing theory, the optimal equity pledge ratio is derived to be between 8% and 12%. Taking the 2 billion yuan energy storage project in Ningxia Baofeng as a typical case, this model achieves a 2.3 percentage point reduction in financing costs, a 6-month shorter construction period, and zero overdue payments. A quantitative analysis of 128 green leasing projects from 2019 to 2024 indicates that the equity pledge ratio has a significant inverse U-shaped relationship with the project's non-performing rate, with the curve's inflection point at 10.2%. For every 10 percentage point increase in the cash flow supervision ratio, the financing cost can be further reduced by 0.5 percentage points (Luo, M., Du, B., Zhang, W., Song, T., Li, K., Zhu, H., ... & Wen, H., 2023). A comparison of the systems in China and the United States shows that differences in registration time, liquidation speed, appraisal standards, and tax incentives can account for 70% of the cross-border funding cost gap. This paper proposes policy recommendations such as establishing a five-day green channel for equity pledge, jointly building a dynamic database for technological residual value, and promoting mutual recognition of leasing standards, providing replicable and scalable solutions for green leasing to support the global carbon neutrality goal.

Keywords: green leasing, equity pledge, direct lease, energy storage financing, Sino-us system comparison, technological residual value, inverse u-shaped risk curve, cash flow supervision, cross-border optimization, carbon neutrality financing

1. Introduction

1.1 Research Background

The International Energy Agency (IEA) 2024 report indicates that to achieve net-zero emissions by 2050, global annual investments in renewable energy need to be stably maintained at 4.8 trillion US dollars in this decade, with an actual funding gap of 430 billion US dollars. The financing pressure on energy storage is particularly prominent, as the equipment procurement cost for a gigawatt-level energy storage plant reaches 1.5 billion US dollars, but its depreciation cycle is only 5 years, with a residual value volatility rate exceeding 30%. The non-standardized valuation characteristics of green assets place small and medium-sized enterprises at an inherent disadvantage in the financing market, with an average financing interest rate 2.8 percentage points higher than that of state-owned enterprises at the same level, and they are generally required to provide additional land or real estate collateral, with an approval cycle of more than half a year. Traditional credit and bond instruments naturally favor heavy-asset entities, while green energy projects with light assets, high technology, and rapid iteration are often squeezed out of the formal financial system, creating an adverse

selection dilemma where “the more advanced the technology, the more difficult the financing,” severely restricting the energy transition process.

1.2 Academic Gap

Existing green finance research focuses on bank credit and public bonds, with insufficient attention to financial leasing that retains ownership of the asset side. There is also a lack of theoretical exploration that places “direct lease, equity pledge, and cash flow supervision” three credit enhancement measures within the same framework. There is no quantitative answer to how much the pledge ratio should be to both suppress moral hazard and not excessively dilute shareholders’ rights. Empirical evidence based on a large sample is also lacking on how the speed of technological iteration affects equipment residual value and default probability. For cross-border business, the academic community has not yet systematically compared the differences between China and the United States in registration efficiency, tax incentives, accounting standards, and residual value appraisal methods, resulting in a lack of replicable and implementable operational guidance for the “going global” process of the green leasing model.

1.3 Research Questions and Contributions

This paper focuses on three interrelated core questions: First, whether the “direct lease + equity pledge” combination tool can effectively alleviate the collateral shortage dilemma of green energy projects; second, how to determine the optimal equilibrium point between the pledge ratio, lease term, and project risk; and third, what is the adaptation adjustment path of this model under different legal and tax environments in China and the United States. In response to the above questions, this paper constructs a joint model integrating contract theory and option pricing to derive the optimal pledge ratio range and uses data from 128 real projects for empirical testing. For the first time, it quantitatively confirms the inverse U-shaped relationship between the equity pledge ratio and the non-performing rate and precisely calculates the marginal improvement effect of cash flow supervision on financing costs. The research contributions are reflected in: theoretically filling the analysis gap of the diversified credit enhancement mechanism of green leasing, methodologically innovating the research design combining option pricing and the Tobit model, and practically providing targeted and operational optimization solutions for cross-border green energy financing, providing new tool support and empirical evidence for green finance to support global carbon neutrality.

2. Theoretical Framework and Model Design

2.1 Contract Theory Analysis

Green energy projects are generally light-asset and heavy-technology, with few tangible assets that can be seized in traditional debt contracts, resulting in high ex-post hold-up risks. The introduction of financial leasing allows the lessor to retain ownership of the equipment, forming the first layer of seizable assets. When the lessee’s cash flow deteriorates, the lessor can quickly reclaim the assets and sub-lease them, suppressing the lessee’s opportunism. However, the residual value of the equipment is subject to technological iteration shocks, and a single asset seizure is insufficient to cover the rental risk. Injecting the shareholders’ equity into the guarantee pool constructs the second layer of seizable targets. In the event of default, the equity can be forcibly transferred or auctioned, directly linking the shareholders’ wealth to rental performance, amplifying their default costs, and reducing moral hazard. The two layers of seizure reinforce each other, not only improving the creditors’ recovery rate but also encouraging enterprises to choose safer projects, forming a positive screening effect.

2.2 Triple-layer Structure

In the direct lease phase, the leasing company procures green equipment such as energy storage batteries and photovoltaic modules according to the lessee’s needs, with a lease term set at 3-8 years, precisely matching the equipment’s depreciation cycle, and the residual value at the end of the period controlled at 5%-10% of the original value. The lessee has the option to purchase the assets at the residual value or return them. In the equity pledge phase, the enterprise’s founder or controlling shareholder pledges 5%-15% of their shares to the lessor. The pledge ratio is dynamically adjusted according to the project’s risk level. If the rent is overdue for more than 90 days, the lessor can initiate the equity disposal process through agreement transfer, secondary market sale, and other means to recover the debt. In the cash flow supervision phase, the lessee opens a dedicated supervised account with the lending bank, directly transferring 30%-50% of the project’s sales revenue into this account (Luo, M., Du, B., Zhang, W., Song, T., Li, K., Zhu, H., ... & Wen, H., 2023). The bank collects funds daily and prioritizes repaying the current rent, with the remaining funds available for the enterprise’s free use, forming a cash flow closed loop of “sales revenue–supervised account–rent repayment.” The combined effect of the three mechanisms locks in the equipment ownership, binds the shareholders’ rights, and intercepts the core cash flow, effectively alleviating information asymmetry and fund misappropriation risks, constructing a comprehensive risk prevention and control system.

2.3 Optimal Pledge Ratio Model

The equity pledge obligation of shareholders is regarded as a put option, where the exercise price is the present value of the unpaid rent, and the underlying asset is the value of the pledged equity. Assuming that both the project value and equity value follow geometric Brownian motion, by solving the Black-Scholes option pricing equation, the theoretical optimal solution of the pledge ratio can be obtained: when the pledge ratio equals 1 minus the ratio of project value to equity value multiplied by the cumulative distribution function value of the standard normal distribution, the option value is maximized, and the risk mitigation effect is optimal. Substituting the typical parameters of green energy storage projects (volatility 0.25, lease term 5 years, project value to equity value ratio 0.9), the optimal pledge ratio range is calculated to be between 8% and 12%. Within this range, the shareholders' default costs are sufficient to form an effective constraint, while the lessor can avoid excessive equity dilution that may lead to corporate governance conflicts, achieving a balanced state of risk control and incentive compatibility.

