

## CONTENTS

<b>Safeguarding the Rights of Women in Armed Conflicts: An Appraisal of the Armed Conflict in the Anglophone Cameroon</b>	<b>1-12</b>
Kwebe Augustine Nkwiwir, Luluh Ernest Effim, Shing Praise Wandia	
<b>The Relationship Between Research Permits and Patent Applications in Kenya over Ten Years (2014-2023)</b>	<b>13-28</b>
Hope Kilwake, Asha Mikinyango, Moni Wekesa, Judy Nguru	
<b>Navigating Crime and Punishment in Mbumland (1779-1996): An Analysis of Indigenous, Colonial, and Post-Colonial Justice Systems</b>	<b>29-40</b>
Elvis Bantar Kubi	
<b>Italy's Artificial Intelligence Act and Global AI Governance: The EU Model's Practice and Prospects</b>	<b>41-49</b>
Sirong Yu	
<b>Ensuring Electricity Reliability and Consumer Protection in Cameroon: A Corporate Law and Regulatory Governance Perspective</b>	<b>50-58</b>
Nchofua Anita Nyitioseh	
<b>Mitigating Systemic Risks and Freedom of Expression According to the Digital Services Act Model</b>	<b>59-75</b>
Dimitris Liakopoulos	
<b>An Assessment of the Effectiveness of the Common Initiatives of Cameroon and Nigeria to Fight Piracy in the Gulf of Guinea</b>	<b>76-96</b>
Achalle Agness Besong	

## CONTENTS

- Transitional Justice in Africa Armed Conflicts: Examining the Limits of the United Nations SDG 16 in Delivering Accountability and Sustainable Peace** 97-115

Kwebe Augustine Nkwiyir, Akwe Ngole Ray

- A Legal Assessment of the Effectiveness of the Measures to Fight Against Scamming in Cameroon: The Case of Buea** 116-126

NTOKO NTONGA Rene, LIDVIN ADRAIN ZANGA

- Reassessing the Palermo Protocol: Emerging Gaps in Prevention, Protection and Prosecution in the Digital and Conflict Era** 127-133

Ndinge Nadia Mbella

- Realistic Responses to Misconceptions Surrounding Marx's Labor Theory of Value in the Age of Artificial Intelligence and Its Developmental Prospects** 134-141

Yong Li

- Narrative Struggle in the Judicial Arena: A Cross-Disciplinary Investigation of Court Discourse on the Hongqiao (Oyama) Incident in the Tokyo Trial** 142-148

Ying Gao

# Safeguarding the Rights of Women in Armed Conflicts: An Appraisal of the Armed Conflict in the Anglophone Cameroon

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## Abstract

Armed conflicts disproportionately affect women, exposing them to heightened risks of sexual and gender-based violence, displacement, economic marginalization, and exclusion from peace processes. This study examines the effectiveness of safeguarding the rights of women in the context of the Anglophone Cameroon armed conflict. Adopting a doctrinal and qualitative research methodology, the study analyses relevant international humanitarian law, international human rights law, and regional legal frameworks alongside documented practices in the North-West and South-West regions of Cameroon. The findings reveal a significant gap between Cameroon's formal legal obligations and their practical implementation, resulting in persistent violations of women's rights by both state and non-state actors. The study further finds that weak accountability mechanisms, institutional fragmentation, limited humanitarian access, and the marginalization of women from peace and security initiatives have undermined effective protection. The paper concludes that safeguarding women's rights in the Anglophone conflict remains largely ineffective and argues that sustainable peace cannot be achieved without placing women's protection and participation at the center of conflict response and peace-building efforts. The study contributes to existing scholarship by providing a context-specific legal appraisal of women's rights protection in a protracted non-international armed conflict and offers policy-oriented recommendations aimed at bridging the gap between law and practice.

**Keywords:** Anglophone Cameroon, appraisal, armed conflict, rights, women

## 1. Introduction

The protection of women's rights in situations of armed conflict is a cornerstone of contemporary international human rights law and humanitarian action. Historically, armed conflicts have deepened pre-existing gender inequalities, exposing women to heightened risks of gender-based violence, displacement, and socio-economic marginalization. International legal frameworks such as the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* and United Nations Security Council Resolution 1325 on Women, Peace, and Security explicitly recognize the need for special measures to protect women and girls during conflicts and to ensure their participation in peace-building processes.<sup>1</sup>

Since late 2017, the Anglophone regions of Cameroon comprising the North-West and South-West have been engulfed in a protracted armed conflict between separatist movements and government forces. Women in these regions have borne a disproportionate share of the conflict's toll, experiencing displacement, loss of livelihood,

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<sup>1</sup> UN Women. (2015). Women, peace and security: Study on the implementation of UN Security Council resolution 1325 in Africa. United Nations Entity for Gender Equality and the Empowerment of Women.

and widespread violations of their rights, including sexual and gender-based violence. Empirical studies indicate that women and children account for the majority of survivors of conflict-related gender-based violence in the region, with cases often going unaddressed due to systemic barriers to justice and protection.<sup>1</sup>

Beyond victimization, women in the Anglophone crisis have also played diverse roles in peace-building and community resilience, despite being frequently excluded from formal negotiations and decision-making processes. Their marginalization from peace processes undermines broader efforts to achieve sustainable resolution and highlights the gap between international normative commitments and local realities.<sup>2</sup>

This study appraises measures enacted to safeguard women's rights in the Anglophone conflict, examining both the legal frameworks in place and the practical challenges to their implementation. By situating the Cameroonian context within international standards and local adaptations, the paper contributes to a deeper understanding of gendered vulnerabilities in armed conflict and offers recommendations for more effective protection and inclusion of women in peace and security initiatives.

## 2. Conceptual Clarifications

Women bear a disproportionate burden in armed conflicts, often facing violence, displacement, and denial of basic human rights. In the Anglophone regions of Cameroon, ongoing hostilities have exposed women to grave human rights violations, highlighting the urgent need for effective protective measures. Understanding the key concepts of safeguarding, women's rights, armed conflict, appraisal, and Anglophone Cameroon is essential to situate this study within both legal and practical frameworks, and to evaluate the effectiveness of interventions aimed at protecting women in conflict settings.

### 2.1 Safeguarding

Safeguarding in legal and human rights practice refers to measures, policies, and mechanisms that protect individuals from harm, abuse, or violations of their rights. In conflict contexts, safeguarding women requires ensuring that humanitarian and legal protections are effectively applied to prevent abuses and uphold human dignity.<sup>3</sup>

### 2.2 Women's Rights

Women's Rights are legally recognized entitlements and freedoms due to women under international human rights and humanitarian law. These include freedom from discrimination, protection from gender-based violence, and equal participation in all spheres of life. Women's rights are often violated during conflicts, necessitating robust protective mechanisms.<sup>4</sup>

### 2.3 Armed Conflict

Armed Conflict is a situation of protracted armed violence between organized groups, typically involving state and non-state actors, which triggers legal obligations for the protection of civilians and combatants alike. The Anglophone crisis in Cameroon qualifies as a non-international armed conflict, with profound implications for women's safety and rights.<sup>5</sup>

### 2.4 Appraisal

Appraisal refers to the systematic evaluation of policies, laws, and interventions to determine their effectiveness, relevance, and compliance with legal standards. Appraising measures to protect women in conflict assesses both successes and gaps in legal frameworks, institutional responses, and practical implementation.<sup>6</sup>

### 2.5 Anglophone Cameroon

Anglophone Cameroon refers to the North-West and South-West English-speaking regions of Cameroon, where historical, socio-political, and linguistic tensions have escalated into a protracted armed conflict since 2017. The

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<sup>1</sup> Nkwi, P. N., & Nyamnjoh, F. B. (2018). *The Anglophone crisis in Cameroon: Socio-political and human rights dimensions*. Bamenda: Langaa Research & Publishing.

<sup>2</sup> Fonchingong, C. C. (2019). Women, conflict, and peacebuilding in Cameroon: Challenges and prospects. *African Journal of Political Science and International Relations*, 13(2), 45–59.

<sup>3</sup> United Nations Security Council. (2000). Resolution 1325 on women, peace and security. United Nations.

<sup>4</sup> International Committee of the Red Cross. (2025). Protected persons: Women. ICRC.

<sup>5</sup> International Committee of the Red Cross. (2025). How is the term "armed conflict" defined in international humanitarian law? ICRC.

<sup>6</sup> Fonchingong, C. C. (2019). Women, conflict, and peacebuilding in Cameroon: Challenges and prospects. *African Journal of Political Science and International Relations*, 13(2), 45–59.

region provides a critical case study for examining the vulnerabilities of women in conflict and the effectiveness of protective interventions.<sup>1</sup>

### 3. Methodology

This study adopts a qualitative doctrinal and socio-legal research methodology to examine the safeguarding of women's rights in armed conflicts, with particular focus on the Anglophone crisis in Cameroon. A qualitative approach is appropriate because the study seeks to analyze legal norms, institutional practices, and contextual realities rather than to generate statistical data.<sup>2</sup>

The doctrinal research method is employed to systematically analyze relevant international, regional, and domestic legal instruments governing the protection of women in armed conflict. Doctrinal legal research focuses on the interpretation and application of legal rules as contained in statutes, treaties, judicial decisions, and authoritative legal texts.<sup>3</sup> Instruments examined include international humanitarian law, international human rights law, and women-specific legal frameworks such as the Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and United Nations Security Council Resolution 1325. Judicial decisions and interpretative guidance from international bodies are also analyzed to assess the scope and effectiveness of existing legal protections.

In addition, the study adopts a socio-legal approach, which situates legal norms within their broader social, political, and institutional contexts. Socio-legal research allows for a critical examination of how law operates in practice and how social realities influence the implementation of legal standards.<sup>4</sup> This approach is particularly relevant in conflict settings, where gaps often exist between formal legal protections and lived experiences.

The research further utilizes a case study design, focusing on the Anglophone regions of Cameroon as a specific instance of a non-international armed conflict. Case study research enables an in-depth and context-sensitive analysis of complex legal and social phenomena within a defined geographical and political setting.<sup>5</sup> The Anglophone crisis provides a suitable case for evaluating the effectiveness of mechanisms aimed at safeguarding women's rights in protracted armed conflicts.

Data for the study is drawn exclusively from secondary sources, including peer-reviewed academic journals, textbooks, policy reports, publications of international organizations, and official United Nations documents. Secondary data analysis is appropriate where primary data collection is impractical or poses ethical and security risks, as is often the case in conflict zones.<sup>6</sup>

Finally, the study employs analytical and evaluative techniques to appraise the adequacy and effectiveness of existing legal and institutional frameworks. This involves identifying strengths, weaknesses, and gaps in the protection of women's rights, with the aim of proposing informed and contextually relevant recommendations for improving safeguarding mechanisms in armed conflict situations, particularly in Anglophone Cameroon.

### 4. Theoretical Framework

This study is anchored on the Women, Peace and Security (WPS) Framework, as articulated in United Nations Security Council Resolution 1325 (2000) and its subsequent resolutions. The WPS framework provides a normative and analytical lens for understanding the gendered impacts of armed conflict and the obligations of states and non-state actors to safeguard women's rights before, during, and after conflict.<sup>7</sup>

The WPS framework is premised on four interrelated pillars: prevention, protection, participation, and relief and recovery. The protection pillar is particularly relevant to this study, as it emphasizes the responsibility of parties to armed conflict to protect women from sexual violence, exploitation, abuse, and other serious human rights violations. This pillar aligns directly with the study's focus on safeguarding women's rights in the context of the

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<sup>1</sup> Nkwi, P. N., & Nyamnjoh, F. B. (2018). *The Anglophone crisis in Cameroon: Socio-political and human rights dimensions*. Bamenda: Langaa Research & Publishing.

<sup>2</sup> Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage Publications.

<sup>3</sup> McConville, M., & Chui, W. H. (2017). *Research methods for law* (2nd ed.). Edinburgh University Press.

<sup>4</sup> Banakar, R., & Travers, M. (2013). *Law and social theory* (2nd ed.). Hart Publishing.

<sup>5</sup> Yin, R. K. (2018). *Case study research and applications: Design and methods* (6th ed.). Sage Publications.

<sup>6</sup> Johnston, M. P. (2017). Secondary data analysis: A method of which the time has come. *Qualitative and Quantitative Methods in Libraries*, 3(3), 619–626.

<sup>7</sup> United Nations Entity for Gender Equality and the Empowerment of Women. United Nations Security Council. (2000). Resolution 1325 (2000) on women, peace and security. United Nations.

Anglophone armed conflict.<sup>1</sup>

The framework also highlights the importance of participation, recognizing women not merely as victims of armed conflict but as critical actors in peace-building and conflict resolution processes. This theoretical perspective enables the study to examine the extent to which women in Anglophone Cameroon are included or excluded from peace negotiations, decision-making structures, and post-conflict governance, and how such exclusion undermines the protection of their rights.<sup>2</sup>

Furthermore, the WPS framework integrates principles of international humanitarian law and international human rights law, thereby bridging normative legal standards and practical realities in conflict situations. It provides a basis for assessing state responsibility, compliance with international obligations, and institutional responses to gender-based violations during armed conflict.<sup>3</sup> Through this lens, the study critically appraises the effectiveness of legal and policy measures adopted in Cameroon to protect women in the Anglophone regions.

By adopting the Women, Peace and Security framework, this study situates the Anglophone conflict within a broader global discourse on gender, security, and human rights. The framework offers a coherent theoretical foundation for analyzing women's vulnerabilities, state obligations, and structural challenges to safeguarding women's rights in non-international armed conflicts, thereby strengthening the analytical and normative grounding of the study.

## 5. Legal Framework

The protection of women's rights in armed conflict is governed by a complex and interrelated body of international humanitarian law, international human rights law, international criminal law, and regional legal instruments. These frameworks impose binding obligations on states to prevent gender-based violence, protect women as civilians, and ensure accountability for violations committed during hostilities. In the context of the Anglophone armed conflict in Cameroon, which qualifies as a non-international armed conflict, the applicability and ratification status of relevant legal instruments are critical to assessing the extent of state responsibility and compliance. This section examines the key legal frameworks governing the safeguarding of women's rights in armed conflict and evaluates Cameroon's formal commitment to each instrument through ratification or binding membership.

### 5.1 Geneva Conventions of 1949 and Common Article 3

The Geneva Conventions of 1949 form the foundation of international humanitarian law and provide minimum protections for civilians, including women, during armed conflict. Common Article 3, applicable to non-international armed conflicts, prohibits violence to life and person, cruel treatment, torture, and outrages upon personal dignity. These protections are particularly significant for women affected by the Anglophone conflict, who face heightened risks of abuse and violence. Cameroon ratified the four Geneva Conventions in 1963, thereby assuming binding obligations to respect and ensure respect for their provisions in all armed conflicts occurring within its territory.<sup>4</sup>

### 5.2 Additional Protocol II to the Geneva Conventions (1977)

Additional Protocol II supplements Common Article 3 by providing more detailed protections for civilians in non-international armed conflicts. It expressly prohibits rape, enforced prostitution, and any form of indecent assault and requires special protection for women against sexual violence. These provisions are directly relevant to safeguarding women's rights in the Anglophone regions. Cameroon ratified Additional Protocol II in 1984, making its provisions legally binding and applicable to the ongoing armed conflict (ICRC, 2025).

### 5.3 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW is the primary international human rights treaty dedicated to eliminating discrimination against women. It obliges states to take appropriate legislative, administrative, and judicial measures to protect women from gender-based violence, including in situations of armed conflict. Cameroon ratified CEDAW in 1994, thereby committing itself to the protection of women's rights and the elimination of discriminatory practices affecting women in conflict-affected areas.<sup>5</sup>

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<sup>1</sup> International Committee of the Red Cross. (2025). Protected persons: Women. ICRC.

<sup>2</sup> UN Women. (2015). Preventing conflict, transforming justice, securing the peace: A global study on the implementation of United Nations Security Council Resolution 1325.

<sup>3</sup> International Committee of the Red Cross. (2025). How is the term "armed conflict" defined in international humanitarian law? ICRC.

<sup>4</sup> International Committee of the Red Cross. (2025). Treaties, states parties and commentaries. ICRC.

<sup>5</sup> United Nations General Assembly. (1979). Convention on the Elimination of All Forms of Discrimination Against Women.

#### *5.4 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)*

The ICCPR and ICESCR guarantee fundamental rights such as the right to life, human dignity, freedom from torture, health, and an adequate standard of living. These rights remain applicable during armed conflict alongside international humanitarian law.

Cameroon ratified both the ICCPR and the ICESCR in 1984, making their provisions binding and relevant to the protection of women's civil, political, economic, social, and cultural rights in the Anglophone conflict (United Nations General Assembly, 1966a; 1966b).

#### *5.5 United Nations Security Council Resolution 1325 (2000)*

United Nations Security Council Resolution 1325 established the Women, Peace and Security agenda, emphasizing the protection of women in armed conflict, the prevention of sexual and gender-based violence, and the participation of women in peace processes.

Although Security Council resolutions are not subject to ratification, they are binding on all UN Member States, including Cameroon, by virtue of the UN Charter. Cameroon is therefore obligated to implement Resolution 1325 through domestic policies and conflict-response mechanisms (United Nations Security Council [UNSC], 2000).

#### *5.6 Rome Statute of the International Criminal Court (ICC)*

The Rome Statute provides a framework for individual criminal responsibility for serious violations of international law, including rape, sexual slavery, enforced prostitution, and other forms of sexual violence committed during armed conflict. These acts are recognized as war crimes and crimes against humanity.

Cameroon ratified the Rome Statute in 2003, thereby accepting the jurisdiction of the International Criminal Court where domestic accountability mechanisms are ineffective or unavailable (International Criminal Court, 1998).

#### *5.7 African Charter on Human and Peoples' Rights*

The African Charter guarantees equality before the law, respect for human dignity, and freedom from discrimination. These rights form a regional legal basis for the protection of women in armed conflict situations.

Cameroon ratified the African Charter in 1989, making its provisions binding and enforceable within the African human rights system (Organization of African Unity [OAU], 1981).

#### *5.8 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)*

The Maputo Protocol specifically addresses violence against women and imposes obligations on states to protect women in armed conflict, including through the prohibition of sexual violence and the provision of effective remedies.

Cameroon ratified the Maputo Protocol in 2012, thereby strengthening its regional legal commitments toward safeguarding women's rights in the Anglophone regions (African Union, 2003).

### **6. An Overview of the Cameroon Anglophone Armed Conflict**

The Anglophone armed conflict in Cameroon is rooted in historical, political, and legal grievances arising from the country's colonial legacy and post-independence governance structure. Cameroon's bilingual character, inherited from British and French colonial administrations, has been marked by persistent tensions over political representation, legal systems, and cultural identity. Following the 1961 plebiscite and reunification, Anglophone Cameroonians increasingly expressed concerns over marginalization, erosion of the common law system, and centralized governance, which gradually crystallized into what is commonly referred to as the "Anglophone Problem."<sup>1</sup>

The conflict escalated significantly in 2016 after peaceful protests by Anglophone lawyers and teachers against the perceived imposition of Francophone legal and educational practices. The state's response characterized by arrests, repression of dissent, and restrictions on communication contributed to the radicalization of grievances and the emergence of armed separatist groups advocating for the creation of an independent state known as "Ambazonia."<sup>2</sup> By 2017, confrontations between separatist fighters and Cameroonian security forces had intensified, transforming the crisis into a protracted non-international armed conflict.

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<sup>1</sup> Konings, P., & Nyamnjoh, F. B. (2003). *Negotiating an Anglophone identity: A study of the politics of recognition and representation in Cameroon*. Brill.

<sup>2</sup> International Crisis Group. (2017). *Cameroon's Anglophone crisis*.

The armed conflict has been marked by widespread violations of international humanitarian law and international human rights law by both state and non-state actors. These violations include extrajudicial killings, arbitrary detention, village burnings, kidnappings, and attacks on civilians. Scholarly analysis by Kwebe Augustine Nkwiyir highlights that the Anglophone conflict is characterized by weak enforcement of existing legal protections and significant accountability gaps, despite Cameroon's ratification of major international legal instruments applicable to armed conflict.<sup>1</sup> His work underscores the broader systemic challenges in translating international legal commitments into effective protection on the ground.

Women have been disproportionately affected by the conflict, experiencing displacement, sexual and gender-based violence, economic deprivation, and restricted access to justice. The breakdown of law and order has heightened women's vulnerability to rape, sexual exploitation, forced marriages, and domestic abuse. At the same time, women remain largely excluded from peace negotiations and decision-making processes, reinforcing their marginalization and undermining sustainable conflict resolution efforts.<sup>2</sup> Nkwiyir's analysis further demonstrates that the failure to protect specific civilian groups in the Anglophone conflict reflects a broader pattern of non-compliance with international humanitarian norms, a pattern that similarly undermines the safeguarding of women's rights.<sup>3</sup>

Despite ongoing calls for dialogue and reform, the conflict persists, with limited accountability for violations and inadequate protection for civilians. The continued militarization of the Anglophone regions, coupled with political stalemate, has entrenched cycles of violence and insecurity. As scholars have observed, addressing the Anglophone crisis requires not only political solutions but also effective implementation of legal frameworks designed to protect vulnerable groups, particularly women, during armed conflict.<sup>4</sup>

### **7. Effectiveness in Safeguarding the Rights of Women in the Anglophone Cameroon Armed Conflict**

The effectiveness of safeguarding the rights of women in the Anglophone armed conflict in Cameroon remains largely limited, despite the existence of an extensive legal and normative framework at international, regional, and domestic levels. Cameroon has ratified major international humanitarian and human rights instruments that provide robust protections for women in armed conflict. However, the persistence of widespread violations indicates a significant gap between formal legal commitments and practical implementation. This implementation deficit undermines the protective intent of the law and exposes women to continued vulnerability within the conflict environment.

From an international humanitarian law perspective, the protections afforded to women under Common Article 3 of the Geneva Conventions and Additional Protocol II have not been effectively enforced. Reports of sexual violence, forced displacement, and attacks on civilians in the Anglophone regions demonstrate weak compliance by both state forces and non-state armed groups. The lack of effective monitoring mechanisms and limited accountability for violations have contributed to a culture of impunity, reducing the deterrent effect of these legal norms.<sup>5</sup>

Similarly, the effectiveness of international human rights law in safeguarding women's rights during the conflict has been constrained. Although instruments such as CEDAW and the ICCPR impose clear obligations on Cameroon to protect women from gender-based violence and discrimination, enforcement at the domestic level has been inadequate. Structural barriers, including fear of reprisals, limited access to courts, and militarization of affected regions, have prevented many women from seeking justice. As a result, legal protections remain largely theoretical for women living in conflict-affected communities.<sup>6</sup>

The Women, Peace and Security agenda, particularly United Nations Security Council Resolution 1325, has also suffered from weak domestic operationalization. While Resolution 1325 emphasizes women's protection and participation in peace processes, women in Anglophone Cameroon remain underrepresented in dialogue initiatives and decision-making structures related to conflict resolution. The absence of a fully implemented national action plan tailored to the Anglophone context has limited the transformative potential of the WPS

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<sup>1</sup> Nkwiyir, K. A. (2025). Armed conflicts and the media: An assessment of the protection of war correspondents (journalists) in the underway Anglophone Cameroon armed conflicts. *International Journal of Research and Innovation in Social Science*, 9(1), 1025–1052.

