LAW AND ECONOMY

ISSN 2788-7049 DEC. 2025 VOL.4, NO.11

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

State Compliance with the Recommendations/Decisions of the African Commission and the African Court on Human and Peoples' Rights: A Critical Appraisal

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doi:10.63593/LE.2788-7049.2025.12.001

Abstract

This study critically examines state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples' Rights, drawing on the Translational Legal Process Theory to analyze how legal norms are interpreted, internalized, and implemented within domestic contexts. The study assesses the binding nature of these decisions, identifies challenges that hinder implementation, and evaluates the practical effectiveness of the African human rights system. Employing a doctrinal research methodology, the study analyzes relevant treaties, protocols, case law, and scholarly literature to understand the factors influencing compliance. Findings reveal that compliance remains inconsistent and often partial, primarily due to political resistance, limited acceptance of the Court's jurisdiction, weak regional enforcement mechanisms, domestic legal constraints, and reluctance to implement remedial measures. The study concludes that legal bindingness alone is insufficient to guarantee compliance, emphasizing the importance of political will, domestic incorporation of judgments, and robust monitoring mechanisms. Recommendations include reaffirming state acceptance of the Court's jurisdiction, strengthening African Union oversight, domesticating Court decisions, implementing capacity-building programs for officials, and fostering collaboration between the Commission and the Court. This study contributes to the discourse on human rights enforcement in Africa and provides practical strategies to enhance state accountability and the effectiveness of regional human rights institutions.

Keywords: African Commission, African Court, critical appraisal, recommendations/decisions, and state compliance

1. Introduction

The African human rights system, as codified in the African Charter on Human and Peoples' Rights (hereinafter "African Charter" or "Banjul Charter"), represents one of the most ambitious and normatively unique regional frameworks for the promotion and protection of human rights in the Global South. Adopted on 27th June 1981 in Nairobi and entering into force on 21 October 1986, the Charter marked a historic transition in Africa's postcolonial legal order, inaugurating a *corpus juris* that affirmed both individual entitlements and collective rights, while simultaneously imposing duties on individuals.[1] The document departed from the Eurocentric template of human rights instruments by embedding within its normative fabric rights to self-determination,

[1] Article 1-29 of the African Charter on Human and Peoples' Rights 1981.

development, and solidarity-a reflection of Africa's anti-colonial struggles and the aspiration to deconstruct the judicial legacies of subjugation.[1]

Central to the operation of the Charter is the African Commission on Human Rights, established under Article 30, with the principal mandate to "promote human and peoples' rights and to ensure their protection in Africa." Its function include receiving communications (individual and inter-state) under Article 47-59, engaging in fact-finding missions, and formulating recommendations to states to ensure compliance with Charter obligations.[2] The legal nature of these recommendations is quasi-judicial: they do not constitute binding judgments but carry significant persuasive authority in shaping state practice, articulating interpretive standards and crystallizing soft law norms.[3] Cases such as *Communication 245/02: Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)*[4] exemplify how the Commission's pronouncements, though non-binding, have contributed to the gradual evolution of African human rights jurisprudence by clarifying state obligations under Article 1 and 7 of the Charter.

Nevertheless, the non-coercive character of the Commission's recommendations soon exposed a compliance deficit, with many states disregarding or selectively implementing its findings. This structural weakness necessitated the establishment of a judicial organ with binding adjudicatory authority. Thus, the 1998 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (hereinafter "Court Protocol") created the African Court on Human and Peoples' Rights (AfCHPR), which entered into force in 2004. Under Article 30 of the Protocol,[5] the Court's judgments are legally binding upon states parties, thereby transforming the African system from a recommendatory mechanism to an enforceable judicial regime.[6]

The African Court's jurisprudence demonstrates a bold interpretive posture that gives substantive force to the Charter. For instance, in *African Commission on Human and Peoples' Rights v. Libya (2011)*,[7] the Court held Libya accountable for gross violations of Article 6 and 7 of the Charter, emphasizing the state's obligations under international human rights law. Similarly, in *Tanganyika Law Society and Legal and Human Rights Centre v. Tanzania (2013)*,[8] the Court invalidated restrictions on independent candidacy as incompatible with Article 13 (right to participate freely in government), underscoring its role as a guardian of political rights. These decisions signify the normative shift from mere recommendations to binding pronouncements, thus enhancing the African human rights architecture's legal robustness.

At the doctrinal level, therefore, the African Charter's recommendations and the African Court's decisions represent two complementary enforcement modalities: one relying on the persuasive force of the soft law and the other on the compulsory authority of hard law. This dialectic between recommendatory guidance and binding adjudication underscores the African system's hybrid nature, reflective of the continent's political realities and its cautious approach to balancing state sovereignty with supranational accountability.[9]

2. Conceptual Clarifications

This section clarifies the key concepts underpinning this study, namely state compliance, recommendations/decisions, the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, and critical appraisal, in order to ensure conceptual precision and analytical coherence. By defining these terms within the context of the African human rights system, the study establishes a clear framework for examining state behavior and institutional effectiveness.

2.1 State Compliance

State compliance refers to the extent to which a State accepts, implements, and gives effect to its legal

[1] Mutual Makau Wa. (1995). The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties. *Virginia Journal of International Law*, *35*, pp. 339-380, p. 350.

[2] Article 47-59 of the African Charter on Human and Peoples' Rights 1981.

[3] Viljoen Frans. (2012). *International Human Rights Law in Africa*, 2nd Edition. Oxford: Oxford University Press, 375.

[4] *Communication 245/02: Zimbabwe Human Rights NGO Forum v. Zimbabwe* (Communication 245/02, African Commission, 2006).

[5] Article 30 of the 1998 Protocol to the African Charter on Human and Peoples' Rights.

[6] *Ibid.*

[7] *African Commission on Human and Peoples' Rights v. Libya* (Application 004/2011, AfCHPR, Judgment of 15 March 2013).

[8] *Tanganyika Law Society and Legal and Human Rights Centre v. Tanzania* (Applications 009/2011, 011/2011, AfCHPR, Judgment of 14 June 2013).

[9] Ebobrah Solomon. (2008). Towards a Positive Application of Complementarity in the African Human Rights System: Issues of Functions and Relations. *African Human Rights Law Journal*, *8*, pp. 93-118, p. 95.

obligations arising from international or regional legal instruments, decisions, or recommendations. Within the African human rights system, it specifically concerns how African States observe, execute, or adhere to the recommendations of the African Commission on Human and Peoples' Rights and the decisions of the African Court on Human and Peoples' Rights.[1] State compliance goes beyond formal acceptance or rhetorical commitment; it entails practical and effective action by the State, including legislative reforms, policy adjustments, judicial enforcement, or other remedial measures required to address human rights violations.[2] The principle of *pacta sunt servanda* under the Vienna Convention on the Law of Treaties (1969) obliges States to perform their treaty obligations in good faith, forming the legal basis for compliance.[3] Effective state compliance is crucial for the credibility, authority, and effectiveness of the African human rights protection mechanisms, whereas persistent non-compliance undermines the protection of rights and the enforcement mandate of the African Commission and Court.[4]

2.2 Recommendations/Decisions

Recommendations/Decisions refer to the authoritative findings, pronouncements, and remedial directives issued by the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights in the exercise of their mandates under the African Charter on Human and Peoples' Rights. Recommendations of the African Commission are generally non-judicial outcomes arising from communications, state reporting procedures, or thematic investigations, and although not formally binding, they carry significant normative and persuasive authority and impose a moral and political obligation on States to comply in good faith.[5] In contrast, decisions of the African Court are judicial and legally binding on States that have accepted the Court's jurisdiction, requiring concrete measures such as restitution, compensation, legislative reform, or other forms of reparation to remedy established violations.[6] Together, recommendations and decisions constitute the primary enforcement outputs of the African human rights system and are central to assessing the effectiveness of regional human rights protection and state accountability.

2.3 African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights (ACHPR) is a treaty-based, quasi-judicial supervisory body established pursuant to Article 30 of the African Charter on Human and Peoples' Rights, mandated to ensure the promotion, protection, and interpretation of the rights guaranteed under the Charter. Although the Charter does not provide an explicit statutory definition of the Commission, Articles 45–59 outline its functions, procedures, and powers, including the examination of state reports, consideration of individual and inter-state communications, undertaking of fact-finding missions, and formulation of recommendations addressed to States Parties.[7]

Scholarly commentary characterizes the ACHPR as a non-judicial or quasi-judicial body whose authority lies primarily in its interpretative competence and moral persuasion rather than binding adjudication.[8] Murray[9] further describes the Commission as the cornerstone monitoring mechanism of the African human rights system, emphasizing its role in norm development and accountability through constructive dialogue with States. While its recommendations lack formal binding force, they carry significant legal and political weight and are increasingly relied upon by domestic courts, regional bodies, and the African Court in interpreting Charter obligations.[10]

2.4 African Court on Human and Peoples' Rights (AfCHPR)

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[1] Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

[2] Shelton, D. (2000). *Commitment and compliance: The role of non- binding norms in the international legal system*. Oxford University Press.

[3] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

[4] *Ibid.*

[5] Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

[6] Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa: Causes and consequences. *European Journal of International Law, 27*(2), 293–328. https://doi.org/10.1093/ejil/chw019

[7] African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 1520 U.N.T.S. 217.

[8] Heyns, C., & Killander, M. (2016). *Compendium of key human rights documents of the African Union* (6th ed.). Pretoria University Law Press.

[9] Murray, R. (2004). *The African Commission on Human and Peoples' Rights and international law*. Hart Publishing.

[10] Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

The African Court on Human and Peoples' Rights (AfCHPR) is a judicial organ of the African Union established under Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights to complement and reinforce the protective mandate of the African Commission. Although the Protocol does not provide an express statutory definition of the Court, Articles 2–4 and 27–31 delineate its jurisdiction, contentious and advisory functions, and remedial powers, including the authority to issue binding judgments and order appropriate remedies where violations of the African Charter or other relevant human rights instruments are established.[1]

Academic commentators describe the African Court as a fully judicial and binding enforcement mechanism within the African human rights system, distinguished from the Commission by the legal finality of its decisions.[2] Gathii[3] characterizes the Court as a critical institution for strengthening judicialization and accountability in Africa, though its effectiveness is contingent upon States' acceptance of its jurisdiction and willingness to implement its judgments. In a nutshell, the Court's authority and legitimacy depend largely on state compliance, as resistance or withdrawal by States significantly undermines its enforcement capacity.

2.5 Critical Appraisal

Critical appraisal refers to a systematic, analytical, and evaluative examination of legal rules, institutions, or practices, aimed at assessing their effectiveness, coherence, limitations, and practical impact, rather than merely describing them. In legal scholarship, critical appraisal involves interrogating both the normative framework (law as written) and its operational reality (law as applied), with particular attention to gaps between legal obligations and actual outcomes.[4] It requires the identification of strengths and weaknesses, consideration of contextual factors such as political will and institutional capacity, and the proposal of reasoned reforms or improvements.

Within international and regional human rights law, critical appraisal is commonly used to evaluate the performance of enforcement mechanisms and state behavior, including the extent to which institutional mandates translate into effective protection on the ground.[5] As Hutchinson and Duncan (2012)[6] explain, critical legal analysis goes beyond doctrinal exposition by questioning assumptions, exposing structural deficiencies, and assessing whether legal regimes achieve their stated objectives. In the context of the African human rights system, a critical appraisal therefore entails evaluating how effectively the recommendations of the African Commission and the decisions of the African Court secure meaningful state compliance and advance human and peoples' rights in practice.

3. Methodology

This study adopts a qualitative research methodology which is doctrinal in nature. Qualitative research methodology is primarily exploratory that is, it is used to gain an understanding of underlying reasons, opinions and motivations.[7] This form of research makes use of non-statistical data, that is, it produces findings not arrived at by means of statistical procedures or other means of quantification and also, it attempts to understand behavior and institutions by getting to know the persons involved and other values, rituals, lives, beliefs, and emotions.

The reason the researcher used qualitative research methodology is because it enables the researcher to provide rigorous exposition, analysis, evaluation of state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples Rights.

Primary and secondary sources of data have been used in this research. Primary sources of legal information[8] are the sources which provide the information in its original form and they contain a wealth of first-hand and

[1] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

[2] *Ibid.*

[3] Gathii, J. T. (2011). *African regional trade agreements as legal regimes*. Cambridge University Press.

[4] McCrudden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, *122*, 632–650.

[5] *Ibid.*

[6] Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, *17*(1), 83–119.

[7] Susan E. Defranzo, (n.d.). What is the Difference Between Qualitative and Quantitative Research? Available online at: www.snapsurveys.com (Accessed on June 10th, 2024).

[8] Primary sources of legal information are original, authoritative materials that establish or interpret laws. These sources are typically considered most reliable and are used as the foundation for legal research.

in-depth information on a particular point.[1] Primary sources are first-hand documents that provide direct evidence on your topic.[2] In legal research, primary sources includes: treaties, international conventions, United, Nations documents, decisions of international courts (e.g., ICC, ICJ) for International Sources; Constitutions, Statutes (laws passed by legislatures), regulations (administrative laws), Court decisions (judicial precedents), government reports for national source. This study has used the African Charter on Human and Peoples Rights and the 1998 Protocol to the African Charter on Human Rights as the key primary sources in this study and a host others. Secondary sources are interpretations and evaluations of primary sources.[3] Secondary sources are not evidence, but rather commentary on and discussion of evidence; secondary sources of information furnish the information derived from primary sources for example, they include: legal commentaries, scholarly articles, textbooks, law reviews, journals, legal dictionaries, textbooks, treatises, commentaries on statutes, abstracts, bibliographies, dictionaries, encyclopedias, review, just to mention but few. This research has used these sources in this study.

4. Theoretical Framework

This study is anchored in Transnational Legal Process Theory, as articulated by Harold Hongju Koh, to analyze State compliance with the recommendations of the African Commission on Human and Peoples' Rights and the decisions of the African Court on Human and Peoples' Rights.[4]

Transnational Legal Process Theory explains compliance with international law not as a function of coercion or sanctions, but as a dynamic and iterative process through which international norms are gradually internalized into domestic legal and political systems. According to Koh, this process operates through three interrelated stages: interaction, interpretation, and internalization.[5] Repeated engagement between States and international institutions leads to the reinterpretation of obligations and, eventually, their incorporation into domestic law and practice.

This theory is particularly suitable for the African human rights system, which lacks coercive enforcement mechanisms and relies heavily on domestic implementation of regional decisions. While the African Commission issues non-binding recommendations and the African Court delivers legally binding judgments, the effectiveness of both bodies ultimately depends on the willingness and capacity of States to internalize these norms within their national legal orders. The prevalence of partial, delayed, and selective compliance among African States is therefore better explained as a failure of internalization rather than outright rejection of international obligations.

Transnational Legal Process Theory also accounts for the critical role played by domestic courts, legislatures, executive authorities, national human rights institutions, and society organizations in facilitating or obstructing compliance.

Where these actors engage constructively with regional jurisprudence, international norms are more likely to be absorbed into domestic practice. Conversely, where political resistance, weak institutions, or restricted civic space prevail, the internalization process is disrupted, resulting in non-compliance. By adopting Transnational Legal Process Theory, this study is able to critically appraise State compliance with African human rights decisions as a structural and process-oriented phenomenon, rather than a purely legal or political failure. The theory thus provides an appropriate and coherent analytical framework for assessing the effectiveness, limitations, and future prospects of the African human rights enforcement regime.

5. The Legal Framework for Recommendations/Decisions of the African Commission and the African Court on Human and Peoples' Rights

The legal framework for recommendations and decisions under the African Charter on Human and Peoples' Rights (Banjul Charter) is grounded in the Charter itself, the institutional mechanisms it created, and subsequent Protocols it created, and jurisprudence. The African human rights architecture is founded upon a dual yet complementary system: the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. While the Commission dispenses recommendations through quasi-judicial lens, the Court renders binding judgments through a robust judicial mechanism. This bifurcated structure reflects the continent's aspiration to uphold human rights through both normative influence and enforceable adjudication. What follows is an exploration of the legal grounding for Commission-made recommendations and Court-issued

[1] Phillips Mary T. (2018). *Legal Research: A Guide for Law Students*. Carolina: Carolina Academic Press, p. 125.

[2] *Ibid.*

[3] Modern Language Association. (2016). *Modern Language Association Handbook*. New York: Modern Language Association, p. 30.

[4] Koh, H. H. (1998). Bringing international law home. *Houston Law Review*, *35*, 623–681.

[5] Koh, H. H. (1997). Why do nations obey international law? *Yale Law Journal*, *106*(8), 2599–2659.

decisions, their jurisprudential weight, and the institutional synergies that strive to bridge moral persuasion with binding adjudication.

Article 30-45 of the African Charter on Human and Peoples' Rights 1981

Article 30 provides that:

"An African Commission on Human and Peoples' Rights, hereinafter called 'the Commission', shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa."[1]

Article 30 is the constitutive legal provision that creates the African Commission on Human and Peoples' Rights (ACHPR). Without this provision, there would be no institutional machinery for the enforcement and promotion of the Charter. It thus represents the institutional backbone of the African human rights system. The provision reflects the duality of functions of the Commission: promotion of rights (educative, advocacy, sensitization, advisory roles); and protection of rights (quasi-judicial functions, examination of communications, state reporting, issuance of recommendations). Therefore, by enshrining the Commission in a treaty, the Charter ensures that the Commission enjoys legal personality and treaty-based legitimacy, making it binding on state parties.

Article 45 makes provision of the functions of the functions of the Commission:

The functions of the Commission shall be:

1) To promote Human and Peoples Rights and in particular:

a. To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

b. To formulate or lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

c. Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2) Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3) Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.[2]

Article 45 of the Banjul Charter delineates the multifaceted mandate of the African Commission on Human and Peoples' Rights, vesting it with promotional, protective, and interpretive functions.[3] Amongst the most notable powers exercised under this provision is the issuance of recommendations, which, although not clothed with the force of binding judgments, have acquired significant normative authority within the African human rights system.

These recommendations arise primarily from the Commission's protective mandate, exercised in the examination of state reports, communications, or thematic studies. They are typically directed to member states and take the form of calls for legislative reforms, administrative restructuring, cessation of ongoing violations, or reparative measures for victims. While the Charter itself does not confer binding legal effect upon them, their persuasive weight is reinforced by the moral authority of the Commission and the expectation that states, having ratified the Charter, will demonstrate good faith compliance with its spirit and letter.

It has been observed that the soft-law character of these recommendations constitutes both strength and a limitation. On one hand, their non-coercive nature fosters dialogue, encourages gradual internationalization of human rights norms, and reduces the likelihood of adversarial standoffs between the Commission and states. On the other hand, the absence of enforceability mechanisms often leaves compliance at the mercy of political will, resulting in selective adherence and persistent impunity in certain jurisdictions.

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[1] Article 30 of the African Charter on Human and Peoples' Rights 1981.

[2] Article 45(-4) of the African Charter on Human and Peoples' Rights 1981.

[3] *Ibid.*

Nevertheless, recommendations pursuant to article 45 of the Banjul Charter have played a pivotal in the in the progressive development of African human rights jurisprudence. They have influenced domestic reforms, informed the interpretative practices of the African Court on Human and Peoples' Rights, and contributed to shaping continental standards on issues like freedom of expression, the rights of indigenous peoples, and the abolition of the death penalty. More importantly, they embody the principle of constructive engagement between the Commission and member states, fostering accountability while respecting the sovereignty of states.

Article 1, 3, 27, and 28 of the Protocol to the African Charter on the Establishment of the African Court 1998

Article 1 of the Protocol makes provision for the Establishment of the Court.

"There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as 'the Court'), the organization, jurisdiction and functioning of which shall be governed by the present Protocol."[1]

This provision essentially creates the African Court on Human and Peoples' Rights, complementing the protective mandate of the African Commission established under the Banjul Charter.

Article 3 of the Protocol makes provision on the jurisdiction of the Court.

1) *The jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.*
2) *In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.*[2]

Article 3(1-2) of the Protocol makes provision for the jurisdiction of the Court. This means however that, the Court only has power to handle cases brought under within the ambit of the afore-stated provisions.

Article 27(1-2) and article 28(1-7) makes provision of findings and judgments of the Court.

Article 27:

1) *If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.*
2) *In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary*.[3]

Article 28 makes provision on judgment.

1) *The Court shall render its judgment within ninety (90) days of having completed its deliberations.*
2) *The judgment of the Court decided by majority shall be final and not subject to appeal.*
3) *Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.*
4) *The Court may interpret its own decision.*
5) *The judgment of the court shall be read in open court, due notice having been given to the parties.*
6) *Reasons shall be given for the judgment of the court.*
7) *If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.*[4]

Article 28 of the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights provides that the judgments of the Court are final and binding. This means parties to a case are under a legal obligation to comply with the Court's decisions, and no further appeal is permitted.

6. An Overview of the Recommendations of the African Charter on Human and Peoples' Rights

[1] Article 1 of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

[2] Article 3(1-2) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

[3] Article 27(1-2) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

[4] Article 28(1-7) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

The African Charter on Human and Peoples' Rights stands as a pivotal framework for safeguarding dignity and justice across the continent. Its recommendations issued principally through the African Commission, function as authoritative interpretative guides that refine state obligations and illuminate the contours of human rights protection. Though not strictly binding, these recommendations possess significant normative weight, shaping state practice and fortifying Africa's evolving human rights jurisprudence.

6.1 Types of Recommendations Issued by the Commission

The African Commission on Human and Peoples' Rights, established under the African Charter of 1981, performs a tripartite role promotion, protection, and interpretation of human and peoples' rights across the continent.[1] A central feature of this mandate lies in its power to issue recommendations, which operate as authoritative interpretative tools guiding States Parties in the implementation of Charter obligations. Though not legally binding in a strict judicial sense, these recommendations carry persuasive normative weight, influencing state behavior, informing jurisprudence, and enriching the continental human rights framework. They are articulated through distinct mechanisms, including communications, periodic state reports, fact-finding missions, and thematic studies, each giving rise to a typology of recommendations.

a) Admissibility and Merits Communications Recommendations

Under article 55-59 of the African Charter,[2] the Commission examines communications alleging human rights violations, deciding admissibility and, if admissible, merits. Based on its findings, it issues recommendations such as urging investigations, compensation, legal reforms, or policy changes, and can propose friendly settlements or provisional measures to prevent irreparable harm.[3]

b) Concluding Observations from Periodic State Reports

Pursuant to article 62 of the Charter, States must submit periodic reports on measures taken to implement Charter rights.[4] The Commission reviews these, issues including observations, and offers recommendation addressing positive developments, gaps, or non-compliance, guiding legislative, institutional, or policy reforms. The Commission adopted guidelines in its 3rd Ordinary Session (1988) to standardize report form and substance. In a nutshell, recommendations from periodic state reports arise from the examination of state reports under Article 62 of the Charter. These recommendations guide states on legislative, institutional, and policy reforms needed to enhance compliance.

c) Recommendations from Fact-Finding, Investigative, and Promotional Missions

The Commission may conduct promotional or fact-finding missions to States facing allegations of serious or widespread rights violations.[5] Such missions yield detailed recommendations for remedial actions, legal reforms, accountability, and reconciliation. The Commission deploys mechanisms including fact-finding missions, country visits, and then formulates recommendations based on findings.[6] Rule 83 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules), requires the preparation of mission reports, which contain findings and recommendations transmitted to the concerned State and later made public. This class of recommendation is conducted in response to allegations of serious or massive human rights violations, and they contain practical measures for ending abuses, ensuring accountability, and promoting reconciliation.

d) Thematic Recommendations, General Comments, and Normative Guidelines

Developed through studies, resolutions, and thematic reports on specific rights (example, Freedom of expression, rights of women, indigenous peoples). Through these mechanisms such as special rapporteurs, working groups, and committees, the Commission issues thematic recommendations, general comments, and guidelines on human rights issues like women's rights, freedom of expression, indigenous populations, and torture. These provide authoritative interpretations and normative clarity. The Charter authorizes the Commission to "draw inspiration from international law… and consider subsidiary measures… general principles… legal precedents

[1] Article 45 of the African Charter on Human and Peoples' Rights 1981.

[2] Article 55-59 of the Banjul Charter 1981.

[3] Rules 119-120 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules).

[4] Article 62 of the African Charter on Human and Peoples' Rights 1981.

[5] Article 45(1)(a)-(c) of the Banjul Charter 1981, mandates the Commission to "promote human peoples' rights," "collect documents, undertake studies and research," and "cooperate with other African and international institutions concerned with the promotion and protection of human rights."

[6] Rule 81 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules).

and doctrine" under article 60-61 of the African Charter on Human and Peoples' Rights.[1]

e) Institutional and Procedural Recommendations

The Commission often issues internal or institutional recommendations, addressed to itself or State Parties for improving the functioning, transparency, and effectiveness of the human rights system (example, enhancing reporting systems, integrating Charter provisions into domestic law, strengthening human rights training).[2]

6.2 Procedure for Adopting Recommendations

The procedure for adopting recommendations under the African Charter on Human and Peoples' Rights begins with the reception of communications, reports, or information before the African Commission on Human and Peoples' Rights (ACHPR). These may arise from individual or NGO communications alleging violations of the Charter,[3] periodic state reports submitted under Article 62, or through fact-finding and promotional missions conducted by the Commission and its special mechanisms.

Once a matter is seized, the African Commission considers it during its sessions. In relation to communications, the Commission examines both admissibility under Article 56 of the Charter and merits of the case. For state reports, the procedure involves an interactive dialogue between the Commission and the reporting State, aimed at evaluating the extent of compliance with Charter obligations. Fact-finding or promotional missions, in turn, lead to the preparation of draft findings. In each scenario, the Commission formulates draft recommendations addressing the issues at stake.