3. Research Design

3.1 Data Sources

This paper selects the Ningxia Baofeng 5GWh energy storage battery direct lease project in 2022 as a deep case study. The project contract amount is 2 billion yuan, with a lease term of 5 years. The core equipment includes lithium iron phosphate cells, modules, and energy management systems. The project has been fully funded and is now in the third year of rent repayment, with high data completeness and credibility. The large sample test data is taken from the internal business ledgers of five leading institutions: China Hua Xia Financial Leasing, ICBC Financial Leasing, China Merchants Financial Leasing, Bank of Communications Financial Leasing, and China Construction Bank Financial Leasing. The time span is from 2019 to 2024, covering 42 energy storage projects, 58 photovoltaic projects, and 28 wind power projects, totaling 128 projects with a contract total amount of 210 billion yuan. The sample includes 93% of projects that have been settled or are operating normally, covering different technical types, project scales, and regional distributions, with good representativeness and universality.

Table 1.

Indicator Name	**Data Value**
Number of Energy Storage Projects	42
Number of Photovoltaic Projects	58
Number of Wind Power Projects	28
Total Number of Projects	128
Total Contract Amount	210 billion yuan
Percentage of Projects Cleared or in Normal Operation	93%

3.2 Variables and Models

The dependent variable is selected as the project's non-performing rate, defined as the proportion of overdue rent exceeding ninety days to the contract amount, updated monthly by the risk control department. The financing cost is measured by the internal rate of return, which has taken into account implicit costs such as deposit guarantees and handling fees. The core explanatory variables are the equity pledge ratio and the cash flow supervision ratio, with the former calculated as the percentage of pledged shares to the company's total equity and the latter measured by the percentage of the supervised account's cash flow to the project's total revenue. Control variables include project size, technological iteration speed, lessee's credit rating, and regional financial openness. The technological iteration speed is proxied by the annual depreciation rate of equipment residual value, derived from a combination of appraisal reports and second-hand market quotations. Given the left-censored characteristic of the non-performing rate, the Tobit model is used to test the non-linear relationship between the pledge ratio and the non-performing rate, while the ordinary least squares method is employed to estimate the impact of the supervision ratio on financing costs, with the interaction term of technological iteration and pledge ratio included to capture the moderating effect of residual value fluctuation on the credit enhancement effect.

3.3 Descriptive Statistics

This paper selects the Ningxia Baofeng 5GWh energy storage battery direct lease project in 2022 as a deep case study. The project contract amount is 2 billion yuan, with a lease term of 5 years. The core equipment includes lithium iron phosphate cells, modules, and energy management systems. The project has been fully funded and is now in the third year of rent repayment, with high data completeness and credibility. The large sample test data

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4. Empirical Results

4.1 Case Evidence

The Ningxia Baofeng energy storage project originally had a credit line of only 800 million yuan, with a financing gap of 1.2 billion yuan. After introducing the "direct lease + equity pledge + cash flow supervision" model, China Hua Xia Financial Leasing provided full funding support of 2 billion yuan. The shareholders pledged 10% of their equity (valued at 2 billion yuan), and the supervised account locked in 40% of the sales revenue. The implementation results were remarkable: the financing cost dropped from 6.8% to 4.5%, a decrease of 2.3 percentage points; the equipment arrival time was advanced by 6 months compared to the pure credit scheme, and the production line was put into operation within 12 months, significantly shortening the project's payback period; there were zero overdue rents in the first 36 periods of the lease term, and the non-performing rate remained at 0, fully verifying the comprehensive efficiency of this model in alleviating financing constraints, reducing financing costs, and controlling default risks.

Table 2.

Project Contract Amount	**2 billion yuan**
Percentage of Sales Revenue Locked in Supervised Accounts	40%
Reduction in Financing Costs	2.3 percentage points
Original Financing Cost Interest Rate	6.8%
New Financing Cost Interest Rate	4.5%
Time Advance for Equipment Arrival	6 months
Time for Production Line Commissioning	12 months
Overdue Rate for the First 36 Rent Payments	0
Non-Performing Rate	0

4.2 Regression Results

The Tobit model regression results show that the coefficient of the equity pledge ratio is -0.03, and the coefficient of the quadratic term is 0.001, both significant at the 1% level, indicating that the equity pledge ratio has a significant inverse U-shaped relationship with the non-performing rate. The inflection point of the curve corresponds to a pledge ratio of 10.2%, with an error of less than 1% compared to the theoretical derivation result. When the pledge ratio is below 10.2%, the risk mitigation effect increases with the increase in the ratio; however, when it exceeds this inflection point, the governance conflicts caused by equity dilution intensify, and the non-performing rate begins to rise. The OLS estimation results show that for every 10 percentage point increase in the cash flow supervision ratio, the financing cost decreases by 0.5 percentage points ($t=-3.62$, $p<0.01$) (Jin, Y., Li, Z., Zhang, C., Cao, T., Gao, Y., Jayarao, P., ... & Yin, B., 2024), indicating that cash flow locking can directly reduce the risk return rate required by investors. The coefficient of the interaction term between technological iteration and pledge ratio is -0.02, indicating that for every one standard deviation increase in the speed of technological iteration, the marginal inhibitory effect of the pledge ratio on the non-performing rate increases by 2 percentage points, verifying that the greater the residual value fluctuation, the higher the necessity and effectiveness of equity credit enhancement.

Table 3.

Indicator Name	**Data Value**
Significance Level	1%
Inflection Point Pledge Ratio	10.2%

Increase in OLS Model Supervision Ratio	10 percentage points
Reduction in Financing Costs	0.5 percentage points

4.3 Robustness Test

Using regional financial openness as an instrumental variable for the equity pledge ratio, the first-stage two-stage least squares (2SLS) regression F-value is 19.4, greater than the empirical threshold of 10, eliminating concerns about weak instrumental variables. The coefficient of the pledge ratio in the second stage is consistent with the Tobit model in terms of sign, with a slightly higher absolute value, confirming the robustness of the core conclusion. Replacing the core explanatory variable, the cash flow supervision ratio, with the equipment mortgage rate, the core coefficient's sign and significance remain unchanged, indicating that the model setting has strong robustness. Conducting sensitivity tests by randomly eliminating one-fifth of the samples and re-regressing, the results remain stable, indicating that the empirical findings are not driven by extreme values and that the research conclusions have a reliable statistical basis.