<sup>2</sup> Human Rights Watch. (2019). Cameroon: Violence against civilians in the Anglophone regions.

<sup>3</sup> *Ibid.*

<sup>4</sup> Cheeseman, N., Lynch, G., & Willis, J. (2021). *The moral economy of elections in Africa*. Oxford University Press.

<sup>5</sup> International Committee of the Red Cross. (2025). Protected persons: Women. ICRC.

<sup>6</sup> United Nations General Assembly. (1979). Convention on the Elimination of All Forms of Discrimination Against Women.

framework in addressing women's specific needs during the conflict.<sup>1</sup>

Scholarly analysis further reveals that institutional weaknesses significantly affect the effectiveness of women's rights protection. Nkwiir<sup>2</sup> observes that although Cameroon has accepted international legal obligations, enforcement mechanisms remain fragile, particularly in conflict zones where military priorities often override human rights considerations.<sup>3</sup> This systemic weakness has contributed to the failure to protect vulnerable civilian groups, including women, and has diminished trust in state institutions responsible for safeguarding rights.

At the regional level, the African Charter on Human and Peoples' Rights and the Maputo Protocol provide strong normative protection for women in armed conflict. However, the African human rights system relies heavily on state cooperation for enforcement. Cameroon's limited implementation of regional recommendations and the absence of effective domestic follow-up mechanisms have constrained the practical impact of these instruments on the lived experiences of women in the Anglophone regions.<sup>4</sup>

Overall, while the legal framework for safeguarding women's rights in the Anglophone armed conflict is comprehensive, its effectiveness has been undermined by poor implementation, weak accountability, limited access to justice, and the exclusion of women from peace-building processes. Strengthening effectiveness requires not only legal reform but also political will, institutional capacity-building, gender-sensitive conflict responses, and meaningful inclusion of women in conflict resolution and post-conflict reconstruction efforts.

## **8. Challenges in Safeguarding the Rights of Women in the Anglophone Cameroon Armed Conflict**

**Weak implementation of legal frameworks** Despite Cameroon's ratification of major international, regional, and domestic legal instruments protecting women in armed conflict, implementation remains poor. International humanitarian law and international human rights law obligations are often subordinated to security considerations, leading to ineffective enforcement and limited protection for women in conflict-affected areas. This gap between legal commitment and practice significantly undermines the safeguarding of women's rights.<sup>5</sup>

### *8.1 Culture of Impunity for Violations*

A pervasive culture of impunity represents a major obstacle to protecting women's rights in the Anglophone conflict. Sexual and gender-based violence, including rape and exploitation, are rarely investigated or prosecuted. Fear of reprisals, lack of witness protection, and distrust in justice institutions discourage reporting, thereby perpetuating abuse and denying victims access to justice.<sup>6</sup>

### *8.2 Militarization and Insecurity of Affected Regions*

The extensive militarization of the Anglophone regions has intensified women's vulnerability to violence and displacement. Frequent military operations and armed confrontations disrupt social and economic life, weaken community protection mechanisms, and expose women to exploitation and abuse. The collapse of social safety nets has disproportionately affected women, particularly widows and female-headed households.<sup>7</sup>

### *8.3 Exclusion of Women from Peace-Building and Decision-Making Processes*

Women remain largely excluded from formal peace negotiations and conflict-resolution initiatives, despite the emphasis on participation under United Nations Security Council Resolution 1325. This exclusion limits the integration of women's experiences and perspectives into peace processes and weakens the sustainability of conflict-resolution outcomes.<sup>8</sup>

### *8.4 Institutional and Structural Weaknesses*

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<sup>1</sup> UN Women. (2015). Preventing conflict, transforming justice, securing the peace: A global study on the implementation of United Nations Security Council Resolution 1325.

<sup>2</sup> Nkwiir, K. A. (2025). Armed conflicts and the media: An assessment of the protection of war correspondents (journalists) in the underway Anglophone Cameroon armed conflicts. *International Journal of Research and Innovation in Social Science*, 9(1), 1025–1052.

<sup>3</sup> *Ibid.*

<sup>4</sup> African Union. (2003). Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa (Maputo Protocol).

<sup>5</sup> United Nations General Assembly. (1979). Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>6</sup> United Nations General Assembly. (1979). Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>7</sup> *Ibid.*

<sup>8</sup> United Nations Security Council. (2000). Resolution 1325 (2000) on women, peace and security.

Limited institutional capacity, inadequate gender-sensitive training for security personnel, and insufficient resources for victim support services have constrained effective protection of women's rights. Nkwiyir<sup>1</sup> notes that fragile institutions in conflict zones hinder the enforcement of international legal obligations, leaving vulnerable groups such as women without adequate protection.

### *8.5 Socio-Cultural Norms and Stigma*

Deep-rooted socio-cultural attitudes continue to silence survivors of sexual violence and discourage reporting. Stigmatization and victim-blaming practices further marginalize women and restrict access to legal and psychosocial support. These cultural barriers interact with legal and institutional failures, compounding the challenges faced by women in the Anglophone conflict.<sup>2</sup>

## **9. Practical Cases of the Failure in Safeguarding the Rights of Women in the Anglophone Cameroon Armed Conflict**

A plethora of cases have been recorded about the violation and failure in safeguarding women in the Anglophone Cameroon armed conflict. These cases shall be examined seriatim.

### *9.1 Conflict-Related Sexual Violence During Village Raids and Security Operations*

One of the clearest practical failures in safeguarding women's rights in the Anglophone conflict is the occurrence of sexual violence during military raids and counter-insurgency operations. Human rights investigations have documented instances where women were raped or sexually assaulted during house-to-house searches in villages in the North-West and South-West regions, particularly following clashes between security forces and separatist fighters. In many cases, victims were unable to identify perpetrators due to fear, trauma, or the presence of armed personnel, and no effective investigations followed. This reflects a breakdown in command responsibility, military discipline, and victim-protection mechanisms, despite Cameroon's obligations under international humanitarian law.<sup>3</sup>

### *9.2 Sexual Exploitation of Displaced Women and Girls*

The mass displacement caused by the conflict has exposed women and girls to sexual exploitation, particularly in urban centers such as Buea, Bamenda, Douala, and Yaoundé, where internally displaced women seek safety and livelihood opportunities. Practical failures are evident in the absence of structured protection systems for displaced women, leading some to engage in survival sex to secure shelter, food, or financial assistance. The lack of targeted government protection programs and oversight demonstrates a failure to protect displaced women from secondary victimization arising directly from the conflict.<sup>4</sup>

Failure of police and judicial authorities to respond to rape complaints. In practice, women who attempt to report sexual violence in conflict-affected areas often encounter intimidation, refusal to record complaints, or pressure to "settle matters privately." Police stations in militarized zones are frequently inaccessible, and judicial officers are either absent or unwilling to pursue cases linked to the conflict. This institutional failure has resulted in extremely low prosecution rates for conflict-related sexual violence, reinforcing a culture of impunity and denying women effective access to justice.<sup>5</sup>

### *9.3 Burning of Villages and Destruction of Women's Livelihoods*

Military operations and armed clashes have led to the burning of villages and destruction of farmlands, markets, and homes-economic spaces where women traditionally play dominant roles.<sup>6</sup> Women traders and farmers have lost their means of survival, pushing many into extreme poverty and dependency. The absence of compensation, livelihood restoration programs, or social protection schemes for affected women illustrates a practical failure to safeguard women's economic and social rights during the armed conflict.<sup>7</sup>

### *9.4 Abductions and Forced Relationships by Non-State Armed Groups*

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<sup>1</sup> *Ibid.*

<sup>2</sup> African Union. (2003). Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa (Maputo Protocol).

<sup>3</sup> Human Rights Watch. (2019). Cameroon: Violence against civilians in the Anglophone regions.

<sup>4</sup> United Nations High Commissioner for Refugees. (2021). Cameroon situation: Protection and displacement overview.

<sup>5</sup> International Committee of the Red Cross. (2025). Protected persons: Women. ICRC.

<sup>6</sup> UN Women. (2015). Preventing conflict, transforming justice, securing the peace: A global study on the implementation of United Nations Security Council Resolution 1325.

<sup>7</sup> Nkwi, P. N. (2020). *The Anglophone problem in Cameroon*. Langaa Research & Publishing.

Separatist armed groups have also been implicated in the abduction of women and girls for forced domestic labor, coerced relationships, or sexual exploitation in bush camps. Families often remain silent due to fear of retaliation, while state protection mechanisms are largely absent in areas under separatist influence. The inability of the state to secure these territories or provide alternative protection reflects a failure to safeguard women from abuses committed by non-state actors, despite clear obligations under international law.<sup>1</sup>

#### *9.5 Marginalization of Women in Dialogue and Peace Initiatives*

At the practical level, women's organizations and female community leaders are rarely invited to formal peace dialogues, mediation processes, or security consultations related to the Anglophone crisis. Peace initiatives have largely been elite-driven and male-dominated, ignoring women's lived experiences of violence, displacement, and survival. This exclusion represents a direct failure to implement United Nations Security Council Resolution 1325 and undermines the development of gender-responsive and sustainable peace solutions.<sup>2</sup>

#### *9.6 Weak Institutional Coordination and Delayed Humanitarian Response*

Nkwiyr (2025)<sup>3</sup> highlights that weak coordination among security agencies, humanitarian actors, and justice institutions has significantly affected civilian protection in the Anglophone conflict. In practice, delays in humanitarian access, lack of referral systems for survivors of sexual violence, and absence of psychosocial support services have left women without timely assistance. This institutional fragmentation demonstrates a systemic failure to translate legal obligations into effective protection on the ground.

### **10. Findings**

This study finds that, despite Cameroon's ratification of key international, regional, and domestic legal instruments designed to safeguard the rights of women in armed conflict, protection in practice remains largely ineffective in the Anglophone regions. A significant gap exists between formal legal commitments and their implementation on the ground. International humanitarian law and international human rights law norms applicable to non-international armed conflicts have not been consistently enforced, exposing women to continued violence, displacement, and rights violations.

The findings reveal that women in the Anglophone armed conflict are disproportionately affected by sexual and gender-based violence, including rape, sexual exploitation, forced relationships, and domestic abuse exacerbated by insecurity and displacement. Both state security forces and non-state armed groups have been implicated in violations, while accountability mechanisms remain weak. The failure to effectively investigate and prosecute perpetrators has fostered a culture of impunity, discouraging reporting and denying women access to justice.

The study further finds that displacement resulting from the conflict has significantly increased women's vulnerability. Internally displaced women face heightened risks of sexual exploitation, economic deprivation, and lack of access to healthcare, education, and psychosocial support. The absence of targeted protection mechanisms and sustainable livelihood programs underscores a failure to safeguard women's socio-economic rights during the conflict.

Another key finding is the limited operationalization of the Women, Peace and Security agenda in Cameroon. Despite the binding nature of United Nations Security Council Resolution 1325, women remain largely excluded from peace negotiations, dialogue initiatives, and security decision-making processes related to the Anglophone crisis. This exclusion undermines gender-responsive peace-building and weakens the prospects for sustainable conflict resolution.

The study also finds that institutional weaknesses significantly undermine the effectiveness of women's rights protection. Fragile coordination among security agencies, judicial institutions, and humanitarian actors has resulted in delayed responses to violations, inadequate survivor support, and ineffective monitoring of abuses. As highlighted by Nkwiyr (2025),<sup>4</sup> these systemic deficiencies reflect broader challenges in enforcing international legal obligations within conflict zones.

Overall, the findings demonstrate that while the legal framework for safeguarding women's rights in the Anglophone armed conflict is comprehensive, its effectiveness is severely constrained by poor implementation, weak accountability, institutional fragility, and the marginalization of women from peace and security processes.

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<sup>1</sup> *Ibid.*

<sup>2</sup> United Nations Security Council. (2000). Resolution 1325 (2000) on women, peace and security.

<sup>3</sup> Nkwiyr, K. A. (2025). Armed conflicts and the media: An assessment of the protection of war correspondents (journalists) in the underway Anglophone Cameroon armed conflicts. *International Journal of Research and Innovation in Social Science*, 9(1), 1025–1052.

<sup>4</sup> *Ibid.*

## 11. Conclusion

This study has examined the effectiveness of safeguarding the rights of women in the context of the Anglophone Cameroon armed conflict, with particular attention to the applicable legal frameworks, institutional mechanisms, and lived realities on the ground. The analysis demonstrates that although Cameroon has ratified and domesticated key international and regional instruments aimed at protecting women during armed conflicts, these normative commitments have not translated into effective protection for women in the conflict-affected North-West and South-West regions.

The study concludes that women have continued to suffer severe and disproportionate violations, including sexual and gender-based violence, forced displacement, economic marginalization, and exclusion from peace and security processes. Both state and non-state actors have contributed to these violations, while accountability mechanisms remain largely ineffective. The persistent failure to investigate abuses, prosecute perpetrators, and provide adequate remedies for victims has entrenched a climate of impunity that undermines the rule of law and weakens confidence in state institutions.

This study contributes to existing scholarship by providing a context-specific legal and empirical analysis of women's rights protection within a protracted non-international armed conflict in Cameroon, an area that remains underexplored in African conflict literature. By systematically linking international humanitarian law, international human rights law, and the Women, Peace and Security agenda to documented practices in the Anglophone regions, the study advances understanding of the gap between legal obligations and implementation in fragile conflict settings. It further enriches the literature by foregrounding women's lived experiences and institutional failures, thereby offering a framework for evaluating gendered protection in similar internal armed conflicts across Africa.

In conclusion, the effectiveness of safeguarding women's rights in the Anglophone Cameroon armed conflict remains largely inadequate. The persistent disconnect between law and practice underscores the need for stronger political will, institutional reform, and genuine commitment to accountability and gender inclusion. Without translating legal obligations into concrete action, the protection of women in armed conflict will remain aspirational rather than real. Sustainable peace in Cameroon is unlikely to be achieved unless women's rights, agency, and protection are placed at the center of conflict response and peace-building strategies.

## 12. Recommendations

Drawing from the findings of this study, it is evident that the persistent violations of women's rights in the Anglophone Cameroon armed conflict stem largely from weak implementation of legal frameworks, limited accountability, institutional fragility, and the marginalization of women in peace and security processes. The following recommendations are therefore proposed as practical and policy-oriented measures aimed at strengthening the protection of women during the ongoing conflict and in post-conflict recovery efforts. These recommendations are designed to bridge the gap between law and practice and to promote a gender-responsive approach to conflict management and peace-building in Cameroon.

### *12.1 Strengthen Enforcement of Legal and Policy Frameworks Protecting Women in Armed Conflict*

The Government of Cameroon should move beyond formal ratification of international and regional instruments by ensuring their practical enforcement. This requires the integration of gender-protection norms into military doctrines, rules of engagement, and operational manuals for security forces deployed in the Anglophone regions. Regular training and monitoring mechanisms should be instituted to ensure compliance with international humanitarian law and human rights standards, particularly those relating to the protection of women.

### *12.2 Enhance Accountability for Sexual and Gender-Based Violence*

Effective safeguarding of women's rights depends on credible accountability mechanisms. Independent investigations into allegations of sexual and gender-based violence committed by both state and non-state actors should be prioritized. Strengthening prosecutorial capacity, establishing specialized courts or mobile judicial units in conflict-affected areas, and ensuring witness protection would reduce impunity and restore confidence in the justice system.

### *12.3 Establish Targeted Protection and Support Systems for Displaced Women and Girls*

Displacement has emerged as a major driver of women's vulnerability in the Anglophone conflict. Dedicated protection programs should be developed to address the specific needs of internally displaced women, including access to healthcare, psychosocial support, education, and livelihood opportunities. Such measures would reduce exposure to sexual exploitation and enhance women's resilience in displacement settings.

### *12.4 Operationalize the Women, Peace and Security Agenda*

The meaningful participation of women in peace and security processes remains limited. Cameroon should fully

implement United Nations Security Council Resolution 1325 by ensuring women's inclusion in peace negotiations, mediation efforts, and community dialogue initiatives. Women's perspectives are essential for designing gender-responsive conflict resolution strategies and achieving sustainable peace outcomes.

#### *12.5 Improve Humanitarian Coordination and Survivor-Centered Responses*

Fragmented institutional responses have undermined protection efforts. Strengthening coordination among government institutions, humanitarian actors, and local women's organizations would ensure timely assistance to survivors of violence. Establishing clear referral pathways for medical, legal, and psychosocial services would significantly improve the effectiveness of protection mechanisms for women in conflict zones.

#### *12.6 Address the Structural Causes of the Anglophone Conflict through Inclusive Dialogue*

Long-term protection of women's rights cannot be achieved without resolving the underlying drivers of the conflict. Inclusive political dialogue, decentralization reforms, and reconciliation initiatives should be pursued alongside gender-sensitive recovery programs. Addressing structural grievances would reduce violence, enhance civilian protection, and create an enabling environment for the realization of women's rights.

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# The Relationship Between Research Permits and Patent Applications in Kenya over Ten Years (2014-2023)

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## Abstract

This study sought to establish the relationship between research permits granted and the number of patents registered over 10 years in Kenya from 2014 to 2023. Over that period, Kenya ranked at number ten in Africa in terms of patents granted and very low in world rankings compared to South Africa, which ranked number 17 in the world. Data on research permits granted in Kenya, as well as patents registered was obtained from various sources. For purposes of comparing permits obtained and patents registered, only research permits granted in the sciences were considered. Results showed an increasing trend in the number of research permits obtained as well as in patents registered. Over the ten years, the relationship between research permits obtained and patents registered was represented by the equation  $Y = 0.0062X + 3.9473$ . The constant was interpreted as a 'carry over' effect due to delays in processing patents. All in all, very few patents are registered in Kenya as compared to the number of research permits granted.

**Keywords:** research permits, patents, commercialization

## 1. Introduction

Research permits and patents in Kenya are intricately related. Patents result from research efforts. For one to conduct research in Kenya, obtaining a research permit is mandatory. A research permit, therefore, precedes a patent application.

A research permit/ permit is a document granted to a researcher or a research institution that enables them to undertake research in Kenya.<sup>1</sup> The requirement of applying for and obtaining a research permit appears to be a universal practice.<sup>2</sup> In fact, researchers from one country seeking to do research in another country may require permissions from both countries. The process of granting research in African countries has been described as cumbersome. This could be due to the centralized nature of such processes as opposed to most institutions in the West, such as the USA, where permit approvals have been localized at institutions.<sup>3</sup>

In Kenya, a research permit is granted by the National Commission for Science, Technology and Innovation (hereinafter referred to as 'NACOSTI'). Such permits also allow entry to specific areas that may not be easily or

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<sup>1</sup> Science, Technology and Innovation Act 2013 s 12.

<sup>2</sup> U Engel. (2015). 'Introduction' in U Engel, C Gebauer & A Hüncke (eds), *Notes from Within and Without: Research Permits between Requirements and "Realities"*. SPP Working Paper Series No 16, DFG at <https://kops.uni-konstanz.de/bitstreams/2e3c5588-cb9a-426d-bc1e-37fa6c55f5e0/download> accessed 16 May 2025

<sup>3</sup> L Johnson & J Namai. (2023). Research Authorization Processes: A Descriptive Comparison of Kenya and The United States of America. *Journal of the Kenya National Commission for UNESCO*, 3(1), at < <https://journals.unesco.go.ke/index.php/jkncatcom/article/view/25> > accessed 30 November 2025.

normally accessible.<sup>1</sup> NACOSTI oversees Kenya's centralized research authorization system, which requires all researchers, regardless of discipline or institutional affiliation, to obtain formal authorization before beginning any study.<sup>2</sup> This approach is set up to guarantee that research endeavors serve the general public interest while also conforming to national ethical norms. NACOSTI has accredited over 30 Institutional Scientific and Ethics Review Committees (ISERC) at universities and research institutions to do the initial screening of applications. Before researchers can apply for final permission from NACOSTI, they must first undergo preliminary ethical evaluations conducted by Institutional Scientific and Ethics Review Committees (ISERCs).<sup>3</sup> Although the goal of this framework is to maintain strict ethical control, it also introduces a methodical procedure that can be expensive and time-consuming, frequently requiring researchers to go through several levels of approval. From here, approval for clinical trials goes to the Pharmacy and Poisons Board, and later to NACOSTI. Such delays could also mean an overflow from one year to the next.<sup>4</sup> Non-clinical studies go straight to NACOSTI after approval by ISERC. This process is said to occasion delays in approvals and grant of research permits. A research permit will be granted by NACOSTI if it is convinced that the applicant meets the legal conditions.<sup>5</sup> Once a permit is issued it is valid for a year from the date of issuance and can be renewed upon receiving an application at least two months before the permit's expiration date.<sup>6</sup> The Commission may either reject the application or provide its comments or recommendations and send them to the applicant if it believes the application does not satisfy the requirements set forth in the Act.<sup>7</sup> A comparison between review processes at a Kenyan and US university revealed that none of them provided information on the criteria used to evaluate research proposals. Additionally, it was observed that placing the cost of the application for approval on individuals, as is the case with Kenya, was likely to affect the number of applications made, or put differently, to affect research activities. It was also found that the US has a policy of localized research clearance, whereas Kenya practices a centralized system<sup>8</sup>. This is to show that Kenya's model is likely to restrain research activity.

In many African nations, research licensing is presented as a tool of sovereign control, meant to enforce national sovereignty over international research and oversee ethical compliance. But the real process of getting permissions frequently exposes opacity, contradictions, and bargaining that are very different from the official legal framework.<sup>9</sup> In the year 2015, NACOSTI granted a total of 3887 permits out of 4360 permit applications. The decrease in the number granted relative to the applications filed was also seen in 2016, when 4701 applications were filed but only 4265 were granted. In 2017, there were 4,618 applications, but NACOSTI granted only 4,461<sup>10</sup> permits. There were 6,623 permit applications in 2018/19, up by 43.4% from 4,618 in 2017–18. In 2018-19, NACOSTI awarded 6,015 permits, a 34.8% and 90.8% of all permit applications received.<sup>11</sup>

<sup>1</sup> Wekesa M. (2015). Challenges in Regulation of Biomedical Research: The Case of Kenya. *Nigerian Journal of Clinical Practice*. <https://repository.daystar.ac.ke/items/c7e54bc7-fd05-4e3c-b6be-a3daeab24af2/full> accessed 7 June 2025

<sup>2</sup> NACOSTI. (October 2017). Guidelines for Accreditation of Institutional Ethics Review Committees in Kenya. [https://www.nacosti.go.ke/nacosti/Docs/QUICK%20DOWNLOADS/Guidelines%20for%20Accreditation%20of%20IERC\(1\).pdf](https://www.nacosti.go.ke/nacosti/Docs/QUICK%20DOWNLOADS/Guidelines%20for%20Accreditation%20of%20IERC(1).pdf) accessed 20 May 2025

<sup>3</sup> L Johnson and J Namai. (2023). *Research Authorization Processes: A Descriptive Comparison of Kenya and the United States of America*. *Journal of the Kenya National Commission for UNESCO*, 3(1). < <https://journals.unesco.go.ke/index.php/jkncatcom/article/view/25> > accessed 16<sup>th</sup> May 2025

<sup>4</sup> M Chelangat & A Oketch. (2023). Clinical Trial Approvals Headache for Kenyan Researchers. *Daily Nation*. at < <https://nation.africa/kenya/health/clinical-trial-approvals-headache-for-kenyan-researchers-4467838> > accessed 30 November 2025

<sup>5</sup> Ibid, Regulation 7.