The recommendations are formally adopted by the Commissioners present and voting in private deliberations. These recommendations may take several forms, including findings of violations accompanied by proposed remedies such as compensation, legislative reforms, or institutional changes. They may also be expressed as general comments, guidelines, or resolutions intended to provide interpretive or normative guidance on the Charter's provisions.

Following adoption, the recommendations are communicated to the concerned State Party and subsequently incorporated into the Commission's Activity Report pursuant to Article 54 of the Charter.[4] This Activity Report is transmitted through the African Union (AU) Executive Council to the Assembly of Heads of State and Government, which has the authority to consider and adopt the report. At this stage, States sometimes raise objections or enter reservations to certain recommendations.[5]

Once the AU Assembly adopts the Activity Report, the recommendations acquire formal recognition as pronouncements of the African Commission. Although they are not legally binding in the same manner as judgments of the African Court on Human and Peoples' Rights, they carry considerable persuasive, moral, and political authority. Implementation is expected in good faith, and the Commission engages in follow-up through its state reporting procedure, promotional visits, and ongoing dialogue with States.

6.3 Legal Character and Authority of Recommendations

The legal character and authority of recommendations under the African human rights system derives primarily from the African Charter on Human and Peoples' Rights of 1981 ("Banjul Charter"). Article 45 of the Charter vests the African Commission on Human and Peoples' Rights with the mandate to "formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms" and "to make recommendations to Governments."[6]

Likewise, Article 58 empowers the Commission, in serious or massive violations, to draw the attention of the Assembly of Heads of State and Government of the African Union and to make appropriate recommendations.[7] Furthermore, Articles 55–59 govern the communications procedure, through which the Commission receives complaints from states or individuals and, after examining admissibility and merits, issues recommendations to the state concerned (see *Communication 155/96, Social and Economic Rights Action Center (SERAC) and Another v. Nigeria*).[8] The Rules of Procedure of the African Commission (2020, Part II, Rules 79–112) also

[1] Article 60-61 of the African Charter on Human and Peoples' Rights 1981.

[2] Traceable under Article 45-46 of the African Charter on Human and Peoples' Rights 1981.

[3] Article 55-59 of the African Charter on Human and Peoples' Rights 1981.

[4] Article 54 of the Banjul Charter 1981.

[5] *Ibid.*

[6] Article 45 of the African Charter on Human and Peoples' Rights 1981.

[7] Article 58 of the African Charter on Human and Peoples' Rights 1981.

[8] Communication 155/96, Social and Economic Rights Action Center (SERAC) and Another v. Nigeria) 2001.

regulate the formulation and transmission of recommendations, reinforcing their legal character as measures expressly provided for under treaty-based authority. In addition, recommendations often flow from promotional missions, fact-finding missions, and investigative missions, which are expressly envisaged under Articles 45(1)(a), 46, and 62 of the Charter,[1] as well as Part III of the Commission's Rules of Procedure.

In terms of authority, recommendations are formally non-binding since the Charter does not grant the Commission judicial powers comparable to the African Court on Human and Peoples' Rights. The African Court, established by the 1998 Protocol to the African Charter, issues binding judgments under Article 30 of the Protocol,[2] which clearly obliges states to comply. By contrast, the Charter and the Commission's constitutive instruments stop short of imposing such legal obligation in respect of recommendations. However, recommendations retain significant interpretative authority as they represent the Commission's official interpretation of the Charter, which states are treaty-bound to respect under Article 1 of the Charter.[3] The African Union Executive Council has also on several occasions adopted decisions calling on member states to comply with Commission recommendations (see e.g., AU Executive Council Decisions EX.CL/Dec.101 (V) and EX.CL/Dec.310 (IX)), thereby strengthening their political authority.[4]

Moreover, recommendations acquire practical weight through the state reporting system under Articles 62–64 of the Charter,[5] where the Commission engages states in constructive dialogue and follows up on compliance. Their persuasive force is also recognized by national courts and regional institutions; for example, Nigerian courts have cited the Commission's reasoning in domestic human rights adjudication. At a broader level, the Commission's recommendations contribute to the development of soft law within international human rights, shaping customary interpretations and guiding judicial decisions of the African Court and UN treaty bodies. Thus, even if not formally enforceable, the combination of treaty-based authority, political endorsement by AU organs, and moral legitimacy gives recommendations a quasi-legal character that exerts continuing influence on state practice and the evolution of human rights norms in Africa.

6.4 Challenges to the Effectiveness of Recommendations Issued by the African Commission

The effectiveness of the recommendations issued by the African Commission on Human and Peoples' Rights has been persistently challenged by both structural weaknesses within the African Charter system and domestic obstacles in member states. A primary challenge lies in the non-binding legal character of the Commission's recommendations. Unlike judgments of the African Court, the Charter provisions (Articles 45–59)[6] empower the Commission to consider communications and make recommendations but do not expressly establish their binding force. This "quasi-judicial" or soft-law status, as noted by scholars such as Rachel Murray[7] and Frans Viljoen,[8] has meant that many states treat recommendations as advisory rather than obligatory, thereby undermining compliance. The problem is compounded by the weakness of follow-up and monitoring mechanisms. The Commission has historically lacked robust procedures for systematically supervising whether states have implemented its recommendations. Although Article 62 of the African Charter[9] requires periodic reports from states on legislative and other measures taken to give effect to rights, many states either delay or fail to submit such reports. As a result, recommendations risk remaining on paper without effective monitoring or accountability. Even the recent efforts to strengthen follow-up through revised Rules of Procedure have not fully resolved this gap. Another significant obstacle is the Commission's dependence on the political organs of the African Union. Because the Commission lacks its own enforcement arm, it relies on the AU Assembly or Executive Council to take political measures that could compel compliance. In practice, however, these bodies often prefer consensus and non-confrontation, rarely censuring states for non-implementation of recommendations. This dependence greatly dilutes the Commission's authority and reinforces the perception that its recommendations are politically negotiable rather than legally enforceable.

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[1] Articles 45(1)(a), 46, and 62 of the 1981 Banjul Charter.

[2] Article 30 of the 1998 Protocol to the African Charter on Human and Peoples' Rights 1981.

[3] Articles 1 of the Banjul Charter 1981.

[4] *Ibid.*

[5] Article 62-64 of the 1981 Banjul Charter 1981.

[6] Article 45-59 of the African Charter on Human and Peoples' Rights 1981.

[7] Rachel Murray. (2000). *The African Commission on Human and Peoples' Rights and International Law*. Oxford: Hart Publishing, p. 24.

[8] Frans Viljoen. (2007). State Compliance with the Recommendations of the African Commission on Human and Peoples Rights. *American Journal of International Law*, *101*, pp. 1-34, p. 25.

[9] Article 62 of the Banjul Charter 1981.

At the domestic level, constitutional and legal barriers further inhibit effectiveness. Many African states, particularly those with dualist legal systems such as Nigeria, require treaties and related obligations to be incorporated into national law through legislation before they can be enforced domestically. In such contexts, recommendations of the Commission are rarely given effect unless parliament enacts enabling measures. This legal hurdle is exacerbated by political resistance and sovereignty concerns. Governments often perceive Commission recommendations as interference in sensitive domestic matters, especially in cases that implicate state security, governance structures, or minority rights. The landmark case of *SERAC v. Nigeria*,[1] in which the Commission recommended extensive remedial measures concerning the Ogoni people, illustrates how states may simply refuse to act on findings that challenge entrenched political and economic interests. Even when political will exists, resource and capacity constraints can impede implementation. Some recommendations require substantial financial resources, institutional reforms, or technical expertise that are not readily available in many member states.[2] This reflects the broader "managerial" perspective on compliance, articulated by Abram and Antonia Chayes,[3] which stresses that non-compliance often stems from capacity deficits rather than deliberate defiance. In practice, however, the lack of resources translates into delayed, partial, or inadequate implementation of Commission recommendations.[4]

Another critical but less visible challenge is the lack of awareness and domestic dissemination of recommendations. Often, Commission findings are not widely circulated within national legal systems, meaning that courts, parliaments, and civil society remain unaware of the recommendations directed at their states. Without domestic visibility, recommendations fail to generate the necessary political and social pressure for implementation. Reports by scholars and civil society groups such as "Watch Africa" underscore that awareness gaps weaken local accountability and advocacy efforts.

Finally, the Commission suffers from a lack of coercive remedies for non-compliance. Unlike the African Court, which can at least report persistent non-compliance to the AU Assembly under Article 30 of its Protocol,[5] the Commission has no clear enforcement tools. Its recommendations rely essentially on persuasion, reporting, and the goodwill of states. Consequently, states that are unwilling to comply face little to no tangible consequence, reinforcing a pattern of selective or non-implementation.

In sum, the effectiveness of recommendations under the African Charter is undermined by a combination of structural, political, and practical challenges. The absence of binding force, weak follow-up mechanisms, reliance on AU political bodies, constitutional barriers, lack of political will, resource constraints, poor dissemination, and the absence of coercive remedies together erode their impact. Addressing these challenges requires both systemic reforms such as: strengthening monitoring and granting clearer binding authority and domestic measures, including legal incorporation, enhanced awareness, and stronger political commitment. Without such reforms, the Commission's recommendations risk remaining largely aspirational rather than transformative in practice.

7. An Overview of the Decisions of the African Charter on Human and Peoples' Rights

The decisions issued under the African Charter on Human and Peoples' Rights constitute the principal interpretative and enforcement mechanisms for the protection of human rights within the African regional system. These decisions emerge primarily from the African Commission on Human and Peoples' Rights and, more recently, the African Court on Human and Peoples' Rights, both of which are mandated to interpret the Charter, determine alleged violations, and provide authoritative guidance on states' obligations. Through communications, advisory opinions, and judgments, these bodies have progressively clarified the substantive content of civil, political, economic, social, and cultural rights, as well as collective peoples' rights, while addressing persistent challenges such as state responsibility remedies, and compliance. An overview of these decisions therefore provides a foundation for understanding how the Charter has evolved from a normative instrument into a practical framework shaping human rights standards and accountability across Africa.

7.1 Jurisdiction of the Court

The jurisdiction of the African Court on Human and Peoples' Rights (AfCHPR) is defined in the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the Court, which came into force

[1] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples' Rights, 30th Ordinary Session, Banjul, The Gambia, October 2001.

[2] *Ibid.*

[3] Chayes Abram *et al*. (1993). On Compliance. *Journal of International Organization*, *47*, pp. 175-205, p. 187.

[4] *Ibid.*

[5] Article 30 of the 1998 Protocol to the Banjul Charter 1981.

in 2004. Its scope covers contentious, advisory, and remedial jurisdiction. To understand its mandate more clearly, its competence can be analyzed under the dimensions of content jurisdiction (ratione materiae), personal jurisdiction (ratione personae), temporal jurisdiction (ratione temporis), and territorial jurisdiction (ratione loci).

7.1.1 Content Jurisdiction (Ratione Materiae)

The material jurisdiction of the Court is articulated in Article 3(1) of the Protocol,[1] which grants the Court competence "in all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned." This broad provision distinguishes the African Court from its European and Inter-American counterparts by allowing it to interpret not only the African Charter but also other human rights treaties ratified by African states, such as the ICCPR, CEDAW, or the African Charter on the Rights and Welfare of the Child. As Frans Viljoen[2] notes, this provision creates a "unique and expansive jurisdictional reach" that potentially enhances the Court's authority in developing cross-cutting human rights jurisprudence. The Court has used this competence in cases such as *African Commission on Human and Peoples' Rights v. Libya* (2011),[3] where it applied both the Charter and other relevant treaties.

7.1.2 Personal Jurisdiction (Ratione Personae)

The personal jurisdiction of the Court concerns the entities entitled to bring cases before it. Under Article 5 of the Protocol,[4] the Court may receive cases from the African Commission, state parties to the Protocol, and African intergovernmental organizations. More significantly, Article 5(3) provides that individuals and NGOs with observer status before the Commission may directly access the Court, but only if the respondent state has deposited the optional declaration under Article 34(6) of the Protocol.[5] In practice, this provision has limited access, since fewer than ten states have made the declaration and some like Tanzania, Rwanda, and Benin later withdrew it after adverse judgments. Rachel Murray[6] observes that the restrictive nature of Article 34(6) has significantly undermined the accessibility of the Court, leaving many potential victims dependent on the Commission or states to submit cases. This differentiates the African Court from the European Court of Human Rights, where individuals have automatic access.

7.1.3 Temporal Jurisdiction (Ratione Temporis)

The Court's temporal jurisdiction is determined by the date on which the Protocol entered into force for the state concerned, and the date when the relevant human rights treaty was ratified by that state. A state cannot be held accountable for violations occurring before it ratified the Protocol or the relevant instrument, unless the violations are continuing in nature. This principle has been affirmed in cases such as *Alex Thomas v. Tanzania* (2015),[7] where the Court clarified that while it could not review events predating Tanzania's ratification of the Protocol, it could examine continuing violations that persisted after ratification. Viljoen[8] highlights that this approach is consistent with international law principles governing ratione temporis jurisdiction.

7.1.4 Territorial Jurisdiction (*Ratione Loci)*

The territorial jurisdiction of the Court extends to violations committed within the territory of any state party to the Protocol, provided that the state has ratified the relevant instrument. However, the Court has also considered cases with extraterritorial implications, particularly where a state exercises jurisdiction or effective control outside its borders. For example, in *African Commission on Human and Peoples' Rights v. Libya* (2011),[9] the Court examined Libya's actions against individuals irrespective of their location, underscoring that the decisive

[1] Article 3(1) of the 1998 Protocol to the Banjul Charter 1981.

[2] *Ibid.*

[3] African Commission on Human Rights v. Great Socialist Peoples' Libyan Arab Jamahiriya, Application No. 004/2011, Judgment of 3 June 2016 (African Court on Human and Peoples' Rights).

[4] Article 5 of the 1998 Protocol to the Banjul Charter 1981.

[5] Article 5(3) of the 1998 Protocol to the Banjul Charter 1981.

[6] *Ibid.*

[7] *Alex Thomas v. United Republic of Tanzania,* Application No. 005/2013, Judgment of 20 November 2015, African Court on Human and Peoples' Rights.

[8] *Ibid.*

[9] African Commission on Human Rights v. Great Socialist Peoples' Libyan Arab Jamahiriya, Application No. 004/2011, Judgment of 3 June 2016 (African Court on Human and Peoples' Rights).

factor is the exercise of jurisdiction by the state. As Murray[1] explains, this reflects the Court's willingness to adopt a flexible understanding of territorial jurisdiction in line with broader international human rights jurisprudence.

In summary, the African Court on Human and Peoples' Rights exercises jurisdiction under four dimensions. Its content jurisdiction (Article 3) is expansive, covering the African Charter and other relevant human rights treaties ratified by states. Its personal jurisdiction (Article 5 and 34(6)) is more restrictive, with direct access for individuals and NGOs heavily curtailed. Its temporal jurisdiction limits cases to violations occurring after ratification of the Protocol or relevant treaty, unless they are continuing violations. Finally, its territorial jurisdiction extends to all violations within the territory of state parties, and in certain cases, to situations where states exercise extraterritorial jurisdiction. Scholars such as Rachel Murray and Frans Viljoen underline that while the Court has broad material competence, its effectiveness has been undermined by restricted personal access and inconsistent state compliance. Nonetheless, the Court remains a pivotal institution in advancing human rights protection in Africa.

7.2 Nature and Binding Force of Decisions

The decisions of the African Court on Human and Peoples' Rights are judicial in nature and legally binding on States that have ratified the Protocol establishing the Court and accepted its jurisdiction. Article 30 of the Protocol expressly obliges States Parties to comply with the Court's judgments in any case to which they are parties, thereby conferring enforceable legal authority on its decisions.[2] In contrast, the findings and recommendations of the African Commission on Human and Peoples' Rights are quasi-judicial and non-binding, as the Commission primarily exercises a supervisory and interpretative mandate under the African Charter rather than adjudicatory powers.[3] Nonetheless, the Commission's recommendations possess considerable normative and persuasive value, contributing to the interpretation of Charter obligations and influencing State conduct. Despite the formal distinction in binding force, scholarly analysis indicates that the practical effectiveness of both the Court's judgments and the Commission's recommendations largely depends on State cooperation, political will, and domestic implementation mechanisms, with persistent non-compliance undermining the authority and credibility of the African human rights system.[4]

7.3 Challenges of State Compliance with the Decisions of the African Court on Human and Peoples' Rights

Despite the legally binding nature of its judgments, state compliance with the decisions of the African Court on Human and Peoples' Rights remains inconsistent and fraught with challenges. One of the foremost obstacles is the limited acceptance of the Court's jurisdiction, particularly the withdrawal or non-deposit of the Article 34(6) declaration, which allows individuals and NGOs direct access to the Court. States such as Rwanda, Tanzania, Benin, and Côte d'Ivoire have withdrawn their declarations following adverse judgments, significantly constraining the Court's reach and undermining its authority.[5]

A second major challenge is the lack of effective enforcement mechanisms at the regional level. While Article 30 of the Court's Protocol obliges States to comply with judgments, the Court lacks coercive powers to ensure execution. Compliance monitoring is largely entrusted to the Executive Council of the African Union, a political body whose responses are often weakened by diplomatic considerations and solidarity among States.[6] As a result, implementation frequently depends on the goodwill and political will of the respondent State.

Domestic legal and institutional constraints further impede compliance. In several jurisdictions, including Tanzania and Kenya, challenges arise from the absence of clear domestic procedures for incorporating and enforcing international court judgments, as well as conflicts between domestic law and the Court's rulings.[7] Weak judicial independence, limited awareness of the Court's authority, and bureaucratic inertia also contribute to delays or partial implementation of judgments.

Financial and remedial obligations imposed by the Court present additional difficulties. Orders requiring

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[1] *Ibid.*

[2] African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 1520 U.N.T.S. 217.

[3] *Ibid.*

[4] *Ibid.*

[5] Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa: Causes and consequences. *European Journal of International Law, 27*(2), 293–328. https://doi.org/10.1093/ejil/chw019

[6] Murray, R. (2019). The African Court on Human and Peoples' Rights. In R. Murray & D. Long (Eds.), *The implementation of human rights judgments* (pp. 141–160). Cambridge University Press.

[7] Gathii, J. T. (2011). *African regional trade agreements as legal regimes*. Cambridge University Press.

compensation, legislative reform, or institutional restructuring are often met with resistance due to budgetary constraints or political sensitivity, particularly where compliance may expose systemic human rights failures. For instance, prolonged delays in implementing reparations ordered against Burkina Faso and Tanzania illustrate the reluctance of States to fully execute remedial measures with far-reaching implications.[1] Collectively, these challenges demonstrate that legal bindingness alone is insufficient to secure compliance. The effectiveness of the African Court ultimately depends on strengthened political commitment by States, enhanced domestic implementation mechanisms, and more robust follow-up procedures within the African Union framework.

8. A Critical Appraisal of State Compliance to Recommendations and Decisions

State compliance with the recommendations of the African Commission on Human and Peoples' Rights and the judgments of the African Court on Human and Peoples' Rights remains uneven and generally weak. This section critically examines the structural causes of non-compliance, illustrated with practical examples from State practice.

8.1 Deficit of Political Will and Sovereignty Resistance

A major reason for non-compliance is the absence of political will, particularly where decisions threaten State authority or expose political actors to accountability. A notable example is *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, where the African Commission found violations relating to torture and unlawful detention and recommended legislative reform and compensation.[2] Despite the clarity of these recommendations, Zimbabwe failed to fully implement them, citing internal political and security considerations. This case demonstrates how States often subordinate human rights obligations to domestic political priorities. Similarly, in *Media Rights Agenda v. Nigeria*, the Commission recommended repeal of repressive military decrees restricting freedom of expression. Although Nigeria later transitioned to civilian rule, full legislative alignment with the Commission's recommendations was slow and selective, highlighting how sovereignty concerns and regime interests delay compliance.[3]

8.2 Weak Enforcement and Follow-Up Mechanisms

The African Commission lacks coercive powers, and the African Court depends on political organs of the African Union for enforcement. This institutional weakness emboldens States to ignore decisions with minimal consequences. For instance, in *Jawara v. The Gambia*, the African Commission found multiple violations and issued remedial recommendations. For several years, The Gambia failed to implement the recommendations until a change in political leadership occurred. Compliance, therefore, resulted from political transition rather than institutional enforcement.[4]

In relation to the African Court, Tanganyika Law Society and Reverend Christopher *Mtikila v. Tanzania* illustrates this problem. The Court ordered Tanzania to amend its constitutional framework to allow independent political candidates. Tanzania acknowledged the judgment but delayed constitutional reform and later withdrew its Article 34(6) declaration, effectively insulating itself from further individual petitions.[5]

8.3 Inadequate Domestic Incorporation of Regional Decisions

Many States operate dualist legal systems where international decisions do not have automatic domestic effect. In *Konaté v. Burkina Faso*, the African Court ordered Burkina Faso to amend its criminal defamation laws. Burkina Faso is often cited as a positive example because it partially complied by revising its legislation. However, the delay in implementation and the limited scope of reforms underscore how domestication processes can slow or dilute compliance.[6]

Conversely, in *African Commission on Human and Peoples' Rights v. Kenya (Ogiek case)*, although Kenya publicly accepted the Court's judgment recognizing the Ogiek community's land rights, domestic implementation-particularly restitution and compensation-has been slow, reflecting the difficulty of translating

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[1] *Ibid.*

[2] African Commission on Human and Peoples' Rights. (2006). *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (Comm. No. 245/02).

[3] Viljoen, F. (2007). State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994–2004. *American Journal of International Law*, *101*(1), 1.

[4] Murray, R. (2022). *The African Charter on Human and Peoples' Rights: A commentary* (2nd ed.). Oxford University Press.

[5] Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa. *European Journal of International Law*, *27*(2), 293–328. https://doi.org/10.1093/ejil/chw019

[6] Killander, M. (2016). The role of domestic courts in the enforcement of decisions of the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, *16*(1), 1–28.

regional decisions into enforceable domestic action.[1]

8.4 Institutional Capacity and Administration Constraints

Even where States express willingness to comply, institutional weakness and lack of resources hinder implementation. In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International v. Kenya (Endorois case)*, the African Commission recommended restitution of ancestral land and compensation. While Kenya took some consultative steps, full restitution and benefit-sharing mechanisms were not implemented for years due to administrative complexity and inter-ministerial coordination failures.[2] This example highlights how structural remedies such as land reform or community compensation require administrative capacity that many States lack.

8.5 Retreat from the Jurisdiction of the African Court

State withdrawal from the Court's jurisdiction represents a significant compliance challenge. Tanzania, Rwanda, Côte d'Ivoire, and Benin withdrew their Article 34(6) declarations following adverse judgments. Rwanda's withdrawal occurred after the Court ordered it to allow a retrial in *Ingabire Victoire Umuhoza v. Rwanda*.[3] These withdrawals significantly curtailed individual access to justice and weakened the Court's authority.[4] Such actions demonstrate that some States prefer jurisdictional exit over substantive compliance.

8.6 Weak Domestic Pressure and Civil Society Constraints

Compliance is strongly influenced by the presence of active civil society and independent institutions. In *SERAC and CESR v. Nigeria*,[5] the African Commission's landmark decision on environmental and socio-economic rights gained international recognition, yet implementation remained limited for years due to weak domestic enforcement and repression of civil society actors during military rule. Progress only emerged after sustained NGO advocacy and international pressure.[6] This case illustrates how, in the absence of domestic pressure, even groundbreaking decisions may remain largely declaratory.

8.7 Critical Synthesis

These practical examples confirm that non-compliance with the recommendations and decisions of the African Commission and the African Court is systemic rather than exceptional. Political resistance, weak enforcement mechanisms, limited domestication, institutional incapacity, jurisdictional retreat, and constrained civic space collectively undermine implementation. While a few States demonstrate partial or progressive compliance, the prevailing pattern reveals a gap between normative commitment and practical execution.

9. Findings

The study finds that compliance by States with the decisions of the African Court on Human and Peoples' Rights is generally low and inconsistent, notwithstanding the binding nature of the Court's judgments. Implementation of decisions is frequently partial or delayed, reflecting a persistent gap between legal obligation and practical enforcement.

It further found out that limited acceptance of the Court's jurisdiction, particularly through the withdrawal of the Article 34(6) declaration by several States, significantly undermines compliance and access to justice. This trend illustrates a pattern of political resistance to adverse judicial outcomes.

The findings also reveal that weak regional enforcement and follow-up mechanisms within the African Union contribute substantially to non-compliance. Oversight by political organs lacks coercive capacity, allowing States to disregard judgments without immediate consequences.

Additionally, the study finds that domestic legal and institutional constraints, including the absence of implementing legislation and conflicting national laws, impede the execution of the Court's decisions in many jurisdictions.

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[1] African Court on Human and Peoples' Rights. (2017). *African Commission on Human and Peoples' Rights v. Kenya (Ogiek case)*.

[2] African Commission on Human and Peoples' Rights. (2010). *Centre for Minority Rights Development (Kenya) and Minority Rights Group International v. Kenya* (Comm. No. 276/03).

[3] *Ingabire Victoire Umuhoza v. Republic of Rwanda*, ApplicationNo. 003/2014, African Court on Human and Peoples' Rights [2018] AfCHPR 73 (7 December 2018).

[4] *Ibid.*

[5] Social and Economic Rights Action Center (SERAC) & Centre for Economic and Social Rights v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples' Rights [2001] ACHPR 35 (27 October 2001)

[6] *Ibid.*

Finally, it is found that orders requiring financial compensation or structural reform face the highest levels of resistance, as States tend to comply more readily with declaratory relief than with remedial measures involving political or economic costs.

10. Conclusion

This study has critically examined state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples' Rights, with particular emphasis on the binding force, implementation challenges, and practical effectiveness of the African human rights system. The analysis demonstrates that, despite the formal legal authority of the African Court's judgments and the normative significance of the Commission's recommendations, state compliance remains largely inconsistent and inadequate.