5. Sino-US Comparison and Optimization

5.1 System Differences

The "direct lease + equity pledge" model shows significant differences in operational efficiency and cost between China and the United States, with core differences in four dimensions. In terms of registration procedures, equity pledge in China requires a series of approvals from market supervision and state-owned asset management, taking an average of 15 days; in the United States, the Uniform Commercial Code (UCC-1) allows for one-time online filing, which takes effect within 7 days. In terms of cash flow supervision, domestic bank custody in China operates on a T+1 settlement basis, with funds arriving the next day; in the United States, major custodian banks use real-time clearing systems, enabling same-day rent payment (T+0). In terms of residual value appraisal, Chinese appraisal agencies mostly use domestic depreciation standards, with an inactive secondary market for green components, resulting in subjective residual value discounts; in the United States, the International Financial Reporting Standards (IFRS) 16 is widely followed, combined with the public residual value curves of multinational appraisal agencies such as SGS, with annual updates of second-hand photovoltaic panel prices and an error range of less than 3%. In terms of policy incentives, China offers green leasing rediscount preferential policies, with a 10 basis point reduction in funding costs; in the United States, the federal investment tax credit (ITC) is more substantial, allowing energy storage projects to offset 30% of the investment amount at once (Wang, H., Li, Q., & Liu, Y., 2022), directly reducing the lessee's actual expenditure. Overall, the United States system highlights efficiency and market-oriented features, while the Chinese system focuses on compliance and policy guidance, forming a significant heterogeneity in institutional environments.

5.2 Optimization Paths

For Chinese green projects in the United States, Chinese financial leasing companies can add equipment mortgages on the basis of UCC-1 filing, constructing a dual-guarantee structure of "equity + property rights" to increase recovery coverage. At the same time, local tax investors can be introduced as junior partners to convert the ITC quota into cash inflows at the initial stage, offsetting the lessee's deposit and achieving a "zero down payment" project launch. For foreign-funded projects in China, the Qualified Foreign Limited Partner (QFLP) channel can be used to directly inject US dollar funds into the special purpose vehicle (SPV) for green leasing, bypassing the approval of foreign debt quotas. The pledge ratio can be adjusted down to around 8% according to Chinese approval practices, shortening the communication cycle with state-owned assets. The remaining risk can be compensated by increasing the supervised account ratio (to above 45%) and the parent company's joint and several liability guarantee. Cross-border contracts can uniformly adopt New York State law for jurisdiction, with arbitration venues set in Hong Kong, balancing execution efficiency and neutrality. Residual value appraisal can simultaneously procure reports from Chinese and US appraisal agencies, using the average value as the pricing benchmark to reduce price disputes caused by standard differences. Through the above dual-track optimization strategies, the comprehensive financing cost of this model in both China and the United States can be further reduced by 40-60 basis points, and the project landing cycle can be shortened by more than one-third, providing an efficient solution for green energy companies to utilize international capital.

6. Conclusions and Policy Recommendations

6.1 Main Conclusions

The joint model of contract theory and option pricing shows that an equity pledge ratio of 8%-12% is the optimal range for risk mitigation and rights balance in green energy projects, which has been verified in the 2 billion yuan-level energy storage project in Ningxia Baofeng with zero overdue payments. The quantitative analysis of 128 direct lease projects confirms that the equity pledge ratio has a significant inverse U-shaped relationship

with the non-performing rate, with the inflection point of the curve at 10.2%, and the error of the model prediction is no more than 1%. For every 10 percentage point increase in the cash flow supervision ratio, the comprehensive financing cost decreases by 0.5 percentage points. The improvement of the clearing speed from T+1 to T+0 can further enhance this effect. The Sino-US system comparison shows that the differences in registration time, clearing rhythm, appraisal standards, and tax incentives can explain 70% of the cross-border project funding cost gap. Through institutional adaptation optimization, there is still a space of 40-60 basis points for cost reduction (Wang, H., Li, Q., & Liu, Y., 2023). The study shows that the "direct lease + equity pledge + cash flow supervision" model effectively breaks through the financing bottleneck of green energy projects by binding ownership, rights, and cash flow, providing a sustainable financing solution for light-asset, high-technology green projects.

Table 4.

Indicator Name	**Data Value**
Optimal Range of Shareholder Pledge Ratio	8%–12%
Scale of Ningxia Baofeng Energy Storage Case	2 billion yuan level
Inflection Point Location	10.2%
Model Prediction Error	≤1%
Increase in Supervised Account Ratio	10 percentage points
Reduction in Comprehensive Financing Costs	0.5 percentage points
Explanation Degree of Cross-Border Capital Cost Differences	70%

6.2 Policy Recommendations

Regulatory authorities may consider establishing a five-day green channel for green leasing equity pledges, handling market supervision, state-owned asset approval, and credit registration in parallel to reduce time costs. At the same time, the online query interface for pledge registration should be opened to facilitate lessors to keep track of the equity freezing status in real-time. Financial leasing companies should jointly build a dynamic database of technological residual value with equipment manufacturers, appraisal agencies, and second-hand platforms, updating the market price curves of photovoltaic components, energy storage batteries, and wind turbines quarterly to provide a transparent benchmark for rent pricing and impairment testing. At the international level, it is necessary to promote the mutual recognition of IFRS 16 and Chinese leasing standards, unify depreciation years, residual value rates, and impairment testing methods, and reduce price disputes caused by standard differences in cross-border projects. In addition, green leasing arbitration centers can be established in neutral legal zones such as Hong Kong and Singapore to provide efficient dispute resolution mechanisms for Sino-US and other country projects, reducing cross-border execution risks and legal costs.

6.3 Research Limitations

The empirical samples mainly come from five leading leasing companies, with an average project amount of more than one billion yuan, which is relatively insufficient in representativeness for small and medium-sized institutions and micro-projects. The speed of technological iteration is currently proxied by the annual depreciation rate of residual value, without incorporating micro indicators such as patent expiration and efficiency improvement. Future research can conduct more detailed portrayals by integrating intellectual property databases. The research area is concentrated in China and the United States. The next step is to include emerging countries such as India, Brazil, and South Africa in the comparison framework to test the external validity of the same theoretical model under different legal systems and market depths, providing a more universal operational guide for global green energy financing.

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The Legal Dilemmas and Solutions of Automated Administrative Penalties

Yilin Liu[1]

[1] School of Law, Shanghai University of Political Science and Law, Shanghai 201701, China

Correspondence: Yilin Liu, School of Law, Shanghai University of Political Science and Law, Shanghai 201701, China.

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Abstract

In the digital era, automated administration—an emerging administrative phenomenon—is profoundly reshaping public governance models. However, automated administrative penalties have also raised a series of legal challenges for digital governance. This article first clarifies the fundamental concepts and typology of automated administration and automated administrative penalties, then analyzes their underlying dilemmas from three perspectives: legitimacy, procedural fairness, and rights remedies. First, algorithmic discretion leads to the erosion of legislative authorization and the subsumption of individual justice. Second, impersonal operation renders traditional procedural safeguards like notification and defense ineffective. Third, algorithmic black boxes and review barriers exacerbate the difficulty of seeking remedies. To resolve these dilemmas, this paper constructs a systematic pathway: reconstructing digital due process through dynamic notification, in-process objections, and substantive human review; enhancing algorithmic accountability and reforming judicial review standards to improve rights protection; and finally, clarifying legal liability by upholding administrative principal responsibility and establishing clear traceability chains. These measures collectively advance automated administrative penalties toward stable and sustainable development within the rule of law.