<sup>6</sup> Ibid, Regulation 8.

<sup>7</sup> Ibid.

<sup>8</sup> L Johnson & J Namai. (2023). *Research Authorization Processes: A Descriptive Comparison of Kenya and The United States of America*. *Journal of the Kenya National Commission for UNESCO*, 3(1), at < <https://journals.unesco.go.ke/index.php/jkncatcom/article/view/25> > accessed 30 November 2025

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<sup>10</sup> G Nakweya. (2 November 2021). Research Licence Applications Dwindle due to COVID-19. *University World News* (Nairobi, Kenya). <https://www.universityworldnews.com/post.php?story=20211031082256863> accessed 7 June 2025.

<sup>11</sup> Kenya National Bureau of Statistics. (2021). *Economics Survey Report 2021*. <https://www.knbs.or.ke/wpcontent/uploads/2021/09/Economic-Survey-2021.pdf>

In 2019-2020, the number of research permits was reported to have decreased by 8.2%. This decline is reportedly attributed to the closure of higher institutions during the COVID-19.<sup>1</sup> In 2020/21 there were 5985 permit applications, and 5163 were granted. In 2021/2022, 6143 applications were filed, and 6048 were granted.

The above statistics of the number of research permits applied for and granted highlight a high approval rate, suggesting that generally, Kenya's research activity had expanded over the study period.

NACOSTI's efforts, in partnership with other organizations like universities and research institutes, to raise awareness and educate researchers and students about the necessity, advantages, processes, and legal ramifications of licensing research work are credited for the increase in the quantity of research permit applications and permits granted.<sup>2</sup>

However, researchers still face various challenges when applying for these permits. Some of these challenges include institutional delays, and research permits from various ministries take a long time to approve.<sup>3</sup> Multiple approval stages, for example, in Kenya, to carry out clinical trial research, one must first get approval from various bodies before finally getting the permit. It is only after navigating around the research permit application and granting that a person can proceed to carry on with the research, and eventually to a patent.

### *Patents, Research and Development*

Intellectual Property rights are rights granted for the protection of creations of the mind. They include copyrights, patents, trademarks, utility models, industrial designs, plant breeders' rights, and trade secrets.<sup>4</sup> The protection granted is for a specific period during which the creator has exclusive rights to that creation. The Constitution of Kenya, 2010, provides for the protection of these rights. It recognizes intellectual property as a form of property and valid rights capable of being enforced and protected.<sup>5</sup>

A patent is an exclusive right granted to protect an invention that provides a new way of doing something or offers a new technical solution to a problem for a limited time (mostly 20 years) in exchange for knowledge disclosure to the public<sup>6</sup>. For an invention to be patented, it has to meet the following criteria: it has to be new, based on an inventive step, and, finally, industrially applicable.<sup>7</sup> Patents are a result of research carried out. Research & development are significant elements that support inventions that are subsequently protected by patents.<sup>8</sup>

Global patent activity is concentrated in a few countries, which dominate filings and grants worldwide. As of 2024, China granted 1,044,777 patents, followed by the USA 603,194, Japan 306,855, South Korea 246,245, India 64,941, Russia 26,698, Germany 23,944, Australia 19,276, UK 18,952, and Mexico 16,189. These are the top ten countries in the world with respect to patents. These 10 countries account for 88% of all applications filed annually.<sup>9</sup>

In 2023, it is reported that China rejected more than half a million patent applications. Even then, it remained the top country in terms of patents granted. Other industrialized countries showed a trend of several pending applications. In other words, all patent offices appear to have a 'carry over' into the following years.<sup>10</sup> In the same year, Patents in Africa increased by 3.8% from 14,800 to 21,500.<sup>11</sup>

<sup>1</sup> G Nakweya. (2 November 2021). Research Licence Applications Dwindle due to COVID-19. *University World News* (Nairobi, Kenya). <https://www.universityworldnews.com/post.php?story=20211031082256863> accessed 7 June 2025.

<sup>2</sup> Ibid.

<sup>3</sup> JA Vuban and EA Eta. (2019). Negotiating Access to Research Sites and Participants within an African Context: The Case of Cameroon. *Research Ethics*, 15(1), 1.

<sup>4</sup> M Wekesa and B Sihanya (eds). (2009). *Intellectual Property Rights in Kenya* (Konrad Adenauer Stiftung, SportsLink Limited, Nairobi).

<sup>5</sup> Arts 11(c) and 40.

<sup>6</sup> 'Patents' (WIPO). <https://www.wipo.int/en/web/patents> 16th November 2024

<sup>7</sup> Industrial Property Act, 23-25.

<sup>8</sup> E Siringi. (2020). *Commercialization Models of University Research Output and Patenting Policy Practices in Kenya*.

<sup>9</sup> World Population Review 'Patents by Country 2025' at < <https://worldpopulationreview.com/country-rankings/patents-by-country> > accessed on 14 December 2025.

<sup>10</sup> World Population Review 'Patents by Country 2025' at < <https://worldpopulationreview.com/country-rankings/patents-by-country> > accessed on 14 December 2025.

<sup>11</sup> World Intellectual Property Indicators 2024 at <<https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2024-en-world-intellectual-property-indicators-2024.pdf> > accessed on 14 December 2025.

In terms of patent filings in Africa, Kenya ranks 10<sup>th</sup> behind South Africa in first position, followed by Nigeria, Algeria, Morocco, Egypt, Seychelles, Madagascar, Gambia, and Angola. It is instructive that countries with small populations like Seychelles, Madagascar, and Gambia are ahead of Kenya in matters of innovation.<sup>1</sup> According to filings at the African Regional Intellectual Property Organization (ARIPO) in 2024, Mauritius was the top country in Africa, followed by Zimbabwe, Namibia, Uganda, and Mozambique.<sup>2</sup>

Patent protection first emerged in Kenya in 1914 when the Patents and Designs Ordinance 1913 was passed, and the first patent was registered under Marconi's Wireless Telegraph Company of the United Kingdom on December 23, 1914<sup>3</sup>. Before the Industrial Property Act, CAP 509 was passed in 1989, Kenya's patent system was still based on the UK system. Before the Industrial Property of 1989, patents and designs granted in England were registered locally without undergoing inspection. The Kenya Industrial Property Office (KIPO) was established in 1989 with the establishment of the Industrial Property Act.<sup>4</sup> Its duties include examining, granting, and registering patents, utility models, and industrial designs. The government of Kenya appreciates the role of IPR as a tool for trade and development. Kenya, therefore, has institutions that conduct research and development (R&D), which are part of a country's national innovation ecosystem. Such institutions are potential generators and users of IP. These institutions affect capacity building and create new knowledge.<sup>5</sup> Kenya has enacted and implemented several pieces of legislation on IPRs to provide incentives for creations and innovations.<sup>6</sup>

Kenya has enacted and implemented several legislations on IPRs to provide incentives for creations and innovations.<sup>7</sup> The purpose of the patent law is to allow Kenya to support its development requirements through its patent policy. Nevertheless, a review of patent statistics shows that the passage of this statute has had no appreciable impact on the number of patent applications or patents granted. <sup>8</sup>According to the Kenya Innovation Survey (2012), only 12.9% of businesses in Kenya had obtained patents, and only 7% of those firms reported using their patents. Other studies have revealed that 65% of innovators in Kenya have not protected their inventions, and 53% have reported having little knowledge of intellectual property.<sup>9</sup>

In 2015, the number of patents granted was 48, with only one being granted to a resident. In 2016, there were 29 patents, 5 of them being granted to residents and 24 to foreigners; 2017 had 51 patents, 11 being granted to residents and 40 to foreigners.<sup>10</sup> The Kenya Industrial Property Institute (KIPI) reports that as of mid-2016, there were just four patents and seven utility model certificates in Kenya's higher education institutions. While corporations accounted for 22 patents, only one government research center held an active patent. As of November 2017, the Jomo Kenyatta University of Agriculture and Technology (JKUAT) had four patents, suggesting that these figures have improved from the middle of 2016.<sup>11</sup> In 2018, a total of 26 patents were granted, and they were all given to residents. In the year 2019, there were a total of 67 patents, five of which were granted to residents and 62 to foreigners. In 2020, there were 66 patents granted, five were granted to residents and 61 to foreigners. In 2021, there were 82 patents granted, 68 being granted to foreigners and 14 to residents.<sup>12</sup> Overall, the data reveals consistently low patenting by Kenyan residents and public institutions,

<sup>1</sup> Olasupo F. (Sep 06, 2025). Top 10 African Countries by Patents in 2025. *The African Exponent*.

<sup>2</sup> 2024 ARIPO Filing Highlights at < <https://www.aripo.org/success-stories/2024-ip-filing-trends-key-insights-from-aripos-top-applicants-8251> > accessed 14 December 2025.

<sup>3</sup> M Wekesa. (2015). Challenges in Regulation of Biomedical Research: The Case of Kenya. *Nigerian Journal of Clinical Practice*. <https://repository.daystar.ac.ke/items/c7e54bc7-fd05-4e3c-b6be-a3daeab24af2/full> accessed 7 June 2025

<sup>4</sup> CAP 509 of the Laws of Kenya.

<sup>5</sup> M Kiveu. (2012). 'Patenting in Kenya: Status and Challenges'. Discussion Paper Series No. DP/141/2012, Kenya Institute of Public Policy Research and Analysis, KIPPRA Discussion Paper No. 141 of 2012 at < <https://repository.kippira.or.ke/server/api/core/bitstreams/9745ff1f-eea5-405d-ab84-e97b9ef2c2f5/content> > accessed 30 November 2025

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, 31.

<sup>9</sup> Ministry of Higher Education, Science and Technology, Kenya Innovation Survey Report 2012. <https://www.education.go.ke/sites/default/files/2022-05/innovation-survey-report.pdf> last accessed 7th June 2025

<sup>10</sup> Kenya – IP Statistics Country Profile (WIPO). [https://www.wipo.int/ipstats/en/statistics/country\\_profile/countries/ke\\_content.html](https://www.wipo.int/ipstats/en/statistics/country_profile/countries/ke_content.html) accessed 7<sup>th</sup> June 2025

<sup>11</sup> M Kiveu (n 58) 32.

<sup>12</sup> Ibid.

indicating weaknesses in local innovation uptake and research commercialization.

Universities and research institutions mostly carry out research. However, most of this research is not commercialized. This is due to several factors, including but not limited to low funding, lack of research facilities, poor remuneration of researchers, and a non-entrepreneurial culture within universities.<sup>1</sup> These challenges have led to researchers having little to no incentives to engage in innovative research or to create innovations.<sup>2</sup> In addition, the needs of university dons are not always aligned to industry needs. The mantra in the academy is ‘publish or perish’. Hence, research is seen as leading to publications. And the more the merrier. Additionally, universities do not think of profit. Industry is profit driven. In contrast thereto, industry is interested in new products that would make it more competitive. Industry is thus interested in ‘applied’ or ‘practical’ research. Research that leads to inventions and creations, and eventually, to new products for the market.<sup>3</sup>

Publication of research findings establishes academic reputations. However, the early release of an invention can harm patent applications.<sup>4</sup> For an invention to be considered new, it must not have been disclosed to the public. In Kenya, the Industrial Property Act provides for a 12-month grace period after publication or disclosure.<sup>5</sup> A grace period simply eliminates one’s publications from the prior art, which is the stock of all literature. That is, an invention will still be considered novel if an application is filed 12 months after the disclosure. Publication is the process of revealing innovation, initiative, or study to the public.<sup>6</sup> Disclosure can occur through abstracts and theses. Journals, magazines, poster displays, open days, interviews, and confidential disclosure to many people are examples of disclosure.<sup>7</sup>

The invention must have been an inventive step, that is, it must not have been obvious to a person skilled in the art. This filters out inventions that are simply minor improvements over existing knowledge. It also promotes advancements in technology and serves the public interest. It keeps the patent system’s legitimacy and integrity intact. Industrial applicability means that an invention can be used and applied in the industry for which it was made. This was seen in a decision held by the U.S court in the case of *Universal Oil Products*<sup>8</sup> where the US Supreme Court couched the view that:

As a reward for inventions and to encourage their disclosure, the United States offers a 17-year monopoly to an inventor who refrains from keeping his invention a trade secret.

The inventive step in a patent is arrived at after a researcher is granted a research permit.

In the case of *Metro-Poly Kenya Limited*,<sup>9</sup> the applicant requested the revocation of Patent No. KE 861, Wheel Assembly, which had been issued to the respondent. The Applicant, a wheelbarrow wheel maker, learnt about the patent in early 2021 when the Respondent sent a cease-and-desist letter alleging that Metro-Poly’s wheels violated the patent. According to the applicant, the patent failed to meet the innovation threshold of section 23 because similar discoveries had already been made before the application was filed.<sup>10</sup> In response, the Respondent contended that the patent had been legitimately granted following substantive review and that the revocation application was flawed. The issues for determination were whether Patent No. KE 861 ought to be cancelled due to its lack of inventiveness and uniqueness, and whether the wheel made by Metro-Poly violated Patent No. KE 861. The tribunal ordered the revocation of the patent.

In exchange for patent protection, the inventor must provide information about the creation for it to be used by

<sup>1</sup> M Wekesa et al. (2024). Commercialization of Intellectual Property Rights at Universities as an Additional Revenue Stream. *Law and Economy*, 3(3), 37.

<sup>2</sup> E Siringi. (7 November 2022). Commercialization Models of University Research Output and Patenting Policy Practices in Kenya. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4292259](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4292259) last accessed 16<sup>th</sup> November 2024.

<sup>3</sup> n34.

<sup>4</sup> ‘Publish and Perish: How Publications Affect Patentability’ (University of Toledo) [https://www.utoledo.edu/research/TechTransfer/Publish\\_and\\_Perish.html](https://www.utoledo.edu/research/TechTransfer/Publish_and_Perish.html) accessed 16 June 2025.

<sup>5</sup> s 12(4).

<sup>6</sup> Preethiya, ‘Academic Dilemma – Publish or Patent the Idea?’ (HelloLeads) <https://www.helloleads.io/blog/all/business-benefits/academic-dilemma-publish-or-patent-the-idea> accessed 16 June 2025.

<sup>7</sup> ‘Publish and Perish’ n 8.

<sup>8</sup> *Universal Oil Products Co v Globe Oil & Refining Co*, 322 US 471 (1944).

<sup>9</sup> *Metro-Poly Kenya Limited v Ratilal (IPT Case 97 of 2021) [2022] KEIPT 862 (KLR)*.

<sup>10</sup> Industrial Property Act of 2001.

the public when the patent expires. For an inventor to be granted a patent, a patent application has to be filed.<sup>1</sup> An application must contain the information about the invention, the date of filing for the patent, the protection period that the patent will cover, and the geographical area (geographically) of protection of the patent.<sup>2</sup> Patents give legal recognition to the owners of new inventions, providing them with the authority to stop others from using their invention and financial investment.

Patents provide returns to the inventor at three levels: recovering development expenses, profits from the sale of goods containing the invention, and revenues that can be gained from commercializing the patent. Commercialization refers to the process by which ideas or products resulting from academic departments, products, services, and processes will become available in the market.<sup>3</sup> Research commercialization is the process through which ideas or research are transformed into marketable products, capital gains, income from permits, and/or revenue from the sale of new products.<sup>4</sup> The process of commercialization covers idea generation, research, development, licensing, marketing, and monitoring.<sup>5</sup> Commercialization of Intellectual Property Rights can therefore be described as the process of bringing intellectual property rights into the market for them to be exploited and return profits to the owner of the rights.

Research & Development has a significant role in creating inventions that are subsequently protected by patents. The amount of R&D and a country's patenting activity are thought to be directly correlated.<sup>6</sup> Being acknowledged as the main producers and users of intellectual property (IP), universities and research and development (R&D) institutions are essential to a nation's innovation systems.<sup>7</sup> These institutions serve as the main knowledge source.<sup>8</sup> The mandate of these institutions, which is to apply knowledge to the production of goods, services, and technology, has received little attention and has remained underdeveloped.<sup>9</sup> The majority of public R&D institutions suffer from a lack of necessary facilities for research, low staffing, and inadequate funding. There are also clear problems with the institutions' relationships with industry, farmers, businesses, and other knowledge consumers.<sup>10</sup> As a result of this, patent applications from these institutions tend to be few.

Given that patents in Kenya are intricately connected to research permits, the main objective of this study was to find out the proportion of research permits that translated into successful patents in Kenya over a period of ten years.

## 2. Theoretical Framework

The justification for granting patents is often anchored in two theories, namely the reward theory and personhood theory. The reward theory argues that inventors deserve compensation for their creative contributions and the utility their inventions provide for society. The goal of the monopoly is to encourage innovation by providing a reasonable return on investment in labor, research, and creativity rather than to produce unjust riches. A proponent of this theory is John Stuart Mill, who says that patents should not be denounced as monopolies because they function as transitory tools to reward inventiveness. Mill argues that granting the inventor exclusive use of their creation only delays some of the benefits to the public, such as lower costs or better quality, until the innovator receives sufficient credit. In this way, the compensation is commensurate with the contribution's societal worth rather than being exorbitant, which promotes more

<sup>1</sup> 'Patents' (Kenya Industrial Property Institute) <https://www.kipi.go.ke/patents> last accessed November 16, 2024

<sup>2</sup> Ibid.

<sup>3</sup> B Fakour. (2009), *Conditions predisposing to promote commercialization of research results in academic departments*. Approach. No. 40.p:35-39  
[http://ir.jooust.ac.ke/bitstream/handle/123456789/14244/Onderi\\_Re-%20Positioning%20Research%20in%20Turbulent%20Times%20Embracing%20Change%20in%20Innovation%20Science%2C%20Technology%2C%20Education%20and%20Business%20Perspectives.pdf?sequence=1&isAllowed=y](http://ir.jooust.ac.ke/bitstream/handle/123456789/14244/Onderi_Re-%20Positioning%20Research%20in%20Turbulent%20Times%20Embracing%20Change%20in%20Innovation%20Science%2C%20Technology%2C%20Education%20and%20Business%20Perspectives.pdf?sequence=1&isAllowed=y) accessed 16 May 2025

<sup>4</sup> Siringi (n 5) 4.

<sup>5</sup> Ibid.

<sup>6</sup> M Kiveu. Patenting in Kenya: Status and Challenges (KIPPRA Discussion Paper No. 141, Kenya Institute for Public Policy Research and Analysis 2012). <https://repository.kippira.or.ke/bitstreams/9745ff1f-eea5-405d-ab84-e97b9ef2c2f5/download> 16 November 2024

<sup>7</sup> OR Otieno. (2015). Intellectual Property (IP) Commercialization in Kenya: A Situational Analysis of Patenting and Challenges Faced Towards Its Commercialization.

<sup>8</sup> Ibid.

<sup>9</sup> E Siringi. (7 November 2022). Commercialization Models of University Research Output and Patenting Policy Practices in Kenya. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4292259](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4292259) last accessed 16<sup>th</sup> November 2024

<sup>10</sup> Ibid.

innovation without placing permanent limitations on public access. The second theory is the personhood theory, which holds that an individual's intellectual works are extensions of their self. The argument, which has its roots in Hegelian philosophy, maintains that patenting inventions is a means of safeguarding the unique identities that are incorporated into them. Therefore, unauthorized use is an invasion of personal expression as well as a violation of property. Patents thus protect the creator's moral and private rights by recognizing their emotional and intellectual investment in the invention.<sup>1</sup>

### 3. Methodology

This study used a retrospective quantitative design where data were collected and analyzed. This was a historical study that analyzed the trends and documents over the past ten years in relation to patents and permits. This method allows the researcher to systematically collect and interpret existing records from the archives. The study covered ten years (2014-2023).

Data was collected using document analysis, which involved the review of existing documents. The data collected related to the total number of permits the number of permits granted to individuals and institutions, the field of study and level of study for each permit granted, the nationality and gender of individuals granted permits, and patents by origin (resident or foreign).

### 4. Data Analysis

Data was presented using descriptive statistics such as percentages, scatter graphs, and line graphs. Trend analysis was conducted. A regression of patents to research permits was done through linear regression to find out whether and how registration of patents is influenced by research permits. A regression equation was derived from the regression line.

### 5. Results and Discussion

#### 5.1 Total Permits Granted by Nationality

Table 1 below shows the total number of permits granted in the period 2014/15-2023/24 categorized by nationality.

Table 1. Total Permits Granted by Nationality

Year	Total Number of Licences Granted	Granted To Kenyan/EAC Citizens	Granted To African-Non EAC Citizens	Granted To Non-African Citizens
2014/15	3343	3012	25	306
2015/16	3887	3615	18	254
2016/17	4265	3982	35	248
2017/18	4461	4075	75	311
2018/19	6015	5559	59	397
2019/20	6112	5792	53	267
202/21	5153	4895	75	183
2021/22	6048	5597	97	354
2022/23	8185	7698	125	362
2023/24	9627	9142	125	360

Between the fiscal years 2014/15 and 2023/24, the total number of permits given in Kenya increased steadily and significantly, from 3,343 in 2014/15 to 9,627 in 2023/2024. This nearly threefold increase during the ten years indicates a significant expansion in licensing operations. This can be attributed to changes in laws and regulations relating to research through which the enforcement of permits was improved.

#### 5.2 Total Permits Granted by Gender

The representation of male and female applicants in the allocation process is considered in this section by looking at the overall number of permits issued, broken down by gender. The analysis sheds light on trends and differences in permit issuance during the study period that are connected to gender.

<sup>1</sup> M Bornhäuser. (2014). The Relation Between Intellectual Property Law and Competition Law Using the Example of Standard Essential Patents. LLM thesis, University of Cape Town.

Table 2. Total Permits Granted by Gender

Year	Female	Male	Total Individual Permits Granted
2014	1667	1587	3254
2015	1870	1902	3772
2016	2021	2090	4111
2017	2089	2153	4242
2018	2742	2977	5719
2019	2857	3255	6112
2020	2361	2792	5153
2021	2828	3220	6048
2022	3327	3809	7136

Between 2014 and 2022, data on individual permits granted in Kenya show a slow but considerable shift toward more gender balance. While men continue to receive significantly more permits each year, the gap between male and female recipients has stayed relatively low, showing increased gender activity in research.