The study concludes that the principal obstacles to compliance stem from political resistance, limited acceptance of the Court's jurisdiction, weak enforcement and follow-up mechanisms within the African Union, and domestic legal and institutional constraints. The withdrawal of Article 34(6) declarations by several States underscores a broader tension between state sovereignty and supranational judicial oversight, revealing a reluctance by States to subject themselves fully to binding regional adjudication.

Furthermore, the conclusion affirms that legal bindingness alone is insufficient to ensure effective implementation. Compliance is significantly influenced by political will, domestic incorporation of international obligations, and the availability of institutional mechanisms capable of translating regional judgments into national practice. Where judgments require financial compensation or structural reforms, resistance is particularly pronounced, resulting in delayed or selective compliance.

Ultimately, the study concludes that strengthening state compliance within the African human rights system requires not only legal obligation but also enhanced political commitment, improved domestic implementation frameworks, and more robust monitoring mechanisms at the regional level. Without these complementary measures, the transformative potential of the African Commission and the African Court in protecting human and peoples' rights will remain constrained.

11. Recommendations

11.1 Reaffirmation and Expansion of Court Jurisdiction

African States should maintain and expand acceptance of the African Court's jurisdiction, particularly through the Article 34(6) declaration, which allows individuals and NGOs direct access. Sustained engagement strengthens accountability, ensures broader access to justice, and prevents selective compliance, as demonstrated by withdrawals in States such as Tanzania and Rwanda.

11.2 Strengthening Regional Monitoring and Enforcement

The African Union should enhance oversight of Court judgments and Commission recommendations through clear compliance timelines, periodic reporting, and accountability measures for non-compliance. Effective monitoring would transform judgments from symbolic pronouncements into enforceable obligations, increasing the credibility of the African human rights system.

11.3 Domestication of Court Decisions

States should integrate African Court judgments into domestic law and judicial practice, ensuring that decisions have practical effect within national jurisdictions. Domestication reduces conflicts between international and national law and empowers domestic courts to enforce human rights protections directly.

11.4 Capacity-Building and Awareness Programs

Judges, legislators, and public officials should be trained on the binding nature of Court decisions and the normative value of Commission recommendations. Increased awareness fosters institutional compliance, reduces resistance, and strengthens the culture of respect for regional human rights obligations.

11.5 Enhanced Collaboration Between the Commission and the Court

The African Commission and African Court should coordinate follow-up, monitoring, and reporting mechanisms, ensuring timely implementation of recommendations and judgments. Collaboration reduces duplication, reinforces the authority of both institutions, and maximizes the practical impact of the African human rights system.

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

Research on Compliance and Cross-Border Transfer Technology of Customer Data in Financial CRM Systems

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doi:10.63593/LE.2788-7049.2025.12.002

Abstract

In the context of the global data regulatory system reconstruction, customer data in financial CRM systems, characterized by sensitivity and cross-border mobility, face the core dilemma of "imbalance between compliance and transfer efficiency." Based on the 2024 industry report by the International Financial Association and practical scenarios of multinational securities brokers, this paper proposes a three-dimensional technical framework of "dynamic grading – encryption adaptation – on-chain notarization" through literature research, model construction, and empirical testing. Using a sample of one million customer data records from a multinational securities broker, the results show that the framework achieves a compliance pass rate of 100%, reduces transfer latency from 189ms to 32ms (an improvement of 83%), lowers compliance audit labor costs by 42%, shortens the duration of cross-border business processing by 73%, and increases customer satisfaction by 27%. This study establishes a dynamic grading model for financial data across jurisdictions for the first time, filling the theoretical gap in balancing "compliance and efficiency." The technical solution has been implemented in three multinational financial institutions, reducing compliance risk losses by over 20 million yuan annually, providing practical references for the data security governance of financial technology.

Keywords: financial CRM system, customer data grading, cross-border data transfer, compliance governance, encryption adaptation, consortium chain notarization, dynamic grading model, homomorphic encryption, regulatory sandbox, data security governance, cross-jurisdictional compliance

1. Introduction

1.1 Research Background

In the current era of deep integration between the digital economy and financial globalization, financial CRM systems have become the core vehicle for multinational financial institutions to integrate customer resources and optimize service experience. These systems store customer data, including sensitive information such as account details, transaction records, and credit reports, with increasing demands for cross-border data transfer. However, the fragmented reconstruction of global data regulatory policies poses severe challenges to compliance management.

The EU GDPR explicitly requires cross-border data transfers to meet "adequacy decisions" or "appropriate safeguards." China's Personal Information Protection Law and Data Export Security Assessment Measures set strict security assessment thresholds for data exports in key areas such as finance. The United States and Southeast Asia have also introduced targeted regulatory rules. The 2024 report by the International Financial Association shows that, affected by the overlap of regulations in multiple regions, the compliance costs for cross-border data transfers by global financial institutions have increased by 37% compared to five years ago, and nearly 40% of institutions have been penalized for non-compliance.

1.2 Research Questions

Based on the above industry pain points and practical difficulties, this paper focuses on three core research questions: First, how to construct a dynamic grading system for financial customer data that is adaptable across jurisdictions, achieving precise identification and real-time adjustment of sensitive information, solving the lag issue of traditional static grading; second, how to design a differentiated encryption adaptation mechanism, matching the optimal encryption scheme for different levels of data to balance the core paradox between compliance security and transfer efficiency; third, how to use on-chain notarization technology to build a full-chain traceability system for cross-border transfers, reducing compliance audit costs and improving regulatory collaboration efficiency.

1.3 Research Significance

The theoretical significance of this paper lies in the first integration of three related theories to construct a three-dimensional technical framework of "dynamic grading – encryption adaptation – on-chain notarization," filling the theoretical gap in cross-jurisdictional financial data grading compliance and efficient transfer. The three-dimensional grading index system and dynamic grading algorithm enrich the theoretical model of financial data grading. The integration of differentiated encryption adaptation and consortium chain notarization also provides a theoretical paradigm of "compliance – efficiency – traceability" in a three-in-one manner. In practice, the solution has been implemented in three multinational financial institutions, achieving dual optimization of compliance risk and operational costs through three core technologies. In practice, the compliance pass rate reaches 100%, and the maintenance cost is reduced by 29%, providing a replicable and promotable cross-border data governance solution for other financial fields.

2. Literature Review

2.1 Research Status of Financial Data Compliance Governance

In the research on cross-border data transfer compliance frameworks, foreign studies focus on the GDPR "adequacy decision" system, proposing compliance solutions such as standard contractual clauses, but are limited to the EU single regulatory system and lack cross-regional regulatory rule coordination and adaptation analysis. Domestic research centers on the data export security assessment under the Personal Information Protection Law, focusing on declaration requirements and risk points, but does not sufficiently integrate cross-jurisdictional compliance rules. Financial data grading standard research is mostly based on the inherent sensitivity of data, using rule-based grading with manually set thresholds, without considering dynamic factors such as cross-border transfer frequency and regulatory requirements of the target region. The industry's static grading model also fails to meet the dynamic compliance needs of real-time cross-border transactions.

2.2 Research Progress on Data Grading and Encryption Technology

In terms of data grading algorithms, traditional rule-based methods are simple to operate but lack flexibility. Clustering analysis and decision tree algorithms have improved intelligence levels, but grading delays exceed 500ms, which cannot meet the millisecond-level requirements of financial real-time transactions. Although machine learning algorithms are increasingly applied to improve accuracy, there are few customized optimizations for the financial data cross-border transfer scenario. Encryption technology research focuses on optimizing the performance of individual technologies. Homomorphic encryption supports "computable but not decryptable," but it is time-consuming and resource-intensive. Symmetric encryption such as AES is efficient but lacks sufficient security. Existing research has not formed a differentiated encryption adaptation system based on data levels, making it difficult to balance compliance and efficiency.

2.3 Research on the Application of Blockchain in Data Compliance

Blockchain technology, with its decentralized and tamper-proof characteristics, assists data compliance. Existing research is mostly concentrated in fields such as electronic contract notarization and intellectual property protection. In the financial field, only some explorations have been made in the traceability of cross-border payment data, with few studies on the full-chain notarization of customer data in financial CRM systems for cross-border transfers. Although consortium chains are adaptable to the privacy and regulatory needs of the financial industry, existing research on basic architecture lacks targeted optimization in node settings and smart contract design, failing to fully consider the participation needs of regulatory and auditing institutions. The integration of on-chain notarization and compliance auditing is insufficient, only achieving notarization of transfer records without forming a complete mechanism for automatic auditing and violation warnings. The improvement in auditing efficiency is limited.

3. Theoretical Framework and Technical Solution Design

3.1 Core Theoretical Basis

Data security governance theory, with "risk grading and precise prevention and control" at its core, emphasizes matching differentiated protection measures according to the risk level of data, providing theoretical support for

the dynamic grading model and encryption adaptation mechanism of financial data cross-border transfers. The cross-jurisdictional compliance coordination theory focuses on the integration and adaptation of regulatory rules in multiple regions, guiding the design of regulatory level indicators in the dynamic grading model and helping the framework adapt to regulations in multiple regions. The encryption technology adaptation theory advocates selecting the optimal encryption scheme based on data value, risk level, and scenario, providing support for the construction of the differentiated encryption adaptation mechanism.

3.2 Overview of the Three-Dimensional Technical Framework

This paper proposes a three-dimensional technical framework of "dynamic grading – encryption adaptation – on-chain notarization," forming a closed-loop governance system of "graded precision – differentiated encryption – traceable notarization." The dynamic grading module realizes real-time grading through a three-dimensional index system and machine learning algorithms, providing a basis for subsequent links; the encryption adaptation module matches differentiated encryption schemes according to the grading results, balancing compliance security and transfer efficiency; the on-chain notarization module records full-chain information through a consortium chain, achieving automated compliance auditing and traceability. The three modules work together to solve the pain points of compliance and efficiency in cross-border transfers.

3.3 Dynamic Grading Model Design

The model constructs a three-dimensional index system of sensitivity level, cross-border transfer frequency, and regulatory level: the sensitivity level is divided into 5 grades (scored from 5 to 1), the cross-border transfer frequency is divided into 3 grades (scored from 3 to 1), and the regulatory level is divided into 3 grades according to regional requirements (scored from 3 to 1). The AHP-entropy method is used to determine the index weights (0.6, 0.2, 0.2), and Cronbach's $\alpha = 0.92$ passes the reliability and validity test. Based on the random forest model, the algorithm is constructed with one million historical data records as the training set, with a grading response time of ≤50ms. It can dynamically adapt to changes in transfer frequency and regulatory rules, meeting the needs of real-time transactions.

Table 1.

Indicator Dimension	**Level Classification**	**Value Range**	**Weight**
Sensitivity Level	5 Levels	5-1 Points	0.6
Cross-border Transmission Frequency	3 Levels	3-1 Points	0.2
Regulatory Level	3 Levels	3-1 Points	0.2

3.4 Encryption Adaptation Mechanism Design

For core sensitive data at levels 1-2, a "homomorphic encryption + blockchain notarization" scheme is adopted, using the optimized BFV algorithm with encryption time ≤30ms, supporting computation and query in the encrypted state. The encryption keys are jointly managed by financial and regulatory institutions to meet cross-border compliance requirements. For data at levels 3-5, a "dynamic key + regulatory sandbox" mode is used, with keys updated every 24 hours. Level 3 data uses SM4 symmetric encryption, while levels 4-5 use lightweight de-identification. The sandbox simulates regulatory rules in multiple regions to ensure compliance.

Table 2.

Data Level	**Encryption Scheme**	**Encryption Algorithm/Technology**
Level 1-2	Homomorphic Encryption + Blockchain Attestation	BFV Algorithm Optimization
Level 3	Dynamic Key + Regulatory Sandbox	SM4 Symmetric Encryption
Level 4-5	Dynamic Key + Regulatory Sandbox	Lightweight De-identification

3.5 On-Chain Notarization and Auditing System Design

Based on Hyperledger Fabric, a financial-specific consortium chain is constructed, with nodes including financial institutions, regulatory agencies, and third-party auditing agencies. The PBFT consensus mechanism is adopted to ensure transaction consistency and security. The notarized content covers key information such as cross-border transfer node information, data grading results, encryption methods, transfer time, and compliance audit records, forming an unalterable transfer log.

Compliance audit smart contracts are designed to automatically trigger the audit process: after cross-border data transfer is completed, the smart contract verifies the accuracy of grading and compliance of encryption based on the notarized information and generates an audit report. Regulatory agencies can query the transfer log in real-time through consortium chain nodes and initiate special audits. The tamper detection rate reaches 100% (Wang Qiang & Liu Yang, 2021), and audit efficiency is improved by 65% compared to traditional manual methods. The smart contract also supports violation warning functions, automatically sending warning messages to financial and regulatory institutions when grading errors or non-compliant encryption are detected.

4. Empirical Research Design and Implementation

4.1 Research Hypotheses

Based on the core functions of the three-dimensional technical framework, the following four research hypotheses are proposed: H1: The dynamic grading model proposed in this paper can significantly improve the compliance pass rate of cross-border data transfers in financial CRM systems compared to traditional static grading; H2: The differentiated encryption adaptation mechanism can significantly reduce data transfer latency and improve transfer efficiency compared to traditional fixed encryption schemes; H3: The on-chain notarization and auditing system can significantly reduce compliance audit labor costs and system resource occupancy rates; H4: The three-dimensional technical framework can significantly shorten the duration of cross-border business processing and improve customer satisfaction.

4.2 Experimental Environment Setup

4.2.1 Hardware Environment

The experiment adopts a server cluster architecture, including one main server, four data servers, and two consortium chain node servers. The main server is configured with an Intel Xeon Gold 6248 CPU, 128GB of memory, and 10TB of SSD storage; the data servers are configured with an Intel Xeon Silver 4210 CPU, 64GB of memory, and 4TB of storage; the consortium chain node servers are configured with an Intel Xeon Bronze 3206R CPU, 32GB of memory, and 2TB of storage. The cluster network bandwidth is 10Gbps, ensuring the stability of the network for cross-border transfer simulation.

4.2.2 Software Environment

The operating system uses Linux CentOS 7.9, the database uses MySQL 8.0 to store customer data, the consortium chain platform is Hyperledger Fabric 2.4, the encryption algorithm library uses Microsoft SEAL to implement homomorphic encryption, the dynamic grading model is developed based on Python 3.8 and the Scikit-learn framework, and the CRM system simulation environment is built based on Java Spring Boot.

4.3 Data Set Selection and Processing

The data set comes from the customer data of a multinational securities broker over 12 months, with a total of one million records, including 23 sensitive fields covering account information, transaction records, credit data, and basic customer information. The data covers cross-border customers in 12 countries and regions worldwide, with 35% of the data from the EU region, 28% from the Chinese region, and 37% from other regions, in line with the cross-jurisdictional research scenario.

During the data preprocessing stage, invalid data with a missing rate of ≥30% were removed, retaining 920,000 valid records (Li Xiaofeng & Wang Min, 2022). Real identity information such as customer ID numbers and bank card numbers was anonymized to preserve the data characteristics and sensitivity level attributes, ensuring the security and usability of the experimental data.

Table 3.

Project	**Description**
Total Number of Records	1,000,000 records
Number of Sensitive Fields	23 fields
Regions Covered	12 countries and regions worldwide
Regional Distribution Ratio	EU region 35%, China region 28%, other regions 37%

4.4 Experimental Design

The experiment sets up a control group and an experimental group: The control group uses the traditional static grading scheme (based on the inherent sensitivity of data for fixed grading) + fixed AES encryption scheme, with no on-chain notarization function, and compliance auditing is conducted manually; the experimental group

uses the three-dimensional technical framework of "dynamic grading – encryption adaptation – on-chain notarization" proposed in this paper.

The evaluation index system includes four core indicators: Compliance indicators are the compliance pass rate (the proportion of transfers that meet the regulatory requirements of the target region); efficiency indicators are transfer latency (the average time from the initiation of data transfer to completion); cost indicators include compliance audit labor costs (average daily audit hours) and system resource occupancy rates (average CPU and memory occupancy rates); customer experience indicators include the duration of cross-border business processing (the average time from customer initiation to completion of business) and customer satisfaction scores (on a 1-5 point scale, collected through questionnaires).

4.5 Empirical Implementation Process

The experimental implementation is divided into four stages: The first stage is data grading, where the traditional static grading algorithm and the dynamic grading model proposed in this paper are used to grade the 920,000 preprocessed data records, recording the grading results and response times; the second stage is encryption transfer, where the control group uses AES-256 to encrypt all data, and the experimental group applies the corresponding encryption scheme according to the grading results, simulating the cross-border transfer process and recording transfer latency and compliance; the third stage is compliance auditing, where the control group audits the compliance of the transfer through three professional auditors manually, and the experimental group audits through on-chain smart contracts, recording the auditing time and labor costs; the fourth stage is customer experience research, where 1,000 cross-border customers are selected to conduct business using both groups' solutions, recording the business processing time and collecting satisfaction scores. The experimental cycle is 30 days to ensure the stability and representativeness of the data. (Wang Qiang & Liu Yang, 2021)

Table 4.

Phase	**Content**	**Record Metrics**
Phase 1	Data Classification	Classification Results, Response Time
Phase 2	Encrypted Transmission	Transmission Delay, Compliance Status
Phase 3	Compliance Audit	Audit Duration, Labor Cost
Phase 4	Customer Experience Survey	Business Processing Time, Satisfaction Score

5. Empirical Results Analysis and Discussion

5.1 Compliance Results Analysis

The comparison of compliance pass rates between the experimental and control groups shows that the experimental group achieved a compliance pass rate of 100%, while the control group only reached 78%, confirming the validity of H1. In the control group, 65% of the cases that failed compliance audits were due to static grading not considering the regulatory requirements of the target region, resulting in insufficient encryption of core sensitive data; 23% were due to grading not responding to changes in cross-border transfer frequency, over-encrypting non-core data and causing compliance disputes; 12% were due to incomplete transfer records that could not pass regulatory audits.

The experimental group, through the dynamic grading model, real-time adaptation to cross-jurisdictional regulatory requirements and transfer frequency changes, ensured precise matching of grading results with compliance needs; the differentiated encryption scheme met the compliance standards of different regions, and the on-chain notarization provided complete transfer logs. The three worked together to achieve a significant increase in the compliance pass rate.

5.2 Transfer Efficiency Results Analysis

The transfer latency data shows that the experimental group had an average transfer latency of 32ms, compared to 189ms for the control group, with an efficiency improvement of 83%, confirming the validity of H2. The control group used a fixed AES encryption scheme for all data, resulting in excessive transfer latency for non-core sensitive data; the experimental group used optimized homomorphic encryption for levels 1-2 data and lightweight encryption or dynamic key encryption for levels 3-5 data, significantly reducing the encryption time for non-core data. (Boneh D, Gentry C & Halevi S., 2013)

Further analysis of the transfer latency for different levels of data shows that the experimental group had an average latency of 48ms for levels 1-2 data, compared to 192ms for the control group; the experimental group had an average latency of 26ms for levels 3-5 data, compared to 187ms for the control group. The results

indicate that the differentiated encryption adaptation mechanism, while ensuring the security of core sensitive data, significantly improved the transfer efficiency of general sensitive and non-sensitive data, meeting the millisecond-level requirements of financial real-time transactions.

5.3 Cost Results Analysis

The comparison of cost indicators shows that the experimental group's compliance audit labor costs were reduced by 42% compared to the control group, and system resource occupancy rates decreased by 29%, confirming the validity of H3. The control group required three auditors to conduct manual audits throughout the day, with an average daily working time of 24 hours; the experimental group used on-chain smart contracts to automatically complete the audit, requiring only one auditor to handle exceptions, with an average daily working time of 5.8 hours.

In terms of system resource occupancy, the control group, which used high-intensity encryption for all data, had an average CPU occupancy rate of 78% and a memory occupancy rate of 65%; the experimental group dynamically adjusted the encryption intensity according to the data level, reducing the average CPU occupancy rate to 55% and the memory occupancy rate to 46% (Li Xiaofeng & Wang Min, 2022). The on-chain notarization system had low resource consumption, only increasing memory occupancy by 5%, far lower than the labor costs and system expenses of manual auditing.

5.4 Customer Experience Results Analysis

The customer experience indicators show that the experimental group's average duration for cross-border business processing was four minutes, compared to 15 minutes for the control group, a reduction of 73%; the average customer satisfaction score was 4.3, compared to 3.4 for the control group, an increase of 27% ($p<0.01$, statistically significant), confirming the validity of H4.

The main reason for the shortened business processing time was that dynamic grading and differentiated encryption improved data transfer efficiency, and on-chain notarization simplified the compliance auditing process, reducing customer waiting time. The customer satisfaction survey showed that 82% of customers believed that "business processing speed has significantly improved," and 76% of customers recognized that "data security is more fully guaranteed (Chen Jing & Zhao Yu, 2023)," indicating that the three-dimensional technical framework achieved dual optimization of customer experience and data security.

5.5 Results Discussion

The empirical results demonstrate that the three-dimensional technical framework effectively solves the core dilemmas of cross-border data transfers in financial CRM systems through the synergistic mechanism of "dynamic grading accurately identifying risks, encryption adaptation balancing security and efficiency, and on-chain notarization optimizing the auditing process." Compared with existing research findings, the framework has achieved significant improvements in compliance pass rate, transfer efficiency, and cost control. The key reasons are that the dynamic grading model integrates static sensitivity attributes with dynamic cross-border characteristics, enhancing the precision of grading; the differentiated encryption scheme achieves precise matching of technology with compliance needs; and the combination of on-chain notarization and smart contracts promotes the transition of compliance auditing from manual to automated.

Practical scenario verification shows that the framework is adaptable to different regional regulatory rules and financial business characteristics and can be directly applied to CRM systems in multinational securities brokers and banks. However, the experiment found that in high-concurrency scenarios (transfer frequency $\geq$1000 times/second), the delay of consortium chain notarization slightly increased, and further optimization of the consensus mechanism is needed.

6. Research Limitations and Future Outlook

6.1 Research Limitations

The empirical data come from a single type of multinational securities broker and do not cover other financial fields such as banks and insurance, resulting in insufficient diversity of data scenarios and potentially affecting the cross-industry adaptability verification of the framework. The experimental environment is a simulated cross-border transfer scenario, which differs from the complexity of real cross-border network environments, such as network latency and bandwidth fluctuations, which have not been fully considered. The scalability of the consortium chain nodes needs to be verified, and performance optimization in high-concurrency scenarios requires further research. Future regulatory policy changes and their impact on the adaptability of the framework have not been fully considered, and the long-term effectiveness of the dynamic adjustment mechanism needs continuous verification.

6.2 Future Outlook

In the future, the data scope will be expanded to apply the framework to multiple financial fields such as banks and insurance, collecting customer data from different types of financial institutions to verify the cross-industry adaptability of the framework. The consortium chain architecture will be optimized, using sharding technology to enhance node scalability and combining edge computing to reduce transfer and notarization delays in high-concurrency scenarios. The integration of quantum encryption technology with the dynamic grading model will be explored to enhance the encryption security of core sensitive data.

A mechanism for automatically identifying regulatory policy updates and adjusting the framework will be constructed. Using natural language processing technology to parse newly introduced regulatory rules, the framework will automatically optimize the grading index weights and encryption scheme parameters, enhancing the dynamic adaptability of the framework. The application of the framework in international cross-border financial cooperation will be promoted, and a cross-border data compliance governance platform will be jointly built with domestic and international financial and regulatory institutions to promote global financial data compliance collaboration.

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

A Legal Appraisal of the Challenges Faced with the Enforcement of Trademarks in Cameroon

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doi:10.63593/LE.2788-7049.2025.12.003

Abstract

Trademark protection plays a vital role in safeguarding intellectual property rights, promoting fair competition, and fostering economic development. In Cameroon, the legal framework for trademark protection is largely influenced by national legislation and the regional system established under the African Intellectual Property Organization (AIPO) know in its French acronym as (OAPI). Despite the existence of these legal mechanisms, the effective enforcement of trademark rights continues to face numerous challenges. This study undertakes a legal appraisal of the challenges associated with the enforcement of trademarks in Cameroon, examining both the substantive and procedural aspects of the law. The research analyzes the institutional, judicial, and administrative obstacles that hinder effective enforcement, including limited public awareness of trademark rights, inadequate enforcement capacity, procedural delays, weak border control measures, and the prevalence of counterfeit goods. It also explores the role of enforcement agencies and the judiciary, highlighting issues such as lack of technical expertise, insufficient coordination, and the inadequacy of sanctions as deterrent measures. In order to achieve same, the study makes use of the qualitative research methodology alongside the doctrinal method which permitted a legal analysis of primary and secondary data. It also makes use of unstructured interviews. The paper concludes by proposing reforms aimed at strengthening trademark enforcement in Cameroon, including legal and institutional reforms, capacity building for enforcement authorities, and increased sensitization of stakeholders. Ultimately, the study underscores the importance of effective trademark enforcement as a means of protecting rights holders, consumers, and the broader economic interests of Cameroon.

Keywords: legal appraisal, challenges, enforcement and trademarks

1. Introduction

Trademarks constitute a core component of intellectual property rights, serving as distinctive signs that identify the origin of goods or services and protect consumers from confusion while safeguarding the goodwill of businesses. In a globalized economy characterized by intense competition and cross-border trade, the effective enforcement of trademark rights has become increasingly significant. Strong trademark enforcement not only promotes innovation and fair competition but also enhances consumer protection and economic development by combating counterfeiting and unfair trade practices[1].

Cameroon, as a developing economy and a member of the African Intellectual Property Organization (AIPO/OAPI),[2] operates within a harmonized regional intellectual property framework governed primarily by

[1] Cornish, W., Llewelyn, D., & Aplin, T. (2013). *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*. Sweet & Maxwell.