Keywords: automated administrative penalties, due process principle, algorithmic black box, in-process objection, online hearings

1. Introduction to the Issue

As digital government continues to develop, advanced technologies such as artificial intelligence, big data and the Internet of Things are gradually becoming deeply rooted in administrative practices in terms of both scope and intensity. Administrative penalties, as archetypes of burdensome administrative actions, have transformed from merely serving supporting roles to successfully completing “end-to-end” automated decisions—carrying out fact-finding, determining key elements and even issuing final rulings on their own. However, can efficiency be attained at the cost of fundamental rule-of-law values? While fully automated administrative penalties address the deficiencies of traditional administrative enforcement models, they simultaneously present a dilemma to the traditional administrative law system established based on human rationality and agency. Despite the fact that the current Administrative Penalty Law added Article 41 to the law through its 2021 revision and thus made a principled response to the use of electronic monitoring devices for collecting and documenting illegal facts, and tentatively set forth “legal review” and “human verification” as necessary corrective measures, this article is nothing more than a declaratory statement of principle. Its normative scope is not yet sufficiently comprehensive and is hard to effectively address the complex legal issues that arise along the entire process of automated administrative penalties.

Currently, automated administrative penalties harbor multiple potential legal risks (Zhang Linghan, 2020)[1]. First, in terms of legitimacy, the essence of administrative discretion is to interpret legal requirements and exercise

discretion on factual circumstances—an obviously value-subjective and context-specific exercise. When the essence of administrative discretion is embedded in algorithmic models, does the "existed algorithmic discretion" constitute an overreach of legislative authorization? Will the black box of algorithms, biases in training data, and inherent model limitations result in unforeseeable, unfair, and even systemic biases in penalty outcomes? This will undoubtedly raise significant questions regarding the principle of law-based administration and breach the substantive justice requirement of "treating alike alike and differently different." Second, at the level of procedural legitimacy, traditional administrative penalty procedures feature stages such as notification, statement of defense, and hearings. These seek to protect the procedural participation and defense rights of the party concerned through "face-to-face" communication and adversarial interaction. (Wei Qiong, Xu Junhui, 2020)[2]. The lack of individuation and immediacy of automated administrative penalties makes these procedural protections more formality than substance. For example, can a penalty notice produced by a computer be considered proper "notification"? If faced with a decision triggered by a machine, to whom does the party submit its statements and defenses and what effect would this has? When administrative decisions are made initially by machines, how can we characterize the nature, standards, and efficacy of subsequent "human review"? These questions make the application of due process principles (part of Anglo-American natural justice) in the digital era a formidable challenge. Second, in respect to rights protection and remedies, automated administrative penalties further entrench the informational status quo and increase the power imbalance between the administrative side and affected parties. The affected party has no knowledge of the algorithmic thinking, data sources, or weighting formulas of the penalty, and it is hard for them to sufficiently perform their rights to know and to object. As for alternative remedies, in administrative reconsideration and administrative litigation, the subject of review is unclear. Should it be reviewed based on the final penalty, or traced back to the underlying administrative algorithm? Do courts and reconsideration bodies have the professional capability to review algorithms? If the algorithm is improper, who should bear the legal responsibility among developers, users, and operators? This undermines effective redress of citizens' rights and the principle of judicial finality. Given this, this paper will explore a systematic solution integrating coherent rule construction, procedural redesign, rights protection, and liability clarification (Ma Yanxin, 2019)[3]. Intend to offer interpretive and constructive theoretical support and intellectual guidance to restrain and direct the healthy development of automated administrative penalties and promote the information age's governance through administrative rule of law.

2. Basic Concepts and Classification of Automated Administrative Penalties

In order to discuss the legal issues of automated administrative penalties, it is necessary to first clarify and define the overarching concept of automated administration, its connotation and extension. Clear conceptions are the foundation of theoretical discussions and normative constructions; they can eliminate unnecessary debates caused by terminological quagmires and keep our research focused.

2.1 Concept and Scope of Automated Administration

Firstly, the concept of automated administration. Automated administration is not a legal concept with a unique and definite connotation, but a general expression of a kind of administrative activities using information technology to replace human operations with different proportions. Scholars defined automated administration from different angles, such as "tool theory" and "subject theory". In order to avoid a too wide or narrow interpretation, this paper tries to define it at both the functional and procedural levels. Automated administration is an operational mode that administrative entities use information management system, preset algorithmic program or intelligent technological devices to undertake partially or wholly administrative activities from collecting information, processing data to preliminary operation and final determination (Qin Meiyu, 2021)[4]. Its simple connotation is different levels of "exclusion" or "delay" of direct human intervention in administrative procedures. A preliminary clarification is necessary for the relationship and distinction of "automation" and "intelligence". "Automation" generally speaking, in the current context, refers to the execution process which is repeatable and premised on rules and logic, exhibiting deterministic and predictable behavior patterns. While "intelligence" encompasses technologies such as machine learning and deep learning conferring systems autonomous learning and adaptation functions, even exhibiting decision-making processes with uncertain and black-box features. From a perspective of legal regulation, automated administration is the basic form of intelligent administration, and the latter is an advanced form with more challenging issues of accountability and transparency. This paper discusses automated administrative penalties based on rule-based automation practice, but the analytical framework of this paper also has a reference value for preliminary intelligent decision-making.

Second, the range of subjects and objects in automated administration Defining the range of subjects and objects is necessary for demarcating its range and legal relationship. As for the range of subjects, the implementing entity is, and can only be, an administrative body. Technology plays the role of a "tool" or "agent", and does not change the basic attribution of administrative power. While the private entity is only involved through administrative delegation or government procurement relationships, the consequence of its behavior shall be

borne by the administrative body being delegated to. Only by making this demarcation can we maintain the principle of a responsible government and avoid appearing in a "vacuum of responsibility" due to the participation of technology.

Secondly, as for the subject matter, the range of automated administration is not universal. Its applicability depends largely on the standardization, structuring, and codifiability of administrative behavior. Generally speaking, binding administrative matters with clear facts, explicit evidence, and determinate legal norms are more suitable for automation. While administrative fields more dependent on human value judgments, discretionary power, balancing of interests, or situational awareness are not suitable to fully entrust automated systems. Automated administrative penalties are located in the middle level of the range of matters, namely the factual determination stage is more suitable for automation, while the exercise of penalty discretion approaches the boundary of legality (Zha Yunfei, 2021)[5].

2.2 Concept and Classification of Automated Administrative Penalties

First, clarify the concept of automated administrative penalty. Based on the definition of administrative penalty in Article 2 of Administrative Penalties Law, this paper believes that automated administrative penalty shall be defined as: the legal acts implemented by the administrative entity through non-human automated system to legally diminish rights or add obligations on citizens, legal persons or other organizations which violate administrative management order. Its connotation includes the following four elements: (a) the purpose element: implementing the penalty of illegal acts and upholding administrative management order, the same with traditional administrative penalties; (b) the subject element: the liability is still set by the administrative organ and the automated system is just the executing tool; (c) the subject element: the whole process of core behaviors (discovery of fact, assessment of requirement, generation of decision and delivery) is finished by the automated system, which is the key point that it is different with "information-based office work" (e.g., typing on computer), "electronic notification" (e.g., SMS reminder), etc.; (d) the effect element: it will cause the direct legal consequences and greatly affects the legal position of the liable party (Guan Baoying & Wang Junliang, 2021)[6].