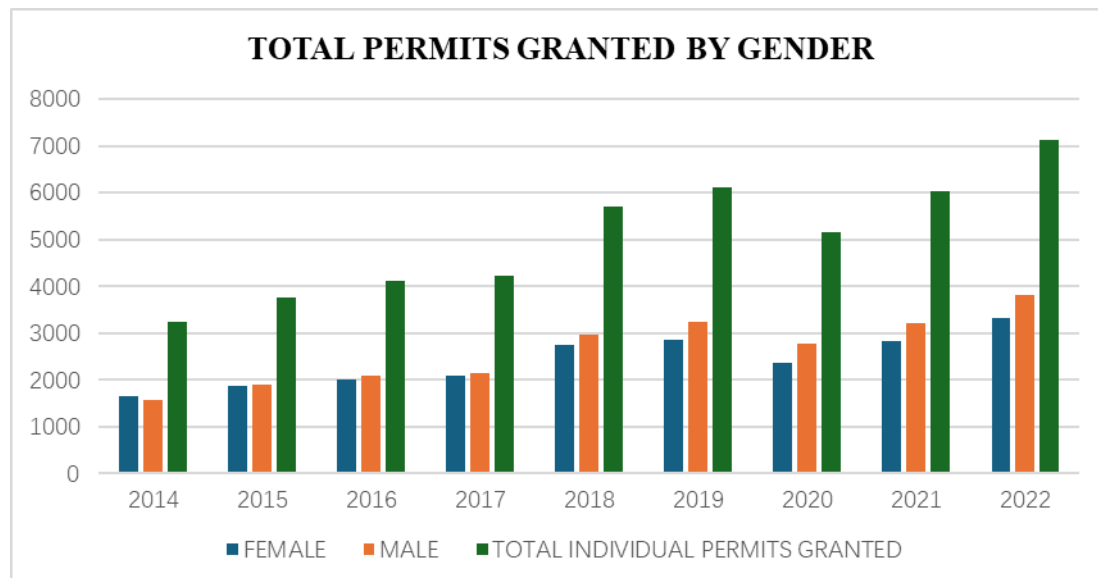


Figure 1. Total Permits Granted by Gender

In 2014, 1,667 permits were awarded to females and 1,587 to males, making it the only year in which women outnumbered men in permit approvals. In succeeding years, male beneficiaries somewhat surpassed female recipients, although the difference was small. For example, in 2022, 3,327 women acquired permits vs 3,809 men, resulting in a gender difference of only 482 permits out of a total of 7,136. The constant increase in the number of permits given to women—from 1,667 in 2014 to 3,327 in 2022—indicates a favorable trend in women’s participation in research, which could be attributed to increased access to education, professional possibilities, or gender-focused policy changes. Table 3: Analysis of research permits granted over the past ten years.

### 5.3 Individual Permits Granted by Field of Study

Table 3 shows the distribution of research permits among different fields of study.

Table 3. Individual Permits Granted by Field of Study

	Agriculture and Natural	Earth and Space	Health and Biological	Humanities and Social	ICT and Infrastructure	Physical, and Industrial
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	Resources Sciences	Sciences	Sciences	Sciences	Sciences	and Energy Sciences
2014/15	43	95	258	2783	60	15
2015/16	33	91	157	3379	77	55
2016/17	71	132	339	3348	151	70
2017/18	80	150	427	3365	152	68
2018/19	143	261	621	4362	215	117
2019/20	303	62	1372	3985	293	97
2020/21	297	54	1113	3411	214	64
2021/22	316	93	1408	3893	246	92
2022/23	338	69	1753	4567	298	111
2023/24	358	83	2112	5394	364	169

Figure 2 shows the number of individual permits granted in six academic and scientific categories, giving insight into the thematic focus of research activity in Kenya. The humanities and social sciences continuously dominate the national research landscape, accounting for the largest number and proportion of research permits every year.

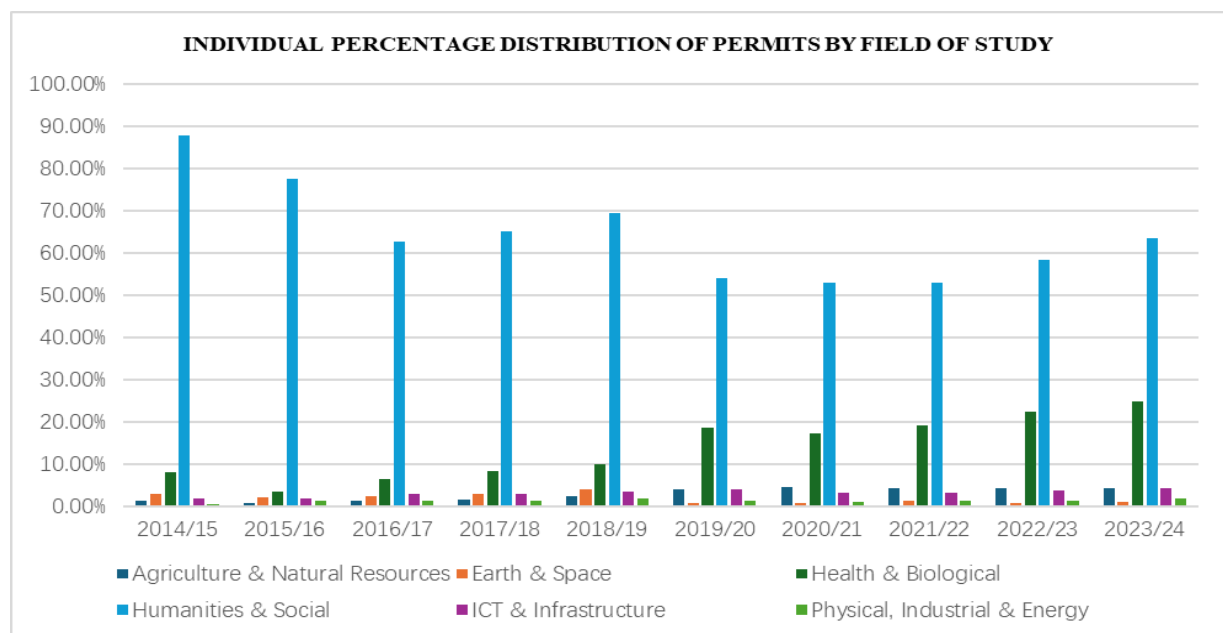


Figure 2. Percentage distribution of individual permits by field of study

Overwhelmingly, most permits were granted in the humanities and social sciences. Permits in the field of humanities and social sciences rose from 2,783 in 2014/15 to 5,394 in 2023/24. This result demonstrates two main things. Firstly, the Science Technology and Innovation (STI) Act broadened the definition of research to include social science and humanities.<sup>1</sup> Also, the Data Protection Act law requires that all data collected be collected in a way that protects the privacy of the individual<sup>2</sup>. Indeed, Wekesa<sup>3</sup> observes that the regulation landscape for research in Kenya has improved tremendously. However, results of research in the humanities and social sciences do not usually lead to patentable innovations. Instead, these results in products that can be

<sup>1</sup> Science Technology and Innovation Act.

<sup>2</sup> Data Protection Act.

<sup>3</sup> M Wekesa. (2015). Challenges in Regulation of Biomedical Research: The Case of Kenya. *Nigerian Journal of Clinical Practice*. <https://repository.daystar.ac.ke/items/c7e54bc7-fd05-4e3c-b6be-a3daeab24af2/full> accessed 7 June 2025

protected by copyright, trademarks, and sometimes, trade secrets. Hence, data from research permits in the social sciences and humanities were not processed further.

A prominent trend is the significant increase in research into Health and Biological Sciences. Between 2014-15 and 2023-24, the number of permits in this field increased from 258 to 2,112, which represents a percentage rise from 8.15% to 24.91%.

The number of permits for research in agriculture and natural resources increased from 43 in 2014-15 to 358 in 2023-24. From 60 permits (1.9%) in 2014-15 to 364 permits (4.29%) in 2023-24, ICT and Infrastructural Sciences likewise showed a steady increase in both absolute and relative terms, indicating growing interest in technology-driven research and infrastructure development. Permits for the Physical, Industrial, and Energy Sciences sector were consistently the fewest. The field increased somewhat from 15 permits (0.47%) in 2014-15 to 169 permits (1.99%). The physical, industrial, and energy sciences together with Earth and Space sciences do not appear to attract a lot of research interest. These are also fields that require expensive and sophisticated equipment that could be out of reach of research institutions in Kenya.

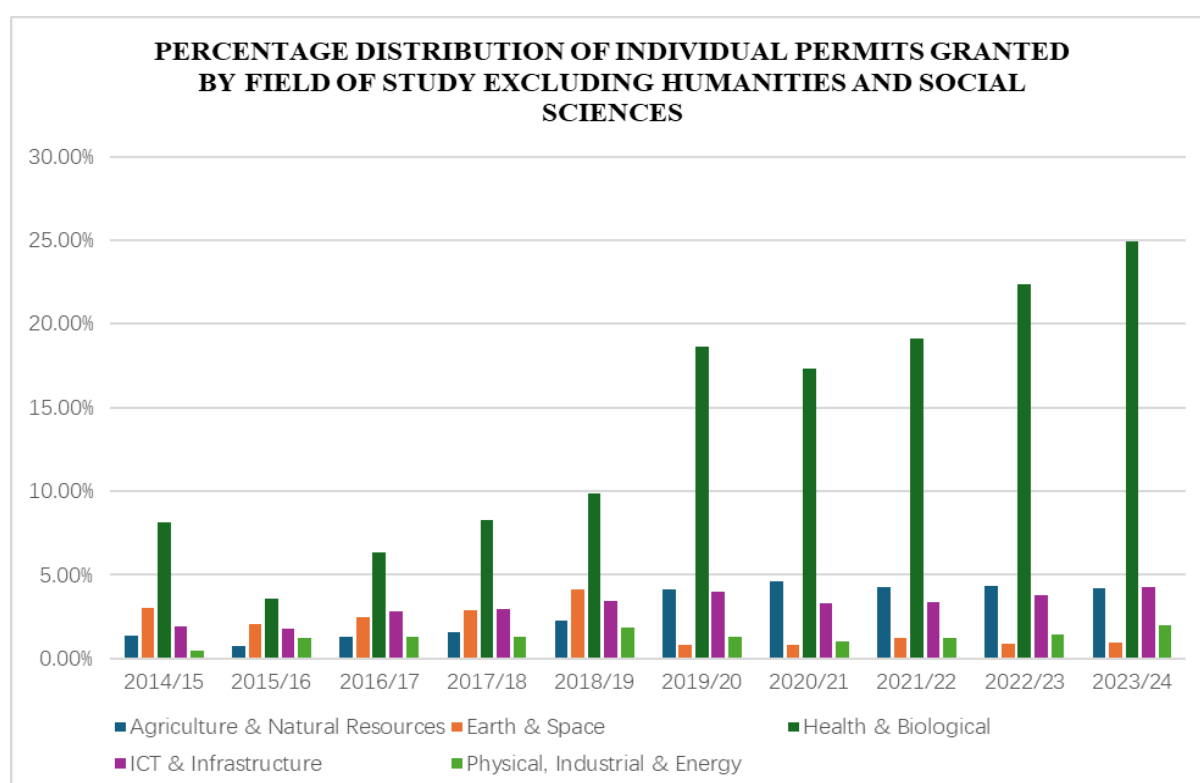


Figure 3. Percentage distribution of individual permits granted by field of study excluding humanities and social sciences

#### 5.4 Total Patents Granted

The data presented in Table 4 displays the number of patents awarded in Kenya between 2014 and 2021, classified by applicant origin as resident, non-resident, or overseas. The total number of patents awarded each year has been relatively modest, ranging from 29 in 2016 to 82 in 2021 (see Table 4).

Table 4. Total Patents Granted

Year	Resident	Non-Resident	Abroad	TOTAL
2014	4	49	26	79
2015	1	23	24	48
2016	5	21	3	29
2017	11	32	8	51

2018	26		13	39
2019	5	23	19	47
2020	15	20	41	76
2021	14	22	46	82

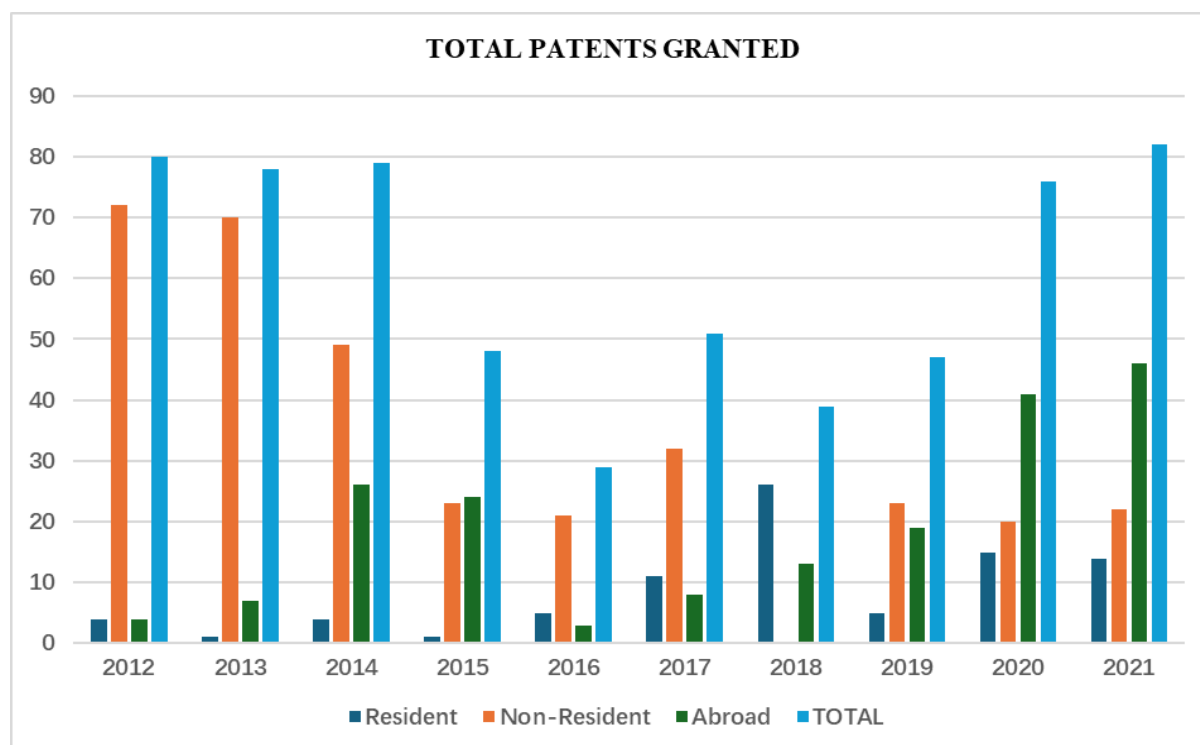


Figure 4. Total number of patents granted by nationality

The number of patents issued to Kenyan residents showed considerable improvements in 2018 (26 patents) and 2020 (15 patents). Despite this minor increase, resident patenting activity remains far behind overseas submissions. These results corroborate those of a nearly similar study carried out for the period 1998-2008, in which the researchers established that there was a low-level patenting activity, with very low patent applicants from universities. Even in the face of low patenting activity, 80% of those respondents in that study reported that they had innovations that were not protected.<sup>1</sup>

Meanwhile, foreign applicants—those who register for protection in Kenya through international systems such as the Patent Cooperation Treaty (PCT)—show varying activity, with a strong increase in 2020 and 2021 (41 and 46 patents, respectively). This could represent Kenya's expanding relevance as a regional IP hub, or a growing global interest in obtaining patent protection within the country.

Most patents granted during the first half of the term (2014-2017) went to non-resident applicants. For instance, they were responsible for 23 out of 48 patents (47.92%) in 2015 and 49 out of 79 patents (62.03%) in 2014. Non-residents obtained 72.41% and 62.75% of all awarded patents, respectively, in 2016 and 2017. This dominance implies that foreign entities, most likely, multinational businesses or foreign inventors, were the main users of Kenya's patent system in order to protect their products within Kenyan territory. There is a gap in the domestic use of the patent system, as seen by the low level of patenting activity among residents throughout this time (for example, only one resident patent in 2015).

A notable change occurred in 2018, as resident applicants accounted for 26 out of 39 patents, or 66.67% of all patents awarded. That year's total lack of non-resident patents could be the result of administrative, procedural, or regulatory changes, or it could be the result of a brief decline in foreign patent applications. This increase in

<sup>1</sup> M Kiveu. (2012). Patenting in Kenya: Status and Challenges. Discussion Paper Series No. DP/141/2012, Kenya Institute of Public Policy Research and Analysis, KIPPRA Discussion Paper No. 141 of 2012 at <<https://repository.kippira.or.ke/server/api/core/bitstreams/9745ff1f-eea5-405d-ab84-e97b9ef2c2f5/content>> accessed 30 November 2025

resident activity could also be a sign of effective policy measures, including better access to filing procedures for local inventors, government support for innovators, IP training programs, or increased awareness.

The number of patents awarded to foreign applicants has been steadily and noticeably increasing since 2019. Foreign-sourced patents accounted for 41 out of 76 patents (53.95%) in 2020 and 46 out of 82 patents (56.10%) in 2021. This reflects the employment of international patent systems (such as the Patent Cooperation Treaty, or PCT) by foreign applicants to seek protection in Kenya and the dependence of Kenya on imports.

It has been observed that large amounts of scientific and technological research in public research institutions and universities go unused and are only used for academic recognition. Research efforts are not linked to the commercial application of the research results.<sup>1</sup> Stories from other countries point to a contrary image as research is used to create products, provide employment, generate income, and create special-purpose vehicles in the form of start-up companies. Such stories emanate largely from the USA, Europe, Australia, and parts of Asia.<sup>2</sup>

In a study on researchers in Kenya, eighty percent of the respondents had innovations that were not protected. They attributed this situation to a lack of knowledge on IP (81%), a long, tedious patenting process (63%) lack of R & D funds (57%), amongst others.<sup>3</sup>

Though the number of registered patents in Kenya is low over the period under review, it should be noted that some firms choose to obtain their patents outside in order to benefit from an international market. A survey by the Ministry of Higher Education, Science and Technology showed that whereas about 12.9 % reported having secured a patent in Kenya, 21.4 % of firms got it from outside the country. Even then, the overall numbers remain small.<sup>4</sup>

Of note is that non-residents obtaining patents in Kenya would have done their research elsewhere, away from the permit requirements in Kenya. Such data was therefore not processed further.

Publishing is said to be the disclosure to the public of an invention through a scientific journal or other means. Publications earn researchers' recognition in their fields. Publication places the invention in the public domain, thereby interfering with eventual patentability. Patenting is protecting an invention and requires that the invention not be in the public domain. However, after patenting, a researcher can still publish the invention in a known journal. Patenting is a process that takes longer than publishing. Therein lies the dilemma of many researchers: whether to publish or patent. Some researchers have referred to this as 'publish and perish', in other words, if you publish first, you perish economically.<sup>5</sup> Accordingly, a publication is deemed to consist of any of learned papers, journals, magazines, abstracts, theses, job interviews, poster displays, internet, exhibitions, oral and casual disclosures, and confidential disclosures to many people.<sup>6</sup>

### 5.5 Regression Analysis of Research Permits Granted and Total Patents

Figure 5 shows the regression analysis of the permits vs the patents granted over a seven-year period (2014-2021). The independent variable is the total number of permits granted over that period, and the dependent variable is the total number of patents granted to residents. The permits and patent figures considered are for the Kenyan Nationals only, with the humanities and social sciences excluded from the total number of Kenyan permits since they do not result in patents.

Table 5 shows the percentage of patents in relation to research permits given in the sciences. This percentage varied between 0.4% to 2.1 with no indication of an increase in patents over the period under review. Generally, this table reveals a very low innovative activity in Kenya. This could be attributed to several factors including

<sup>1</sup> C Moturi and T Ogada. (2006). The Role of Research and Development in the Industrialization Process, Paper Presented at the Technical Workshop on Industrialization on Nov. 22, Nairobi.

<sup>2</sup> M Kiveu. (2012). Patenting in Kenya: Status and Challenges. Discussion Paper Series No. DP/141/2012, Kenya Institute of Public Policy Research and Analysis, KIPPRA Discussion Paper No. 141 of 2012 at <  
<https://repository.kippira.or.ke/server/api/core/bitstreams/9745ff1f-eea5-405d-ab84-e97b9ef2c2f5/content>> accessed 30 November 2025

<sup>3</sup> Ibid.

<sup>4</sup> Ministry of Higher Education, Science and Technology, Kenya Innovation Survey Report 2012. <https://www.education.go.ke/sites/default/files/2022-05/innovation-survey-report.pdf> accessed 7 June 2025

<sup>5</sup> University of Toledo, 'Publish and Perish: How Publications Affect Patentability' [https://www.utoledo.edu/research/TechTransfer/Publish\\_and\\_Perish.html](https://www.utoledo.edu/research/TechTransfer/Publish_and_Perish.html) accessed 16 June 2025

<sup>6</sup> Preethiya, 'Academic Dilemma – Publish or Patent the Idea?' (HelloLeads) <https://www.helloleads.io/blog/all/business-benefits/academic-dilemma-publish-or-patent-the-idea> accessed 16 June 2025

low awareness of intellectual property.<sup>1</sup> Wekesa et al. have indicated lack of awareness as a bottleneck in the overall conception of research. The lack of a ‘Triple Helix’ approach in Kenya means there is no strong drive towards innovation. The university culture of ‘publish or perish’ could mean that researchers in Kenya do not give innovation a serious consideration.<sup>2</sup>

Table 5. Total permits and patents granted

Total permits granted	Total patents granted	% of patents to permits
229	4	1.7
236	1	0.4
634	5	0.8
710	11	1.5
1,197	26	2.1
1,807	5	0.3
1,484	15	1.01
1,704	14	0.82

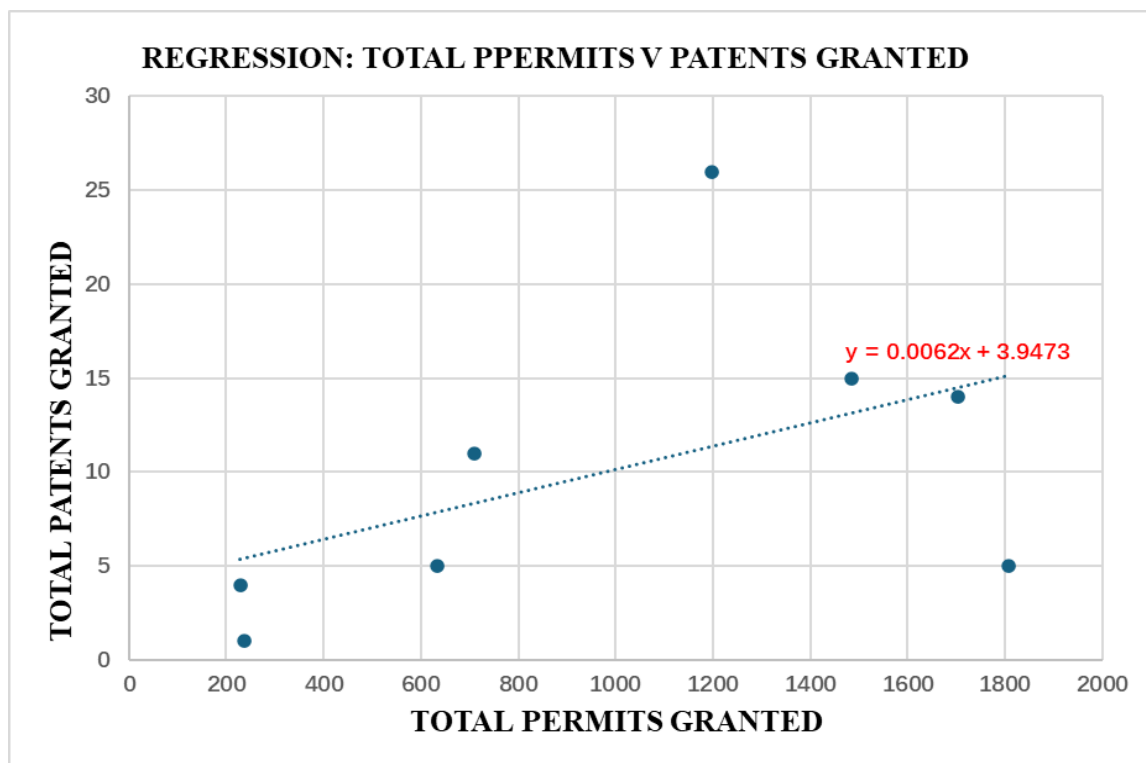


Figure 5. Regression graph of total permits granted v total patents granted over a 10 year period

The regression equation is  $Y=0.0062X+3.9473$ , where Y is the total number of patents granted (dependent variable), and X is the total number of research permits granted over the same period. The slope is **0.0062**. This represents the rate at which awarded patents (y) and permits (x) are changing. It indicates that the model forecasts a 0.0062 rise in patents for every additional permit. In practical terms, every 100 permits are likely to result in just roughly 0.62 additional patents, indicating a positive but very weak link. The overall number of patents tends to rise marginally as the total number of permits rises. The slope is modest, though, indicating that

<sup>1</sup> M Wekesa et al. (2024). Commercialization of Intellectual Property Rights at Universities as an Additional Revenue Stream. *Law and Economy*, 3(3), 37.