[2] African Intellectual Property Organization (OAPI). (2015). *Bangui Agreement Relating to the Creation of an African Intellectual Property Organization* (as revised, 2015).

the Bangui Agreement of 1977 (as revised by the Bamako Act of 2015). Annex III of this Agreement provides the substantive and procedural rules for the protection of trademarks across AIPO/OAPI member states, including Cameroon. Additionally, Cameroon is a signatory to several international instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[1], which sets minimum standards for the enforcement of intellectual property rights at the global level. These legal instruments collectively demonstrate Cameroon's formal commitment to the protection and enforcement of trademark rights[2].

Despite the existence of this legal framework, the practical enforcement of trademarks in Cameroon remains fraught with challenges. Counterfeit and pirated goods continue to circulate widely in local markets, undermining legitimate businesses and posing risks to public health and safety. Factors such as limited awareness of trademark rights, inadequate institutional capacity, weak border controls, procedural delays within the judicial system, and insufficient deterrent sanctions have significantly constrained effective enforcement. [3]Moreover, the gap between law on the books and law in practice raises important questions about the effectiveness of existing enforcement mechanisms.

This paper undertakes a legal appraisal of the challenges faced in the enforcement of trademarks in Cameroon. It critically examines the applicable legal and institutional framework, identifies key obstacles to effective enforcement, and evaluates the extent to which Cameroon's trademark regime complies with regional and international standards. By doing so, the article seeks to contribute to scholarly discourse on intellectual property enforcement in developing countries and to propose recommendations aimed at strengthening trademark protection in Cameroon.

2. Conceptualization of Trademark

A trademark is basically a sign that is used to distinguish the goods or services offered by one undertaking from those offered by another. That's a very simplified definition, but it does explain essentially what a trademark is. There are basically two main characteristics for a trademark: it must be distinctive and it should not be deceptive[4].

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as amended on 23th January 2017 Section 15(1) defines a trademark as any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks[5].

The 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization, Annex III Article 2 also defines a trademark as any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise shall be considered a trademark or service mark, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristics form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colors, drawings, reliefs, letters, numbers, devices and pseudonyms[6].

A trademark can also be defined as any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. This definition comprises two aspects, which are sometimes referred to as the different functions of the trademark, but which are, however, interdependent and for all practical purposes should always be looked at together[7].

The requirements which a sign must fulfill in order to serve as a trademark are reasonably standard throughout the world. Generally, two different kinds of requirement are to be distinguished; - The first kind of requirement relates to the basic function of a trademark, namely, its function to distinguish the products or services of one enterprise from the products or services of other enterprises. From that function it follows that a trademark must

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[1] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

[2] WIPO. (2001). *Intellectual Property Handbook: Policy, Law and Use*. WIPO Publication.

[3] Kur, A. & Levin, M. (n.d.). *Trademark Law: A Handbook of Contemporary Research*. Edward Elgar Publishing.

[4] WIPO Academy Distance Learning course 2019, 004TM 101. pp. 02-03.

[5] Section 15(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as amended on 23th January 2017.

[6] Article 2 Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[7] *Ibid.*

be distinguishable among different products. To be distinctive it must by its very nature be able to distinguish goods and services, a good example would be the word “apple”. While “Apple” is a very distinctive trademark for a computer, because it has absolutely nothing to do with computers, it would not be distinctive for actual apples. In other words, someone who grows and sells apple could not register the word ‘apple’ as a trademark and protect it, because his competitors have to be able to use the word to describe their own goods. So, in general terms a trademark is not distinctive if it is descriptive. It is descriptive if it describes the nature or identity of the goods or services for which it is used. But a trademark can also be deceptive, namely when it claims a quality for the goods that they do not have.

The second kind of requirement relates to the possible harmful effects of a trademark if it has a misleading character for instance a trade mark that says that the goods for which it is used have certain qualities when they don’t. An example would be the trademark “Real Leather” for goods that are not made of genuine leather[1] or if it violates public order or morality. These two kinds of requirement exist in practically all national trademark laws[2].

A trademark has some rules that must be observed in order to function, firstly it must be distinctive. A sign that is not distinctive cannot help the consumer to identify the goods of his choice. The word “apple” or an apple device cannot be registered for apples, but it is highly distinctive for computers. This shows that distinctive characters must be evaluated in relation to the goods to which the trademark is applied. In the ‘BABY-DRY’ case[3] before the European Court of Justice about the registration of ‘BABY-DRY’ as a trademark for baby diapers. OHIM refused the registration of the brand as a community mark saying that ‘BABY-DRY’ wasn’t distinctive, but instead that it was descriptive without a secondary meaning.

The Court ruled that trademarks consisting of certain word combinations not used in a common phraseology may be deemed creations, bestowing distinctive power on the trademark. If the relevant goods or services or their essential characteristics are so formed, then they may be refused registration on the grounds that such marks are solely descriptive and non-distinctive.

The test of whether a trademark is distinctive is bound to depend on the understanding of the consumers, or at least the persons to whom the sign is addressed. A sign is distinctive for the goods to which it is to be applied when it is recognized by those to whom it is addressed as identifying goods from a particular trade source, or is capable of being so recognized[4].

Descriptive signs are those that serve in trade to designate the kind, quality, intended purpose, value, place of origin, time of production or any other characteristic of the goods for which the sign is intended to be used or is being used[5].

A second important rule is that trademarks should always be used as true adjectives and never as nouns, in other words the trademark should not be used with an article, and the possessive “s” and the plural form should be avoided. It would be wrong to talk about NESCAFÉ’s flavor or about three NESCAFÉs instead of three varieties of NESCAFÉ. Furthermore, it is advisable always to highlight the trademark, that is, to make it stand out from its surroundings.

Finally, a trademark should be identified as such by a trademark notice[6], only a few laws provide for such notices, and making their use on goods compulsory, it is prohibited by Article 5D of the Paris Convention. Trademark law in the United States of America allows the use of a long statement (such as “Registered with the United States Patent and Trademark Office”) to be replaced by a short symbol, namely, the circled R, or ®. Over the years this symbol has spread throughout the world and become a widely recognized symbol for a registered trademark. Its use is recommended for registered trademarks as a warning to competitors not to engage in any act that would infringe the mark. Cameroon under AIPO/OAPI is yet to include a provision for a mandatory trademark notice.

To be identical does a mark have to be exactly the same? The answer is no, not in every respect. An identical

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[1] WIPO Academy Distance Learning course 2019, 004TM 101. pp. 07-09.

[2] See Article 6 of the Paris Convention and Article 3 Annex III of the 1999 Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[3] Procter & Gamble v. Office for Harmonization in the Internal Market (European Court Reports 2001 I-06251).

[4] WIPO Academy Distance Learning course 2019, 004TM 101. pp. 014-14.

[5] *Ibid.*

[6] WIPO. (2004). *Intellectual Property Handbook: Policy, Law and Use*. WIPO Publication No: 489(E) WIPO 2004 Second Edition. pp. 67-139.

mark is one where an average consumer, when thinking about the two marks (they are not expected to have the marks sitting side by side allowing them to make a detailed comparison), would not be aware of any differences in the marks. Identical marks are those where any differences are so insignificant that consumers just would not notice them.

An average consumer would not notice the difference between Origin and Origins or Cannon and Canon. They might not notice that WebSphere and web-sphere were different but they are sure to notice that, although similar, Reed Elsevier and Reed Business Information are not identical marks[1].

To decide if two-word marks are similar one has to consider the initial impact on the average consumer of the look, sound and conceptual similarity of the words. But you must also take into consideration the goods to which the marks are applied. If an expensive purchase is being made the average consumer is unlikely to be confused into buying the wrong good despite a similarity in marks. They are unlikely to buy a Mitsubishi Cordia thinking that it was a Ford Cortina. If, however, a Penguin chocolate biscuit was sitting side by side with a Puffin chocolate biscuit at the checkout of a crowded supermarket, both packaged in a similar style, the average consumer would give the purchase little attention and may well be confused into buying the wrong chocolate biscuit[2].

3. Regulatory Framework for Trademarks in Cameroon

Amongst the laws that regulate trademarks in Cameron, we have inter-alia the following.

3.1 The 2015 Bamako Act Revising the Bangui Agreement

The Bangui Agreement was adopted on the 2nd March 1977 in Bangui, Central Africa Republic called the "Bangui Agreement" to form the African Intellectual Property Organization known in its French acronym as OAPI. The Bangui Agreement has witnessed two revisions. It was revised on the 24th February 1999 and came into force on the 28th February 2002, and the recent revision of 14th December 2015 singed at Bamako, which came into effect on the 14th November 2020. The Bamako Act revising the Bangui Agreement has been signed by 17 center African states including Cameroon. The Bamako Act set out ten different categories of IPRs that has to be applied in each member state, including, Patents (Annex I), Utility models (Annex II), Trademarks and Service marks (Annex III), Industrial Designs (Annex IV), Trade Name (Annex V), Geographical Indications (Annex VI), Literary and Artistic Property (Annex VII), Protection against unfair competition (Annex VIII), Layout Designs of integrated circuit (Annex IX) and Plant variety protection (Annex X)[3].

The Bamako Act revising the Bangui Agreement established a centralized structure for registration of Trademarks and a uniform filling procedure[4] for all members that are signatories to the agreement.

3.2 The Cameroon Penal Code

The Cameroon Penal Code also addresses issues of trademark infringement. Section 330 of the Cameroon Penal Code[5] punishes whoever forges a trademark or uses any trademark so forged with imprisonment for a term of three months to three years, or with a fine of fifty thousand to three hundred thousand francs, or with both such imprisonment and fine. Whoever, without forgery of a registered trademark, imitates it in a manner liable to mislead a purchaser, or uses any such imitation, shall be punished with imprisonment for a term of one month to one year, or with a fine of fifty thousand to one hundred and fifty thousand francs, or with both such imprisonment and fine.[6] These laws are applied alongside duly rectified treaties asper section 45 of the Cameroon Constitution of 1996.

4. Challenges Faced with the Enforcement of Trademarks in Cameroon

From our study, several challenges were discovered to be encounter in the enforcement of trademarks in Cameroon these challenges ranges from Weak Enforcement Organs and Poor Coordination, Local Protectionism, Non-Deterrent Penalty, and High Cost of Enforcement amongst others, these challenges are treated in turn below.

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[1] D Bainbridge & C Howell. (2014). *Intellectual Property Asset Management*. Routledge: Taylor & Francis Group, pp. 12-34.

[2] *Ibid.*

[3] Article 4(1) of the Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[4] Article 6 of the Agreement revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[5] Law No 2016/007 of 12th July 2016.

[6] *Ibid.*

4.1 Weak Enforcement Organs

One of the main reasons for rampant counterfeiting and passing off of trademarks in Cameroon is, of course, the weakness of Trademark enforcement organs. The enforcement of Trademark in particular is problematic because of the inadequacies in the organizational structure of the trademark administrations, namely, the Director General and the High Commission of Appeal of the African Intellectual Property Organization (AIPO/OAPI) and also the Standard and Quality Control Agency known by its French acronym "ANOR". ANOR was created in the year 2009 by the head of states in Cameroon which has as its mission to promote standard and quality goods in Cameroon. ANOR is an administrative public establishment with a judicial personality and a financial autonomy placed under the technical supervision of the Ministry of Industries and financial guardians of the Ministry of Finance[1].

All these institutions that have been put in place to monitor and enforce trademarks doesn't have the competence to either make orders for seizures and damages against infringers or convict infringers as these orders are within the inherent jurisdiction of the ordinary courts[2].

Rather than ensuring that trademark infringement cases are dealt with expediently, this lack of jurisdiction by the organs involved to remedy the situation has led to poor cooperation and coordination among the various governmental agencies.

4.2 Local Protectionism

Black's law dictionary[3] defines protectionism as the protection of domestic businesses and industries against foreign competition by imposing high tariffs restricting imports.

Local protectionism constitutes a great barrier to trademark protection in Cameroon. Part of the problem stems from certain misconceptions held by local officials that intellectual property infringement, including counterfeiting and passing off, is in fact beneficial to the local economy because it provides employment for otherwise unemployable workers. Some even believe that the imitation and counterfeiting of foreign brands is justifiable in the context of the protection of local industries from international competition[4]. This particular problem is difficult for the government to address because local officials prioritize the protection of local needs before that of national needs, and thus are less inclined to pursue vigorously strict enforcement measures that they perceive as harmful to local economic interests. They therefore assume a negative and uncooperative attitude toward investigations by rights holders against alleged intellectual property infringements. In areas where local protectionism is especially fierce, law enforcement officials will even impede the administrative enforcement of intellectual property rights by taking bribe from infringers and leaking insider information to infringers in advance. In some instances, local officials have been known to return confiscated goods to the infringers.

Such practices are at odds with Cameroon's obligations towards the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement'). Which requires members to ensure that effective enforcement procedures are available in order to remedy the infringement of intellectual property rights, and also stipulates that these procedures shall be 'fair and equitable' and 'not unnecessarily complicated or costly'[5]. Considering the degree of discretion local authorities have in intellectual property rights enforcement, Cameroon does not seem to be holding up its end of the bargain.

4.3 Non-Deterrent Penalty

According to the Cameroon Penal Code, whoever forges a registered trademark or use any trademark so forged shall be punished with imprisonment for from three months to three years or with fine of from fifty thousand to three hundred thousand francs or with both such imprisonment and fine[6]. The Bangui accord sets forth similar provisions which stipulate that the penalty for unlawful exploitation of a registered mark shall be imprisonment from three months to two years and a fine of 5.000.000 to 30.000.000 FCAF or one of the above penalties

[1] www.minfi.cm last visited June 2019.

[2] Article 51 of Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[3] B Garner. (2014). *Black's Law Dictionary*, 10th Edition. Thomson Reuters, p. 1418.

[4] P. Torremans, H. Shan and J. Erauw. (2007). *Intellectual Property and TRIPS Compliance in China*. Edward Elgar Publishing Limited, pp. 82-87.

[5] Article 41(1) of the TRIPS Agreement.

[6] Section 330 of Law No 2016/007 of 12th July 2016 to institute the Cameroon Penal code.

alone[1].

Despite the fact that the fine of 5.000.000 to 30.000.000 FCFA sounds reasonable, the imprisonment term is so mild that they do not constitute any real disincentive to intellectual property infringement. Since local enforcement officials have great discretion in determining the penalty to be either a fine or imprisonment, the maximum imprisonment term is very rarely imposed and imprisonment is almost unheard of. Lack of clear guidelines or rules with regard to the way fines should be calculated is also one reason why such mild penalties are imposed on infringers. Unfortunately, intellectual property owners have little recourse against these decisions[2]. The TRIPS Agreement stipulates that remedies should constitute a 'deterrent to further infringement' and 'include imprisonment and/or monetary fines sufficient to provide a deterrent'[3]. Clearly, this is not yet the case in Cameroon.

4.4 High Cost of Enforcement

In Cameroon, intellectual property rights owners are required to bear almost all of the costs for enforcement actions. While the state provides various enforcement authorities with financial support for their law enforcement activities, intellectual property rights owners still incur costs associated with the following: soliciting the services of a lawyer to handle the infringement case on the rights owner's behalf; payment of action fees and locus fees where a visit to the locus is required; execution of a judgment against the infringer; and expenses incurred in the transportation, storage, and disposal of seized infringing or counterfeit goods. Furthermore, for Customs to detain goods suspected of infringement, intellectual property rights owners must bear all costs related to the storage and disposal of such goods, in addition to paying a Customs deposit equal to the value of the detained imported or exported goods.

4.5 Time-Consuming Trial Process

The Cameroon Criminal and Civil Procedure Laws provide no time limits on the trial period of trademark infringement cases. Moreover, in the history of the Cameroon courts, trademark infringement cases have mainly been brought to the attention of the courts in large cities such as Douala and Yaoundé, most of the judges lack the expertise necessary to handle trademark infringement cases, and often require assistance from intellectual property experts and this procedure will prolong the trial unnecessarily. The TRIPS Agreement provides that the procedures concerning the enforcement of intellectual property rights shall not be delayed unnecessarily[4]. The practice in Cameroon is yet to meet this standard.

From the forgoing, one can see that the protection of trademarks in developing countries particularly in Cameroon is lagging behind expectations because most trademark actors (judges, lawyers, customs official or the police, trademark owners and users) are still ignorant about the various institutions that the government has put in place to govern and protect trademarks. This is as a result of the fact that Intellectual Property law is being offered in most Universities in Cameroon as a post graduate elective course or a specialist post graduate program in some universities. Most of the trademark actors (judges, lawyers, customs officials or the police, trademark owners, users) are not armed with intellectual property right knowledge as in the case of Cameroon wherein the prerequisite qualification for the recruitment of these actors is below LL.M except with the case of the judges.

Most industries in developing countries particularly in Cameroon see the cost of registering a trademark as a waste of resource due to the heavy financial cost involved in registering, maintaining and protecting a trademark. Infringers have taken advantage of this fact and are pirating and counterfeiting the trademarks of businesses and services that have established a good will and reputation. The majority of infringing goods in developing countries as in the case of Cameroon are intended for sale to the domestic markets, and most Cameroonian consumers are still ignorant and do not believe that piracy and counterfeiting are serious violations of law. This mindset only exacerbates intellectual property rights infringement.

Although criminal enforcement of intellectual property right is possible in most underdeveloped countries as in the case of Cameroon, in practice very few intellectual property rights infringers receive criminal sanctions moreover the penalties for trademark infringement in most developing countries are lesser that doesn't deter further infringement, for instance in Cameroon whoever forges a registered trademark or use any trademark so forged shall be punished with imprisonment for from three months to three years or with fine of from fifty

[1] Article 57 Annex III of the 2015 Bamako Act revising the Bangui Agreement of March 2, 1977 on the creation of an African Intellectual Property Organization.

[2] *Ibid.*

[3] Articles 41 and 61 of the TRIPS Agreement.

[4] Article 41(2) of the TRIPS Agreement.

thousand to three hundred thousand francs or with both such imprisonment and fine[1] which implies the maximum imprisonment sentence is three years and the maximum amount of fine is three hundred thousand after free riding and making millions on the good will of another person's trademark that he may have taken a lifetime to establish.

5. Conclusion

The effective enforcement of trademarks is a critical component of a functional intellectual property regime, as it safeguards brand identity, promotes fair competition, and encourages economic growth. In Cameroon, despite the existence of legal and institutional frameworks governing trademark protection — particularly under national laws and the AIPO/OAPI system — significant challenges continue to undermine effective enforcement. These challenges range from inadequate awareness of trademark rights among rights holders and enforcement agencies, procedural complexities, and limited judicial specialization, to insufficient administrative capacity and weak border control mechanisms.

Furthermore, the prevalence of counterfeit goods, coupled with slow judicial processes and limited sanctions that often fail to deter infringement, exacerbates the enforcement gap. Practical difficulties such as high litigation costs, lack of technical expertise, and poor coordination among enforcement bodies further weaken the protection afforded to trademark owners. These shortcomings not only discourage investment but also expose consumers to substandard and potentially harmful products.

A comprehensive approach is therefore required to address these challenges. Strengthening institutional capacity, enhancing public and professional awareness, improving inter-agency cooperation, and reforming enforcement procedures are essential steps toward more effective trademark protection in Cameroon. Additionally, aligning enforcement practices with international best standards and ensuring the consistent application of sanctions would significantly improve compliance. Ultimately, robust enforcement of trademark rights is indispensable for fostering innovation, protecting consumers, and supporting sustainable economic development in Cameroon.

6. Recommendations

From the challenges identified to be the made difficulty in the enforcement of trademarks in Cameroon, this study puts forth the following recommendation in a bit to enhance the enforcement of same. Amongst these recommendations, we have as follows.

Firstly, Cameroon should launch a national public awareness campaign on intellectual property rights protection as a whole including trademarks by, introducing television programs, organizing seminars and publishing articles in newspapers to educate the public on the various Intellectual property rights, the advantages of protecting intellectual property rights and the disadvantages of infringing intellectual property rights.

Also, the legal framework of trademarks should be revised (strengthen) and increase the punishment for trademark infringement from a Misdemeanor to a Felony. Although criminal enforcement of trademarks is possible in Cameroon as per the Bangui Accord and the Cameroon Penal Code, in practice very few trademark infringers receive criminal sanctions.

Lastly, the cost of registration of trademarks and the renewal costs should be reduced or, if possible, eliminated to enable small innovative enterprises that are faced with financial challenges to register their trademarks, which are presumed to be their personal property. This would help them protect their goodwill and reputation.

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[1] Law No 2016/007 of 12th July 2016 to institute the Cameroon Penal code.

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

Prospects and Challenges of the Protection and Enforcement of Registered and Unregistered Trademark Rights Within the OAPI Sub-Region

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doi:10.63593/LE.2788-7049.2025.12.004

Abstract

This study critically examines the prospects and challenges of protecting and enforcing registered and unregistered trademark rights within the Organisation Africaine de la Propriété Intellectuelle (OAPI) sub-region. Anchored in institutional theory and the economic incentive theory of trademarks, the research explores how legal harmonization through centralized registration interacts with decentralized national enforcement mechanisms to shape practical outcomes. Drawing on doctrinal analysis of the Bangui Agreement, national laws, and international treaties including TRIPS and the Paris Convention, the study assesses the effectiveness of civil, criminal, administrative, and border enforcement mechanisms. Findings reveal that while the OAPI framework provides strong legal protection for registered trademarks, enforcement effectiveness is uneven due to institutional weaknesses, procedural delays, limited judicial expertise, and inadequate protection for unregistered marks, particularly affecting informal and small-scale businesses. The study identifies systemic challenges including fragmented enforcement, high litigation costs, and low stakeholder awareness, which undermine the broader objectives of trademark law. Based on these findings, the research proposes context-specific recommendations to strengthen institutional capacity, harmonize enforcement procedures, expand protection for unregistered trademarks, and enhance awareness among stakeholders. The study contributes to knowledge by offering a nuanced analysis of OAPI's hybrid intellectual property regime, highlighting enforcement gaps, and providing practical insights for policy reform, judicial practice, and regional cooperation, thereby advancing understanding of trademark protection and economic development in African regional IP systems.

Keywords: OAPI Sub-Region (Bangui Agreement), registered trademarks, trademark enforcement, trademark protection, unregistered trademarks

1. Introduction

The protection and enforcement of trademark rights have evolved significantly as legal systems respond to the demands of commerce, consumer protection, and economic integration. Historically, trademarks emerged as basic indicators of origin in local markets and gradually acquired legal recognition as trade expanded beyond national boundaries and competitive practices intensified.[1] Over time, trademarks have come to be recognized not merely as commercial symbols but as valuable intellectual property assets that safeguard brand identity, promote consumer trust, and prevent unfair competition.[2] Today, trademarks are integral to corporate strategy,

[1] Bently, L., & Sherman, B. (2018). *Intellectual property law (5th ed.)*. Oxford University Press.

[2] World Intellectual Property Organization. (2020). Introduction to intellectual property (WIPO Publication No. 489). WIPO.

facilitating market differentiation, enabling the creation of goodwill, and serving as collateral in financial transactions, which underscores their economic and legal significance in both domestic and regional markets.

In Africa, the need for a coordinated intellectual property framework became particularly evident in the post-colonial period, as newly independent states sought to harmonize commercial regulation and foster regional economic cooperation.[1] This objective culminated in the establishment of the Organization Africaine de la Propriété Intellectuelle (OAPI) in 1977 and the adoption of the Bangui Agreement, which created a centralized and uniform system for the protection of intellectual property rights, including trademarks, across its member states.[2] By providing a single registration mechanism with unitary effect throughout the OAPI sub-region, the system significantly reduces duplication, facilitates cross-border trade, and encourages investment by providing greater legal certainty to rights holders.

The Bangui Agreement marked a significant departure from fragmented national trademark regimes by introducing a unified registration system administered by a single regional office.[3] Subsequent revisions of the Agreement, particularly those of 1999 and 2015, reflect an evolutionary response to globalization, technological advancement, and the need to align regional intellectual property law with international standards, most notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[4] These revisions expanded the scope of registrable marks to include non-traditional signs such as sounds, colors, and shapes, strengthened substantive rights, and enhanced enforcement mechanisms, including provisions to address counterfeit goods and trademark piracy. Despite these advancements, the practical enforcement of trademark rights remains uneven due to disparities in national judicial capacity, administrative efficiency, and the availability of remedies such as injunctions, damages, or customs interventions.[5]

Within this evolving legal framework, a distinction persists between registered and unregistered trademarks. Registered trademarks enjoy formal recognition, exclusive rights, and presumptive validity under the OAPI regime, offering rights holders a higher degree of legal certainty and enforceability (Bangui Agreement, Annex III). Conversely, unregistered trademarks occupy a more precarious legal position, often requiring proof of prior use, acquired distinctiveness, or evidence of bad faith registration for protection.[6] The predominance of a first-to-file system further complicates the protection of unregistered marks, which may be vulnerable to loss or legal disputes even when they enjoy substantial market recognition. These dynamics underscore the importance of early registration, effective market monitoring, and strategic enforcement to protect intellectual property in the region.

The economic and legal stakes of trademark protection in the OAPI sub-region are considerable. With increasing regional integration, intra-African trade, and the growing presence of multinational enterprises, trademarks function not only as tools of brand identity but also as instruments for attracting foreign investment, promoting innovation, and facilitating technology transfer.

Consequently, understanding the prospects and challenges of both registered and unregistered trademark protection is essential for policymakers, legal practitioners, and commercial actors seeking to navigate the OAPI system effectively.

Against this backdrop, this paper examines the prospects and challenges associated with the protection and enforcement of registered and unregistered trademark rights within the OAPI sub- region. It analyses the historical evolution of the OAPI trademark framework, evaluates the effectiveness of existing enforcement mechanisms, and assesses the extent to which the current regime national implementation. By situating the discussion within its historical, economic, and institutional context, the study contributes to a deeper understanding of trademark governance in Africa and offers insights relevant to intellectual property law, commercial strategy, and policy formulation.