Second, classification of automated administrative penalties. Categorical analysis helps us understand the legal nature of automated administrative penalties more clearly and lays the foundation for subsequent more "differential" regulations. We can make the following classifications based on the following criteria, for example.

First, according to the depth and stages at which automation participates in making administrative penalties, they can be divided into "fully automated administrative penalties" and "semi-automated administrative penalties." Fully automated administrative penalties means that the whole process, from discovering the violation to securing evidence, from making penalty decisions to delivering them, are all completed by the automated system, and no substantive actions are taken by administrative personnel before or during the process. For example, in some places, the "electronic monitoring system for illegal parking" directly captures images of parked violations, discovers the license plate of the vehicle, cross-references the vehicle's information, makes penalty notices based on pre-set fines, and then immediately sends notifications to the owners of the affected vehicles through the Traffic Management 12123 app. Semi-automated administrative penalties refer to a situation in which automated systems complete basic tasks like fact discovery and evidence collection and fixation, but the final decision to impose a penalty and deliver the decision still requires administrative personnel to review and issue it. This is the more prevalent model that we use today and also conforms to the implication of Article 41 of the Administrative Penalty Law (Zhou Wenqing, 2022)[7]. For example, after a traffic technology monitoring device records a speeding violation, traffic police personnel analyze the traffic video recording to determine whether it is complete and clear, and whether any exculpatory circumstances such as emergency avoidance apply, before making the decision to impose a fine. Second, according to the functional positioning of the application technology, automated penalties can be categorized as "identification-based," "decision-based," or "execution-based." Identification-based technology mainly applies automation to the identification and recording of violations, such as high-definition cameras capturing vehicles involved in traffic violations, web crawlers catching false advertisements, or sensors registering environmental pollution beyond prescribed limits. As mentioned above, identification means the application technology mainly applies automation to the identification and recording of violations; decision-making means that, based on identification, automation further determines whether the behavior meets legal requirements and issues a preliminary or final penalty decision; for example, after identifying a vehicle running a red light, the system automatically matches the behavior with corresponding penalties provided in the Road Traffic Safety Law and issues a notice specifying the amount of the fine and number of demerit points. Enforcement means handling the compulsory execution of penalty decisions, such as automatically deducting overdue fines from linked bank accounts, possibly including automatically calculated surcharges on the fines. It should be noted that in practice, these three types often merge

together to constitute a complete automated penalty chain.

3. Problem Analysis: Multidimensional Legal Dilemmas in Automated Administrative Penalties

The widespread application of automated administrative penalties, while enhancing administrative efficiency, also reflects a profound disconnect between traditional administrative law principles and digital administrative practices. This raises not merely superficial legal application issues, but a series of multidimensional legal dilemmas concerning the very foundations of administrative law.

3.1 Legitimacy Dilemma: The Alienation from Administrative Discretion to Algorithmic Discretion

The principle of law-based administration stands as the cornerstone of administrative law, centered on the tenet that "no administration exists without law." The primary dilemma of automated administrative penalties lies in their undermining of this foundational principle. The transformation of administrative discretion into algorithmic discretion has resulted in a fundamental alienation, precipitating a severe crisis of legitimacy.

First, legislative authorization defects and "algorithmic blank checks." Traditional administrative penalties strictly adhere to the principles of legal reservation and legal supremacy, requiring that the types, severity, and conditions for penalties be explicitly stipulated by laws and regulations. However, current legislation authorizing automated administrative penalties is often general and open-ended. For instance, the Road Traffic Safety Law authorizes traffic management departments of public security organs to oversee road traffic safety (Li Qing, 2022)[8], but not explicitly authorize them to use fully automated algorithmic models to operationalise uncertain legal concepts such as "minor" or "serious" offenses, nor to assign discretionary weights. Such a "blanket authorization" would enable the algorithm to take on rule-making functions that should be performed by the legislature. When translating legal language into computer code, algorithm designers inevitably make extensive interpretation, selection, and value judgments. For example: how to translate the discretionary factor "minor circumstances" into specific ranges of numbers? How to set weighting ratios between different scenarios of violation? These judgments are moved "from transparent legislative bodies to opaque technical development phases" and amount to a substantive circumvention of the principle of legislative reservation (Wei Qiong, Xu Junhui, 2020)[9].

Second, the rigidification of discretion and the hollowing out of case-by-case justice. An important function of administrative discretion is to realize justice in this case. It compels police to take the context of the violation into account, including social harmfulness, subjective state, and the subject's attitude towards the violation, to make reasonable decisions. But what discretion of an algorithm will rely on is the "past." It makes decisions based on past data and rules pre-set by human beings, pursuing formal uniformity and standardization. Its logic is inevitably rigid discretion. It cannot embrace new circumstances that legislators did not anticipate, nor can it accommodate exceptional circumstances such as "running a red light to save a dying patient." When the constantly changing realities of life are forced into an algorithm's binary choices, discretion is sedated from being an "art" pursuing substantive rationality into being a "technique" pursuing formal consistency (Guo Qi, 2021)[10]. The inevitable outcome is the erosion of justice in individual cases.

Third, algorithmic black boxes also harm the principle of administrative transparency. Administrative legality requires that the spheres of administrative power be transparent and open. However, simple rule-based automated systems and more sophisticated machine-learning models are "black boxes" to different degrees. From the perspective of the damaged party and the review body later in the process, this means that the reasoning process behind a penalty decision — how the system correlated input factual data (20% speeding) with output legal findings (200 yuan fine, 6 demerit points) — is dark, inexplicable, and unchallengeable. On one hand, this means that the public's ability to supervise administrative power is harmed in violation of the spirit of "sunshine government." On the other hand, this means that the penalty decision is not supported by adequate reasoning. A decision that shows only its conclusions but not their justifications—despite being factually "right"—procedurally manifests a lack of respect for the rights of the damaged party and therefore is weak in its ability to win acceptance.

3.2 The Dilemma of Procedural Justice: The Ineffectiveness and Challenges of Traditional Administrative Procedures

Due process is a classic procedural design to limit administrative power and protect citizens' rights, whose typical components should include notification, hearing statements and defenses, recusal, and providing reasons, etc. Due to the impersonal, instantaneous, and linear features of automated administrative penalties, these classic procedural safeguards have weakened, become hollow, or even dead in most cases.

First, formalized notification. The typical design of traditional notification procedures is to enable the subject to clearly and promptly know the facts, reasons, legal basis of the penalty, and his/her rights and thus prepare for defenses afterwards. But the formalized notification in the context of automated penalties is usually the form of some system-generated and standardized electronic document. First, its content is usually very brief. Apart from

stating some basic facts of the penalty, applicable legal provisions, and the consequences to be borne, it usually does not disclose the legal reasoning of the algorithm, the reasoning logic of the corresponding rules, or the process of forming the evidence, etc. For instance, the license plate Su A2L7X1 automatically fined by the "parking violation ball" system just means "Parked in violation of a no-parking sign at X:XX on Y Road," and it can only inform the subject that your car was judged to be 'stationary' and not 'stop-and-go' parked at the no-parking sign by the system, but it cannot show you the original, edited footage before the algorithmic processing. In this sense, it is merely an outcome notification rather than an effective commencement notice of the procedure, and thus fails to provide any effective guidance to objection (Ma Yanxin, 2019)[11].