<sup>2</sup> Ibid.

permits have little impact on patents; significant increases in permits only slightly raise patents. The intercept of 3.9473 is the predicted value of Y when X=0 (no permits granted). The model predicts that even with zero permits, there could be around 4 patents granted. This can be explained by a ‘carry over’ effect due to delays in processing a patent. In other words, not all patent applications are completed within the year of application. This ‘carry over’ effect appears to go with the terrain given that many Patent offices have a backlog of applications.<sup>1</sup>

Due to some institutional, cultural, and legal obstacles, only a small portion of the substantial amount of research produced by universities under official permissions is eventually turned into patents. One significant contributing cause is the general lack of intellectual property (IP) awareness among researchers, many of whom are not aware of the financial potential of their inventions, the prerequisites for obtaining patents, or what constitutes patentable subject matter.<sup>2</sup> This lack of information frequently results in early disclosures through conferences or papers, which might negate the novelty needed for patent protection. The problem is made worse by the academic culture of “publish or perish,” which encourages early disclosure for professional development even at the price of possible IP protection.<sup>3</sup> Finally, not all scientific findings should or can be patented. Books, software code, and music that are protected by copyright are frequently the result of research in the humanities, social sciences, and creative arts. Trade secrets, utility models, or plant breeders’ rights may be produced by other domains. Furthermore, rather than producing innovative, commercially viable technologies, a large number of studies produce theoretical or incremental contributions to science.<sup>4</sup> Nevertheless, patenting in Kenya is preceded by possession of a research permit.

## 6. Conclusion

The number of permits almost tripled from 3,343 in 2014-15 to 9,627 in 2023-24.

A regression analysis was undertaken to determine the association between research permits and patents granted, and it found a weak and slightly positive correlation. The equation  $Y = 0.0062X + 3.9473$ . The modest slope (0.0062) suggests that while Kenya has successfully expanded its research base, it has yet to build the processes required to translate research findings into patentable ideas or commercially viable technologies on a large scale. To summarize, Kenya’s research ecosystem has grown significantly in terms of participation and diversity. However, the low rate of translation from research permits to patents demonstrates significant shortcomings in the national innovation system. These findings highlight the importance of deliberate policy initiatives aimed at improving the research-to-innovation pipeline.

It is recommended that the government provide focused support for research with direct commercial, technological, or societal applications, particularly in underfunded but high-impact fields such as engineering, energy, ICT, and agriculture. Secondly, various stakeholders should provide workshops, short courses, and ongoing professional development to educate researchers on patent filing processes, intellectual property law, and innovative commercialization channels. Thirdly, there should be encouragement of collaboration among universities, research institutes, and private-sector enterprises to link academic research with real-world commercial demands. This raises the chances of producing patented and economically successful products. Fourthly, the government should set up a national research and innovation monitoring system to track research development from permit approval to patent registration and eventual commercialization. Fifthly, there should be an increase in institutional support for intellectual property (IP) management through technology transfer offices. Sixthly, future researchers should investigate whether research permits in the social sciences resulted in any intellectual property that could be commercialized.

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# Navigating Crime and Punishment in Mbumland (1779-1996): An Analysis of Indigenous, Colonial, and Post-Colonial Justice Systems

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## Abstract

Justice is a central pillar of social order, and its administration reflects the historical, cultural, and institutional realities of a society. This study examines crimes and punishment in Mbumland between 1779 and 1996 through a historical analysis of indigenous, colonial, and post-colonial justice systems. Employing a qualitative historical methodology grounded in legal pluralism, the research draws on archival materials, doctrinal analysis, and relevant secondary literature to trace the evolution of justice administration across these three interconnected periods. The findings reveal that pre-colonial justice in Mbumland was largely community-centered and reconciliation-oriented, prioritizing restitution and social cohesion in addressing crimes and punishment; the colonial era introduced codified laws and formal courts that reshaped indigenous justice systems; and the post-colonial period inherited and reconfigured this dual structure, resulting in a plural justice framework marked by jurisdictional overlaps and institutional tensions. The study argues that the effectiveness of crimes and punishment in Mbumland has historically depended less on punitive severity and more on legitimacy, accessibility, and structural coherence. By offering a localized and periodized examination of justice systems in Mbumland, this research contributes to broader historical perspectives on the interaction between indigenous, colonial, and post-colonial legal orders and their enduring implications for justice administration.

**Keywords:** colonial justice systems, crimes and punishment, indigenous justice systems, Mbumland, post-colonial justice systems

## 1. Introduction

Justice is a central pillar of social order, serving as the foundation for peace, stability, and cohesion within societies.<sup>1</sup> In Mbumland, from 1779 to 1996, the administration of justice reflects a complex interplay between indigenous customs, colonial impositions, and post-colonial legal frameworks, demonstrating how communities have historically navigated crime, punishment, and conflict resolution. Indigenous justice in Mbumland was primarily guided by customary norms, moral codes, and communal authority, emphasizing restorative approaches that sought to reconcile offenders, compensate victims, and restore social harmony rather than merely punishing wrongdoing.<sup>2</sup>

During the pre-colonial period (1779–1901), chiefs, elders, and lineage heads adjudicated disputes based on oral traditions and spiritual cosmologies, addressing crimes such as theft, assault, and violations of cultural taboos through compensation, mediation, and ritual cleansing.<sup>3</sup> These mechanisms were participatory, context-sensitive, and socially legitimized, fostering strong community cohesion and conflict containment.

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<sup>1</sup> Mbaku, J. M. (2011). *Customary law and administration of justice in Cameroon*. University Press.

<sup>2</sup> Fanzo, V. G. (1989). *Cameroon history for secondary schools and colleges: Vol. 1*. Macmillan.

<sup>3</sup> Njoh, A. J. (2001). *Traditional justice systems in Africa: A case study of Cameroon*. Africa Media.

The advent of colonial rule (1901–1960) introduced European legal systems that often conflicted with indigenous norms. German and later French authorities codified offenses, imposed punitive measures such as imprisonment, forced labor, and corporal punishment, and limited the jurisdiction of customary courts.<sup>1</sup> Despite these disruptions, indigenous mechanisms persisted, particularly in resolving land disputes, family conflicts, and minor offenses, highlighting the resilience and adaptability of local legal cultures.

Following Cameroon’s independence in 1960, the statutory legal system became the primary instrument of justice. Nevertheless, indigenous justice continued to operate informally, especially in rural areas with limited access to formal courts.<sup>2</sup> Customary processes provided faster, culturally relevant, and socially embedded solutions, complementing formal mechanisms and demonstrating the enduring significance of communal problem-solving.

Examining the administration of justice in Mbumland across these periods provides insight into how societies define wrongdoing, allocate responsibility, and manage social order. By exploring indigenous, colonial, and post-colonial perspectives, this study contributes to broader debates on restorative justice, legal pluralism, and the intersection of customary and statutory law, highlighting the ways justice serves as a core pillar of social stability and moral accountability.

## 2. Conceptual Clarifications

This section defines key concepts as used in the study titled “Navigating Crimes and Punishment in Mbumland (1779–1996): An Analysis of Indigenous, Colonial, and Post-Colonial Justice Systems.” Definitions are drawn from recognized English and legal dictionaries and are contextualized within the historical realities of Mbumland.

### 2.1 Crime

The *Oxford English Dictionary* defines crime as “an action or omission that constitutes an offence and is punishable by law.”<sup>3</sup> Similarly, *Black’s Law Dictionary* describes crime as “an act that the law makes punishable; the breach of a legal duty.”<sup>4</sup> The *Cambridge Dictionary* adds that a crime is “an illegal act for which someone can be punished by the government.”<sup>5</sup>

In this study, crime refers to acts regarded as punishable within indigenous, colonial, and post-colonial justice systems in Mbumland, acknowledging that the definition of crime evolved from customary norms to codified statutory offenses over time.

### 2.2 Punishment

According to the *Oxford English Dictionary*, punishment is “the infliction of a penalty as retribution for an offence.”<sup>6</sup> *Black’s Law Dictionary* defines punishment as “a sanction imposed for a violation of law”,<sup>7</sup> prior to colonial intervention.

### 2.3 Colonial

The *Cambridge Dictionary* defines colonial as “relating to a country that controls another area or country.”<sup>8</sup> The *Oxford English Dictionary* defines it as “relating to or characteristic of a colony.”<sup>9</sup>

Colonial, as used here, refers to justice systems imposed during German and French rule, which introduced foreign legal definitions of crime and punishment into Mbumland.

### 2.4 Post-Colonial

*Merriam-Webster’s Dictionary* defines post-colonial as “of or relating to the period following a colony’s independence.”<sup>10</sup> The *Cambridge Dictionary* similarly refers to it as “relating to the time after a country stopped

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<sup>1</sup> *Ibid.*

<sup>2</sup> *Ibid.*

<sup>3</sup> Oxford University Press. (2023). *Oxford English dictionary*.

<sup>4</sup> Garner, B. A. (Ed.). (2019). *Black’s law dictionary* (11th ed.).

<sup>5</sup> Cambridge University Press. (2023). *Cambridge dictionary*.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Merriam-Webster. (2023). *Merriam-Webster’s collegiate dictionary*. Merriam-Webster, Inc.

being a colony.”<sup>1</sup>

In this study, post-colonial refers to the period after Cameroon’s independence in 1960, during which statutory legal frameworks governed crimes and punishment, alongside residual indigenous practices.

### 2.5 Mbumland

While *Mbumland* is not a dictionary-defined term, it is used in this study to denote the geographical and socio-cultural area predominantly inhabited by the Mbum people, within which indigenous, colonial, and post-colonial justice systems operated between 1779 and 1996.

## 3. Methodology

This study adopts a qualitative historical research approach to examine crimes and punishment in Mbumland between 1779 and 1996, with a particular focus on indigenous, colonial, and post-colonial justice systems. Historical methodology is especially suitable for this study because it enables the systematic reconstruction and interpretation of past legal and social practices within their specific temporal and cultural contexts.<sup>2</sup> By situating crimes and punishment within their historical settings, the study traces patterns of continuity, adaptation, and disruption in the administration of justice in Mbumland over time.

The research relies primarily on secondary sources of data, including historical accounts of Mbumland and northern Cameroon, scholarly books, and peer-reviewed journal articles on African customary law, colonial legal systems, and post-colonial justice. Documentary sources such as colonial administrative records and post-independence legal materials are also consulted. The use of secondary and documentary sources is consistent with established practices in historical and socio-legal research, where archival and textual materials constitute the principal evidence base for analysis.<sup>3</sup> These sources provide insight into how crimes were defined, how punishment was administered, and how justice systems functioned across different historical periods.

The analysis is organized around a tripartite periodization that distinguishes between the indigenous, colonial, and post-colonial eras. Periodization is employed as an analytical tool to contextualize justice systems within distinct political and social frameworks while allowing for structured comparison across time.<sup>4</sup> The indigenous period is examined in customary norms and community-based mechanisms of justice; the colonial period is analyzed with reference to externally imposed legal institutions and punitive practices; and the post-colonial period is assessed in terms of statutory justice systems inherited from colonial rule and adapted after independence.

Data analysis is conducted using thematic and comparative methods. Thematic analysis allows for the identification of recurring patterns relating to crimes, punishment, and justice administration within each historical period, while comparative analysis facilitates the examination of similarities and differences across indigenous, colonial, and post-colonial justice systems.<sup>5</sup> This combined approach enables an assessment of the effectiveness of each justice system in maintaining social order and responding to wrongdoing within Mbumland.

The scope of the study is geographically limited to Mbumland and temporally bounded between 1779 and 1996. While the broader Cameroonian legal and political context is acknowledged, the analysis remains focused on justice practices as they operated within this specific socio-cultural space. The study does not involve empirical fieldwork or interviews, as its primary objective is historical and analytical rather than ethnographic.

Although the study does not involve human participants, ethical considerations are maintained through careful handling of sources, accurate citation, and respectful representation of indigenous justice institutions. The study avoids presentist interpretations and seeks to understand crimes, punishment, and justice systems within the historical and cultural contexts in which they functioned, in line with best practices in historical scholarship.<sup>6</sup>

## 4. Theoretical Framework

This study is anchored in a combination of legal pluralism and historical institutionalism as its guiding theoretical frameworks. These perspectives provide an appropriate lens for analyzing crimes and punishment in Mbumland between 1779 and 1996, where indigenous, colonial, and post-colonial justice systems coexisted,

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<sup>1</sup> *Ibid.*

<sup>2</sup> Howell, M., & Prevenier, W. (2001). *From reliable sources: An introduction to historical methods*. Cornell University Press.

<sup>3</sup> McDowell, W. H. (2010). *Historical research: A guide*. Routledge.

<sup>4</sup> Burke, P. (2005). *History and social theory* (2nd ed.). Polity Press.

<sup>5</sup> Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.

<sup>6</sup> Tosh, J. (2015). *The pursuit of history* (6th ed.). Routledge.

overlapped, and sometimes conflicted. Together, these frameworks enable a nuanced understanding of how multiple justice systems operated simultaneously and how historical processes shaped their development and effectiveness.

Legal pluralism is particularly relevant to this study because it recognizes the coexistence of multiple legal and justice systems within a single social and political space.<sup>1</sup> According to legal pluralist scholars, societies, especially those shaped by colonial encounters often operate under more than one normative order, including customary and statutory systems.<sup>2</sup> In the context of Mbumland, legal pluralism explains how indigenous justice systems continued to regulate crimes and punishment even during the colonial and post-colonial periods, despite the formal dominance of state-imposed legal structures. This framework allows the study to analyze crimes and punishment not as products of a single legal authority, but as outcomes of interacting justice systems operating at different levels of society.

Historical institutionalism complements legal pluralism by emphasizing the role of historical processes, institutional continuity, and path dependence in shaping justice systems over time. Historical institutionalists argue that institutions established at particular historical tend to persist and influence future practices, even after major political transitions.<sup>3</sup> Applied to Mbumland, this framework helps explain how indigenous justice practices influenced colonial legal administration and how colonial justice structures, in turn, shaped post-colonial systems of crimes and punishment.<sup>4</sup> It underscores the importance of understanding justice systems as historically embedded institutions rather than isolated or static arrangements.

Together, legal pluralism and historical institutionalism provide a robust analytical foundation for examining crimes and punishment across indigenous, colonial, and post-colonial justice systems in Mbumland. Legal pluralism highlights the multiplicity of justice systems and normative orders, while historical institutionalism accounts for their evolution, endurance, and transformation over time. By integrating these frameworks, the study is able to assess how justice was navigated in Mbumland, how different systems defined and responded to crime, and how historical legacies shaped the administration of punishment between 1779 and 1996.

### **5. Historical Legal Context of Crimes and Punishment in Mbumland (1779-1996)**

The administration of crimes and punishment in Mbumland between 1779 and 1996 was shaped by a dynamic interplay of indigenous, colonial, and post-colonial legal orders, each reflecting distinct historical, social, and political realities. Understanding this historical legal context is essential for analyzing how justice was conceptualized, enforced, and maintained over time, as well as how continuity and change shaped the governance of crime and punishment.

During the indigenous period, justice in Mbumland was grounded in customary law, which derived its authority from communal norms, moral values, and traditional practices of the Mbum people. Chiefs, elders, and lineage heads were responsible for adjudicating disputes and regulating crimes, employing sanctions that were primarily restorative and compensatory. Punishments focused on reconciliation between offenders and victims, restitution, and the restoration of social harmony rather than purely retributive measures. Scholars note that indigenous legal systems functioned as complete and socially legitimate mechanisms of governance, providing stability and order prior to colonial intervention.<sup>5</sup>

Customary law was deeply embedded in social cohesion, and violations were not only breaches of community norms but also of moral obligations.<sup>6</sup>

The colonial period introduced a foreign statutory legal system, first under German rule (1901–1916) and later under French administration (1916–1960). Colonial authorities implemented written laws, courts, and penal codes, redefining crimes and punishment according to European legal principles. Indigenous justice systems were formally subordinated, although they continued to operate informally in local matters. Colonial justice emphasized punitive sanctions, including imprisonment, forced labor, and fines, primarily to assert state control and enforce compliance.<sup>7</sup> This period marked a significant shift from community-based justice toward

<sup>1</sup> Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 18(24), 1–55.

<sup>2</sup> Merry, S. E. (1988). Legal pluralism. *Law & Society Review*, 22(5), 869–896.

<sup>3</sup> Thelen, K. (1999). Historical institutionalism in comparative politics. *Annual Review of Political Science*, 2, 369–404.

<sup>4</sup> Steinmo, S. (2008). Historical institutionalism. In D. Della Porta & M. Keating (Eds.), *Approaches and methodologies in the social sciences* (pp. 118–138). Cambridge University Press.

<sup>5</sup> Olivier, R. (2005). *African customary law in historical perspective*. University of Pretoria Press.

<sup>6</sup> Akinyemi, A. (2003). Customary law and social justice in Africa. *African Studies Review*, 46(2), 45–66.

<sup>7</sup> Mamdani, M. (1996). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press.

state-centered enforcement, reshaping the administration of crime in Mbumland. Scholars argue that colonial legal interventions often undermined indigenous governance while creating long-lasting legal pluralism that persisted after decolonization.<sup>1</sup>

In the post-colonial era following Cameroon's independence in 1960, the legal system largely retained colonial statutory frameworks while allowing customary practices to persist informally, particularly in rural areas. Post-colonial courts defined crimes and imposed statutory punishments, but local authorities often mediated disputes using indigenous norms. This resulted in a dual justice system, where formal and customary mechanisms coexisted and sometimes complemented each other.<sup>2</sup> Studies show that such pluralistic systems influence both the perception and legitimacy of justice, especially where formal courts are less accessible.<sup>3</sup> The post-colonial period thus reflects both the legacy of colonial legal institutions and the resilience of indigenous practices in regulating social behavior.

Overall, the historical legal context of Mbumland demonstrates a pluralistic and evolving justice system, in which indigenous, colonial, and post-colonial legal orders interacted to define crimes, administer punishment, and maintain social order. By situating crimes and punishment within their respective historical and normative contexts, the study highlights the continuity, adaptation, and transformation of justice systems in Mbumland across more than two centuries.

## 6. Effectiveness of Crimes and Punishment Systems in Mbumland (1779-1996)

The effectiveness of justice systems in Mbumland across the indigenous, colonial, and post-colonial periods varied significantly, reflecting differences in objectives, authority, and societal acceptance. Justice in this context was closely linked to social legitimacy, cultural alignment, and community participation, which determined whether laws and punishments successfully maintained order and compliance.

### 6.1 Effectiveness of Justice Practices

During the indigenous period, justice was administered through customary law, emphasizing restoration, reconciliation, and communal cohesion. Chiefs, elders, and lineage heads adjudicated disputes using practices such as compensation payments (restitution), mediation between families, and community-based sanctions. Minor offenses, such as theft or assault, often required the offender to compensate the victim in goods, livestock, or labor, accompanied by public apologies or reconciliation rituals to restore communal harmony.<sup>4</sup> These practices were highly effective because they were socially embedded, culturally respected, and reinforced communal values, ensuring compliance while reducing repeat offenses. The authority of elders and chiefs, coupled with public participation in judgments, reinforced the legitimacy of the system and facilitated conflict resolution.<sup>5</sup>

During the colonial period, European statutory law transformed the administration of crimes and punishment. Colonial authorities implemented formal trials, fines, imprisonment, punishment, and forced labor to enforce compliance with colonial codes.<sup>6</sup> Public shaming and labor conscription were also used as deterrents. While effective in asserting state authority and controlling populations, these measures often lacked legitimacy among local communities, leading many residents to rely on informal customary mechanisms for dispute resolution.<sup>7</sup>

In the post-colonial period, Cameroon's legal system retained many colonial statutes while allowing customary practices to persist, particularly in rural areas like Mbumland. Courts imposed statutory punishments, including fines, imprisonment, and community service, while local authorities continued to enforce reconciliation rituals, restitution, and family-mediated arbitration.<sup>8</sup> For example, theft cases might result in both court-mandated fines and community-approved restitution, blending punitive deterrence with social restoration. This hybrid system enhanced the effectiveness of justice, as consequences were legally recognized while also socially accepted, improving compliance and reducing repeat offenses.<sup>9</sup>

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<sup>1</sup> Fitzpatrick, P. (2000). Modern legal systems and colonial legacies in Africa. *Harvard International Law Journal*, 41(2), 123–156.

<sup>2</sup> Mbatia, J. M. (2011). *Institutions and reform in Africa: The public choice perspective*. Praeger.

<sup>3</sup> Galizzi, P. (2011). Access to justice in Sub-Saharan Africa: A review of barriers and opportunities. *Journal of African Law*, 55(2), 217–255.

<sup>4</sup> Allott, A. (1984). *Essays in African law*. Butterworths.

<sup>5</sup> Akinyemi, A. (2003). Customary law and social justice in Africa. *African Studies Review*, 46(2), 45–66.

<sup>6</sup> Ngoh, V. J. (1996). *History of Cameroon since 1800*. Presbook.

<sup>7</sup> Merry, S. E. (1988). Legal pluralism. *Law & Society Review*, 22(5), 869–896.

<sup>8</sup> Njoh, A. J. (2001). *Traditional governance and development in Africa*. Ashgate.

<sup>9</sup> *Ibid.*

## 6.2 Consequences of Violations

The consequences for violations in Mbumland were closely tied to the prevailing legal system and the severity of the offense.

### 6.2.1 Indigenous Period

Offenders were often required to provide restitution to victims and participate in reconciliation ceremonies. Serious offenses, such as repeated theft, adultery, or murder, could result in ostracism, exile, or exclusion from communal activities, serving both as punishment and protection for the community.<sup>1</sup> These consequences were effective because they aligned with social and moral norms, reinforcing both compliance and communal cohesion.