2. Conceptual Clarification

[1] Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, *21*(2), 309–331.

[2] Bangui Agreement relating to the creation of an African Intellectual Property Organization (OAPI), as revised on February 24, 1999 and December 14, 2015.

[3] *Ibid.*

[4] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

[5] Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, *49*(2), 299–320.

[6] World Intellectual Property Organization. (2013). Protection of unregistered trademarks. WIPO Standing Committee on the Law of Trademarks.

This section examines the core concepts related to the study for better understanding.

2.1 Trademark

A trademark is defined as any visible or audible sign used or intended to be used and capable of distinguishing the goods or services of any natural person or legal person.[1] A trademark or service mark encompasses of signs which could words or combination of words, figurative signs such as drawings, labels, seals logos; audible signs, audiovisual signs and series of signs.[2] Trademarks protect brand identity, help consumers make informed choices, and prevent unfair competition.

2.2 Registered Trademarks

A registered trademark refers to a mark that has been officially recorded within the OAPI registry under the Bangui Agreement. subregion. The Bangui agreement specifies that ownership of a trademark belongs to the person who first deposited it.[3] This therefore stipulates that ownership of trademark under the OAPI is gotten through registration of the trademark. Registration of a trademark confers on the trademark owner a right of ownership of trademark for the goods or services designated. [4]Trademark registration bestows on the trademark owner the right to use trademark on the designated good or services and the right to prohibit third parties from the use of their trademarks. The unitary nature of registration allows rights holders to secure protection regionally with a single application, reducing administrative burdens.[5]

2.3 Unregistered Trademarks

Unregistered trademarks are marks used in commerce that have not been formally registered within the OAPI subregion. Though the Bangui agreement recognizes that ownership of a trademark is accorded to person who first registers it, it however accords limited protection to unregistered trademarks. The Bangui agreement makes it possible for an unregistered trademark owner to claim prior right of use or ownership of trademark within the OAPI organization and this should be done within three months following publication of the record of the first filing.[6] However, unregistered rights are weaker than registered marks because OAPI primarily operates on a first-to-file basis. However, unregistered trademarks are limited in protection than registered trademark rights, this is because the first-to-file principle operates within the OAPI subregion.

2.4 Protection of Trademark Rights

Trademark protection refers to legal mechanisms preventing unauthorized use, imitation, or exploitation of a mark. Protection is achieved through registration with OAPI, opposition procedures, and sanctions against infringement, including civil and criminal remedies.[7]

Trademark protection refers to the legal mechanisms or steps taken by the trademark owner to prevent the use of their trademark in a manner which will cause consumer confusion about the source of their goods or services. Protection of trademark can be achieved either through trademark registration, opposition procedures, and bringing legal actions in cases of trademark violations.

2.5 Enforcement of Trademark Rights

Enforcement refers to the practical application of legal rights to stop infringement. While registration is centralized in OAPI, enforcement occurs at the national level, requiring remedies like injunctions, damages, or criminal sanctions through local courts.[8] Challenges include limited judicial capacity and procedural delays, which affect the practical effectiveness of legal protection.

2.6 Prospects of Protection and Enforcement

Prospects refer to the opportunities and positive developments for enhancing trademark protection. Recent revisions to the Bangui Agreement have modernized the system by enabling multi-class filings, expanding

[1] Article 2 (1) Annex III of the Bangui agreement

[2] Article 2(1) (a)-(b) of Annex III of the Bangui agreement

[3] Article 4 (1) Ibid.

[4] Article 6 (1) of Annex III of the Bangui agreement

[5] World Trademark Review. (2025). Brand owner's guide to Africa's regional IP agreements.

[6] Article 16 (1) of Annex III of the Bangui agreement

[7] European Union Intellectual Property Helpdesk. (2025). Cameroon IP country fiche.

[8] Mondaq. (2025). Intellectual Property Rights and the OAPI in Cameroon. MPECK & PARTNERS. (2025). TAKI trademark enforcement case.

protectable marks, and empowering customs authorities to seize counterfeit goods.[1]

2.7 Challenges of Protection and Enforcement

Challenges are obstacles undermining effective trademark protection in OAPI. Key challenges include inconsistent enforcement across member states, limited digital infrastructure, and the vulnerability of unregistered marks under the first-to-file system.

3. Theoretical Framework

This study is anchored on Institutional Theory and Economic Incentive Theory, both of which provide a robust analytical foundation for examining the prospects and challenges of the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region.

3.1 Institutional Theory

Institutional theory, as articulated by Douglass C. North in *Institutions, Institutional Change and Economic Performance* (1990),[2] emphasizes that the effectiveness of legal rules depends on the strength and functionality of institutions responsible for their implementation. According to North, institutions comprise formal rules (laws and regulations), informal constraints (norms and practices), and enforcement mechanisms that collectively shape social and economic interactions.[3]

Applied to trademark protection in the OAPI sub-region, institutional theory explains the gap between formal legal harmonization and practical enforcement outcomes. While the Bangui Agreement provides a centralized and uniform framework for trademark registration, enforcement remains decentralized and dependent on national courts, customs authorities, and law enforcement agencies. Variations in institutional capacity, judicial expertise, and procedural efficiency across member states directly affect the extent to which registered trademark rights are effectively enforced and unregistered trademarks are recognized. This theory therefore provides a valuable lens for understanding enforcement inconsistencies and systemic weaknesses within the OAPI regime.

3.2 Economic Incentive Theory (Economic Theory of Trademark)

Economic incentive theory, as advanced by Landes and Posner in their seminal work *Trademark Law: An Economic Perspective* (1987),[4] views trademarks as economic instruments designed to promote market efficiency. According to this theory, trademarks reduce consumer search costs, protect business goodwill, and incentivize firms to maintain consistent product quality. Legal protection of trademarks is therefore justified as a means of encouraging investment and fair competition.

In the context of the OAPI sub-region, economic incentive theory highlights the importance of strong, predictable trademark protection in fostering regional trade, attracting investment, and supporting business development. Registered trademarks provide higher economic value due to their legal certainty and enforceability, while weak enforcement mechanisms and limited protection for unregistered trademarks undermine these incentives. The theory also provides insight into the rationale behind OAPI's first-to-file system, which prioritizes legal certainty but may disadvantage small and informal enterprises that rely on unregistered marks.

3.3 Relevance of the Theories to This Study

Together, institutional theory and economic incentive theory provide a comprehensive framework for analyzing trademark protection and enforcement in the OAPI sub-region. Institutional theory explains enforcement challenges arising from structural and administrative limitations, while economic incentive theory clarifies the commercial implications of effective or ineffective trademark protection. The integration of these theories enables a balanced assessment of both legal-institutional performance and economic outcomes, thereby strengthening the analytical foundation of this study.

4. Methodology

This study adopts a qualitative doctrinal research methodology to examine the prospects and challenges of the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region. Doctrinal legal research is particularly suitable for this study because it enables a systematic analysis of legal rules, principles, and institutional frameworks governing trademark protection, while also allowing for critical evaluation of their effectiveness in practice.

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[1] European Union Intellectual Property Helpdesk. (2022). Key changes from amendments to the Bangui Agreement.

[2] North, D. C. (1990). *Institutions, institutional change and economic performance*. Cambridge University Press.

[3] *Ibid.*

[4] Landes, W. M., & Posner, R. A. (1987). Trademark law: An economic perspective. *Journal of Law and Economics*, *30*(2), 265–309.

The research relies primarily on secondary sources of data, including international treaties, regional instruments, national legislation, judicial decisions, and scholarly literature. Key legal instruments analyzed include the Bangui Agreement establishing OAPI, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention for the Protection of Industrial Property, and relevant national intellectual property and enforcement laws of selected OAPI member states. These instruments are examined to identify the scope of trademark rights, enforcement mechanisms, and the extent of protection accorded to registered and unregistered trademarks.

In addition, the study engages in an extensive review of scholarly writings, including textbooks, peer-reviewed journal articles, policy reports, and publications by international organizations such as the World Intellectual Property Organization. These sources provide theoretical perspectives, comparative insights, and empirical observations on intellectual property enforcement in developing and regional contexts, particularly within Africa.

The research employs analytical and evaluative methods to assess the effectiveness of trademark enforcement mechanisms. Civil, criminal, administrative, and border enforcement measures are examined to determine their practical functionality, institutional capacity, and deterrent value. This evaluation is complemented by a comparative approach, drawing selectively on experiences from other regional intellectual property systems and national jurisdictions to contextualize the OAPI framework and highlight best practices and structural deficiencies.

Furthermore, the study is underpinned by a theoretical framework drawn from institutional theory and economic incentive theory, which guides the analysis of how legal institutions, enforcement capacity, and market incentives influence compliance and enforcement outcomes. This theoretical grounding enables a deeper understanding of the relationship between legal norms and real-world enforcement behavior.

Overall, the methodology ensures a coherent and critical examination of trademark protection within the OAPI sub-region, enabling the study to draw well-reasoned conclusions and propose practical, context-specific recommendations aimed at strengthening the effectiveness of trademark enforcement.

5. Legal Framework

The legal framework governing the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region is primarily anchored in regional instruments, international treaties, and national implementing laws of OAPI member states.

This multi-layered framework reflects the hybrid nature of the OAPI system, characterized by centralized registration and decentralized enforcement.

5.1 The Bangui Agreement Establishing OAPI

The cornerstone of trademark protection in the OAPI sub-region is the Bangui Agreement Relating to the Creation of an African Intellectual Property Organization, first adopted in 1977 and subsequently revised in 1999 and 2015. The Agreement establishes OAPI as a regional intellectual property organization and provides a uniform legal regime applicable across all member states.[1]

Trademark law is principally governed by Annex III of the Bangui Agreement, which sets out the conditions for trademark registrability, the scope of rights conferred by registration, the procedure for trademark registration, and the duration of protection. Under this framework, a trademark registered with OAPI enjoys unitary protection throughout all member states for an initial period of ten years, renewable indefinitely. Trademark registration grants trademark owners the exclusive right to use the mark[2] and to prevent third parties from using identical or confusingly similar signs in the course of trade.[3]

The OAPI subregion practices the first-to-file principle wherein priority in trademark right is accorded to the first applicant who files for the registration of trademark regardless of a prior use right. Trademark registration enhances legal certainty and administrative efficiency; however, it poses challenges for unregistered trademark owners who must rely on limited exceptions such as bad faith registration, prior use of trademark and well-known trademark status.

5.2 Protection of Unregistered Trademarks Under the Bangui Agreement

Unlike registered trademarks, unregistered trademarks do not enjoy automatic statutory protection under the OAPI regime. However, the Bangui Agreement recognizes certain limited forms of protection for unregistered marks, particularly where they qualify as well-known marks in accordance with international standards.

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[1] Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (OAPI), as revised in 1999 and 2015.

[2] Article 6 (1) of Annex III of the 2015 Bangui agreement

[3] Article 6 (2) Ibid

Article 6bis of the Paris Convention, which is incorporated into the OAPI legal framework, provides protection for well-known trademarks even in the absence of registration. This allows owners of such marks to oppose or invalidate later registrations that are likely to cause confusion. Nevertheless, the burden of proof lies heavily on the claimant, who must demonstrate the mark's reputation, recognition, and market presence within the relevant territory.

The Bangui agreement legislator makes it possible for prior right users of trademark to claim ownership of their trademark before the OAPI when there is the registration of their trademark by a party who knew or should have known of the existence of their trademark right.[1] The claim of ownership trademark right needs to be done within three (3) following publication of the record of the first filing.[2] This therefore implies that, though the OAPI sub region practices the first-to-file principle it however recognizes the use of unregistered trademarks, though its protection limited.

5.3 International Legal Instruments Applicable in the OAPI Sub-Region

The OAPI subregion is a signatory to several international instruments which ensures the protection of trademark rights, some of these international instruments are; Paris Convention, the TRIPS Agreement, the Vienna Agreement and the protocol relating to the Madrid Agreement concerning international registration of marks. It is this light; this paper seeks to elucidate on some of the international instruments.

a. Paris Convention for the Protection of Industrial Property (1883)

The Paris convention which was signed in Paris France, on the 20th March 1883. It was the first international treaty dealing with industrial property and the convention came as a result of the diplomatic conference in Paris in 1880. The Paris Convention establishes foundational principles such as national treatment, right of priority, and protection against unfair competition. The principle of national treatment requires each member state to grant same level protection it grants to its nationals to foreigners in their country in regards to the protection of trademark rights.[3] The right of priority is a principle which makes it possible for a person who has duly filed for the registration of trademark in a country which is a party to the Paris Union to claim a prior right in trademark in a country which is equally party to the Paris union, provided that it is done within the period of six (6) months.[4] The principle of unfair competition is a principle which requires member states to the Paris Convention to assure to honest practices in commercial or industrial matters to countries of the Paris Union.[5] The OAPI which is a signatory to the Paris Convention has integrated this principles in to the Bangui agreement, these principles outrightly influence the protection of registered and unregistered trademark rights within the OAPI.

b. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)

The TRIPS Agreement was adopted at Marrakesh on April 15, 1994as Annex 1C of the Final act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.[6] The agreement on Trade- Related Aspects of Intellectual Property (TRIPS) came into effect on 1 January 1995. It was one of the major outcomes from the Uruguay Round of multilateral trade negotiations that led to the establishment of the World Trade Organisation (WTO).[7] The objective of the TRIPS Agreement is stated out in Article 7 of the TRIPS Agreement. The main principles of the TRIPS Agreement are; national treatment, most favoured nation treatment, minimum standard protection.

The TRIPS Agreement sets minimum standards for trademark protection and enforcement, including obligations relating to civil, administrative, and criminal remedies.[8] OAPI's trademark regime is designed to comply with TRIPS standards, particularly in relation to exclusive rights, enforcement procedures, and border measures against counterfeit goods.[9]

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[1] Article 16 (1), Annex III of the 2015 Bangui agreement

[2] It is of essence to take note that the claim of ownership in trademark right has been deduced from the period six months to the period of three months. The 1999 Bangui agreement makes mention of six months whereas the 2015 Bangui makes provision of three months.

[3] Article 2 (1) of the Paris Convention

[4] Article 4 (A) Ibid

[5] Article 10 bis (1) – (3) of the Paris convention

[6] Daniel Gervais. (2008). The TRIPS AGREEMENT Drafting History and Analysis.

[7] John Revesz. (May 1999). Trade related Aspects Intellectual Property Rights (Staff Research Paper).

[8] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

[9] *Ibid.*

c. The Madrid Protocol

The Madrid protocol relating to the Madrid agreement concerning the international registration of marks was adopted at Madrid on June 27, 1989 and began operational in 1996. The Madrid protocol is a separate treaty that co-exists with the Madrid agreement and the protocol came in to address the short comings of the Madrid agreement.[1] The Madrid protocol is a primary legal instrument governing international trademark registration of trademark by making it possible for trademark owners to secure international registration based on national application or registration.[2]

5.4 Enforcement at the National Level

Although trademark registration is centralized under OAPI, enforcement is carried out at the national level by the courts and administrative authorities of member states. National laws, including penal codes and civil procedure rules, play a critical role in determining the availability and effectiveness of remedies such as injunctions, damages, seizure of infringing goods, and criminal sanctions.

This decentralized enforcement model results in varying levels of effectiveness across member states, depending on factors such as judicial expertise in intellectual property law, procedural efficiency, and institutional capacity. Consequently, the practical enforcement of trademark rights-especially for unregistered trademarks-remains uneven across the OAPI sub-region.

a. Customs and Border Measures

The enforcement of trademark is decentralized; it is in this light that member states to adopt customs measures aimed at preventing the importation and circulation of counterfeit goods bearing infringing trademarks. Customs authorities may suspend the release of suspected counterfeit goods upon application by the trademark owner or through ex officio action, subject to national implementing laws. There are even regional custom border measures like the CEMAC Custom border which is made up of six countries which are equally members of the OAPI sub region. The CEMAC custom border has introduced a one-stop-border post which simplifies customs procedures by integrating various clearance steps in to a single point of contact.

However, the effectiveness of these measures is contingent on inter-agency coordination, technical capacity, and awareness among customs officials. In practice, limited resources and lack of specialized training often hinder the consistent application of border enforcement mechanisms.

b. Assessment of the Legal Framework

The OAPI legal framework provides a robust and harmonized foundation for trademark protection through centralized registration and alignment with international standards. Nevertheless, challenges persist in the areas of enforcement, protection of unregistered trademarks, and institutional capacity at the national level. The dominance of the first-to-file system, combined with limited protection of unregistered rights, raises concerns regarding fairness and access to protection for small and informal businesses.

Overall, the legal framework reflects a tension between regional harmonization and national implementation, which continues to shape the prospects and challenges of trademark protection and enforcement in the OAPI sub-region.

6. Enforcement Mechanisms

The enforcement of trademark rights within the OAPI sub-region is characterized by a dual structure in which trademark registration is centralized under the OAPI system, while enforcement is largely decentralized and implemented through national legal and administrative institutions. Enforcement mechanisms derive from the Bangui Agreement, international intellectual property instruments, and domestic laws of OAPI member states. These mechanisms are crucial for transforming formal trademark rights into effective and practical protection.

6.1 Civil Enforcement Mechanisms

Civil enforcement constitutes the primary avenue through which trademark owners assert their rights against infringement within the OAPI sub-region. Under the Bangui Agreement, holders of registered trademarks are entitled to institute civil proceedings before competent national courts to restrain unauthorized use of their marks (article 49 (1), Annex III of the Bangui Agreement). Civil remedies commonly available include injunctions, monetary damages, and orders for the seizure or destruction of infringing goods.

Civil enforcement is particularly significant for registered trademarks, which benefit from presumptive validity. However, owners of unregistered trademarks face a higher evidentiary burden, often requiring proof of prior use,

[1] Jerome Gilson & Anne Gilson Lalonde. (2003). The Madrid Protocol: A slumbering giant awakens at last.

[2] Article 2 (1) of the Madrid Protocol

reputation, or likelihood of confusion to succeed in civil claims.[1] The effectiveness of civil enforcement varies across member states due to differences in judicial expertise, procedural efficiency, and access to interim relief.[2]

6.2 Criminal Enforcement Mechanisms

Criminal enforcement plays a complementary role in combating trademark infringement, particularly counterfeiting and large-scale piracy (Article 46 (2) and article 49 (1), Annex III of the Bangui Agreement). Many OAPI member states criminalize trademark counterfeiting under their national penal laws, providing for sanctions such as fines, imprisonment, and confiscation of counterfeit goods.[3]

Criminal enforcement serves a deterrent function and is particularly effective against organized counterfeit networks. However, enforcement is often hindered by limited prosecutorial prioritization of intellectual property crimes, insufficient investigative capacity, and low levels of technical expertise among law enforcement agencies. These challenges reduce the practical impact of criminal sanctions within the region.

6.3 Administrative Enforcement Mechanisms

Administrative enforcement mechanisms operate alongside judicial remedies and provide preventive and corrective measures against trademark infringement. Within the OAPI system, administrative enforcement includes opposition proceedings against pending trademark applications and invalidation or cancellation actions against improperly registered trademarks (Article 15 Annex III of the Bangui Agreement).

Administrative enforcement is generally less costly and more expeditious than judicial proceedings, making it an important tool for rights holders seeking early intervention. Nevertheless, administrative remedies are limited in scope and typically do not provide compensation for economic losses suffered as a result of infringement.[4]

6.4 Customs and Border Enforcement Measures

Customs and border measures are essential for preventing the importation and circulation of counterfeit goods within the OAPI sub-region. In accordance with the TRIPS Agreement, OAPI member states are required to provide border measures enabling customs authorities to suspend the release of goods suspected of infringing trademark rights.[5] The CEMAC custom border which some of the OAPI are members regulate the movement of goods and protect internal market of its members.

The Bangui Agreement further empowers member states to adopt customs procedures aimed at intercepting counterfeit goods (Article 66). However, the effectiveness of border enforcement is constrained by limited resources, inadequate training of customs officials, and weak coordination between customs authorities and trademark owners.[6]

6.5 Alternative and Complementary Enforcement Measures

Beyond formal legal mechanisms, trademark enforcement in the OAPI sub-region is supported by alternative and complementary measures such as cease-and-desist letters, the use of Alternative Dispute Resolutions such as like arbitration, conciliation, negotiations and private monitoring of markets. These measures offer cost-effective and flexible enforcement options, particularly where litigation may be time-consuming or expensive.[7]

Public awareness campaigns and stakeholder education initiatives also contribute to strengthening enforcement by promoting respect for intellectual property rights and discouraging infringement.[8]

6.6 Assessment of Enforcement Mechanisms

Despite the availability of multiple enforcement mechanisms, the practical enforcement of trademark rights within the OAPI sub-region remains uneven. Structural challenges such as disparities in institutional capacity, limited judicial specialization in intellectual property law, procedural delays, and the weak protection of

[1] World Intellectual Property Organization. (2013). Protection of unregistered trademarks.

[2] Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, *49*(2), 299–320.

[3] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

[4] Organisation Africaine de la Propriété Intellectuelle. (2023). General presentation of the OAPI trademark system.

[5] *Ibid.*

[6] European Union Intellectual Property Helpdesk. (2022). IP enforcement and border measures in Africa.

[7] International Trademark Association. (2021). Trademark enforcement strategies in emerging markets.

[8] World Intellectual Property Organization. (2020). Introduction to intellectual property.

unregistered trademarks continue to undermine enforcement effectiveness.[1] These challenges highlight the need for enhanced institutional coordination, capacity building, and legal reforms to strengthen trademark enforcement across the region.

7. Effectiveness of Trademark Protection and Enforcement

The effectiveness of trademark protection and enforcement in the OAPI sub-region reflects a complex interplay between a solid formal legal framework and the practical challenges of implementation. At the formal level, the OAPI system provides a unitary, centralized trademark registration regime under the Bangui Agreement, which confers exclusive rights throughout all member states upon registration. This framework aligns with international intellectual property norms, including the Paris Convention and the TRIPS Agreement, and, in principle, offers rights holders a clear and predictable basis for enforcement.[2]

In practice, however, the effectiveness of enforcement varies significantly. Civil enforcement mechanisms such as actions for injunctions, damages, and seizure of infringing goods exist in national legal systems, but procedural delays, high litigation costs, and limited judicial specialization in intellectual property undermine their practical utility. Empirical research on African intellectual property systems finds that courts often lack the technical expertise required to adjudicate complex trademark disputes swiftly and consistently, resulting in uneven outcomes across jurisdictions.[3] These procedural and capacity constraints deter many rights holders, especially small and medium-sized enterprises, from initiating infringement proceedings. Criminal enforcement, although present in many OAPI member states' penal codes, is similarly underutilized. While the availability of fines, imprisonment, and confiscation measures theoretically enhances deterrence, it is often deprioritized by enforcement agencies due to limited investigative expertise and competing law enforcement priorities.[4] Studies of IP crime enforcement in developing economies indicate that intellectual property offenses are rarely treated with the same urgency as violent or economic crimes, which diminishes the practical deterrent effect of criminal penalties.

Administrative enforcement mechanisms, including opposition and invalidation proceedings before OAPI, provide useful preventive tools and help maintain the integrity of the trademark register. Nevertheless, such administrative actions do not address market-level infringement and cannot compensate rights holders for economic losses suffered due to unauthorized use of marks. This limitation reduces the overall effectiveness of the system in protecting commercial interests on the ground. Border control and customs measures represent another key component of trademark enforcement, particularly in combatting counterfeit goods. OAPI member states, as parties to TRIPS, are obligated to provide border measures that suspend the release of suspected infringing goods. Yet, research on African customs enforcement highlights operational challenges such as inadequate training, limited technological capacity, and insufficient cooperation with rights holders that constrain the effectiveness of these measures.[5] Without robust customs enforcement, infringing and counterfeit products can traverse borders with relative ease, undermining national and regional efforts to uphold trademark rights.

A further constraint on effectiveness is the limited protection afforded to unregistered trademarks within the OAPI system. Because the regime is anchored in a first-to-file principle, unregistered marks often lack enforceable rights unless they can be proven well-known or subject to bad-faith filings, both of which require substantial evidence. This legal gap disproportionately affects informal and small-scale enterprises that may have built significant market recognition through use but lack formal registration.[6] The resulting enforcement gap weakens the legitimacy and reach of the trademark system as a whole.

Overall, while the formal legal architecture of trademark protection in the OAPI sub-region is sound and provides a comprehensive basis for rights, the effectiveness of enforcement remains moderate and inconsistent in practice. Institutional weaknesses, procedural inefficiencies, limited judicial and administrative capacity, and gaps in protection for unregistered marks all contribute to this outcome. Strengthening effectiveness will therefore require systemic reforms that enhance enforcement capacity, streamline procedures, promote judicial expertise, and broaden protection mechanisms so that the legal benefits of trademark rights are realized in

[1] Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, *21*(2), 309–331.

[2] Organisation Africaine de la Propriété Intellectuelle. (2015). Bangui Agreement Relating to the Creation of an African Intellectual Property Organization (as revised).

[3] *Ibid.*

[4] World Intellectual Property Organization. (2015). Guide on trademark enforcement.

[5] World Intellectual Property Organization. (2020). Introduction to intellectual property.

[6] *Ibid*.

everyday commercial practice.

8. Challenges to the Protection and Enforcement of Trademark Rights in the OAPI Sub-Region

Despite the existence of a harmonized trademark registration regime under OAPI, the effective protection and enforcement of registered and unregistered trademark rights within the sub-region remain constrained by multiple interrelated challenges. These challenges are legal, institutional, structural, and socio-economic in nature, and they significantly undermine the practical value of trademark rights.