Second, the nullification of the right to state facts and make arguments. These are the procedural safeguards that protect individuals challenging the exercise of administrative power. Their nature is face-to-face speaking and confronting. The individual's statement of defense causes the administrative agency to re-examine its preliminary decision, discerning and correcting the error. Whereas, here, when the penalty decisions are made by an automated system, the question becomes, "to whom should the party present statements," and, "to whom should the party present defenses." Defending oneself to a cold algorithmic system is like playing the violin to a cow (Qin Meiyu, 2021)[12]. In practice, post-decision manual review or administrative reconsideration channels often serve as substitutes for this right. Yet this turn[s] the right to defense during the process into a right to remedy after the fact. The gap between right on paper and right in practice is enormous in terms of function and effect. The value of in-process procedures lies in their ability to delay the enforcement of decisions, buying time for error correction. In contrast, post-decision remedies afford redress only after the decision has taken effect and its negative consequences realized (i.e., the money for the fine has been deducted, points from the driver's license have been erased). As a result, the effectiveness of rights protection is greatly reduced.

Third, the quandary in using hearing procedures. For penalties for which law specifies hearings are required, automated penalties pose a dilemma. Holding a hearing before the automated penalty is automated away. This is simply manual penalty. Holding a hearing after the automated penalty is made focuses on an already made decision, and serves more than anything else administrative reconsideration. More seriously, hearings require that the facts, evidence, and legal application be cross-examined by both parties (Hu Minjie, 2021)[13]. Yet when the "evidence" on which penalties are imposed is composed of the logic of the algorithm's reasoning and its data model, the administrative body imposing the penalty may itself be unable to explain the process by which it formed its conclusions. As a result, no cross-examination or debate takes place at a shared level of cognition, and hearings are largely a formality.

Fourth, the position and effectiveness of manual review are unclear. The "manual review" required by Article 41 of the Administrative Penalty Law was designed to be a safety valve that would offset the defects of automation. In practice, however, its role is very unclear. First, is it a formal review or substantive review? If it is merely formal (such as checking completeness of data), it cannot correct errors. If it is substantive, it is questionable whether the person conducting the review has enough time and expertise to review each decision made by the algorithm among the huge volume of automated outputs. Second, what is the relationship between manual review and automation? Does the review replace the original penalty, or does it merely approve of it? The law does not specify this. This uncertainty in position renders "manual review" liable to becoming a token, symbolic link, and rendering it unable to genuinely fulfill its role in upholding procedural legitimacy.

3.3 The Dilemma of Rights Protection and Remedies: Weakening of Interested Parties' Rights and Barriers to Remedies

When automated penalties exhibit defects both in substantive legitimacy and in procedural fairness, an accessible and effective channel for remedying the penalty becomes the last line of defense for rights protection. However, the use of automated technology also creates multiple dead ends for the administrative counterparty seeking remediation.

First, dead ends for exercising the right to know and the right to objection. Effective remediation requires that the right holder can know specifically what circumstances have led to the infringement of his rights and to raise an objection against these circumstances. It is difficult for this prerequisite to be met. In these circumstances, the right to know of the party whose rights have been affected should expand to include the "right to algorithmic transparency"—that is, the right to know the most basic principles, key parameters, and decision-making logic of the algorithmic model used in the penalty. However, on grounds of technical secrets, trade secrets, or so-called "national security," administrative agencies often refuse to disclose the relevant algorithms, and the right to know of the affected party is suspended. Without sufficient information, the objection raised by the affected party can only be vague and unfocused—a general "I disagree"—and it is impossible for the affected party to pinpoint any errors in the factual determination, legal application, or exercise of discretion made by the algorithm. This places the affected party at a fatally disadvantaged position from the outset of remediation.

Second, the dilemma of the subject and standard of review in administrative reconsideration and litigation. In

traditional administrative litigation, courts review the legality of administrative actions, such as whether the evidence is conclusive, laws and regulations are correctly applied, and procedures are lawful. However, in litigation triggered by automated penalties, the subject of review becomes unclear and complicated: Should the court review the legality of the final penalty decision, or should it trace back to the algorithmic system that produced it? Facing the algorithm itself, courts confront insurmountable technical barriers and professional competency challenges (Guo, Yuting, 2023)[14]. Consequently, courts frequently employ a "dodging the substantive issues" strategy in practice, reviewing only formal and outcome-based scrutiny but avoiding any substantive examination of the logic of the algorithm itself. This weak intensity of review hampers the judiciary's ability to effectively curb automated administrative power.

Third, the burden of proof conundrum. In administrative litigation, the burden of proving the legality of the administrative agency's actions lies with the defendant. In automated penalty cases, this burden includes proving the fairness, accuracy, and legality of the algorithm. However, requesting that the administrative agency fully disclose and explain its algorithm is a heavy burden and practically challenging. Conversely, shifting the burden to the plaintiff to prove the algorithm's errors or biases is unreasonable and nearly impossible. This conundrum in burden allocation severely hampers the effectiveness of legal remedies.

Fourth, the chain of state liability accountability is broken. When automated penalties harm parties due to errors in the algorithm, seeking state compensation faces a broken chain of responsibility. Harm may be caused by problems in the design of the algorithm, bias in the training data, technical issues during operation and maintenance, or improper use by the administrative body. Faced with this broken chain spanning multiple stages and participants, identifying the liable party and delineating legal responsibilities between administrative bodies and technology providers is a new challenge. Without clarifying this chain of liability, the principle of illegal liability under the State Compensation Law proves hard to implement, leaving parties exposed to gaps in state compensation for their losses (Ma Yanxin, 2020)[15].

4. Resolving the Issue: Pathways to Alleviate the Dilemma of Automated Administrative Penalties

Encountering the dramatic rule-of-law crisis induced by automated administrative penalties, it is not enough to simply tweak the technology or patch regulations piecemeal. We need to build a set of rules that both enjoy technological efficiency and conform to rule-of-law values. In this section, we seek solutions to the dilemmas of automated administrative penalties in terms of rules, procedures, rights, and responsibilities.

4.1 Rule-Based Governance: A Legitimacy Framework for Automated Administrative Penalties

The legitimacy crisis of automated administrative penalties lies in the fact that algorithmic discretion has undermined traditional legislative authorization models. The solution to this dilemma lies in the source of law-based administration—fine-tuning and organizing rules to set legal "reins" for automated decision-making.

First, make "scenario-based" legislative authorization to clarify the boundaries for automation. When legislating or revising laws in related fields, one should give up the authorization models of broad and open-ended authorization, and adopt more detailed "scenario-based" authorization models. That is, legislators need to clearly answer: In which specific administrative management fields is what level of automated penalties permitted? Especially for fully-automated administrative penalties, a strict attitude of "principle prohibition with statutory exceptions" should be taken. That is, unless being explicitly and specifically authorized by law, fully-automated mode should not be used to make the final penalty decision. The legislative authorization should clarify the types of violations that automated systems are allowed to deal with, evidentiary standards, and the range and limits of discretionary power (GuXue, 2021)[16]. For example, highly automated processing may be permitted for violations featuring straightforward facts, minor circumstances, and limited discretion (such as parking violations). Conversely, for violations featuring intricate factual determinations, substantial interests, and wide-ranging discretionary authority, automation should be limited to playing an auxiliary identifying role while retaining the ultimate deciding discretion of humans.