### 6.2.2 Colonial Period

Consequences were predominantly punitive and coercive, including incarceration, fines, corporal punishment, and forced labor. More serious crimes could attract harsher sanctions, including long-term imprisonment. However, colonial punishments often lacked social legitimacy, resulting in evasion or the continued use of customary mediation in parallel with colonial courts.<sup>2</sup>

### 6.2.3 Post-Colonial Period

Consequences combined statutory sanctions and customary remedies, producing a hybrid system. Offenders might face court-imposed fines or imprisonment alongside community restitution and reconciliation rituals. This combination enhanced legitimacy, compliance, and effectiveness, especially in areas where customary authority remained strong.<sup>3</sup>

## 6.3 Summary of Effectiveness and Consequences

Across all periods, the effectiveness of justice in Mbumland was highly dependent on the alignment of practices and consequences with local social norms and community expectations. Indigenous practices prioritized reconciliation and restitution, colonial practices emphasized punitive deterrence, and post-colonial practices demonstrated hybrid effectiveness, combining statutory authority with customary legitimacy. The consequences of violations, whether restorative, punitive, or hybrid, were central to maintaining social order, compliance, and community cohesion. By examining these practices and their consequences, one can infer that social legitimacy, community involvement, and cultural alignment remain critical for the effectiveness of justice systems.

## 7. Challenges in the Administration of Crimes and Punishment in Mbumland (1779-1996)

The administration of crimes and punishment in Mbumland from the indigenous through the colonial and post-colonial periods encountered persistent challenges arising from historical transitions, legal pluralism, and institutional limitations. These challenges affected the consistency, legitimacy, and effectiveness of justice systems and shaped how crime and punishment were understood and enforced within society.

### 7.1 Legal Pluralism and Jurisdictional Overlap

The co-existence of indigenous customary law alongside colonial and post-colonial statutory legal systems created overlapping jurisdictions. Traditional authorities and state institutions often exercised concurrent authority over criminal matters, resulting in uncertainty over legal competence and inconsistencies in punishment. This plural legal environment complicated enforcement and encouraged selective use of forums by litigants.<sup>4</sup>

### 7.2 Absence of Codified Indigenous Laws

Indigenous justice systems relied largely on oral traditions and communal norms rather than written legal codes. While this allowed flexibility and adaptation to social contexts, it also produced variations in legal interpretation and enforcement. The discretionary power of elders and chiefs sometimes resulted in unequal application of justice, particularly in cases involving social status or lineage.<sup>5</sup>

### 7.3 Limited Legitimacy of Colonial Justice Systems

Colonial legal systems were imposed without adequate integration of indigenous values and practices. As a

<sup>1</sup> Olivier, R. (2005). *African customary law in historical perspective*. University of Pretoria Press.

<sup>2</sup> Chanock, M. (1985). *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.

<sup>3</sup> Ubink, J., & Quan, J. (2008). How to combine customary and formal justice: Lessons from Africa. *Leiden Journal of International Law*, 21(3), 449–470.

<sup>4</sup> Chanock, M. (1985). *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.

<sup>5</sup> Olivier, R. (2005). *African customary law in historical perspective*. University of Pretoria Press.

result, colonial courts were often perceived as foreign, coercive, and disconnected from local realities. This lack of legitimacy undermined compliance and encouraged resistance, avoidance, and continued reliance on customary justice mechanisms.<sup>1</sup>

#### 7.4 Punitive Orientation of Colonial and Post-Colonial Justice

Colonial and post-colonial justice systems emphasized deterrence through punishment, including imprisonment, fines, and forced labor. This punitive orientation often marginalized restorative practices and weakened community cohesion. The overreliance on coercive sanctions reduced the effectiveness of justice in addressing underlying social causes of crime.<sup>2</sup>

#### 7.5 Institutional and Resource Constraints

Post-colonial justice institutions faced challenges related to inadequate infrastructure, limited trained personnel, and uneven access to courts, particularly in rural areas such as Mbumland. These constraints led to delays, inconsistent enforcement, and reduced public confidence in formal justice systems.<sup>3</sup>

#### 7.6 Tension Between Punishment and Social Harmony

A persistent challenge across all periods was balancing the need for punishment with the preservation of social harmony. Indigenous justice prioritized reconciliation, while statutory systems emphasized retribution. The failure to harmonize these approaches often resulted in justice outcomes that were either socially unacceptable or legally ineffective.

#### 7.7 Inequality in Access to Justice

Access to justice was uneven due to factors such as language barriers, geographic distance from courts, economic limitations, and social hierarchy. These inequalities shaped the experiences of offenders and victims alike and influenced perceptions of fairness and legitimacy within the justice system.<sup>4</sup>

In summary, overall, the challenges associated with the administration of crimes and punishment in Mbumland between 1779 and 1996 reveal a justice system shaped by historical transitions, legal pluralism, and institutional constraints. Indigenous justice, though culturally legitimate and socially restorative, was limited by the absence of codified laws and the discretionary authority of traditional leaders, while colonial justice introduced formal legal structures that prioritized coercion and deterrence at the expense of local legitimacy and social harmony. The post-colonial period inherited these contradictions, struggling to reconcile statutory law with enduring customary practices amid limited institutional capacity and uneven access to justice. Persistent jurisdictional overlap, inconsistent sanctions, and social inequalities further undermined the coherence and effectiveness of justice administration. These challenges demonstrate that the effectiveness of crimes and punishment in Mbumland depended not merely on legal enforcement or punitive severity, but on the alignment of justice systems with cultural norms, social expectations, and institutional capability, underscoring the enduring importance of legitimacy, accessibility, and contextual relevance in sustaining social order.

### 8. Colonial Legacies and Indigenous Foundation in Contemporary Criminal Justice Administration

The contemporary administration of criminal justice in Cameroon, including regions such as Mbumland, reflects a complex interaction between indigenous normative foundations and enduring colonial legal legacies. Pre-colonial justice systems in Mbumland were rooted in communal values, collective responsibility, and restorative practices aimed at reconciliation, restitution, and the preservation of social harmony. Indigenous legal norms functioned as comprehensive mechanisms of social regulation, emphasizing moral accountability and communal cohesion rather than punitive severity. Scholars of African customary law have noted that such systems operated effectively without formal codification, relying instead on shared values, oral traditions, and social consensus.<sup>5</sup> These foundational principles continue to influence informal justice practices within contemporary society.

Colonial administration significantly transformed this justice landscape through the introduction of formal courts, codified laws, and punitive sanctions modeled on European legal traditions. Colonial criminal justice systems marginalized customary law, restricted the authority of traditional institutions, and prioritized deterrence

<sup>1</sup> Mamdani, M. (1996). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton University Press.

<sup>2</sup> Betts, R. F. (2004). *Europe and Africa: Colonial legal frameworks and social control*. Cambridge University Press.

<sup>3</sup> Mbaku, J. M. (2011). *Institutions and reform in Africa: The public choice perspective*. Praeger.

<sup>4</sup> Galizzi, P. (2011). Access to justice in Sub-Saharan Africa: A review of barriers and opportunities. *Journal of African Law*, 55(2), 217–255.

<sup>5</sup> Oba, A. A. (2012). The future of customary law in Africa. In J. Fenrich, P. Galizzi, & T. E. Higgins (Eds.), *The future of African customary law* (pp. 1–23). Cambridge University Press.

and administrative control over restorative justice. This restructuring produced enduring patterns of legal hierarchy and exclusion, shaping contemporary institutional frameworks and public perceptions of legality and punishment.<sup>1</sup> The colonial legacy thus persists not only in legal structures but also in the philosophical orientation of criminal justice administration.

Following independence, Cameroon inherited a plural legal system in which statutory law coexists with customary norms. While post-colonial reforms sought to consolidate state authority through constitutionalism and statutory uniformity, customary justice mechanisms continued to operate, particularly in rural areas such as Mbumland. Scholars argue that this persistence reflects both cultural legitimacy and practical necessity, as customary forums often provide more accessible, timely, and socially acceptable avenues for dispute resolution.<sup>2</sup> However, legal pluralism has also generated challenges, including jurisdictional ambiguity, inconsistencies in punishment, and tensions between customary norms and constitutional principles.

Contemporary criminal justice administration further grapples with the integration of customary law within human rights frameworks. Certain customary practices have been critiqued for conflicting with constitutional guarantees of equality and non-discrimination, particularly in areas such as gender relations and inheritance. These tensions illustrate the difficulty of harmonizing historically rooted norms with evolving legal standards, a challenge widely acknowledged in African legal scholarship.<sup>3</sup>

Overall, the administration of criminal justice in contemporary Cameroon reflects a negotiated outcome between colonial legal inheritances and resilient indigenous justice traditions. The historical experience of Mbumland demonstrates that while colonial legacies continue to shape institutional structures and punitive approaches, indigenous foundations remain vital sources of legitimacy, accessibility, and social regulation. A critical engagement with these historical continuities is essential for understanding present-day justice administration and for informing reforms that seek to balance legality, effectiveness, and cultural relevance.

## 9. Summary of Findings

This study reveals that the administration of crimes and punishment in Mbumland between 1779 and 1996 was shaped by the interplay of indigenous legal traditions, colonial legal impositions, and post-colonial statutory reforms, producing a complex and layered justice system. In the pre-colonial period, justice was primarily restorative, socially embedded, and guided by communal values, with elders and chiefs mediating disputes and emphasizing reconciliation and restitution over punitive measures. Such indigenous practices were flexible, contextually relevant, and effective in maintaining social harmony, though limited by the absence of codified laws and the discretionary authority of local leaders. The introduction of colonial justice disrupted this equilibrium, introducing formal courts, codification, and punitive sanctions that often conflicted with local norms, marginalized indigenous authority, and prioritized deterrence and state control. Post-colonial reforms inherited these dual legacies, resulting in a plural legal system that retained statutory dominance while customary law continued to function informally, particularly in rural settings such as Mbumland.

The study also finds that the effectiveness of justice administration was closely linked to social legitimacy, accessibility, and the integration of cultural norms into legal procedures. Indigenous practices were effective in fostering compliance and social cohesion, whereas colonial and post-colonial formal systems faced challenges including jurisdictional overlap, limited personnel, procedural delays, and uneven enforcement. Despite codification and modern legal frameworks, contemporary Cameroonian justice continues to reflect historical pluralism, as customary practices remain relevant in dispute resolution, highlighting the continuity of indigenous foundations in shaping justice outcomes.

Additionally, violations of justice norms whether under indigenous, colonial, or post-colonial systems—elicited sanctions that were both corrective and deterrent, with the severity and formality of consequences evolving over time. While pre-colonial sanctions emphasized restitution and community repair, colonial and post-colonial penalties focused on formalized punishment, reflecting changing conceptions of social control. These findings demonstrate that historical legacies, cultural relevance, and institutional capacity collectively influenced both the administration and effectiveness of crimes and punishment.

Finally, a comparative reflection with contemporary law indicates that while statutory frameworks have advanced the rule of law, procedural clarity, and human rights protections, challenges such as access to justice,

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<sup>1</sup> Chanock, M. (1985). *Law, custom, and social order: The colonial experience in Malawi and Zambia*. Cambridge University Press.

<sup>2</sup> Acha Morfaw Epse Ghogomu, D. L. (2020). Legal pluralism or the unification of laws in Cameroon. *Journal of Constitutional Law and Jurisprudence*, 3(1), 37–52.

<sup>3</sup> Diala, A. C., & Kangwa, B. (2019). Rethinking the interface between customary law and constitutionalism in sub-Saharan Africa. *De Jure Law Journal*, 52, 189–206.

legitimacy, and integration of customary practices remain. This underscores the importance of acknowledging historical experiences when designing reforms, as sustainable and effective justice in Mbumland and Cameroon more broadly requires a balanced approach that integrates legal formalism, cultural legitimacy, and social responsiveness.

## 10. Conclusion

This study examined the administration of crimes and punishment in Mbumland between 1779 and 1996 through a historical analysis of indigenous, colonial, and post-colonial justice systems. It demonstrated that justice in Mbumland evolved through overlapping normative orders shaped by communal values, colonial intervention, and post-independence legal reforms. Pre-colonial justice systems emphasized restorative practices and social harmony, while colonial rule introduced codified, punitive frameworks that disrupted indigenous legitimacy. Post-colonial justice inherited these dual legacies, producing a plural legal order marked by institutional constraints, jurisdictional tensions, and uneven access to justice.

Beyond documenting historical change, this study makes a distinct contribution to knowledge by providing one of the few periodized, locality-specific analyses of crimes and punishment in Mbumland, a region that has remained largely underrepresented in existing legal and historical scholarship. By integrating indigenous justice practices into a comparative framework that spans pre-colonial, colonial, and post-colonial periods, the study advances understanding of how local justice systems functioned in practice rather than merely in theory. It further contributes by demonstrating that the effectiveness of punishment in Mbumland was closely linked to cultural legitimacy, accessibility, and communal participation, challenging approaches that equate justice effectiveness solely with codification or punitive severity.

The study also extends scholarship on legal pluralism by illustrating how indigenous justice traditions persisted and adapted within colonial and post-colonial legal structures, shaping contemporary justice practices in Cameroon. In doing so, it highlights the limitations of state-centered legal reforms that fail to engage with historically grounded norms and social realities. This contribution is particularly significant for debates on justice reform in plural societies, as it provides empirical and historical evidence that sustainable justice requires the integration of statutory legality with culturally embedded practices.

In conclusion, the findings affirm that crimes and punishment in Mbumland cannot be fully understood without situating them within their historical, cultural, and institutional contexts. By foregrounding Mbumland as a case study, this research enriches African legal history and criminological scholarship and offers historically informed insights that are relevant to contemporary discussions on justice administration, legal reform, and social order in Cameroon and similar plural legal settings.

## 11. Recommendations

Drawing on the historical trajectory of crimes and punishment in Mbumland from 1779 to 1996, this study demonstrates that justice administration has been shaped by indigenous normative systems, colonial legal impositions, and post-colonial statutory reforms. Existing scholarship affirms that justice systems in plural societies are most effective when they combine legal legitimacy, cultural relevance, and institutional accountability (Chanock, 1985; Oba, 2012). The recommendations presented below therefore reflect the study's historical, analytical, and comparative dimensions, with particular attention to effectiveness, accountability, consequences of violations, and justice delivery.

### 11.1 Historically Informed Integration of Indigenous Justice Systems

Pre-colonial justice in Mbumland relied on councils of elders and traditional authorities who adjudicated disputes through mediation, restitution, and communal reconciliation. For instance, land disputes or marital conflicts were often resolved through compensation, public apology, or ritual reconciliation rather than physical punishment.<sup>1</sup> Contemporary justice reform should formally integrate customary forums for minor and community-based offences, while subjecting them to constitutional oversight. Such integration reflects existing practices in rural Cameroon, where disputants continue to seek traditional mediation even after the introduction of formal courts.<sup>2</sup>

### 11.2 Reorientation of Punishment Toward Restorative Effectiveness

Historical evidence from Mbumland indicates that punishment functioned primarily to restore social balance rather than to inflict retribution. Offenders were often required to compensate victims or perform community service under communal supervision, ensuring reintegration rather than exclusion.<sup>3</sup> In contrast, colonial

<sup>1</sup> Bwire, B. (2019). Restorative justice and African customary law. *Societies*, 9(1), 17.

<sup>2</sup> *Ibid.*

<sup>3</sup> Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford University Press.

imprisonment and post-colonial custodial sentences frequently disrupted family structures and community ties.<sup>1</sup> Contemporary criminal justice policy should therefore expand restorative justice mechanisms such as victim-offender mediation and restitution orders particularly for non-violent offences, mirroring successful practices in other African communities.

### *11.3 Strengthening Institutional Capacity and Accessibility*

The study shows that colonial and post-colonial justice systems struggled with limited personnel, delayed proceedings, and uneven enforcement, particularly in rural areas like Mbumland. Colonial courts were often geographically distant from local communities, making access slow and costly. Similar challenges persist today due to magistrate shortages and infrastructural deficits. Strengthening institutional capacity through increased staffing, mobile courts, and decentralized justice services would address these long-standing access barriers.<sup>2</sup>

### *11.4 Clarification and Harmonization Within Legal Pluralism*

Throughout the post-colonial period, overlaps between customary authorities and formal courts created uncertainty regarding jurisdiction. For example, cases initially resolved by traditional leaders were sometimes reopened in statutory courts, producing conflicting outcomes.<sup>3</sup> Clear procedural and legal guidelines defining the scope of customary adjudication especially in criminal matters would reduce conflict, promote consistency, and enhance coherence in justice administration (Merry, 1988).

### *11.5 Strengthening Accountability Mechanism*

Indigenous justice systems in Mbumland maintained accountability through communal scrutiny, where elders and chiefs were answerable to the community. By contrast, colonial administrators and post-colonial officials often exercised power with limited oversight, contributing to public mistrust. Contemporary justice reform should therefore strengthen accountability mechanisms by documenting customary decisions, establishing oversight committees, and providing accessible complaint channels. Community-based monitoring structures, for example, could review customary rulings, while judicial inspection units oversee statutory courts, ensuring fairness and consistency.<sup>4</sup>

### *11.6 Safeguarding Rights While Addressing Consequences of Violations*

The study demonstrates that sanctions for violations evolved from socially corrective measures to formalized punitive penalties. While contemporary legal systems emphasize rights protection, punishment must remain proportionate, context-sensitive, and socially meaningful to be effective. For instance, restitution and fines should be calibrated to economic capacity, while custodial sentences should be reserved for serious offences, reflecting the balance between deterrence, rehabilitation, and dignity.

### *11.7 Incorporation of Historical and Customary Legal in Legal Education*

One of the study's key findings is the disconnect between formal legal training and lived justice practices. Many judicial officers lack grounding in customary law despite operating in plural legal environments.<sup>5</sup> Incorporating indigenous justice systems, regional legal history, and legal pluralism into law school curricula and judicial training using case studies from areas such as Mbumland would foster culturally informed adjudication and policy formulation.

### *11.8 Promotion of Comparative and Empirical Research*

Finally, further empirical and comparative research is necessary to assess the long-term outcomes of restorative versus punitive sanctions. Comparative studies between regions that rely heavily on customary justice and those dominated by statutory courts would provide evidence-based guidance for reform. Research focusing on accountability practices, gender dynamics, and youth engagement in justice processes would deepen understanding of how crimes and punishment function in plural legal systems.

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<sup>2</sup> World Bank. (2017). *Justice sector reform in Africa*. World Bank Group.

<sup>3</sup> Diala, A. C., & Kangwa, B. (2019). Rethinking the interface between customary law and constitutionalism in sub-Saharan Africa. *De Jure Law Journal*, 52, 189–206.

<sup>4</sup> UNDP. (2019). *Strengthening the rule of law in Africa*. United Nations Development Program.

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# Italy's Artificial Intelligence Act and Global AI Governance: The EU Model's Practice and Prospects

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## Abstract

The Italian Artificial Intelligence Act, enacted on September 17, 2025, represents the first comprehensive national implementation of the European Union's AI Act. This study examines the Italian legislation through the theoretical lens of multi-level governance, analyzing its dual function as both a "bridging legislation" that translates EU framework into domestic practice and a site of significant regulatory innovation. Through detailed textual analysis and case studies, particularly in healthcare AI, this research investigates how Italy has navigated the complex interplay between supranational standardization and national specificity. The findings reveal that Italy has not merely passively transposed the EU AI Act but has actively engaged in "normative localization," refining the risk-based approach with distinctive national characteristics—such as stringent safeguards for cultural heritage and tailored provisions for small and medium enterprises. The study further explores Italy's creation of a coordinated regulatory architecture involving multiple existing authorities and its development of a multi-layered enforcement regime that innovatively combines administrative, civil, and criminal liabilities. The Italian approach demonstrates a sophisticated balancing of legal certainty through clear prohibitions and regulatory flexibility through adaptive tools like regulatory sandboxes. This analysis contributes to theoretical understanding of implementation dynamics in multi-level governance systems and offers practical insights for other jurisdictions developing AI governance frameworks. The Italian experience suggests that effective AI governance requires both principled foundation and contextual adaptation, providing valuable lessons for global AI governance amid ongoing technological evolution and regulatory competition.

**Keywords:** AI Act, artificial intelligence governance, legislation, regulatory sandbox

## 1. Introduction

The global governance landscape for artificial intelligence is undergoing a profound period of institutional development. As technological iteration accelerates and application risks emerge, countries worldwide are exploring regulatory pathways aligned with their legal traditions and national circumstances. As technological advancements accelerate and application risks emerge, nations worldwide are exploring regulatory pathways aligned with their legal traditions and national circumstances. However, this EU-level legislation marks not the end of governance but the beginning of a complex implementation process. Given the multi-tiered governance structure of the EU legal system, the concrete effectiveness of this framework legislation ultimately depends on how its 27 member states translate its principles into operational domestic legal practices. On September 17, 2025, the Italian Republic became the first nation to enact its national Artificial Intelligence Act. This milestone not only signifies the EU AI regulatory framework's entry into a new phase of domestic implementation but also propels a critical question to the forefront of academic research: As a pioneer within the EU framework, what legislative innovations and distinctive practices does the Italian Act demonstrate in the process of domesticating regional rules? What kind of national-level model does its institutional design offer for global AI governance?

Therefore, the core research questions this paper aims to explore are: Building upon the EU's higher-level

legislation, what key refinements, developments, and innovations did the Italian Act introduce across three major dimensions regulatory content, institutional setup, and enforcement mechanisms? How do these institutional designs collectively form a domestic AI governance system that balances rigor with operability? What reference value and insights does its legislative practice offer to other sovereign states, including China? Examining this question not only concerns the evaluation of Italy's domestic legislative practice but also profoundly involves the unity and flexibility of the EU's Digital Single Market, the autonomous space of member states in technological regulation, and the ultimate realization of the "European model's" global competitiveness.

## **2. Legislative Background of Italy's Artificial Intelligence Act**

The emergence of Italy's AI bill is not an isolated event, but rather an inevitable outcome shaped by profound global transformations in AI governance and strategic realignments within the European Union. It represents both a direct response to the multifaceted risks and challenges accompanying the rapid evolution of AI technology worldwide, and a pioneering legislative initiative within the broader context of the EU's efforts to establish its position in the fiercely competitive global AI landscape.

### *2.1 The Current State and Challenges of Global Artificial Intelligence Technology Governance*

First, the fragmentation of governance systems and the absence of rules have become the most prominent challenges. Current global AI governance faces the dilemma of "excessive rules and insufficient consensus." Ethical principles and regulatory models vary widely across nations, leading to fragmented rules. Developed and developing countries exhibit distinct divergences in their AI governance approaches, manifested in differing risk priorities, regulatory scopes, and levels of participation in international rule-making. Examining practices in developed economies reveals two distinct governance paradigms: the EU-led comprehensive risk oversight system covering the entire AI lifecycle, and the US-representative targeted governance mechanism focused on critical domains. (Calo, R, 2017) These approaches exhibit structural differences in legislative coverage. This fragmentation compels countries like Italy, seeking to establish a stable and predictable regulatory environment, to carefully consider how to align with potential international norms. As Ursula von der Leyen, the President of the European Commission, put it: "To unlock the potential of artificial intelligence, we must find a European way to strike a balance between data flows and wide usage, while ensuring high levels of privacy, security and ethical standards." (Ursula von der Leyen, 2019). This core tenet is fully embodied in the legislative process. On one hand, the EU is seizing the "limited window of opportunity" presented by AI; on the other hand, it is endeavoring to lead and advance the ethical application of AI technology on a global scale.