8.1 Institutional Weaknesses and Limited Enforcement Capacity

A central challenge to trademark enforcement within the OAPI sub- region is the limited institutional capacity of national enforcement bodies. While OAPI centralizes trademark registration, enforcement responsibilities are vested in national courts, customs administrations, police, and prosecutorial authorities. Many of these institutions lack adequate resources, specialized training, and technical expertise in intellectual property law, particularly trademark enforcement.[1]

Judicial officers often lack exposure to complex trademark disputes, leading to inconsistent rulings, reluctance to grant interim remedies such as injunctions, and prolonged adjudication. In criminal enforcement, investigative agencies frequently lack the operational tools required to combat organized counterfeiting networks, thereby weakening the deterrent effect of sanctions.[2]

8.2 Decentralized Enforcement and Fragmentation of Outcomes

The structural dichotomy between centralized registration and decentralized enforcement constitutes a significant challenge within the OAPI system. Although a trademark registered with OAPI enjoys unitary protection across all member states, enforcement outcomes are governed by national procedural laws and judicial practices. This results in fragmented enforcement standards and inconsistent remedies across jurisdictions.[3]

Such fragmentation undermines legal certainty and increases enforcement costs for rights holders operating across multiple member states. The lack of uniform enforcement practices diminishes confidence in the regional trademark system and weakens its integrative function.

8.3 Weak Protection for Unregistered Trademarks

Another major challenge is the limited legal recognition afforded to unregistered trademarks under the OAPI regime. The first-to-file principle prioritizes formal registration over prior use, disadvantaging businesses-particularly small and informal enterprises that rely on unregistered marks. Protection for unregistered trademarks is largely restricted to well-known marks or cases of bad-faith registration or an action of unfair competition, both of which impose stringent evidentiary requirements.[4]

In practice, proving reputation, goodwill, and consumer recognition is particularly difficult in economies characterized by informal trade and limited documentation. This legal imbalance exacerbates inequality between multinational enterprises and local businesses, undermining inclusive access to trademark protection.

8.4 Procedural Delays and High Cost of Enforcement

Procedural delays and the high cost of litigation constitute significant barriers to effective trademark enforcement. Civil proceedings in many OAPI member states are slow, and access to interim measures is limited. Delays in granting injunctions allow infringing activities to continue, eroding the economic value of trademark rights.[5]

For small and medium-sized enterprises, enforcement costs including legal representation, court fees, and evidentiary expenses often outweigh the perceived benefits of litigation. This discourages rights holders from pursuing enforcement actions and fosters a culture of non-compliance.

8.5 Limited Effectiveness of Criminal Enforcement

Although trademark counterfeiting is criminalized in many OAPI member states, criminal enforcement remains

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[1] Ncube, C. (2016). Enforcement of intellectual property rights in Africa. *Comparative and International Law Journal of Southern Africa*, *49*(2), 299–320.

[2] Kuruk, P. (2004). African intellectual property law in the context of economic integration. *Arizona Journal of International and Comparative Law*, *21*(2), 309–331.

[3] *Ibid.*

[4] World Intellectual Property Organization. (2013). Protection of unregistered trademarks.

[5] *Ibid.*

largely ineffective. Intellectual property crimes are frequently treated as low-priority offenses, resulting in weak investigation and prosecution rates.

Law enforcement agencies often lack specialized training in identifying and handling trademark infringement cases, particularly those involving cross-border counterfeiting operations.[1] As a result, criminal enforcement functions more as a symbolic deterrent than as an effective mechanism for combating large-scale infringement.

8.6 Challenges in Customs and Border Enforcement

Customs and border enforcement mechanisms face considerable operational challenges within the OAPI sub-region. Porous borders, extensive informal trade routes, and limited technological infrastructure hinder the interception of counterfeit goods. Customs officials often lack the technical expertise required to identify infringing trademarks, particularly where counterfeits are sophisticated.[2]

Furthermore, the effectiveness of border measures depends heavily on cooperation from trademark owners, including the recording of trademarks with customs authorities. Low levels of awareness and engagement by rights holders significantly reduce the utility of customs enforcement mechanisms.

8.7 Low Awareness, Informality, and Socio-Cultural Factors

Low awareness of trademark rights and enforcement mechanisms among businesses and consumers further undermines protection efforts. In many OAPI member states, informal markets dominate commercial activity, and trademark infringement is often socially tolerated or perceived as economically necessary. Cultural perceptions that prioritize affordability over authenticity weaken consumer-driven enforcement and reduce the social stigma associated with counterfeiting, thereby placing additional strain on formal enforcement mechanisms.[3]

8.8 Lack of Data and Transparency

The absence of comprehensive and reliable data on trademark infringement cases, enforcement outcomes, and counterfeit trade flows presents an additional challenge. Limited transparency impedes evidence-based policy formulation and hinders effective monitoring and evaluation of enforcement strategies.[4] Without accurate data, reforms risk being ad hoc rather than systematic, perpetuating existing weaknesses within the trademark enforcement framework.

8.9 Overall Impact of the Challenges

Collectively, these challenges create a cycle of weak enforcement, low compliance, and diminished confidence in the trademark system. While the OAPI framework provides a solid normative foundation, its effectiveness is constrained by institutional fragility legal limitations, and socio-economic realities. Addressing these challenges requires coordinated reforms aimed at strengthening national institutions, expanding protection for unregistered trademarks, enhancing enforcement capacity, and promoting awareness across the sub-region.

9. Finding

This study finds that the OAPI trademark system offers a strong legal and institutional foundation for the protection of registered trademarks through a centralized and unitary registration regime. The Bangui Agreement, particularly Annex III, provides clear substantive rights and aligns broadly with international standards under the Paris Convention, Madrid Protocol and the TRIPS Agreement. This centralized registration mechanism enhances legal certainty, reduces duplication, and promotes regional economic integration by granting uniform trademark protection across all OAPI member states.

However, the study also reveals that the effectiveness of trademark enforcement is significantly constrained by the decentralized nature of enforcement. While rights are granted at the regional level, enforcement depends on national courts, administrative bodies, and law enforcement agencies whose capacity, expertise, and resources vary considerably. This has resulted in uneven enforcement outcomes across member states, undermining the uniformity intended by the OAPI system and creating uncertainty for rights holders.

The findings further indicate that registered trademarks enjoy significantly stronger protection than unregistered trademarks within the OAPI sub-region. The first-to-file principle embedded in the Bangui Agreement prioritizes registration over prior use, offering limited legal recourse for unregistered marks. Protection for unregistered trademarks is largely confined to exceptional circumstances such as well-known marks or cases of bad-faith

[1] World Trade Organization. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

[2] European Union Intellectual Property Helpdesk. (2022). IP enforcement and border measures in Africa.

[3] World Intellectual Property Organization. (2020). Introduction to intellectual property.

[4] *Ibid.*

registration, leaving many small and informal businesses legally vulnerable despite their market presence.

The study also finds that civil enforcement mechanisms are underutilized and often inefficient due to procedural delays, high litigation costs, and limited judicial specialization in intellectual property matters. Criminal enforcement, although provided for in national laws, is inconsistently applied and frequently deprioritized by law enforcement agencies. Border and customs measures, while recognized in law, suffer from operational constraints, inadequate training, and limited coordination with trademark owners.

Another key finding is the low level of awareness and compliance among businesses, consumers, and enforcement officials. Many market participants lack adequate knowledge of trademark rights, registration procedures, and enforcement mechanisms, contributing to widespread infringement and counterfeiting. This problem is particularly acute in informal markets, which dominate economic activity in many OAPI member states.

Finally, the study finds that although the OAPI framework presents strong prospects for effective regional trademark protection, these prospects remain largely unrealized due to institutional weaknesses, fragmented enforcement practices, limited protection for unregistered trademarks, and insufficient regional coordination. Without targeted reforms aimed at strengthening enforcement capacity, harmonizing procedures, and increasing awareness, the full economic and legal benefits of the OAPI trademark system will remain constrained.

10. Conclusion

This study has examined the prospects and challenges associated with the protection and enforcement of registered and unregistered trademark rights within the OAPI sub-region. It has demonstrated that the OAPI trademark regime, anchored in the Bangui Agreement, provides a harmonized and internationally aligned legal framework that promotes regional economic integration through a unitary trademark registration system. This centralized registration model offers legal certainty and broad territorial protection, positioning OAPI as a distinctive regional intellectual property system within the African context.

Despite these institutional strengths, the study concludes that the practical effectiveness of trademark protection and enforcement remains uneven and constrained. The decentralization of enforcement to national institutions has produced fragmented outcomes, procedural inefficiencies, and disparities in judicial expertise and enforcement capacity across member states. While registered trademarks benefit from strong statutory protection, unregistered trademarks remain inadequately safeguarded, particularly within informal and small-scale business environments, thereby undermining inclusivity and weakening the developmental objectives of trademark law.

The study further finds that enforcement mechanisms civil, criminal, administrative, and border measures are limited by high litigation costs, procedural delays, weak institutional prioritization of intellectual property crimes, and low levels of awareness among stakeholders. These shortcomings, coupled with inadequate data collection and coordination, allow trademark infringement and counterfeiting to persist despite the existence of a comprehensive legal framework.

Beyond its evaluative findings, this study makes a clear contribution to knowledge by advancing African intellectual property scholarship through a context-driven analysis of trademark protection within the OAPI sub-region. It reconceptualizes OAPI as a hybrid regime of centralized registration and decentralized enforcement, exposing the structural disconnect between legal harmonization and enforcement outcomes. By foregrounding the neglected position of unregistered trademarks particularly within informal commercial settings the study fills a critical gap in existing literature. Anchored in institutional and economic incentive theories, it deepens understanding of how enforcement capacity and market behavior interact in developing economies, while offering practical, region-specific insights capable of informing policy reform, judicial practice, and institutional strengthening within the OAPI framework.

In conclusion, while the OAPI trademark system holds significant promise, realizing its full potential requires deliberate and coordinated reforms aimed at strengthening enforcement capacity, harmonizing national practices, expanding protection for unregistered trademarks, and enhancing stakeholder awareness. Addressing these challenges will not only improve the effectiveness and credibility of trademark protection in the OAPI sub-region but will also contribute meaningfully to sustainable economic development, innovation, and fair competition across member states.

11. Recommendations

The protection and enforcement of trademark rights in the OAPI sub-region are vital for ensuring fair competition, protecting business reputation, and driving economic growth. Yet, persistent challenges-ranging from weak institutions and fragmented enforcement to inadequate protection for unregistered marks and low stakeholder awareness-continue to undermine the system’s effectiveness. Tackling these issues demands bold,

coordinated, and strategic interventions. The following recommendations outline practical steps to strengthen legal frameworks, enhance enforcement capacity, foster compliance, and build a more robust, inclusive, and resilient trademark system across the sub-region.

11.1 Strengthen Institutional and Judicial Capacity

The effectiveness of trademark enforcement in the OAPI sub-region is often hindered by weak institutional capacity. To address this, member states should establish specialized intellectual property courts or tribunals to handle trademark disputes efficiently. Specialized courts can ensure uniform interpretation of laws, expedite proceedings, and provide technical expertise necessary for complex cases. Furthermore, judicial officers and law enforcement personnel should receive regular training in trademark law, infringement investigations, and evidence collection to improve the consistency and quality of judicial decisions and criminal prosecutions. Allocating adequate resources to national enforcement agencies, including customs authorities, is also essential to strengthen operational capacity and ensure effective enforcement.

11.2 Harmonize National Enforcement Procedures

While OAPI provides centralized registration, enforcement outcomes are governed by national procedural laws, resulting in fragmented protection across member states. Harmonizing enforcement procedures would reduce inconsistencies and increase predictability. Member states should develop standardized guidelines for civil, criminal, and administrative enforcement, ensuring uniform application of laws. Regional cooperation among national IP offices and enforcement authorities, through joint operations and sharing of best practices, would further strengthen enforcement efforts. Additionally, OAPI-led monitoring and evaluation of enforcement outcomes could ensure regional consistency and improve cross-border legal certainty.

11.3 Expand Legal Protection for Unregistered Trademarks

The current OAPI regime offers limited protection for unregistered trademarks, disadvantaging small and informal businesses. To address this gap, member states should explicitly recognize well-known and prior-use trademarks in their national laws and adopt flexible evidentiary standards that enable these businesses to assert rights more easily (WIPO, 2013). Capacity-building initiatives should educate enterprises on the benefits of registration and assist them in documenting trademark usage, reputation, and consumer recognition to support potential legal claims. This approach would make the trademark system more inclusive and equitable.

11.4 Reduce Procedural Delays and Litigation Costs

Lengthy legal proceedings and high litigation costs often discourage rights holders from enforcing trademarks. To mitigate this, member states should promote alternative dispute resolution (ADR) mechanisms, such as mediation, arbitration, and negotiation, which provide faster, cost-effective, and less adversarial ways to resolve disputes.

Simplified civil procedures, including expedited injunctions and provisional remedies, would further enhance access to justice. Additionally, financial support or legal aid for small and medium-sized enterprises would ensure that enforcement is not prohibitively expensive, encouraging broader compliance.

11.5 Enhance Criminal and Border Enforcement Mechanisms

Criminal sanctions and border enforcement are underutilized in the sub-region. Member states should prioritize intellectual property crimes in law enforcement agendas and establish specialized investigative units to tackle large-scale counterfeiting (WIPO, 2015). Customs authorities require training and technological support, including access to trademark databases and risk profiling for suspicious goods. Enhanced collaboration between rights holders and customs officials is essential to ensure proper recording and monitoring of trademarks at borders, improving the overall effectiveness of enforcement measures.

11.6 Promote Awareness and Cultural Change

Low awareness of trademark rights and informal market practices undermine compliance. Member states should implement regional awareness campaigns targeting consumers, businesses, and enforcement officials to emphasize the legal, economic, and social importance of trademarks. Incorporating IP education into academic curricula and professional development programs would cultivate a culture of compliance. Industry associations and business networks can also play a role by encouraging voluntary compliance and self-regulation, especially within informal sectors.

11.7 Improve Data Collection, Monitoring, and Transparency

The absence of reliable enforcement data hinders policy development and effective decision-making. OAPI and member states should maintain centralized databases tracking trademark applications, infringement cases, enforcement actions, and counterfeit trade patterns. Public accessibility to enforcement data, while respecting confidentiality, would facilitate research, policy evaluation, and stakeholder engagement. Periodic audits of

enforcement performance would help identify gaps, monitor progress, and guide strategic reforms.

11.8 Leverage Regional and International Cooperation

Finally, regional and international collaboration can strengthen the OAPI trademark system. Member states should work closely with ARIPO, WIPO, and WTO to adopt best practices, access technical assistance, and harmonize enforcement standards. Cross-border enforcement initiatives can help combat transnational counterfeiting and provide consistent protection across jurisdictions. Participation in regional IP forums also facilitates knowledge sharing, joint capacity-building efforts, and the development of model legislation.

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

Linking Financial Literacy, Fintech and Financial Inclusion in Cameroon's Mfoundi Division

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doi:10.63593/LE.2788-7049.2025.12.005

Abstract

Purpose: The purpose of this paper is to investigate how financial literacy influences financial inclusion in Cameroon, and whether financial technology (fintech) adoption plays a role in this relationship. ***Design/Methodology/Approach:*** The study is based on primary data collected from a sample of 231 respondents using well-structured questionnaire. The study uses a quantitative approach and the purposive random sampling method with the help of a Structural Equation Model (SEM), which is operated with Smart PLS to test a mediation model where fintech adaption mediates the link between financial literacy and inclusion. ***Findings:*** The results indicate that financial literacy significantly boosts financial inclusion, with fintech adoption playing a key partial mediator. ***Practical Implications:*** Enhancing literacy programs and expanding fintech access can drive inclusion, informing policymakers. ***Originality/Value:*** The study highlights fintech's mediating role in a developing context, offering insights for Africa's digital financial push.

Keywords: financial literacy, financial inclusion, financial technology, SEM, Cameroon's Mfoundi Division

1. Introduction

Financial inclusion remains a critical development goal in emerging economies like Cameroon (Demirguc-Kunt et al., 2018). Financial literacy helps empower and educate small businesses so that they have the knowledge and can evaluate various financial products and services to make wise financial decisions. Financial inclusion is included in the financial literacy program, especially to increase the ability of small businesses to use financial services and get a direct impact from financial institutions. The higher the increase in financial inclusion in SMEs, the more it will ultimately increase the financial stability of a country (Cohen & Nelson, 2011). The Cameroon National Strategy for Financial Inclusion (SNKI) aims to increased access to financial services for 65% of the adult's population by 2027, focusing on vulnerable groups like rural populations, women, youth and MSMEs.

This strategy was created by the government to achieve equitable economic growth and eliminate economic and social inequalities in society by increasing public access to financial services. Financial inclusion encourages economic growth, financial system stability, poverty reduction and economic disparities between individuals and regions. Financial inclusion is intended to make access to various financial assets and services easier, faster and cheaper (Irman et al., 2021). The aim is to improve prosperity and financial inclusion. This is achieved through the implementation of new and advanced approaches, including increased financial awareness and education. Economic and social. With the main aim of providing financial services, the inclusive financing program is called financial inclusion. With increased financial inclusion, the financial services sector of developing countries is expected to develop more quickly. Financial inclusion includes access to all necessary financial products, organizations and services as well as the level of community ability to improve the welfare of society.

Financial inclusion is when the majority of people can take advantage of available financial services. This minimizes the number of people who are unaware of the benefits of financial access because this access is available at no cost. The Financial Services Authority (OJK) conducted the National Survey of Financial Literacy and Financial Inclusion (SNLIK) in Indonesia (Rahadjeng et al., 2023).

In financial management, financial inclusion is very important. Based on the definition of financial management and its relationship with the theory of planned behaviour, individual decision-making helps financial inclusion because it is related to the availability of access to financial products and services. Financial management is not only expected in profit-oriented organizations or companies but the concepts and theories can be applied to individuals. Individuals who are capable and have access to various kinds of financial products and services can be said to have a good level of financial inclusion, and these individuals can manage their finances well by financial management concepts and theories which provide knowledge about financial management, which is related to financial management. With personal finance, financial literacy is very important for the economic growth of a country, especially developing countries like Indonesia (Bhuvana & Vasantha, 2019). Everyone should have a good understanding of finances to avoid financial problems. Lack of knowledge about finances can have a negative impact, and one of the factors that influences financial decisions is ignorance. By increasing financial knowledge, it is hoped that you can balance the income earned with the costs incurred. Since everyone's income is different, having a good understanding of finances will help them manage their finances better. Therefore, everyone should have a good understanding of finances so that they can use their money wisely and efficiently. Because scientific development is usually slower, increasing financial inclusion is very important because the financial literacy of traditional rural communities is very limited. The amount of financial inclusion has increased as a result of advances in financial technology. This technology has spread to various fields, and the encouragement of financial literacy and financial technology has made financial inclusion quickly spread to modern and conventional villages. The goal of this increased knowledge is to help people who are unfamiliar with financial management to take a better stance on wise investments. They can use their savings and credit cards, which helps them understand, evaluate, and act on their financial interests. Human life is experiencing very rapid changes as a result of technological developments and emerging problems. One of them is the discovery of non-cash payments which are made along with advances in technology.

Technological developments have changed our daily lives. Electronic media has become one of the main media for communicating and doing business using the internet. The financial and technology sectors have been working together for a long time, and technological advances are nothing new. All societal activities in the current digital era require technology. Technological developments have been utilized by almost all industries to make discoveries, including the financial sector. discoveries in the field of financial technology. Many financial technology companies have emerged in Indonesia showing quite rapid development in the financial industry (Pandey et al., 2022). Nowadays, people use technology to carry out their daily activities, such as buying food, ordering transportation, sending goods, doing business, and booking tickets. With technology, people find their work more efficient and helpful. Fintech, which is a concrete manifestation of the use of information technology that connects it with the financial services sector, affects the level of financial inclusion in addition to low financial literacy. Fintech is a massive and rapidly growing industrial movement with a variety of business models. Fintech is the advancement of information technology innovation through the creation of new financial service models. The massive development of fintech has given rise to several problems in criminal acts, so regulations are needed that support the existence of fintech as a form of prudence. Fintech exists because it aims to make it easier for people to obtain monetary goods, increase exchange, and increase monetary incorporation at the same time. Rapid technological developments in the financial sector have resulted in many new companies in the financial technology sector. The company provides financial technology services that can be accessed by two customers easily. Digital-based financial services are developing in Indonesia, including peer-to-peer loans, digital payment systems, digital insurance, digital banks and crowd-funding. Financial technology will increase people's access to financial goods and services, increase availability, and increase the quantity and quality of use (Khan et al., 2022).

This research is very important. Many people do not understand finances, causing them to experience losses, either due to declining economic conditions and inflation or because of the development of an economic system that tends to be wasteful because society is increasingly consumerist. Based on the National Financial Literacy Survey conducted by the Financial Services Authority (OJK) in 2023, shows the low understanding and utilization of financial products and/or services among the Indonesian people. Where only 21.84% of the Indonesian population is classified as well literate, that is, they have knowledge and confidence about financial service institutions and financial products and services, including features, benefits and risks, rights and obligations related to financial products and services (Hasan & Hoque, 2021). The level of financial literacy and financial inclusion of the Indonesian people is still relatively low compared to other countries in Asia, even though financial inclusion contributes positively to economic growth and improves people's welfare which

ultimately leads to a reduction in poverty levels, financial inclusion is very important to increase efficiency economy, supporting financial system stability, reducing shadow banking or irresponsible finance, can support financial market deepening, provide new market potential for banking, and support an increase in the Human Development Index (HDI). Fintech helps streamline transaction and administration costs in financial services (Hussein, 2020). Fintech helps consumers get services at lower costs and increases company profitability. Fintech is a tool to make it easier for people to utilize the resources they need so that it becomes easier and more efficient. People who have higher financial literacy will make themselves more confident in making decisions.

2. Research Gap

Previous research (Hussein, 2020) that has been carried out has found factors that can influence behaviour in financial management, namely age, gender, race, socio-economic status, personal characteristics, personal traits and knowledge. In other research, factors that influence financial management behaviour include financial knowledge, financial attitudes, and external locus of control. Other research states that social factors, demographics and financial knowledge influence a person's financial management behaviour. Other research states that financial education in the family and the role of teachers have an impact on financial management. The research of Jaya (2019) shows that financial literacy has an impact on financial management behaviour. Research findings show that a person's financial attitude influences the way they handle their finances. The findings of this research are in line with those found in other research which states that a person's financial attitude influences the way they manage their money. These consequences will have a rather long period. Other research (George & Pathanamthitta, 2020) states something different, namely that financial views do not have an impact on how money is managed by individuals and financial management behaviour is not influenced by beliefs related to money management. This is because each person has a unique perspective regarding money, including how to approach the current precarious financial position.

This research is financial literacy and is intervened by financial technology variables. The selection of this variable is based on several previous studies, where there are different research results. One indicator of financial inclusion is financial technology on financial literacy. Previous research (Martini et al., 2022) related to financial literacy through financial technology on financial inclusion is also different. Financial literacy influences financial inclusion. However, other studies have found that financial literacy does not affect financial inclusion. Apart from that, the results of previous research are different from the financial technology variable on financial inclusion. Financial technology has a positive and significant impact on financial inclusion (Bansal, 2014).

3. Literature Review

3.1 Financial Literacy

Financial literacy is knowledge, skills and beliefs that influence attitudes and behaviour to improve the quality of decision-making and financial management to achieve community financial prosperity. Financial Literacy also provides great benefits for the financial services sector (Hasan et al., 2022). Financial institutions and society need each other so that the higher the level of financial literacy in society, the more people will utilize financial products and services. Financial literacy is knowledge about financial sectors and how to utilize them (Hasan et al., 2022). Recognize the meaning, levels and importance for society. Financial literacy is people's knowledge and skills related to finances so they can manage and utilize finances optimally. With financial literacy, people are expected to have adequate financial education so they can take a stand and make financial decisions wisely. The first importance of financial literacy is that people become more aware of various kinds of financial products (Sisharini et al., 2019). The wider their financial knowledge, the more familiar and familiar people will be with financial products on the market. After knowing this, people will be able to enjoy the benefits of each financial service. An example of financial literacy is that people can use debt for productive activities. With the development of financial literacy, people are becoming aware that being in debt is not always bad. On the contrary, debt can help improve the economy if it is used as productive debt (Gautam et al., 2022). Good financial literacy has long-term benefits for every individual. Two long-term benefits can be obtained, namely increasing previous literacy or less literate to well literate, and increasing the number of uses of financial products or services. Financial literacy is also able to enable someone to manage and take every opportunity to have a more prosperous life in the future.

3.2 Financial Inclusion

Financial inclusion is the availability of access to various formal financial institutions, products and services by community needs and abilities to improve community welfare. This increase in access is also supported by increasing public understanding of financial systems, products and services, as well as the availability of formal financial services (Gautam et al., 2022). As for access to financial products, systems and services according to people's needs, several factors need to be considered: affordable costs, effectiveness and efficiency, and quality. Financial inclusion is access to useful and affordable financial products and services to meet the needs of society

and business, including transactions, payments, savings, credit and insurance, which are used responsibly and sustainably. Financial inclusion refers to the availability of access to various formal financial institutions, products and services by community needs and capabilities, to improve community welfare (Wufron et al., 2023). Financial inclusion can be understood as an effort to provide access to financial products and services to everyone without limited background.

This means that everyone should be able to access bank accounts, insurance, loans, investments and various other financial services. Financial inclusion helps increase economic equality by enabling people from various economic strata to meet their needs through available financial products and services. For example, loans that can help with vehicle ownership or setting up a business. Financial inclusion minimizes economic inequality, contributing to better economic growth. Through access to capital loans and digital payments, people can improve the economy (Asyik et al., 2022).