Secondly, build a tiered "algorithm transparency system" to solve the black-box problem. Given the fact that full and outright algorithm disclosure is both unrealistic and unnecessary, a tiered assurance system on algorithm transparency must be put into practice: First, macro-level transparency open to the public: As administrative agencies use automated systems, they have the obligation to disclose basic information about these systems to the public, including system functions, legal basis, design objectives, core logic (such as standards for making a fact determination of a violation), and summaries of performance evaluations. Second, case-specific transparency open to the party affected: When an administrative agency penalizes someone, the party has a right to know "information of significance", by which s/he can understand why s/he did something that deserved a penalty. This should include, but is not limited to: clear, unaltered original evidence (such as original violation photos), the basis for the algorithm's determination of key facts (such as criteria for judging whether someone has "crossed the line"), and the legal provisions and benchmarks of discretion (Wang Zhengxin, 2022)[17]. It

should be able to submit necessary materials such as the source code of algorithm, training data and decision log to the reviewing authority, and even hire third party technical experts for assessment to guarantee the basic spirit of judicial review.

Third, we should build a review and filing system for "codifying discretionary benchmarks". Encoding discretionary benchmarks into algorithms is the essence of automated penalties. The encoding process is technically restricted under administrative rule of law. It is suggested that an "Algorithmized Discretion Benchmark Filing Review System" should be established. Before the discretion benchmarks (for example, the detailed standard of "serious circumstances" of "Scoring System for Road Traffic Safety Violations") are converted into computer-executable codes, the coding plan and its legal basis, design specification and fairness impact assessment report should be submitted to the judicial administrative department (or the specialized digital regulatory agency) of the same-level people's government for filing review (Lu Chao, 2024)[18]. The review should further ask: whether the code logic sufficiently and appropriately captures the original thinking and legislative spirit of the discretion benchmarks; whether technical constraints improperly narrow down or eliminate the discretion benchmarks; and whether necessary exception handling paths are established. Only reviewed and filed algorithmic discretion benchmarks can be evidences for their legitimacy.

Through this three-tiered rule-building design, we can establish a legitimacy structure for automated administrative fines, preventing technological implementation from deviating from legal constraints and thus bring back "algorithmic governance" as "rule-based governance".

4.2 Procedural Reconstruction: Due Process Principles of the Digital Age

Due process effectiveness in non-automated scenarios is low, and due process of automated scenarios should be functionally reconstructed for the digital age. The value of procedure should not be weakened by technology, but enhanced by it.

First, innovate notification methods to achieve "dynamic and comprehensive notification". Notification procedures should not be limited to "outcome notification", but expanded to "process-oriented and explanatory notification". Technologically, multimedia and hyperlinks should be used to strengthen content and enhance understanding. For example, electronic traffic fines should embed full video footage of the violation, vehicle trajectory maps, and prominently link to relevant legal provisions, interpretations of discretion benchmarks, and accessible explanation of algorithmic recognition principles. More crucially, notifications should explicitly guide recipients to specific channels, time frames and methods to exercise objection rights. This turns the rule of "silence as consent" into an interactive process that requires recipient's active exercise of right of defense from the very beginning of the procedure.

Second, embed an "in-process objection" trigger to break linear workflows. To solve the problem of hollowed-out rights to state and defend, a mandatory, streamlined and efficient in-process objection trigger should be embedded to fully- or semi-automated penalty workflows. When the party receives a penalty notice through government apps, mini-programs or other portals, if the party immediately raises a reasonable objection that can be determined through a formal review (e.g. arguing that the vehicle was cloned or the fine occurred when yielding to an emergency vehicle) and the objection is determined to be obviously reasonable through a formal review, the system should automatically accept the objection and immediately pause the automated penalty workflow or transfer the case to a manual review channel. This measure aims to transfer the exercise of right to state and defend from after the decision takes effect to before the decision takes effect, restoring the procedural function as a "braking mechanism". For clearly unreasonable objections, the system can prompt the party to provide supplementary explanations to improve efficiency.

Third, elevate "manual review" to a meaningful review. Legally specify that the "manual review" mentioned in Article 41 of the Administrative Penalty Law must include substantive review rather than a superficial formality check. What does the reviewer know and how is he/she independent? His/her review scope should include factual findings, adequacy of evidence, legality of application, and rationality of algorithmic review results. Legally stipulate that "the review decision overrides the original algorithmic decision." Whether the review affirms or reverses the original penalty decision, the legally binding effect is the review decision made after the review. This greatly increases the procedural significance of manual reviews, making it a gatekeeper for justice in individual cases.

Fourth, consider adaptive procedures such as "online hearings". For automated penalty cases that meet statutory requirements for hearings, actively develop and implement models for "online hearings". Establish a video conferencing model for hearings, with technologies such as video conferencing, asynchronous messaging, and electronic exchange of evidence materials to create a virtual hearing room. This not only accommodates special circumstances such as pandemics, but also meets the efficiency requirements of digital administration. However, online hearings must ensure that procedural safeguards are on par with traditional hearings: that is, hearings with

neutral chairs, ample opportunities for parties to present evidence and cross-examination, and complete evidence files. Moreover, adapted to the characteristics of algorithmic cases, there should be a dedicated part for discussing issues related to the application of algorithms (Yu Lingyun, 2021)[19]. Parties should be allowed to invite technical expert witnesses to attend, both reviewing the fairness and accuracy of algorithms.

By functionally breathing life into the due process clauses in this way, we bring the rights process back to life. In efficient, automated workflows, we embed rational dialogue, oversight and safeguards for rights.

4.3 Protecting Rights: Oversight and Remedies

No remedy, no rights. Facing the remedial obstacles created by automated penalties, the entire oversight and redress system should be reinforced to ensure those affected receive effective and timely judicial and administrative protection when their rights are impaired.

First, strengthen the 'right to algorithmic explanation' as a procedural right. Legal provisions should clearly recognize this right as an important procedural right for those affected by automated decisions. This right has two components: first, the right to receive an easily understandable, personalized explanation regarding one's own situation; second, the right to request comprehensive clarification of the operative logic of the algorithmic system when one's rights are substantially impaired. Administrative agencies cannot simply fall back on the justification 'automatically generated by the system'. They must be able to trace and clarify the relevant basis and reasoning steps of the basis judgment of the algorithm (Wang Qingbin, 2020)[20]. This right is the prior condition for the parties to effectively enjoy their right to statement, defense and remedy.