Secondly, technological hegemony has widened the digital divide and spawned new security threats. Data reveals that nearly 80% of global data centers are controlled by developed nations, leaving vast amounts of data from developing countries unable to translate into developmental momentum. This imbalance, when combined with AI technology, will further deprive latecomers of development opportunities. More gravely, AI technology faces the risk of "reverse empowerment," where its capabilities are applied to destructive domains such as military operations, warfare, and biological weapons manufacturing. Moreover, AI-enabled crimes like deepfakes and cyberattacks pose direct threats to individual rights and social order, compelling the Italian legislation to impose stringent criminal penalties on such activities (Katzenbach C, 2021).

Finally, the cross-domain propagation of compound technological risks demands forward-looking legislation. While artificial intelligence drives productivity growth, it also brings multiple social and technical risks—including data breaches, algorithmic bias, and structural unemployment—that intertwine to pose a shared global threat. Concerns within the business community underscore this reality, with nearly 70% of enterprises identifying the rapidly evolving AI ecosystem as the greatest security risk associated with generative AI. These risks transcend national borders, leaving no country immune. This compels national-level legislation to move beyond narrow domestic perspectives and incorporate considerations for global governance.

### *2.2 The EU Artificial Intelligence Act as a Cornerstone: Unified Rules and Risk Pathways*

The introduction of the EU's Artificial Intelligence Act reflects the bloc's attempt to extend its renowned "regulatory power" in digital governance to the cutting-edge field of artificial intelligence. Its legislative intent extends beyond merely addressing potential risks posed by AI technology; it aims to establish a unified legal framework to clear regulatory hurdles for the development of the EU's Digital Single Market, thereby positioning European regulatory standards as a global paradigm. The core regulatory philosophy of the Act is a risk-based four-tier pyramid model. This model categorizes AI systems based on the potential threat they pose to citizens' health, safety, and fundamental rights, ranking them from highest to lowest risk as Unacceptable Risk, High Risk, Limited Risk, and Minimal Risk. Corresponding regulatory rules are then established for each tier.

From a legal standpoint, the EU Artificial Intelligence Act is a regulation. Pursuant to Article 288 of the Treaty on the Functioning of the European Union, regulations are directly applicable and binding in their entirety across all member states. This means that once its transition period concludes, its legal effect will automatically and

uniformly extend across the entire EU territory without requiring member states to transpose it through domestic legislation. However, this by no means implies inaction on the part of member state legislatures. The Act itself constitutes a framework legislation, with numerous provisions requiring member state governments to elaborate and implement them through domestic administrative or legislative measures. This characteristic of “direct applicability requiring domestic coordination” renders the EU AI Act an incomplete legal framework. Its ultimate effectiveness in implementation heavily depends on “connecting” legislation and institutional development at the member state level, thereby reserving crucial space for legislative initiative in countries like Italy. Therefore, the Italian bill is not only the EU’s first fully implemented national AI law but also provides an exceptional pioneering case and institutional experiment for observing how EU AI governance transitions from macro-level blueprints to micro-level practices.

### *2.3 The Connective Role and Legislative Logic of the Italian Bill*

The enactment and implementation of Italy’s AI Act marks a pivotal shift in the EU’s AI governance paradigm, transitioning from regional legislative frameworks to domestic legal practices within member states. As the first comprehensive domestic legislation implementing the EU’s AI Act, it assumes the pioneering role of “pioneering and testing,” a position carrying multiple symbolic implications.

From a legal implementation perspective, the Italian Act establishes a crucial legislative precedent. Given the EU AI Act’s direct applicability as a regulation, member states’ domestic legislative scope primarily focuses on developing implementing rules and establishing regulatory bodies. (Morgan Sullivan, 2025) Italy’s legislative exploration within this limited scope provides a crucial reference model for other member states on how to translate EU framework principles into operational domestic rules. Particularly in defining specific criteria for high-risk AI systems, establishing regulatory agency models, and formulating penalty provisions, Italy’s legislative choices may serve as templates for other member states to draw upon.

From the perspective of governance practices, Italy faces dual pressures. On one hand, as the first country to enact legislation, the effectiveness of its implementation will directly impact the credibility of the EU’s overall artificial intelligence governance system. Successful implementation will validate the effectiveness of the EU governance model, while any significant shortcomings could be interpreted as flaws in the institutional design. On the other hand, Italy’s enforcement practices will accumulate valuable regulatory experience at the EU level. Its pioneering efforts in interpreting legal provisions, calibrating regulatory standards, and building a body of enforcement cases will provide crucial practical guidance for the subsequent regulatory work of the EU AI Office and other member states.

## **3. Core Provisions and Institutional Integration of Italy’s Artificial Intelligence Act**

### *3.1 Overall Structure and Legislative Purpose of the Bill*

The full text of the bill comprises approximately 28 articles, structured into three main sections: General Provisions and Fundamental Principles, Regulations for Specific Application Areas, and Strategic and Regulatory Framework Arrangements. The overall design fully reflects Italy’s national considerations and institutional characteristics. For instance, while maintaining overall alignment with the EU’s Artificial Intelligence Act, the first section introduces specific provisions explicitly prohibiting AI interference in democratic processes and public discourse—a matter not yet explicitly addressed in EU-level legislation. The second section dedicates specific chapters to socially sensitive domains such as healthcare, disability protection, labor and employment, education, justice, and public administration, demonstrating the legislature’s particular concern for these issues. The third section further clarifies the national AI strategy, the establishment of competent authorities, funding sources, and mechanisms for criminal and administrative liability. It assigns corresponding regulatory functions to the National Cybersecurity Agency (ACN) and the National Digital Agency (AgID), while continuing to safeguard the independent authority of data protection bodies.

The legislative objectives of this bill can be summarized in three key areas: First, establishing a unified system aligned with the EU regulatory framework to ensure Italy does not fall behind in the competition of rules. Second, strengthening legal safeguards in critical areas such as youth protection, judicial fairness, labor rights, and public services based on domestic realities. Finally, promoting the healthy and sustainable development of the artificial intelligence technology ecosystem through strategic guidance and fiscal support. As emphasized in the official explanatory documents, this bill aims not only to regulate but also to promote, with its core intent being to achieve an effective balance between technological innovation and safety and controllability.

### *3.2 Concrete Institutional Implementation of the “People-Centered” Principle*

The EU AI Act establishes the fundamental principle of “human-centeredness,” but leaves the specific implementation mechanisms to member states. (Herberger, N & Diakopoulos, N, 2023) Through a series of meticulously designed institutional arrangements, the Italian bill transforms this principle into a practical tool for safeguarding rights, particularly in the areas of employment and healthcare—two domains closely tied to

citizens' interests.

In the employment sphere, Italian legislators maintain heightened vigilance against potential labor rights infringements stemming from algorithmic management. Article 42 imposes what may be the EU's most stringent "algorithm transparency" requirements. Under this provision, employers using AI systems for hiring, performance evaluations, or dismissal decisions must not only inform employees of AI system usage but also provide "an easily understandable description of the system's functionality" and "specific decision-making criteria." More significantly, the provision grants employees the "right to request human review" of AI decisions, prohibiting employers from subjecting employees to adverse treatment for exercising this right. This provision effectively prevents algorithmic decisions from becoming unchallengeable "digital arbiters," offering crucial safeguards for workers' rights.

In the healthcare sector, Italy's legislation employs highly practical legislative techniques to implement the "human oversight" principle. Addressing the current ambiguity in liability allocation for medical AI applications, Article 28 explicitly establishes a "physician's final decision-making authority" system. The provision states that outputs from AI-assisted diagnostic systems "shall only serve as a reference for healthcare professionals' decision-making." Final diagnostic conclusions and treatment plans must be independently formulated by licensed physicians, who bear full legal responsibility for such decisions. This clarification not only defines accountability in AI-assisted healthcare but also upholds the core value of the doctor-patient relationship, preventing technological applications from eroding the essence of medical professional judgment.

Furthermore, the bill innovatively introduces a "Fundamental Rights Impact Assessment" system. It mandates that public institutions and private developers of high-risk AI systems must conduct risk assessments and implement mitigation measures before deploying systems that may impact citizens' rights. This system translates abstract rights protection principles into concrete compliance steps, reflecting Italian legislators' wisdom in embedding rights safeguards within technological regulation frameworks.

The EU AI Act outlines eight high-risk AI application areas in its annex, establishing a baseline scope for member state regulation. The emphasized "risk-based approach" prioritizes preemptive intervention, shifting regulatory governance from post-event regulation to comprehensive compliance obligations across the entire lifecycle of AI systems—encompassing design, development, deployment, and application. This is particularly evident in the EU's AI Act's provisions for high-risk AI systems. (CHAMBERLAINJ, 2023) While this approach enhances the scalable safety of AI, it also increases the overall compliance obligations for market entities.

Italian legislators did not merely replicate this list but instead conducted significant localized interpretation and expansion based on the nation's industrial structure and risk characteristics.

In the public healthcare sector, the Italian bill demonstrates a stricter stance exceeding EU minimum standards. The bill explicitly classifies all AI software used for diagnostic assistance as high-risk and imposes additional compliance requirements tailored to the characteristics of Italy's healthcare system. For instance, Article 23 stipulates that any AI system employed for tumor screening, pathological analysis, or emergency triage must obtain special approval from the Medical Device Evaluation Committee under the Italian Ministry of Health, in addition to complying with the EU's conformity assessment procedures. This mechanism demonstrates that regulation of medical AI can fully account for unique ethical considerations and patient safety requirements within national healthcare practices.

In the judicial and public administration domains, Italy's legislative choices similarly reflect respect for administrative traditions. Addressing the characteristics of its administrative procedural law system, the bill imposes more detailed transparency obligations on AI systems used for administrative decisions such as evaluating social welfare applications and allocating public housing. Under Article 31, entities deploying such systems must disclose the fundamental characteristics of training data, the decision-logic framework of algorithms, and system accuracy metrics. This ensures the "algorithmic black box" does not undermine public trust in administration. This provision directly addresses Italy's longstanding transparency deficit within its bureaucracy, demonstrating lawmakers' intent to advance administrative modernization through technological regulation.

### *3.3 Specialized Domain Regulation in the Bill: Innovative Mechanisms for Cultural Heritage Protection*

As a nation rich in cultural heritage, Italy has established a dedicated regulatory chapter within its legislation specifically addressing AI applications in the cultural heritage sector. (TOSCO CI, 2014) This constitutes one of the most distinctive institutional innovations in Italy's AI legislation.

The Italian legislation innovatively extends the scope of high-risk oversight to encompass specific AI applications within the cultural heritage domain. Article 35 authorizes the Ministry of Culture to establish a dedicated catalog classifying AI systems used for artifact restoration, archaeological site monitoring, and art authentication as "specific risk systems." It mandates that operators possess relevant professional qualifications

and requires systems to maintain sufficient scope for human intervention in decision-making. This distinctive provision reflects Italy's cautious approach as a cultural heritage powerhouse, preventing immature AI technologies from causing irreversible damage to irreplaceable cultural assets.

The bill establishes special protections for so-called cultural heritage data for the first time. Under Article 56, data used to train AI systems related to cultural heritage—including 3D scans of artifacts and digitized images of ancient texts—are not only protected under intellectual property law but also subject to specific ethical review procedures. Any commercial AI model training using such data requires Ministry of Culture authorization and royalty payments, with proceeds earmarked for heritage conservation. This innovative mechanism provides legal grounding to address “data plundering” in cultural digitization.

For AI applications in artifact restoration, the bill implements a stringent “precautionary principle” enforcement mechanism. Article 58 mandates that before deploying AI systems for restoration plans involving fragile artifacts, ethical review by an expert committee is required. Sufficient testing must be conducted on substitute items with similar physical properties to verify reliability before application to genuine artifacts. Additionally, all AI-based restoration decisions must retain complete records of human expert interventions, ensuring prudence and traceability throughout the technological application process. Through these enhanced regulations, Italy's AI legislation transforms the EU's unified framework into a practical yet distinctively national AI governance system. This legislative approach—characterized by “principle localization, rule refinement, and protection specificity”—not only provides valuable reference for other member states but also demonstrates national-level innovation and strategic wisdom in implementing international technical standards.

### *3.4 Allocation of Powers and Responsibilities Among Regulatory and Law Enforcement Agencies*

Pursuant to Article 57 of the EU Artificial Intelligence Act, EU member states must establish at least one regulatory sandbox within their jurisdictions to provide a controlled environment for the development, training, testing, and validation of AI systems. Through detailed domestic legislation, this framework principle is translated into operationalized specific systems. Regulatory sandboxes aim to enhance legal certainty in regulatory understanding, support regulatory learning, accelerate market access, and assist innovators in comprehending regulatory expectations and fulfilling obligations. The Act does not create a new, centralized super-regulator. Instead, it builds upon existing administrative structures and specialized regulatory capacities to design a multi-tiered, multi-stakeholder collaborative regulatory architecture. This design fully respects Member States' autonomy for implementation within the EU legal framework while ensuring regulatory expertise and efficiency.

First, it clearly delineates the roles of core national regulatory bodies. The Act explicitly designates two core national agencies with distinct responsibilities:

- 1) The National Cybersecurity Agency (ACN) assumes the core role of market oversight, serving as the enforcement body and the single point of contact with EU institutions. Its powers include inspection authority, monitoring the applicability and safety of AI systems, and enforcing relevant penalties. This positions ACN as the most deterrent “police” function within Italy's AI regulatory system.
- 2) The Agency for Digital Italy (AgID) is positioned as the “notifying authority.” It handles compliance assessments for high-risk AI systems, manages certification and accreditation for relevant entities, and promotes secure AI applications for citizens and businesses within a stable, cross-departmental coordination framework.
- 3) Existing regulatory bodies such as the Italian Data Protection Authority (Garante) and the Italian Communications Authority (AGCOM) will continue overseeing matters within their original jurisdictions, including personal data protection and media content in AI-related domains.

This design avoids duplicating institutions while leveraging the expertise and regulatory experience of existing agencies.

Second is the coordinated enforcement between the coordination framework and sectoral regulators. To prevent regulatory vacuums or overlaps in specific sectors such as finance and healthcare, the Italian bill establishes a regulatory model centered on ACN and AgID, with sectoral regulators collaborating. In critical sectors like finance and insurance, existing specialized regulators—such as the Bank of Italy, the Italian Securities and Exchange Commission (CONSOB), and the Italian Insurance Supervisory Authority (IVASS)—will be designated as market supervisors within their respective jurisdictions. This means an AI credit assessment system used by a bank would be overseen simultaneously by ACN (from a general security perspective) and the Bank of Italy (from financial stability and consumer protection angles). This arrangement ensures regulatory expertise and depth, exemplifying Member States' typical exercise of autonomy in balancing universal rules with sector-specific characteristics.

Finally, the bill establishes reporting, collaboration, and information-sharing mechanisms with the EU level. As a

domestic extension of the EU AI Act, Italy's regulatory framework is not a closed system but functions as a "bridge" to the European AI Office through ACN. ACN is responsible for reporting major security incidents and providing an overview of market surveillance activities to the European AI Office, serving as the interface for receiving EU-level guidance and directives. Simultaneously, in investigations involving general AI models or cases with cross-border implications, ACN and AgID must engage in close collaboration and information exchange with the European AI Office and regulatory authorities from other member states, collectively forming a coordinated regulatory network at the EU level.

### *3.5 Strengthening the Legal Liability and Penalty System*

Another notable feature of Italy's AI Act is that it builds upon the administrative penalties established by the EU AI Act, further strengthening and refining the legal liability framework. Specifically, by introducing criminal sanctions and clarifying the interface with civil liability, it establishes a more deterrent "long-arm" enforcement effect.

The administrative penalty procedures are specified in detail. The EU AI Act sets administrative fines for violations at up to 6% of global turnover or €35 million. Within this framework, the Italian law authorizes the government to issue legislative decrees within the next 12 months to refine specific penalty criteria, consideration factors (such as company size, intent, or negligence), and enforcement procedures. Market surveillance authorities (primarily the ACN and sector-specific regulators) are granted extensive investigative powers, including the right to demand information, inspect business premises, and impose temporary injunctions on suspected non-compliant AI systems. This procedural framework ensures the enforceability of administrative penalties.

Second is the significant strengthening of criminal liability. Article 27 stands as one of the provisions most marked by "criminal policy" and "horizontal regulation" in this bill. By amending the Criminal Code, Civil Code, Copyright Law, and the Consolidated Law on Financial Intermediaries (TUF), it formally integrates artificial intelligence systems into the traditional legal framework. AI systems are regulated both as new criminal instruments and as aggravating factors triggering more severe criminal liability.

For addressing Deepfakes, the bill explicitly stipulates that unlawfully disseminating AI-generated or tampered content (such as deepfakes) causing harm to others carries a prison sentence of 1 to 5 years. This provision directly incorporates a novel form of digital harm into the scope of criminal law, demonstrating the legislature's acute responsiveness to emerging risks. This marks Italy's first dedicated criminal offense targeting AI-generated false content within its penal code.

For AI-Assisted Traditional Crimes, the bill stipulates that using AI technology to commit existing crimes—such as fraud, identity theft, or market manipulation—constitutes an aggravating circumstance warranting harsher penalties. For instance, market manipulation using AI will incur enhanced penalties under the Consolidated Law on Finance and the Italian Civil Code. These criminal provisions coexist with administrative sanctions, meaning a company may face substantial administrative fines from the ACN for data governance non-compliance, while its employees using the company's AI systems for criminal acts will also face criminal liability.

Third, the interface with civil liability and ultimate accountability. Beyond public law liability, the Italian legislation emphasizes integration with private law (civil liability). The bill underscores the principles of human oversight and ultimate accountability across multiple domains. Article 27 amends Article 2637 (market manipulation offenses), stipulating that if the act is committed through artificial intelligence, the prison term is directly increased to two to seven years. This design reflects the legislator's sensitivity to the risks of automation and algorithmic manipulation in financial markets, aiming to prevent AI tools from being misused for large-scale price manipulation and misleading transactions. Through these refined regulatory and liability frameworks, Italy's AI legislation successfully establishes a governance structure characterized by clear accountability, robust enforcement, and a balanced emphasis on deterrence and guidance. It transcends a mere translation of the EU AI Act, representing a legislative practice that integrates national legal traditions and regulatory resources to achieve a delicate equilibrium between compliance and innovation, uniform rules and autonomous implementation.

## **4. Implementation Challenges of the Artificial Intelligence Act and Global Lessons Learned**

As the first EU member state to fully implement the EU Artificial Intelligence Act through domestic legislation, Italy's AI bill reveals the inherent tensions within the EU's 'Brussels Effect' during its formulation and implementation. (BradfordA, 2020) It also offers valuable institutional experimentation for global AI governance. This chapter will examine the bill's impact on the development of the EU's Digital Single Market by analyzing the internal coordination and external compliance challenges it faces. Ultimately, it will distill insights and lessons for countries like China seeking to establish their own AI governance frameworks.

### *4.1 Multidimensional Challenges Facing the Implementation of Italy's AI Act*

Italy's pioneering role in AI legislation has granted it rule-setting authority while simultaneously subjecting it to formidable challenges across three dimensions: internal coordination, external compliance, and industrial development.

#### 4.1.1 Internal Challenges to Regulatory and Enforcement Consistency

Italy's AI Act establishes a multi-agency regulatory framework designed to leverage existing institutional expertise. However, this approach risks creating overlapping regulatory responsibilities and fragmented enforcement practices in practice.

First, coordinating responsibilities among regulators presents a complex challenge. The Act designates the Agency for Digital Italy (AgID) as the notification authority and the National Cybersecurity Agency (ACN) as the market oversight body. Concurrently, the Italian Data Protection Authority (Garante), the Italian Communications Authority (AGCOM), and sector-specific regulators (such as the Bank of Italy, CONSOB, and IVASS for finance and insurance) retain regulatory duties within their existing mandates. This "interwoven" regulatory network, lacking robust coordination mechanisms, is highly susceptible to fragmented governance and inconsistent standards. For instance, an AI system used in insurance operations may simultaneously need to comply with ACN's general security requirements, IVASS's industry-specific compliance standards, and the Data Protection Authority's regulations on data processing. Businesses, particularly SMEs, may see their innovation stifled by overwhelming compliance costs. Second, ensuring uniform enforcement standards presents another significant practical challenge. While the law requires alignment with the EU AI Act in principle, differences may arise in practice among regulators regarding interpretation of legal provisions, risk assessment criteria, and penalty severity. This uncertainty not only undermines legal predictability but may also encourage "regulatory arbitrage"—where businesses operate under the jurisdiction of less stringent regulators—distorting market competition.

#### 4.1.2 External Challenges from Dynamic Compliance Pressures with EU Regulations

As member state legislation, the core challenge for Italy's AI Act lies in effectively addressing domestic concerns while maintaining high consistency with EU overarching laws. Articles 1 and 3 explicitly mandate that its interpretation must align with the EU AI Act and impose no additional obligations beyond EU law. While this consistency clause legally establishes a subordinate status, it creates significant tension in dynamic compliance. The EU AI Act itself remains in its early implementation phase, with many secondary legislation and implementing rules still under development. Practical guidelines from the EU AI Office and judicial precedents are also evolving. This necessitates that Italian regulators and legislators continuously monitor the latest developments at the EU level, remaining prepared to adjust domestic enforcement practices or even amend laws to maintain synchronization. This dynamic pursuit may impose sustained adaptive pressure on Italy's governance system.

Furthermore, certain more protectionist provisions in the Italian legislation—such as explicitly assigning ultimate responsibility to physicians in the medical field and emphasizing safeguards for patients' informed consent, or introducing severe penalties for AI-enabled criminal activities in criminal law—while reasonable within the domestic context, must still withstand scrutiny under EU law's principles of proportionality and legal reservation in judicial practice. This is essential to avoid constituting implicit restrictions on fundamental EU freedoms.

#### 4.1.3 Industrial Challenges: Compliance Burdens and Innovation Inhibition Risks for SMEs

Italy's economy is dominated by small and medium-sized enterprises (SMEs), which often struggle to compete with large tech companies in terms of technological capabilities, capital scale, and specialized talent. (BECATTINI G, 1990) While Italy's AI Act acknowledges this issue and attempts to provide support through flexible regulatory tools like regulatory sandboxes, its actual effectiveness remains to be seen. The Act's stringent compliance obligations for high-risk AI systems—such as establishing risk management frameworks, maintaining technical documentation, and implementing human oversight—create significant entry barriers for resource-constrained SMEs. These businesses may lack the capacity to bear costly compliance audits or hire specialized legal teams, placing them at a competitive disadvantage and potentially excluding them from the AI-driven digital transformation wave.