3.3 Financial Technology

FinTech is an abbreviation of financial technology which can be interpreted as financial technology which is a form of innovation in the development of innovation in the financial sector so that it can be carried out more effectively, efficiently and easily (Telukdarie & Mungar, 2023). Financial technology is a combination of technology and financial features or can also be interpreted as innovation in the financial sector with a touch of modern technology. Financial technology is the benefit expected by information system users in carrying out their duties, where the measurement is based on the intensity of use, frequency of use and the number of applications or software used. FinTech is an alternative investment that presents options for Attitude friends who have the desire to access financial services in a practical, efficient, comfortable and economical way (Desai et al., 2022). FinTech emerged along with changes in people's lifestyles which are currently dominated by users of information technology, and the demands of life, which is fast-paced. With FinTech, problems in buying and selling transactions and payments such as not having time to look for goods at shopping places, going to banks/ATMs to transfer funds, and reluctance to visit a place because of unpleasant service can be minimized. In other words, FinTech helps buying and selling transactions and payment systems become more efficient and economical but still effective.

3.4 Research Method

This research aims to learn more about how financial literacy and the use of financial technology influence financial inclusion. This type of research is associative quantitative. Next, the relationship between these variables is explained using statistical formulas. Consequently, the term for this research is "quantitative research". The study population is the number of people who use financial services. For this sampling, the purposive random sampling method was used. The following criteria are determined in sampling: 1) Minimum age 17 years, this is intended to take the minimum age standard in sampling and is considered capable of understanding the contents of the questionnaire statements. 2) Have ever used financial services. In this study, 11 question items were used to measure 3 variables, so this study used the largest range, namely 231 respondents. The intervention variable will be used as a reference for the Partial Least Square (PLS) method to analyze this research data. This study uses a causal model (causal modelling, relationships, and influence) or path analysis. The hypotheses that will be discussed in this research are tested using Structural Equation Models (SEM), which are operated with Smart PLS.

The hypothesis of this research is:

H1: Financial literacy has a positive and significant impact on financial inclusion.

H2: Financial literacy has a positive and significant impact on financial technology.

H3: Financial technology has a positive and significant impact on financial inclusion.

H4: Financial technology mediates the relationship between financial literacy and financial inclusion.

The research model in Figure 1 shows that the independent variable in this research is financial literacy, the dependent variable is financial inclusion, and the mediating variable is financial technology. Financial literacy can be measured using 4 (four) indicators, namely basic knowledge of financial management, credit management, savings and investment management. Indicators of financial inclusion are the number of account owners per population and the number of accounts used for saving and carrying out transactions within the last year. Indicators that can be used to measure financial technology include benefits of use, ease of use, website appearance, system availability, privacy and security.

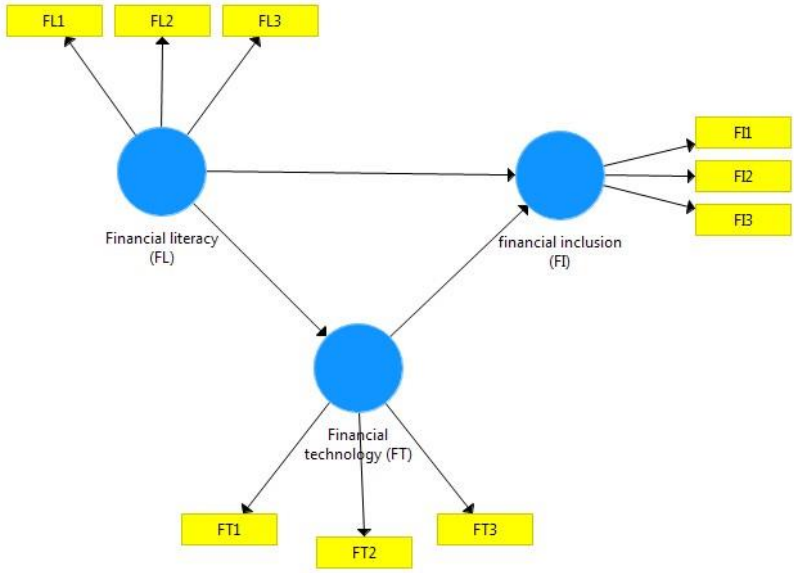

Figure 1. Research model

4. Result and Discussion

4.1 Convergent Validity

The purpose of convergent validity is to evaluate the validity of indicators as construct measures based on Smart PLS external loadings. The indicator is considered valid if the external load value is greater than 0.5. The external load value can also show the contribution of each indicator to the latent variable. The outer loading value of an indicator with the highest value indicates that the indicator is the strongest or most significant measure of the latent variable. By looking at the results of the external examination of the model, we can find out the external load of each indicator on certain variables, as shown in Figure 2.

As shown in Figure 2, the indicators that measure each variable have validity as variable measures, because they have an external loading value above 0.5. The square root of the average extracted (AVE) value for each latent indicator in the model is compared with the correlation between other latent indicators.

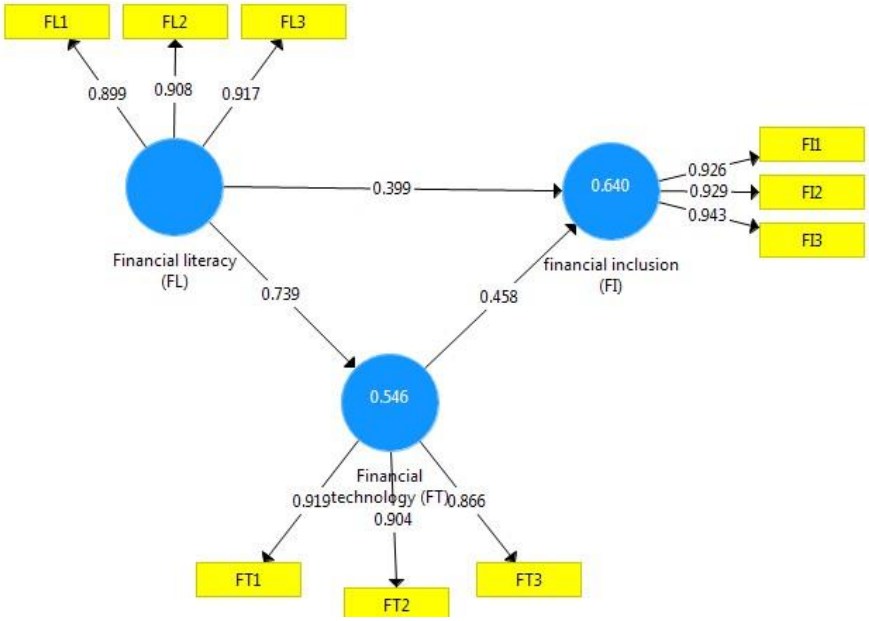

Figure 2. Validity testing

The recommended AVE value is greater than the AVE value shown in Table 1, which shows the value of discrete validity and composite reliability (CR). According to the results of evaluating the convergent and discriminant validity of each latent variable, data from Table 1 shows that the model has good discriminant validity. AVE of three latent variables is above 0.5.

Table 1. Loading factors, Cronbach alpha, CR and AVE

Variables	Items	Factor loadings	Cronbach's alpha	rho_A	Composite reliability	Average variance extracted
Financial literacy	FL1	0.899	0.836	0.853	0.815	0.798
	FL2	0.908				
	FL3	0.917				
Financial inclusion	FI1	0.926	0.876	0.801	0.808	0.704
	FI2	0.929				
	FI3	0.943				
Financial technology	FT1	0.919	0.818	0.801	0.894	0.723
	FT2	0.904				
	FT3	0.866				

4.2 Discriminant Validity

The discriminant validity test is used to check the discriminant between measurement scales in research are shown in Table 2 below. The Heterotrait Monotrait (HTMT) discriminant validity limit value cannot be greater than 0.90.

Table 2. Discriminant validity

	Financial literacy	Financial inclusion	Financial technology
Financial literacy			
Financial inclusion	0.808		
Financial technology	0.834	0.734	

4.3 Hypothesis Testing

The test results for each path are described below, and the results for the mediating variables and partial direct effects are shown in Table 3 and Figure 3 below.

Table 3. Hypothesis testing

Correlation	Original sample	*t* statistics	*P* values	Result
FL → FI	0.399	4.973	0.000	Significant
FL → FT	0.739	17.981	0.000	Significant
FT → FI	0.458	5.286	0.000	Significant

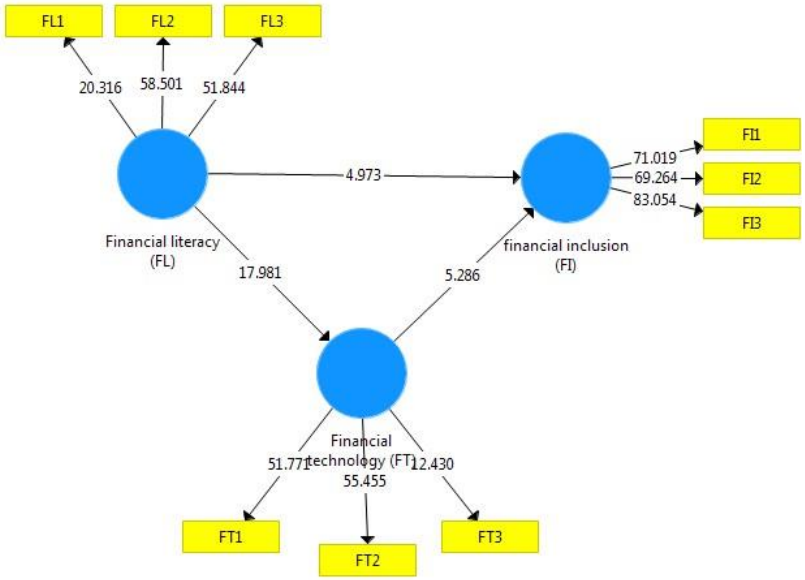

Figure 3. Validity testing

4.4 The Influence of Financial Literacy on Financial Inclusion

The research results show that knowledge about finance is useful and important for financial inclusion in Bangli Regency society. Financial literacy is a person's ability to manage their finances. This includes knowledge of financial concepts, an understanding of investment risks and rewards, and the ability to make wise financial decisions. People who know about finance will be wiser when using financial services; on the contrary, people who do not know about finance will be prevented them from making the right decisions when choosing financial services (Hasan et al., 2021). However, someone who has good financial knowledge will have a greater perception to make wise and responsible decisions based on their previous experiences. Previous studies found a strong relationship between financial knowledge and financial access (Hussein, 2020). This study shows that financial knowledge causes major changes.

4.5 The Influence of Financial Literacy on Financial Technology

The research results show that knowledge about finance has a positive and significant relationship with society regarding financial technology. Financial technology is influenced by financial knowledge; With good knowledge, financial technology can also be used well. Financial technology combined with good financial knowledge is expected to increase the use of financial technology. Fintech seeks to utilize technology to speed up financial services by making financial transactions more efficient and practical (Jaya, 2019). Previous studies show that interest in fintech advances can be influenced by financial literacy towards financial inclusion (George & Pathanamthitta, 2020).

Financial technology has implications for financial inclusion. Financial Technology, often known as digital finance, is a digital financial breakthrough in accessing financial products and services. The existence of fintech can reduce barriers to accessing financial service information because everything is done online. The availability of financial services can reach people who were previously hampered in accessing products and financial services (Hapsari & Puspitasari, 2024). The transformation which was initially carried out in person and in cash to become digital can save time and costs for the people. This research found that financial technology had a positive and significant effect on financial inclusion. This means that more people using financial technology will encourage inclusive financial applications. The presence of financial technology such as technology-based payment products that have been classified as digital banks, peer-to-peer lending, digital wallets and insurance applications supported by high internet penetration will make things easier for the public (Haudi et al., 2022).

4.6 The Influence of Financial Technology on Financial Inclusion

The research results show that financial technology, also called fintech, is a combination of financial sector systems and technologies that enable the purchase and sale of goods or services at any time. Financial technology increases financial inclusion. Bank Indonesia stated that the growth of fintech was caused by the use of technology as a fast-paced necessity in modern life. With the presence of fintech, the problem of buying and selling transactions and payments that require trips to shops, banks or ATMs to carry out funds transactions can be reduced. This can also reduce the number of people who are unhappy with the service at the shopping centre.

In other words, fintech makes the payment process and buying and selling transactions easier, more efficient and cost-effective without losing effectiveness. The number of people who use financial technology will increase financial inclusion (Martini et al., 2022). Previous studies support this statement. Research shows that financial technology services increase financial inclusion (Bansal, 2014).

Financial literacy has a positive and significant relationship to financial inclusion. Financial literacy and financial inclusion are important to go hand in hand (Muhajir et al., 2022). Financial literacy promotes financial inclusion and attracts consumers to access formal financial institutions for the first time. Increasing financial literacy can increase awareness and understanding of financial products and services while increasing demand and use. The results of this research are in line with the theory that financial literacy increases demand for financial products and services, while inclusion will increase the supply of financial products and services which will ultimately increase financial wellbeing (Juwaini, 2022). The research results also support other research, that there is a positive relationship between financial literacy and financial inclusion.

4.7 Financial Technology Mediates the Effect of Financial Literacy on Financial Inclusion

Studies show that financial technology can offset the impact of financial literacy on financial inclusion. Increased financial literacy is necessary to select and consider various types of financial products and services. The presence of fintech encourages economic growth because the number and value of transactions continue to increase. However, online and cashless shopping habits lead to consumerism, which can affect a person's financial behaviour, despite its benefits (Hasan et al., 2022). Increasing public financial literacy is followed by improvements in financial technology. In his research, the results of previous research show that financial technology can mediate (Sisharini et al., 2019).

Previous research by Wijayaa et al. (2021) showed that financial literacy variable indicators were measured by knowledge, behaviour, attitudes and financial skills. The financial literacy variable indicator is measured by general knowledge, savings and loans, and investment. Then in research by Asmana et al. (2024) the variable indicators of financial inclusion were measured by access, use, quality and welfare. Research of Kurniawan and Soediantono (2022) shows indicators of financial inclusion variables measured by access, quality and use. Furthermore, research by Telukdarie and Mungar (2023) shows that financial technology variable indicators are measured by indicators of increasing e-commerce transactions, consumer acceptance of digital products, gaining convenience and efficiency, and providing solutions to financial problems. Meanwhile, in research of Desai et al. (2022) the financial technology indicators used are ease, use and benefits. Then, measuring the performance of MSMEs in research of Hapsari and Puspitasari (2024) uses indicators of cash position, business growth, profit growth and customer growth. The presence of financial inclusion can overcome various causes, one of which is overcoming low financial literacy in Indonesia. One of the intelligences that modern humans must possess is financial intelligence, namely intelligence in managing personal financial assets. Financial knowledge and skills in managing personal finances are very important for everyday life. Financial literacy is a must for every individual to avoid financial problems because individuals are often faced with a trade-off, namely a situation where a person has to sacrifice one interest for the sake of another. By implementing correct financial management methods, it is hoped that individuals can get maximum benefits from the money they have. Modern society's activities tend to use technology more intensively to meet its needs. It has become a habit of today's people to carry out daily activities using technology, such as buying food, ordering transportation, sending goods, ordering tickets, and doing business. Because of technology, people feel that their activities have become more helpful and more efficient. Fintech has been a popular term in recent years. When someone hears the term fintech, what comes to mind is all the convenience and speed in financial transactions, such as ease and speed in payments, borrowing, sending, and so on. With fintech, it is hoped that you can save time, thought, energy and costs.

Fintech is an innovative service in the financial sector that uses or exploits the role of technology.

In essence, fintech is a technology-based financial service. Paying electricity bills, vehicle installments or insurance premiums online are some examples of fintech products that are often used in everyday life, as are sending money or checking balances via online banking. Using fintech is one way to increase financial literacy. Fintech may be able to take over in the economic recovery process. The characteristics of fintech are low contact economy, client-based, based on social capital, use of information science and driven by young experts, the progress of fintech during the pandemic is still positive. Several fundamental characteristics of fintech that can be described also reflect the role of fintech in expanding financial inclusion as follows: one, making the financial system more accessible and decentralized through the use of technological advances that enable non-bankable MSMEs and individual communities to participate as providers and users of assets in the system finance; second, expanding transparency, responsibility and joint efforts in various fields, where innovation can provide transparency, tracking, responsibility and sharing of data that is more important for the state, society and the private sector to work together and third, reducing costs through increasing productivity, speed, and

computerization.

4.8 Practical Implications

The results of this research are used as input for the community so that they pay more attention to their internal human resources related to financial products that can be used for investment. With knowledge of the right financial products, it is hoped that they can create good financial behaviour so that an awareness of the importance of carrying out good financial planning. Interested parties such as local governments, financial policymakers (banks, financial services authority), and deposit insurance institutions play a greater role in increasing financial literacy in the business sector and need to create programs to increase self-confidence in running their businesses. Low financial literacy and financial attitudes can cause community actors to be unable to make wise decisions and lack responsibility in managing their businesses. This can cause the business to experience financial problems and can lead to bankruptcy. Good public financial literacy will help in managing finances, analyzing returns and risks, and determining appropriate investment instruments. For financial institutions, it is hoped that this can increase easy access to financial products and services, in particular credit for businesses as additional capital for the community.

4.9 Theoretical Implications

The results of this research show that the development of science needs to pay attention to financial management behavioural factors such as financial literacy and locus of financial control. These two factors have been proven to influence financial management behaviour. Therefore, this research provides an illustration for researchers to research further the relationship between these four variables and financial management behaviour. The theoretical implications of this research support previous research findings regarding good financial management behaviour. Financial literacy is balanced with self-control as a level of knowledge and self-awareness in implementing an understanding of concepts and risks in making financial decisions to improve individual welfare. The results of this research theoretically strengthen the signaling theory that the signals given by companies through investment managers are used by investors to make investment decisions, this is because investors have good financial literacy. Financial literacy has a positive effect on financial inclusion.

5. Conclusion

This research was conducted to determine whether financial technology can have an impact on financial literacy on financial inclusion. After the discussion above, the researcher came to the following conclusions: 1) Financial literacy has a positive and significant impact on financial inclusion. 2) Financial literacy has a positive and significant impact on financial technology. 3) Financial technology has a positive and significant impact on financial inclusion in society. 4) Financial technology can offset the impact of financial literacy on financial inclusion. This research was conducted to help financial service users. Because financial knowledge is very important in managing funds, people must understand that this knowledge is the most important factor in making decisions about the use of financial services. People who understand financial technology are expected to dig up information about financial products and services. In the fintech era, even though the ease of transactions is offered through handheld (mobile banking via cellphone) or Cash Deposit Machine (CDM) which does not require customers to visit or come directly to the bank, however, past habits or repeated habits that form habits are not easy to change even with digitalization. Apart from that, emotional factors to obtain a sense of security, comfort and practicality can also be the basis for customers to continue making transactions directly with the Bank. Future researchers can develop research with considers other factors that influence behaviour consumptive, with the limitations of researchers, it is hoped that further researchers can develop this research with different research subjects and populations, research variables and research methods that are different from researchers. In increasing financial literacy, the role of government is needed to support the public to have financial literacy understanding and skills by holding training and counselling regarding financial literacy. In financial inclusion, the government plays a very important role in the sustainability and development of community financial inclusion, namely by expanding access to financial inclusion to all corners of the region so that every community has the opportunity to access financial institutions.

Author Contributions

Ayuk Takemeyang conceived the topic and manuscript. Henry Jong Ketuma and Tambi Andison Akpor review and revised the manuscript, enhancing its content, clarity and accuracy met the highest standards.

Conflict of Interest

The authors declare no conflict of interest.

Acknowledgement

Not applicable.

Declaration of Funding

No funding.

Data Availability

The data set generated during and/or analyzed during the current study are available from the corresponding author on reasonable request.

Declaration of Competing Interest

The authors declare no competing interest.

Clinical Trial Number

Not applicable.

Ethics Consent to Participate and Consent to Publish Declaration

Not applicable.

Consent to Participate

Informed consent was obtained from all individuals participants included in the study. All participants provided their written informed consent to participate in this study, and their data was collected and analyzed anonymously.

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Paradigm Academic Press
Law and Economy
ISSN 2788-7049
DEC. 2025 VOL.4, NO.11

On the Application of Public Order Reservation in the Application of Law

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doi:10.63593/LE.2788-7049.2025.12.006

Abstract

The mainstream academic view in mainland China adopts the Effects Doctrine as the standard for applying the public order reservation. However, there has been little discussion on how to reasonably apply the Effects Doctrine in judicial practice. The separate application of the two primary modern western public order reservation theories — "Structured Public Order Theory" and "Doctrine of the Close Connection with Public Order" — each has its shortcomings. However, while adhering to the Effects Doctrine, drawing upon the distinction of structured concepts from Structured Public Order Theory and case-specific connection approach under the Doctrine of the Close Connection with Public Order can facilitate its reasonable application in judicial practice. Furthermore, when employing the public order reservation to exclude laws from Hong Kong, Macao, and Taiwan, mainland courts should also be guided by the principle of minimum harm.

Keywords: public order reservation, legal application, Effects Doctrine, Structured Public Order Theory, Doctrine of the Close Connection with Public Order

1. Introduction

Case 1: On April 1, 2020, the Dinghai District People's Court of Zhoushan City, Zhejiang Province, accepted China's first same-sex custody dispute case.[1] In this case, the parties were legally married in the United States and underwent embryo transfer procedures there, subsequently giving birth to a son and a daughter. Their relationship deteriorated in 2019, leading each to return to China. In 2020, they filed separate lawsuits in Chinese courts to contest custody of the two children. This case involves a custody dispute, but it presents a preliminary issue — the legal validity of international same-sex marriages. The legal validity of such marriages impacts the primary issue at hand — the "best interests of the child" in the custody dispute. Specifically, whether the marriage registration of the two "mothers" in the United States is recognized directly affects the interests of the two children.[2] Given that the recognition of foreign same-sex marriages in this case directly relates to custody disputes, this paper focuses on the legal validity of foreign same-sex marriages. Pursuant to Articles 21

[1] Beijing News. (2020, April 7). Zhejiang Dinghai Court Accepts Same-Sex Couple's Child Custody Case. https://baijiahao.baidu.com/s?id=1663301429028654239&wfr=spider&for=pc.

[2] See Guo, X. (2020, April 22). The shadow of non-recognition by law: A dispute over parental rights between lesbian partners. *Shanghai Review of Books*. https://www.thepaper.cn/newsDetail_forward_6998311

and 22 of the Law on the Application of Law to Foreign-Related Civil Relations[1], if the parties had their common habitual residence in the United States at the time of marriage, the conditions and procedures for marriage shall be governed by U.S. law. Under U.S. law, the marriage may be deemed valid. However, mainland China has historically refused to recognize the legal validity of same-sex marriages. In such cases, courts may invoke Article 5 of the Law on the Application of Law to Foreign-Related Civil Relations[2], which permits the exclusion of foreign law based on public order reservation. Specifically, they may rule that applying U.S. law would violate China's public order and good morals, thereby precluding its application. Ultimately, Chinese law would be applied to deny the legal validity of the foreign same-sex marriage involved in the case.

Case 2: "A defendant from mainland China entered into a loan agreement with a plaintiff from mainland China while vacationing in Macao, borrowing cash for gambling purposes. After the defendant failed to repay part of the cash by the due date, the plaintiff filed a lawsuit with a mainland Chinese court." [3]In this case, the court selected Macao law as the governing law pursuant to Article 41 of the Law on the Application of Law to Foreign-Related Civil Relations[4]. Under Macao law, the loan agreement is valid. However, mainland Chinese law contains entirely different provisions regarding gambling debts. Recognizing this debt as lawful and providing it with protection would clearly violate mainland public order. The court ultimately excluded the application of Macao law based on the public order reservation provision under Article 5 of the Law on the Application of Law to Foreign-Related Civil Relations. It ruled the loan agreement invalid under mainland Chinese law. In this case, since both the plaintiff and defendant are mainland Chinese nationals and the incident occurred during a brief visit to Macao, the application of Macao law was excluded under the public order reservation. The invalidation of the loan agreement under China's Law is unquestionably correct. However, if the plaintiff were a Macao resident and the defendant a mainland Chinese citizen residing long-term in Macao, with the defendant later returning to the mainland where the plaintiff ultimately filed suit, mainland Chinese courts might still invoke the public order reservation to exclude Macao law's applicability. Consequently, mainland Chinese law would be applied to declare the contract invalid.

In the aforementioned Case 1, the legal validity of foreign same-sex marriages was merely a preliminary issue. If the application of foreign law — which would recognize the legality of foreign same-sex marriages — is consistently rejected on the grounds that it violates China's public order, does this constitute a reasonable application of the public order reservation? Is it beneficial for China to uniformly invoke the public order reservation without distinguishing the specific circumstances of recognizing same-sex marriages under Chinese law? In the second case, where the parties' status changed, would it be reasonable for the court to still apply the public order reservation to exclude the application of Macao law? Is it necessary to invoke the public order reservation? Furthermore, is there a distinction between applying the public order reservation to exclude foreign law versus excluding laws from Hong Kong, Macao, and Taiwan? This article explores these questions by examining the primary theories of modern public order reservation.

2. Application of the Public Order Reservation Doctrine and Its Shortcomings

Public order reservations are referred to by different names in various countries. Anglo-American scholars call it public policy, French and Japanese scholars refer to it as "public order and morality," while German scholars term it the "reservation clause" or "exclusion clause". In China, it is generally known as the "public order reservation" or "public order." This principle allows courts to exclude the application of a foreign substantive law that would otherwise be applicable under their conflict-of-laws rules to a foreign-related civil legal

[1] According to Article 21 of the *Law of the People's Republic of China on the Application of Law in Foreign-Related Civil Relations*, the conditions for marriage shall be governed by the law of the parties' common habitual residence. Where the parties do not share a common habitual residence, the law of their common nationality shall apply. Where the parties have neither a common habitual residence nor a common nationality, and the marriage is concluded in the habitual residence or the country of nationality of either party, the law of the place where the marriage is concluded shall apply. Article 22 of the same Law provides that the formalities of marriage shall be valid if they comply with the law of the place where the marriage is concluded, the law of the habitual residence of either party, or the law of the nationality of either party.

[2] Article 5 of the *Law of the People's Republic of China on the Application of Law in Foreign-Related Civil Relations* provides that where the application of foreign law would harm the social public interests of the People's Republic of China, the law of the People's Republic of China shall apply.