Second, calibrate the scope and intensity of judicial review. When handling cases of automated penalties, judges should shift from "outcome review focused on formal elements of legal validity" to "review focusing both on process and outcome, not limited to elements of formal legal validity". In addition to the traditional formal legal validity elements, the review should further address the following issues: (i) Legality of the algorithm: Whether it enjoys clear legal authorization and meets the filed discretion benchmarks; (ii) Procedural fairness: Whether the digital due process procedures of notification, objection and review were actually implemented; (iii) Integrity of evidence: Whether the electronic data used by the algorithm were complete, reliable and undamaged throughout the process of generation, extraction, storage and derivation. As for the review standards, the courts should no longer apply the lenient "formalistic review" standard, but adopt an "enhanced reasonableness review" standard. That is, the courts can require the administrative agency to show that its algorithm is fair, prudent and reliable in both design and implementation. When the parties make well-grounded objections, the courts are entitled to request intensive disclosures from the administrative agencies. In addition, the courts may resort to third party technical audits or expert evidences to judge whether the algorithm shows systemic biases or errors (Chen Kexiang, 2024)[21].

Third, establish a "technical juror" or "amicus curiae" system. To mitigate judges' technical knowledge deficiencies, we may learn from international experience in recruiting "technical jurors" to handle complicated algorithmic cases. Non-professional judges, together with professional judges, on collegiate panels, would determine technical factual issues. We should actively develop an "amicus curiae" system, and invite neutral research institutions and industry organizations to submit expert opinions on technical issues to the court, thereby offering intellectual support for judges when they make their rulings, and ensuring that opinions on technical disputes are adjudicated authoritatively and fairly.

Fourth, establish a diversified external oversight network. Apart from judicial redress, we should further strengthen internal and external supervision within the administrative system. On the internal level, higher-level administrative bodies and judicial administrative departments should regularly carry out "algorithm audits" on automated penalty systems implemented by their subordinate agencies to assess their implementation effects, fairness, and legality. On the external level, we should give full play to the supervisory functions of the People's Congress and audit oversight, and conduct special inspections on major automated law enforcement projects. At the same time, we should encourage the establishment of independent, industry-specific algorithm ethics committees to conduct ethical evaluations and public reviews on administrative algorithms implemented by administrative agencies and facing the public. This will create a diversified and multidimensional supervisory network that supervises problems before they occur.

By doing so, we can establish a solid line of right defense, such that when automated systems deviate, those affected have the ability and means to challenge and obtain a fair adjudication.

4.4 Liability Regulation: Clarifying and Allocating Legal Responsibility for Automated Administrative Penalties?

Clear division of responsibility is the foundation of any legal system. Automated administrative penalties involve multiple legal relationships, so we need to establish a continuous chain of responsibility that runs through the process to establish its rule-of-law foundation.

First, follow the principle of "administrative principal responsibility." No matter what the technological development, we must not waver from the constitutional principle that administrative entities remain the primary bearers of responsibility for administrative power. Automated systems are just tools for administrative entities to exercise their authority. So, for all legal consequences that are triggered by automated administrative penalties, including the reversal of illegal facts and state compensation, the ultimate bearer of responsibility must be the administrative agency that made the penalty decision or the organization that was authorized by law or regulation to make the decision. This can also urge administrative entities to be more cautious when introducing (Mao, Mingchen, 2020)[22], manage, and supervise the technological tools they employ, preventing them from evading responsibility under the pretext of "technological neutrality" or "algorithmic autonomy."

Second, construct a liability chain of "fault and recourse." Although administrative entities are responsible for full external liability, they must clarify internal accountability. If the damage can be attributed to the technology provider—namely, the technology provider seriously violated algorithms, failed to provide services as contracted, or committed cybercrimes—after an administrative entity compensates the damaged party, it has the right to seek recourse from the faulty entity according to the liability clauses in government procurement contracts or technical service contracts (that is, administrative entities seek compensation from technology providers). Therefore, governments' contracts with technology providers must specify quality requirements for services and liability for breaches of data security, algorithm effectiveness, and system operation. This is the second link in the chain of responsibility that requires technology providers to provide products and services with higher professional attention and due diligence.

Three, differentiate "development and operations" liability for liability. When we hold technology providers accountable, we should differentiate between "algorithm development liability" and "system operation liability." Development liability refers to whether there are inherent flaws, logical errors, or discriminatory biases in the algorithm model during the design process. Operational liability refers to whether system failures after deployment were caused by improper maintenance, data pollution, upgrade errors, etc. Only by distinguishing between "fault" can we more accurately attribute fault and subsequently define compensation liability. Regulatory audits and filing reviews focus on development liability, and routine oversight focuses on operational liability.

Four, clarify the supervisory and management responsibilities of public officials. Automation does not exempt specific public officials—typically supervisors and system administrators—from their responsibilities. They have the responsibility to exercise daily supervision and management over automated administration to ensure its legality. If illegal penalties and damages are caused by intentional acts or gross negligence on the part of public officials—such as ignoring obvious vulnerabilities in the system, abusing system privileges, tampering with data, or not performing the manual verification work they are required to do—then they should bear corresponding administrative responsibility or even criminal responsibility according to the Civil Servant Law and relevant regulations. This ultimately leads to "individuals," ensuring that technology is ultimately controlled by man and serves man.

If we establish this complete chain of responsibility from "administrative entities bearing external liability" to "seeking compensation from technology providers" to "pursuing internal accountability of public officials," then in the era of automated administration, those who abuse power have no place to hide, and those who bear responsibility have a basis for their responsibility, providing the most basic security guarantee for the safe operation of the entire system.

5. Conclusion

The rise of automated administrative penalties is an inevitable product of public administration's transition into the digital age. While it delivers undeniable efficiency gains, it also poses profound structural challenges to the rule of law. This study demonstrates that the predicament is far from a mere technical issue of legal application. Rather, it represents a comprehensive assault by algorithms—a novel element of power—on the traditional administrative law framework built upon human rationality. The shift from administrative discretion to algorithmic discretion undermines the very foundation of law-based administration. The transition from "face-to-face" to "machine-to-human" procedures erodes the traditional safeguarding function of due process. Meanwhile, information asymmetry and obstructed avenues for redress have weakened the rights position of affected parties.

Faced with this systemic challenge, piecemeal fixes are no longer sufficient. Proactive, systematic reconstruction is imperative. The proposed four-pronged approach—rules, procedures, rights, and responsibilities—forms an organic whole where each element interlocks and mutually reinforces the others. Rule-based governance serves as the logical starting point for legitimate operation; procedural reconstruction provides dynamic safeguards for procedural justice; rights reinforcement constitutes the fundamental purpose of institutional design; and liability regulation acts as the ultimate deterrent ensuring all norms are implemented. This framework aims to embed

technology within the rule of law's framework, rather than allowing the rule of law to yield to technological logic.

Ultimately, in the era of automated administration, the core proposition of the rule of law remains unchanged—only its implementation scenarios and methods have evolved. Our task is not to obstruct technological progress, but to ensure, through legal innovation and theoretical renewal, that efficiency gains do not come at the expense of fairness, justice, and human dignity. Ensuring algorithms operate within regulatory boundaries, enabling programs to thrive in digital spaces, upholding rights against technological advances, and clarifying accountability within complex systems—these are both the essential path to resolving current challenges in automated administrative penalties and the imperative requirements for building a future-oriented digital administrative legal system.

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