[3] Hubei Provincial Xiaogan Intermediate People's Court. (2020). (2020) E 09 Min Zhong No. 242 Civil Judgment.

[4] Article 41 of the same Law provides that the parties may, by agreement, choose the law applicable to a contract. Where the parties have not made such a choice, the law of the habitual residence of the party whose performance best reflects the characteristics of the contract, or another law that has the closest connection with the contract, shall apply.

relationship if such application would violate the public order of the forum state. [1]It also permits courts to refuse recognition or enforcement of a foreign court's final judgment or ruling when requested if such recognition or enforcement would contravene the public order of the forum state. [2]Public order reservations exist at both the application of law stage and the recognition and enforcement stage. The application of public order reservation differs between these two stages, such as the distinct phases at which domestic courts conduct public order reservation reviews and the varying degrees of scrutiny applied.[3] Given the differing applications of public order reservation at the stages of law selection and recognition and enforcement, this paper focuses solely on public order reservation during the law selection stage. The primary modern theories of public order reservation include the "Effects Doctrine," the "Structured Public Order Theory," and the "Doctrine of the Close Connection with Public Order." The following discussion will continue to examine the application and limitations of these three theories in light of the aforementioned case.

2.1 Application and Limitations of the Effects Doctrine

The Effects Doctrine holds that "when invoking public order reservation, one must distinguish between foreign law provisions that violate the public order of the forum state and the consequences of applying such foreign law that violate the forum state's public order. If the violation is merely substantive, it does not necessarily preclude the application of the foreign law. Only when the consequences of applying the foreign law threaten the public order of the forum state may the public order reservation be invoked to exclude its application."[4] The Effects Doctrine emphasizes the consequences of applying foreign law in a particular case rather than merely examining the content of that foreign law, thereby demonstrating greater objectivity. However, a limitation of this doctrine is that it addresses only the scenario where the application of foreign law threatens the public order of the forum, without considering the degree of connection between the specific case and the forum.

In Case 1 above, under the Effects Doctrine and guided by the Law on the Application of Law to Foreign-Related Civil Relations, U.S. law was applied as the governing law. The application of U.S. law necessitated recognizing the validity of foreign same-sex marriages. This clearly conflicts with China's historical and cultural tradition of not recognizing the legal validity of same-sex marriages. In such cases, the court would inevitably invoke the public order reservation clause to exclude the application of U.S. law on grounds of violating China's public order and good morals, thereby negating the legal effect of foreign same-sex marriages in China. However, in essence, recognizing the legal validity of foreign same-sex marriages in China in Case 1 serves only as a preliminary issue in a custody dispute. This differs markedly from recognizing the validity of foreign same-sex marriages as the primary issue of the case. This distinction arises because the degree of connection to the forum differs between treating the validity of foreign same-sex marriages as a preliminary issue versus as the primary issue. Compared to being the main issue, recognizing the validity of foreign same-sex marriages as a preliminary issue indicates a less direct connection to the court's jurisdiction. In Case 2, where both the plaintiff and defendant are from mainland China and entered into a loan agreement for gambling purposes during a brief visit to Macao, the court would naturally exclude the application of Macao law on the grounds that its outcome would violate China's public order. Ultimately, applying mainland Chinese law to invalidate the loan agreement is entirely reasonable. However, if the plaintiff were a Macao resident and the defendant a mainland Chinese citizen residing long-term in Macao, with the defendant later returning to the mainland where the plaintiff ultimately filed suit. According to the Effects Doctrine, the application of Macao law would similarly conflict with mainland China's public order. The court would similarly invoke the public order reservation clause to exclude the application of Macao law and apply mainland law to invalidate the loan agreement between the parties. However, if the factual circumstances of the case involve a transformation from both parties being mainland Chinese residents to one being a Macao resident and the other a mainland resident, coupled with the defendant's residency status changing from a temporary visit to Macao to long-term residence, this case scenario indicates a significantly diminished connection to mainland China. If mainland Chinese courts persist in solely focusing on the outcome — that the application of Macao law violates mainland China's public order — to exclude Macao law and invalidate the loan agreement, then with this precedent, mainland Chinese residents who have relocated to Macao for long-term residence may develop a speculative mindset that gambling-related loan agreements with local Macao residents are invalid. This could lead to a refusal to fulfill

[1] See Hu, Z., & Li, S. (1992). On the proper application of the public policy reservation doctrine in private international law: Evidence from several cases decided by Chinese courts. *Tribune of Political Science and Law*, (5).

[2] Hu, Z., & Li, S. (1992). On the proper application of the public policy reservation doctrine in private international law: Evidence from several cases decided by Chinese courts. *Tribune of Political Science and Law*, (5).

[3] See Gao, X. (2008). *The application of public policy in private international law* (p. 134). Beijing: China Democracy and Legal System Publishing House.

[4] See Xiao, Y. (2002). *Xiao Yongping on conflict of laws* (p. 91). Wuhan: Wuhan University Press.

such agreements, increasing loan contract disputes in Macao and undermining the maintenance of normal civil and commercial order in the region. Moreover, if the plaintiff files a lawsuit against the defendant in the Macao region and the defendant subsequently returns to the mainland of China, the judgment rendered by the Macao court would require recognition and enforcement by mainland Chinese courts. This would inevitably increase the judicial burden on mainland Chinese courts. In other words, whether the plaintiff sues the defendant in the Macao region or in mainland China, it offers no benefit to mainland China. Therefore, under the Effects Doctrine, focusing solely on whether the application of the law would jeopardize the public order of the forum without considering the importance of the connection between the specific case and the forum cannot properly guide courts in judicial practice to reasonably apply the public order reservation.

2.2 Application and Limitations of Structured Public Order Theory

Structured Public Order Theory represents European scholars' expansion and elaboration of the rough outline of Savigny's structured theory of public policy exceptions.[1] According to this doctrine, public order can be divided into three types: 1) Domestic public order. Domestic public order refers to "Ordre Public Interne," which are matters of domestic concern rather than international public order, and the rules of this type of public order have not entered the stage of legal application, but understanding this concept helps distinguish other types of public order and grasp the complete structure of public order.[2] 2) Ordre public international. "Ordre public international is a public policy doctrine that, despite its name, is essentially national in character. The term 'international' refers only to the effect of the forum's rules on the policy and law of other jurisdictions interested in the case."[3] This essentially constitutes the public order that should be considered when applying foreign law under a nation's private international law conflict-of-laws rules to govern private international legal relationships. Public order in private international law does not take into account the public order of other countries. 3) Ordre public universel. It provides that "the principle of public policy will prevail if the application of a foreign legal rule conflicts with the peremptory rules of the law of nations, the international commitments of the home state, or the requirement of justice as generally recognized by the international legal community."[4]

Structured Public Order Theory provides judges with a structured analytical framework to distinguish between different sources and effects of public order, thereby preventing the abuse of the public order reservation system in judicial practice. However, this doctrine falls short by remaining confined to theoretical distinctions without accounting for the intricate complexity of real-world cases. Regarding the concept of "Ordre public universel" proposed by this doctrine, domestic scholars in China have suggested that "introducing a community-centered approach in private international law will inevitably incorporate numerous internationally recognized factors into the assessment of whether a violation of public policy occurs. This will gradually establish certain international standards that the international community must uniformly adhere to, thereby establishing a truly meaningful international public order."[5] This paper argues that prioritizing the realization of Ordre public universel is merely a noble aspiration. On the one hand, from the perspective of logical relationships, "since it is 'universal' public order, it reflects the public order universally recognized by all nations and thus simultaneously reflects the public order of the home country. If a court of a given nation considers the so-called ordre public universel in judicial practice, it is not because that court is applying the standards of ordre public universel but rather because this ordre public universel is also part of its own domestic public order and is therefore taken into account."[6] On the other hand, regarding international treaties, the exclusion of relevant rules in international conventions based on domestic public order has been adopted by the Hague Conventions and resolutions of the Institute of International Law. Many Hague Conventions employ the following standardized format to limit the application of international conventions: "The provisions of this Convention shall not be applied where compliance by a

[1] Burger, D. C. (1984). Transnational public policy as a factor in choice of law analysis. *New York Law School Journal of International & Comparative Law, 5*, 370.

[2] Burger, D. C. (1984). Transnational public policy as a factor in choice of law analysis. *New York Law School Journal of International & Comparative Law, 5*, 370.

[3] Burger, D. C. (1984). Transnational public policy as a factor in choice of law analysis. *New York Law School Journal of International & Comparative Law, 5*, 370.

[4] Burger, D. C. (1984). Transnational public policy as a factor in choice of law analysis. *New York Law School Journal of International & Comparative Law, 5*, 370.

[5] See Li, S., & Xu, G. (1998). *The construction of a new international civil and commercial order* (pp. 257–261). Wuhan: Wuhan University Press.

[6] See Gao, X. (2008). *The application of public policy in private international law* (pp. 39-40).

Contracting State would be manifestly contrary to its public order." [1]For example, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters explicitly stipulates public order as an exclusionary condition. The public order referred to in this convention clearly pertains to the domestic public order of each state.[2] Moreover, as some scholars have pointed out, "public order in private international law today is closely tied to the society of the forum and cannot exist beyond the legal order of a specific society. Given the exceptional and passive nature of reservation clauses, it is more appropriate to understand them, in principle, as a domestic concept."[3] In summary, the so-called Ordre Public Universel is only realized when it coincides with the public order of the forum state. When the forum state's own public order conflicts with Ordre Public Universel, the forum state's own interests prevent Ordre Public Universel from taking precedence.

In the aforementioned Case 1, recognizing the legal validity of foreign same-sex marriages serves to protect the rights and interests of the two children involved in this case. As a signatory to the Convention on the Rights of the Child, China is obligated under Article 2(2) of the Convention to recognize the legal validity of international same-sex marriages. This recognition would facilitate China's implementation of the principle of "the best interests of the child" enshrined in the Convention, safeguarding the rights of the two children in this case to a family environment free from discrimination. "The best interests of the child" constitute an Ordre Public Universel in this case. However, recognizing the legal validity of same-sex marriage clearly conflicts with China's public order. Here, China's public order under private international law—which denies the legitimacy of same-sex marriage—clashes with the Ordre Public Universel of "the best interests of the child." In such a conflict, Chinese courts would prioritize the realization of "the best interests of the child" as the overriding Ordre Public Universel. Would they then recognize the legality of same-sex marriage? This paper believes the answer is no. China has its own interests in maintaining public order that denies the legality of same-sex marriage. Courts would not disregard China's public order under private international law solely to achieve the Ordre Public Universel of "the best interests of the child." Only if China had no inherent public order denying same-sex marriage would courts unhesitatingly implement the Ordre Public Universel of "the best interests of the child."

2.3 Application and Limitations of the Doctrine of Close Connection with Public Order

The Doctrine of Close Connection with Public Order, proposed by American scholars, asserts that "the closer the tie between the forum and the facts of a given transaction, the more readily we may expect the forum to use its own law to judge the matter before it." [4]Professor Nussbaum has stated, "All depends on the circumstances, or, more precisely, on the importance of the 'contacts' of the case with the territory of the forum." [5]According to this doctrine, the degree of connection between the case and the forum's jurisdiction is the key factor in determining whether to invoke the public order reservation. The closer the connection between the case and the forum, the greater the likelihood of invoking the public order reservation.

The merit of this doctrine lies in proposing a concrete analytical method for assessing the connection between a case and the forum, thereby assisting judges in determining whether to invoke the public order reservation during case adjudication. However, its drawback is the potential for a "forum-centered approach", where courts may abuse their discretion in judging the degree of connection between a case and the forum, leading to misuse of the public order reservation. In Case 1 above, since both the plaintiff and defendant held Chinese nationality and returned to China to litigate the custody dispute, under the Doctrine of Close Connection with Public Order, the court would likely find a close connection to China due to their shared nationality. This could lead to the application of the public order reservation to exclude the application of U.S. law. Similarly, in Case 2, if the parties were transformed from mainland Chinese nationals to Macao residents and mainland Chinese nationals residing long-term in Macao, the mainland Chinese national's involvement would raise issues of mainland China's public order. Mainland Chinese courts would then likely invoke the public order reservation to exclude the application of Macao law, thereby declaring the loan agreement invalid. Therefore, the approach that focuses solely on the degree of connection to public order—considering only the case's connection without emphasizing the objective outcome—risks leading to the abuse of the law of the forum and fails to achieve conflict justice in the case.

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[1] Ye, D. (2012). *The application of the public policy reservation doctrine in China's foreign-related civil and commercial judicial practice* (p. 57). Beijing: Law Press China.

[2] Convention on the recognition and enforcement of foreign judgments in civil or commercial matters. The Hague, 2 July 2019.

[3] See Kita-waki, T. (1989). *Private international law: International relations law II* (M. Yao, Trans., p. 67). Beijing: Law Press China.

[4] Paulsen, M. G., & Sovern, M. I. (1956). Public policy in the conflict of laws. *Columbia Law Review, 56*, 981.

[5] Nussbaum. (1940). Public policy and the political crisis in the conflict of laws. *Yale Law Journal, 49*, 1027, 1031.

3. Applying the Public Order Reservation in Legal Application

Regarding the application of the public order reservation in legal practice, the Effects Doctrine should be upheld as the standard for applying the public order reservation. However, its application in specific judicial practice should be enriched. This requires drawing upon the Structured Public Order theory to distinguish structured concepts and employing the Doctrine of the Close Connection with Public Order to establish case-specific connections. This approach ensures the effects doctrine effectively guides the reasonable application of public order reservations in concrete judicial practice.

3.1 Drawing on the Distinction of Structured Concepts from Structured Public Order Theory

Although Structured Public Order Theory remains confined to academic distinctions, it offers a structured framework for differentiating between domestic public order and ordre public international, thereby facilitating the reasonable application of public order reservations in judicial practice. When applying public order reservations in legal application, one should adhere to the Effects Doctrine while drawing upon the structured conceptual distinctions of Structured Public Order Theory.

First, when applying the Effects Doctrine to determine whether the application of foreign law or laws of Hong Kong, Macao, and Taiwan violates mainland China's public order, one must distinguish whether the result violates Domestic Public Order or Ordre Public International. If it violates Domestic Public Order, the application of foreign law or laws of Hong Kong, Macao, and Taiwan should not be excluded. If it violates Ordre Public International, further consideration should be given to whether the public order reservation system should be invoked to exclude the application of foreign law or laws of Hong Kong, Macao, and Taiwan. This involves domestic public order and ordre public international. Domestic Public Order can be understood as "encompassing all mandatory norms within domestic law, as well as the fundamental principles of the constitution and various branches of law—such as the principle of good faith in civil law. Furthermore, although not explicitly stipulated in domestic law, the good morals that clearly form the foundation of normal domestic social life should also fall within the scope of public order as defined by domestic law." [1]However, not all such rules apply equally to foreigners entering domestic social life. Some apply only to nationals, or at most to foreigners under specific circumstances governed by conflict-of-laws rules—such as provisions concerning age and these mandatory rules under domestic law do not constitute public order in the sense of private international law.[2] The so-called Ordre Public International encompasses at least two components. The first comprises mandatory rules within a state's domestic law that are deemed of paramount importance, thereby possessing absolute territorial effect and enforceable against all persons within the state, including foreigners. [3]The other part consists of mandatory rules specifically established by domestic laws and regulations governing international civil and commercial relations, such as China's legislation concerning international trade and international financial controls.[4] In Case 1 above, recognizing the legal validity of foreign same-sex marriages in China goes beyond mere Domestic Public Order. It directly challenges mainland China's marriage system, which stipulates that "marriage is between a man and a woman". This gender-based marriage system constitutes an absolute, mandatory rule of territorial jurisdiction in China—a rule that applies to all persons within its jurisdiction. Therefore, the preliminary issue in Case 1 falls under Ordre Public International. In the aforementioned Case 2, the determination that the validity of a loan agreement violated China's fundamental legal principle prohibiting gambling also falls under Ordre Public International. Consequently, both cases necessitate further examination of whether the public order reservation should be invoked to exclude the application of foreign law or the laws of Hong Kong, Macao, and Taiwan.

Secondly, if the facts of the case have been determined to violate Ordre Public International, it is necessary to further distinguish between the strength of public order considerations. This is because the exclusion of foreign law on grounds of public order preservation is limited and cannot exceed the requirements of public interest, which imposes a constraint: the consequences arising from the application of an objectionable legal rule are not necessarily objectionable themselves.[5] For example, while a marriage between a father-in-law and a daughter-in-law is prohibited in England as it violates public policy, such a marriage contracted in the parties' foreign domicile will presumably be deemed valid and their children presumably legitimate if the couple subsequently acquire a domicile in England.[6] Whether the validity of the marriage between the father-in-law and

[1] Jin, Z. (2004). A comparative study of the public policy reservation doctrine in private international law. *Journal of Comparative Law*, (6).

[2] Jin, Z. (2004). A comparative study of the public policy reservation doctrine in private international law. *Journal of Comparative Law*, (6).

[3] Li, H. (2000). *Public policy issues in private international law*. In *Selected works of Li Haobei* (p. 91). Beijing: Law Press China.

[4] Li, H. (2000). *Public policy issues in private international law*. In *Selected works of Li Haobei* (p. 91). Beijing: Law Press China.

[5] Wolff, M. (2009). *Private international law* (2nd ed., H. Li & Z. Tang, Trans., p. 208). Beijing: Peking University Press.

[6] Wolff, M. (2009). *Private international law* (2nd ed., H. Li & Z. Tang, Trans., p. 208). Beijing: Peking University Press.

daughter-in-law in this case is treated as a preliminary issue or a principal issue yields different legal consequences, precisely reflecting the distinction between strong and weak public order. In Case One above, applying the distinction between strong and weak public order: since the right of this same-sex couple to marry had already been legally established in the United States, their marriage would be treated merely as a preliminary issue in the custody dispute. Consequently, the resulting legal effect—recognizing the validity of their marriage—would not necessarily violate Ordre Public International in China. In the second case, if the factual circumstances changed such that the plaintiff were a Macao resident and the defendant were a mainland Chinese national residing long-term in Macao, the intensity of public order would be less pronounced than if both parties were mainland Chinese nationals.

3.2 Applying the Case-Specific Connection Approach Under the Doctrine of Close Connection with Public Order

Although the Doctrine of Close Connection with Public Order may readily give rise to a "forum-centered approach," incorporating its case-specific connection methodology while adhering to the Effects Doctrine can facilitate the reasonable application of the Effects Doctrine in specific cases. To distinguish between strong and weak public order concerns, the case-by-case approach under the Doctrine of Close Connection with Public Order must be employed. This involves assessing whether the case has sufficient connection to the forum state and evaluating the severity of the conflict between applying foreign law or the law of a foreign jurisdiction and Ordre Public International. In applying the public order reservation doctrine, German courts typically analyze both the severity of the violation of public order and the domestic connection of the case, permitting the exclusion of foreign law only when a substantial connection to the forum state exists and its application would lead to a serious violation of the domestic public order. [1]This approach by German courts offers valuable reference for China. Specifically, the public order reservation should only be invoked to exclude the application of foreign law or the laws of Hong Kong, Macao, and Taiwan when the consequences of applying such laws exhibit sufficiently substantial ties to China's public order.

In the aforementioned Case 1, the application of U.S. law to recognize the legal effect of foreign same-sex marriages in China serves only as a preliminary issue in the case. Compared to the main issue, its status as a preliminary matter renders its connection to Chinese courts less significant. Therefore, applying U.S. law to recognize the legal effect of foreign same-sex marriages is not unacceptable. In other words, the result of applying U.S. law in this case—recognizing the legal effect of foreign same-sex marriages—does not have a sufficiently substantial connection to China's public order. Therefore, invoking the public order reservation to exclude the application of U.S. law would not be reasonable in this context. Specifically, as analyzed above, applying U.S. law to recognize the validity of foreign same-sex marriages serves to protect the legitimate rights of the couple's two children to a family environment free from discrimination. It also advances the implementation of the principle of "the best interests of the child" enshrined in the Convention on the Rights of the Child, which China has ratified. In Case 2, both the plaintiff and defendant are from mainland China. Moreover, the loan agreement for gambling purposes was signed during a brief visit to Macao, demonstrating a clear and sufficient connection to mainland China. Therefore, invoking the public order reservation to exclude the application of Macao law is unquestionably justified. However, if the facts were altered such that the plaintiff is a Macao resident and the defendant is a mainland Chinese national residing long-term in Macao, where the loan agreement was signed in Macao; the plaintiff is a Macao resident; and the defendant is a mainland Chinese national residing long-term in Macao, but the lawsuit is filed solely in mainland Chinese courts, these facts collectively indicate an insufficiently substantial connection to mainland China's public order. Consequently, mainland Chinese courts would have no grounds to invoke the public order reservation to exclude the application of Macao law and thereby declare the loan agreement invalid.

3.3 Guided by the Principle of Minimum Harm

When deciding whether to exclude laws from Hong Kong, Macao, and Taiwan, judges in mainland Chinese courts should apply the public order reservation system guided by the principle of minimal harm to the laws of Hong Kong, Macao, and Taiwan. The scholar argues that "when public policy reservation serve as limitations on the application of foreign laws, courts should be guided by the principle of minimal harm to foreign laws. If alternative solutions that do not violate public order would not create gaps, foreign laws should continue to apply." [2]This paper contends that the "principle of minimal harm" can serve as the guiding principle for applying the public order reservation to exclude laws from Hong Kong, Macao, and Taiwan.

First, this is dictated by the nature of these three jurisdictions. Hong Kong, Macao, and Taiwan remain regions

[1] Zhang, H. (2011). International human rights protection and the public policy reservation doctrine: A perspective from German private international law. *Journal of Guangzhou University*, (9).

[2] Luís de Lima Pinheiro. (2020). *Public policy and private international law*. Cheltenham, UK: Edward Elgar Publishing.

under China as a sovereign state, differing in nature from foreign countries. In advancing the interests of the mainland, efforts should be made to balance the interests of these three jurisdictions while minimizing inter-regional conflicts, thereby laying the groundwork for future unified inter-regional conflict-of-laws rules in China. This necessitates that when applying the public order reservation to exclude the application of Hong Kong, Macao, and Taiwan laws, consideration must be given to whether excluding the application of these laws in mainland China would cause harm to the legal systems of the Hong Kong, Macao, and Taiwan regions. Second, from the perspective of feasibility, when considering whether applying mainland Chinese law after excluding Hong Kong, Macao, and Taiwan laws would cause harm to the legal system of these regions, judges need to be familiar with the legal provisions of Hong Kong, Macao, and Taiwan. Compared to foreign national laws, judges in mainland Chinese courts find it easier to ascertain the laws of these three jurisdictions and can more readily and accurately understand their public order. This indicates that considering the minimal impact on the laws of these three jurisdictions when applying mainland Chinese law after excluding Hong Kong, Macao, and Taiwan laws is a more realistic and feasible approach. Moreover, China resolves inter-regional private law conflicts by reference to international private law conflict rules. When mainland Chinese courts exclude the application of Hong Kong, Macao, and Taiwan laws and uniformly apply mainland Chinese law, this result fails to reflect protection for the distinct interests of these regions as opposed to foreign countries. Therefore, guiding mainland Chinese courts' discretion on whether to exclude Hong Kong, Macao, and Taiwan laws by the principle of minimal harm can compensate for this legislative deficiency. Conversely, when excluding the application of foreign law, judges need only assess whether the application of foreign law would threaten the public order of the forum. They bear no obligation to consider whether excluding foreign law and applying domestic law would cause harm to the foreign law. This is because a nation's judges need only consider their own country's interests, not those of other nations. Moreover, if judges were to consider whether foreign law is harmed, they would need to assess the public policy of the foreign state. However, judges generally lack sufficient capacity to discern foreign public order, potentially leading to discrepancies between their understanding and the foreign state's own interpretation of its public order. Therefore, when exercising discretion to exclude foreign law or the laws of Hong Kong, Macao, and Taiwan through the public order reservation, a distinction should be made. The exclusion of the laws of Hong Kong, Macao, and Taiwan should be guided by the principle of minimum harm.

In the aforementioned Case 2, if the plaintiff were a Macao resident and the defendant were a mainland Chinese national residing long-term in Macao, and the parties entered into a loan agreement in Macao for gambling purposes, mainland Chinese judges deciding whether to apply the public policy exception to exclude Macao law should be guided by the principle of minimum harm. That is, judges should consider whether applying Macao law would cause harm to the legal system of the Macao Special Administrative Region. After applying the public order reservation to exclude the application of Macao law in this case, the final outcome was the application of Mainland China's Law to declare the loan agreement invalid. Given the stronger ties both parties had with Macao, the invalidation of the contract undoubtedly undermined the maintenance of normal civil and commercial order in the Macao Special Administrative Region. Furthermore, given that the parties' connection to mainland China was not particularly strong—they merely filed the lawsuit in a mainland court—the application of mainland Chinese law had limited relevance to mainland interests. Therefore, the mainland judge should have applied the principle of minimum harm, applied Macao law to uphold the contract's validity, and thereby achieved fairness and justice under both conflict of laws and substantive law principles.

4. Conclusion

Regarding the proper application of the Effects Doctrine in mainland China's judicial practice, the correct procedure is to draw upon the distinction of structured concepts from Structured Public Order Theory. First, differentiate whether the application of foreign law or Hong Kong, Macao, and Taiwan laws results in a violation of Domestic Public Order or Ordre Public International. Second, to differentiate the strength of public order, apply the case-specific connection approach under the Doctrine of Close Connection with Public Order. Additionally, distinctions should be made when employing the public order reservation system to exclude the application of foreign law or Hong Kong, Macao, and Taiwan laws. When excluding laws from Hong Kong, Macao, and Taiwan, mainland courts should be guided by the principle of minimum harm in addition to applying the aforementioned steps.

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