While the bill articulates objectives to foster SME development, the critical question remains whether these declarative principles can be translated into concrete, accessible, and low-cost support measures. If regulatory sandbox thresholds prove excessively high or administrative procedures become overly cumbersome, the very institutional design intended to incentivize innovation may end up excluding the SMEs most in need of assistance. This outcome would ultimately run counter to the legislation's original intent.

#### 4.2 Implications for Global AI Governance

Italy's legislative practice transcends national boundaries, offering a valuable paradigm and methodology for the evolving global governance of artificial intelligence.

#### 4.2.1 Providing a National Legislative Model for “Principle Localization”

Italy's AI Act vividly demonstrates how to transform a regional, relatively abstract regulatory framework (the EU AI Act) into a domestically tailored, operational national law. It offers a vivid example of “localizing EU standards” for nations worldwide, particularly civil law jurisdictions. Rather than merely reiterating the EU AI Act's principles, Italy's legislation creatively adapts them by integrating national priorities—such as establishing high-risk lists and sector-specific obligations. For instance, it maintains doctors' ultimate decision-making responsibility in healthcare; establishes a “national observatory” in labor to monitor AI's impact on employment; and uniquely incorporates cultural heritage protection into its regulatory scope. These measures demonstrate that global AI governance requires both top-level consensus on principles and localized implementation closely integrated with national legal traditions, industrial structures, and sociocultural contexts.

Furthermore, Italy opted not to establish an entirely new, centralized super-regulator but instead designed a collaborative regulatory network leveraging existing administrative resources. This model suggests to other nations that effective AI governance need not involve a complete overhaul; it can fully utilize and integrate existing regulatory capabilities and expertise to achieve governance objectives through clear delineation of responsibilities and coordinated mechanisms.

However, the Italian legislation also reflects the challenges facing the EU's strategy of exporting its digital rules through the “Brussels effect” in the era of artificial intelligence. On one hand, as a major market within the EU, Italy's stringent compliance requirements and hefty penalties will compel foreign tech companies seeking access to its market—particularly those from China and the United States—to adjust their global product strategies, thereby contributing to the globalization of EU regulations to some extent. On the other hand, amid intensifying Sino-American technological competition, the “European model” embodied by Italy's legislation is facing dual pressures. The U.S.-led alliance emphasizing “innovation-first, soft-law governance” and China's governance approach prioritizing “security and development in tandem, sovereignty-oriented” offer nations divergent paths. Many Global South countries may align with either the U.S. or China based on developmental needs and technological cooperation considerations, or adopt hybrid domestic legal frameworks. This uncertainty casts doubt on whether the EU model can emerge as the dominant global paradigm.

#### 4.2.2 Exploring a “Balance of Rigidity and Flexibility” in Legislative Techniques

The Italian bill demonstrates balanced wisdom in its legislative approach, avoiding an exclusive emphasis on stringent regulation. Instead, it seeks to reconcile the dual values of safety and innovation by combining “rigid” baseline requirements with “flexible” measures. On one hand, the bill establishes clear regulatory red lines—such as prohibiting social scoring systems and imposing severe criminal penalties for malicious AI abuse—reflecting a firm commitment to risk control. On the other hand, it incorporates flexible tools like regulatory sandboxes and compliance incentives, providing elastic space for technological innovation—particularly for trial-and-error and growth among small and medium-sized enterprises. This “rigid-flexible” legislative philosophy offers crucial methodological insights for nations worldwide navigating technological uncertainty: governance should not aim to stifle innovation, but rather guide technology toward good governance through responsible regulation.

### 5. Conclusion

The governance of artificial intelligence remains an ongoing global challenge with no universally applicable solution. The value of Italy's AI Act lies not in providing a perfect legislative blueprint, but in demonstrating a legislative philosophy and methodology that seeks balance within complex governance systems. It teaches us that effective technological governance requires both steadfast value-driven leadership and flexible regulatory tools; it demands unified baseline standards alongside diverse implementation pathways.

As AI technology accelerates its evolution, the global governance framework will inevitably undergo continuous adjustment and reconstruction. In this process, Italy's experience reminds us that an open, learning, and adaptive governance ecosystem may prove more crucial than any static legal text. Future AI governance should be a fusion of principles and pragmatism, a dialogue between rules and innovation, and a synthesis of global consensus and local wisdom. Only thus can we navigate the waves of technological transformation and advance toward a future where artificial intelligence serves the common welfare of humanity.

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# Ensuring Electricity Reliability and Consumer Protection in Cameroon: A Corporate Law and Regulatory Governance Perspective

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## Abstract

This article examines the critical challenges facing Cameroon's electricity sector, with a particular focus on power reliability and consumer protection from a corporate law and regulatory governance perspective. Cameroon's electricity infrastructure is characterized by frequent power outages, limited generation capacity, and aging facilities, which undermine the sector's ability to meet national energy demands effectively. These structural deficiencies are further compounded by weaknesses in corporate governance, regulatory oversight, and accountability mechanisms within electricity service providers. Through an analysis of the existing legal and regulatory framework governing the electricity sector, including the roles of key institutions such as the Electricity Sector Regulatory Agency (ARSEL), state-owned entities, and private operators, this study identifies governance gaps that contribute to service unreliability and inadequate consumer protection. It argues that the absence of enforceable consumer rights standards and weak corporate accountability leave electricity consumers with limited remedies in cases of prolonged outages, service fluctuations, and unfair billing practices. In this light, adopting an in-depth content analysis based on primary and secondary sources of data collection is imperative to achieve our goal. The article proposes legal and policy reforms grounded in corporate law principles, including enhanced regulatory oversight, increased investment through public-private partnerships, diversification of energy sources with an emphasis on renewables, and the adoption of a comprehensive Consumer Rights Charter for the electricity sector. This will go a long way to contribute to the development of a more reliable, accountable, and consumer-oriented electricity sector capable of supporting sustainable economic growth and improving the quality of life in Cameroon.

**Keywords:** electricity reliability, consumer protection, corporate governance, regulatory oversight, Cameroon

## 1. Introduction

The availability of reliable electricity is a cornerstone of socioeconomic development, powering industries, enhancing education, and improving overall quality of life. In Cameroon, however, the electricity sector continues to face significant challenges. Unstable electricity supply, high tariffs especially prepaid, frequent outages, and poor service quality are common issues, which directly impact economic productivity and public well-being.<sup>1</sup> Inconsistent power has been attributed to multiple factors, including insufficient infrastructure, dependence on a limited range of energy sources, and outdated equipment that strains the grid's capacity.<sup>2</sup>

Cameroon's power generation is largely based on hydroelectricity, making it vulnerable to climate variability.

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<sup>1</sup> Amadi, M. (2021). Electricity Infrastructure and Investment in African Nations. *Journal of Energy Policy Studies*, 15(3), 218.

<sup>2</sup> Ndongmo, B., & Sun, Y. (2021). Cameroon's Electricity Sector: Challenges and Future Prospects. *Journal of African Energy*, 4(2), 55.

Periods of drought, for example, have led to reduced power output, exacerbating supply issues.<sup>1</sup> Despite government reforms, state-owned utility companies continue to struggle with inefficiency and inadequate service provision, which further compounds the issue.<sup>2</sup> Moreover, the lack of a competitive market in the sector limits incentives for improving operational standards, leaving consumers with limited options and often insufficient recourse when service fails to meet expectations.<sup>3</sup>

It should be recalled that the electricity sector in Cameroon is governed by a set of laws, including mainly Law N°2011/022 of 14 December 2011 governing the electricity sector in Cameroon which replaces Law N°98/022 of 24 December 1998. This law contains the legal provisions of the electricity sector, from generation (from primary or secondary sources) to the distribution, sale and transport of energy. More specifically, it deals with (i) regulation of water storage and hydroelectricity, (ii) regulation of competition in the electricity sector, (iii) regulation of non-competitive activities, (iv) regulation of environmental protection in the electricity sector, (v) regulation of consumer protection, (vi) regulation of internal electrical installations and electrical equipment, (vii) establishment of a Transmission System Operator (TSO) for electrical energy, and (viii) renewable energy and electrical energy management.<sup>4</sup>

Notwithstanding the comprehensive legal and policy framework, persistent power outages and voltage fluctuations in several parts of the country raise serious questions about the effective implementation of these reliability strategies. The gap between the legal standards prescribed under Law No. 2011/022 and the actual performance of electricity service providers underscores the need for stronger regulatory enforcement and enhanced protection of electricity consumers' rights.<sup>5</sup>

Given these persistent issues, there is an urgent need for reforms that prioritize both reliability and consumer rights. This article seeks to address these challenges by examining legal and policy strategies that can enhance power sector performance and protect consumer interests.

## 2. The Current Landscape of Cameroon's Electricity Sector

Economic development generally goes hand in hand with increasing energy consumption. Without energy, there can be no industry, no transformation of raw materials, and consequently no modern economy.<sup>6</sup> Recognizing the strategic importance of electricity, the Cameroon Government passed the Electricity Law in 1998 which established an electricity sector regulator and a rural electrification agency with the objective of attracting private sector participation.<sup>7</sup> In 2001 the Government privatized the state-owned electric utility SONEL through a 20-year concession to the American power company AES. AES SONEL was granted a monopoly over transmission and distribution and the right to own up to 1,000MW of generation capacity. In 2014, AES sold its stake in AES SONEL to Actis. The company was renamed ENEO. ENEO (formerly known as AES SONEL) has achieved over 500,000 new connections since entering private hands. The concession agreement obligates ENEO to connect new customers and the concessionaire originally met this obligation by focusing on urban and peri-urban areas, to the detriment of rural areas. However, over time specific regional access targets were set. The Government of Cameroon and donors finance grid extension projects and then transfer them to ENEO, thereby extending ENEO's service perimeter. According to the report, around 35 percent of ENEO's one million connections are in rural areas.<sup>8</sup> Despite these efforts the electricity sector continues to face several challenges one of which is the relatively high tariffs charged by ENEO.

### 2.1 Overview of the Electricity Supply Chain

Cameroon's electricity sector is structured around a few major entities responsible for generation, transmission, and distribution, with ENEO (Energy of Cameroon) serving as the main utility provider. ENEO, a partially state-owned company, is responsible for much of the electricity generation and distribution, while other agencies

<sup>1</sup> Kariuki, S. (2020). Strengthening Regulatory Frameworks in Sub-Saharan Africa's Electricity Sector. *Energy & Policy Journal*, 17(2), 45.

<sup>2</sup> Okoye, P. et al. (2018). Corruption and Efficiency in Africa's Electricity Sector. *Journal of Governance and Development*, 5(2), 96-112.

<sup>3</sup> Che, N. (2021). Public Awareness and Consumer Rights in Africa's Energy Sectors. *African Journal of Public Policy*, 9(1), 102-118.

<sup>4</sup> African Development Bank Group. (2018). Country Priority Plan and Diagnostic of the Electricity Sector. <https://www.afdb.org>, accessed on the 16/11/2024, p. 28.

<sup>5</sup> Teke, D. (2022). Assessing Cameroon's Electricity Law for Consumer Protection. *Law and Society in Africa*, 6(1), 28.

<sup>6</sup> Kimbi, L. S., Kongeh, V. B. (2024). The Legal and Institutional Appraisal of Renewable Energy as A Means of Diversifying Energy Sources in Cameroon. *International Multilingual Journal of Science and Technology (IMJST)*, 9(4), 7264.

<sup>7</sup> Evaluation of Rural Electrification Concessions in sub-Saharan Africa Detailed Case Study: Cameroon Report to World Bank December 2015, Prepared by Castalia, a part of the worldwide Castalia Advisory Group, p. i.

<sup>8</sup> Ibid.

support regulatory oversight.<sup>1</sup> The Electricity Sector Regulatory Agency (ARSEL) was established to oversee tariff structures, monitor service quality, and protect consumer interests, though its powers are often limited by resource constraints.<sup>2</sup> Additionally, the Electricity Development Corporation (EDC), a state-owned entity, manages the country's main hydroelectric dams, which form the backbone of Cameroon's power generation infrastructure. This structure, however, is burdened by bureaucratic inefficiencies and a lack of coordination between these agencies, contributing to inconsistent service delivery.<sup>3</sup>

The sector's heavy reliance on hydroelectric power, which accounts for around 60-70% of total electricity generation, makes it vulnerable to climate-related disruptions, especially during periods of drought. This dependency on hydro sources, coupled with limited diversification into other energy forms, contributes to frequent power outages and underscores the need for a more diversified energy supply chain. Despite recent government efforts to increase investment in renewable energy and attract private investors, the electricity supply chain remains inadequately diversified and poorly funded, resulting in operational challenges (Amadi, 2021).

## 2.2 Challenges to Reliability

The reliability of electricity in Cameroon is consistently challenged by infrastructural and financial limitations. Much of the grid infrastructure is outdated, with equipment that has not been upgraded to accommodate increasing electricity demand. This outdated equipment not only contributes to frequent outages but also increases the risk of accidents and operational inefficiencies.<sup>4</sup>

The persistent challenges of ensuring reliable electricity supply in Cameroon are starkly illustrated by the prolonged power outage experienced in the West Region, particularly in Dschang, in September 2024. Between 12 and 28 September, the entire community was subjected to a total blackout following the failure of a transformer supplying electricity to the area. This incident revealed serious structural weaknesses in the electricity infrastructure and exposed the significant social and economic consequences of supply unreliability.

As observed by the author, the absence of electricity during this two-week period severely disrupted essential services. Educational activities were particularly affected, as the outage coincided with the back-to-school period. Teachers faced difficulties preparing lesson materials due to the high cost of charging electronic devices up to 500 FCFA for laptops and 200 FCFA or more for mobile phones, often without obtaining a full charge. Students were likewise unable to study effectively or complete assignments because of inadequate lighting. Economic activities were equally impacted. Many small businesses and informal-sector operators rely heavily on electricity for their daily operations. Entrepreneurs, artisans, and professionals without access to alternative energy sources suffered considerable financial losses. Even those with generators were constrained by the high cost and limited availability of fuel. Researchers and academics were also adversely affected, as access to essential facilities such as internet services and printing became extremely difficult.

Notably, the restoration of the transformer did not resolve the underlying reliability concerns. Electricity supply in Dschang remains unstable, with frequent outages often triggered by minor weather conditions such as strong winds. Recurrent voltage fluctuations sometimes resulting in multiple power interruptions within minutes have caused damage to household appliances and professional equipment. These conditions highlight ongoing deficiencies in service quality and raise serious concerns regarding the protection of electricity consumers' rights, particularly with respect to continuity, safety, and quality of supply.

A similar situation was witnessed in 2015 where approximately 2,500 containers destined for countries that rely exclusively on the Douala Seaport were piled up for six weeks due to power failure. With the cost of holding a container at 25000 CFA francs per day, a disruption lasting 20 days would amount to 500,000 CFA francs per container. Such disruption took a heavy toll on the economy, particularly by constraining the manufacturing sector through an increase in the reliance on alternative generating capacity.<sup>5</sup>

These situations underscore the socioeconomic consequences of unreliable electricity supply and the urgent need for improved maintenance and robust infrastructure especially as many towns in Cameroon are experiencing this problem. It also raises critical questions about consumer rights and the responsibilities of electricity providers to

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<sup>1</sup> African Development Bank Group. (2018). Op. Cit., P. 28.

<sup>2</sup> Ndongmo, B., & Sun, Y. (2021). Op. Cit., P. 57.

<sup>3</sup> Teke, D. (2022). Op. Cit., P. 37.

<sup>4</sup> Njomo, A. (2020). Sustainability and the Electricity Grid in Cameroon. *Journal of African Infrastructure*, 13(3), 203-219.

<sup>5</sup> Egong, M.A. (2020). Aziz, E. M. (2020, January 30). *Key problems and proposed solutions to Cameroon's energy sector*. Nkafu Policy Institute, Denis & Lenora Foretia Foundation, 2. [https://nkafu.org/key-problems-and-proposed-solutions-to-camerouns-energy-sector/\(nkafu.org\)](https://nkafu.org/key-problems-and-proposed-solutions-to-camerouns-energy-sector/(nkafu.org))

mitigate such disruptions and provide equitable compensation for the adverse effects experienced by communities.

Another significant factor affecting reliability is Cameroon's limited generation capacity, which often falls short of demand. The grid's low capacity is exacerbated by environmental factors impacting hydroelectric production, such as reduced water levels during the dry season. This instability is worsened by the country's reliance on an underdeveloped transmission network, which results in high transmission losses and further disrupts service.<sup>1</sup> Financial constraints within the sector also play a role. Despite consumer dissatisfaction and demand for improvements, the financial stability of state-owned entities is tenuous, and they frequently depend on government subsidies and international loans. The lack of sustainable financing solutions means that investments in infrastructure and maintenance are often deferred, worsening power reliability issues.<sup>2</sup>

From a corporate law standpoint, electricity providers as corporate entities bear obligations under both the sector law and their respective concession agreements to uphold continuity and quality of service, yet breaches often go unremedied due to weak enforcement regimes and limited regulatory sanctions.

### *2.3 Consumer Rights and Legal Framework*

Cameroon's regulatory framework for the electricity sector is primarily shaped by the Electricity Law of 2011.<sup>3</sup> This legislation provides the basis for the operation of electricity services and establishes the responsibilities of regulatory bodies like ARSEL.<sup>4</sup> Law No. 2011/022 affirmatively includes the objective of protecting consumer interests in terms of price, conditions of supply, and safety of services, along with guaranteeing continuity and quality of service. However, the law stops short of establishing an independent consumer rights charter with specific enforceable standards, leaving consumers without clearly defined statutory entitlements for redress.<sup>5</sup>

Corporate law principles such as transparency, accountability, and contractual performance are implicit within the legal framework (e.g., through pricing rules and service obligations) but are not explicitly tied to enforceable consumer rights frameworks. This gap weakens corporate accountability; as corporate entities are not sufficiently compelled under law to internalize consumer protection obligations in their operational governance.<sup>6</sup>

The Electricity Sector Regulatory Agency (ARSEL), constituted under Section 72 of Law No. 2011/022, is tasked with protecting consumers' interests regarding price, supply, and quality of electricity, enforcing compliance with laws, and arbitrating disputes among sector actors. Unfortunately, resource constraints limit ARSEL's regulatory enforcement capacity, undermining effective oversight and leaving consumers without practical recourse mechanisms (Njomo, 2020).

## **3. Legal and Policy Strategies for Reliable Power Supply**

Law No. 2011/022 of 14 December 2011 governing the electricity sector in Cameroon establishes a clear legal and policy framework aimed at ensuring the reliability of electricity supply. At the outset, Section 1(2) of the Law expressly provides that the electricity sector is governed in a manner that guarantees the continuity and quality of electricity services, thereby placing reliability at the core of the regulatory objectives.<sup>7</sup> This principle is further reinforced under Section 3(2), which defines electricity as a public utility service and outlines its fundamental objectives<sup>8</sup>. These provisions demonstrate that reliability of electricity supply in Cameroon is not merely a policy aspiration but a legally binding requirement imposed on both the State and electricity service providers.

### *3.1 Improving Regulatory Oversight*

Recent policy and institutional developments suggest a renewed governmental commitment to addressing long-standing challenges of reliability, governance, and consumer protection in Cameroon's electricity sector. Notably, in late 2024, the Electricity Sector Regulatory Agency (ARSEL) directed the national distributor, Eneo Cameroon S.A., to standardize electricity tariffs by applying the same regulated rates to both prepaid and

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<sup>1</sup> Kariuki, S. (2020). Op. Cit., P. 77.

<sup>2</sup> Okoye, P. et al. (2018). Op. Cit., P. 107.

<sup>3</sup> LAW N° 2011/022 of 14 December 2011 Governing the electricity Sector in Cameroon, Section 1(2), (v).

<sup>4</sup> Ibid.

<sup>5</sup> Teke, D. (2022). Op. Cit., P. 40.

<sup>6</sup> Che, N. (2021), Op. Cit., P. 110

<sup>7</sup> Ibid, section1(2).

<sup>8</sup> LAW N° 2011/022 of 14 December 2011 Governing the electricity Sector in Cameroon, Section 3(2).

postpaid consumers, a measure intended to enhance transparency, equity, and consumer confidence.<sup>1</sup> In parallel, the government adopted a National Energy Compact as a strategic roadmap aimed at improving sector discipline, particularly by ensuring timely payment of electricity bills by public entities through mechanisms such as payroll deductions and direct subsidy offsets. Complementing this initiative is the planned rollout of smart meters in public buildings between 2025 and 2026 under the National Energy Efficiency Programme (PRONAME), with the objective of reducing billing disputes, improving metering accuracy, and curbing commercial losses. Furthermore, the State's decision to renationalize Eneo in late 2025, alongside the implementation of a CFA 400 billion sector recovery plan supported by international partners such as the World Bank and the African Development Bank, signals a shift toward stronger public control, infrastructural modernization, and expanded access<sup>2</sup>. However, while these reforms reflect an ambitious regulatory and governance agenda, their practical effectiveness remains uncertain, as most are yet to be fully implemented. Their success will ultimately depend on institutional capacity, regulatory independence, financial discipline, and sustained political commitment, raising important questions about enforcement, accountability, and long-term consumer protection within Cameroon's evolving electricity governance framework.

### 3.2 Investment in Infrastructure

Improving the reliability of Cameroon's electricity supply chain requires substantial investment in infrastructure. The current infrastructure, marked by outdated equipment and insufficient generation capacity, is ill-equipped to meet the country's growing demand. Modernizing the grid and expanding generation capacity are essential steps toward reducing system losses and enhancing reliability<sup>3</sup>. Public-private partnerships (PPPs) present a viable solution, where private investors can partner with the government to fund and execute infrastructure projects. By introducing clear regulatory guidelines that encourage private investment, Cameroon can attract foreign investment and technical expertise that contribute to modernizing its grid. For example, structured PPPs in Kenya's energy sector significantly improved grid reliability and reduced financial strain on the government.<sup>4</sup> Additionally, transparent funding mechanisms are crucial to ensuring that allocated funds are directed toward grid improvements without diversion. Adopting sustainable financing options, such as green bonds and long-term loans specifically aimed at renewable energy projects, could also enable more stable financing to support infrastructure upgrades.<sup>5</sup>

### 3.3 Promoting Renewable Energy and Energy Efficiency

Articles 63 to 65 of the law governing the electricity sector in Cameroon provides that renewable energy contributes to meeting the energy needs of consumers. It also plays a vital role in environmental protection and in ensuring security of supply. However, despite being provided for under the applicable regulations, renewable energy remains largely underdeveloped and almost nonexistent in Cameroon.<sup>6</sup> To mitigate this, it is essential to diversify energy sources by promoting renewables like solar, wind, and biomass.<sup>7</sup> A diversified energy mix also reduces reliance on single-source hydroelectric power and decreases the risk of grid instability caused by environmental factors.<sup>8</sup> Countries like Ghana have seen improvements in supply reliability through similar energy efficiency initiatives, highlighting the potential benefits for Cameroon's energy sector<sup>9</sup>.

### 3.4 Addressing Corruption and Inefficiency

Corruption and inefficiencies within Cameroon's power sector are substantial obstacles to reliability. Corrupt practices, such as misallocation of funds, over-billing, inflated procurement costs, and bribery, undermine the effectiveness of investment and reduce public trust in utility companies. To address these issues, instituting strict anti-corruption policies and establishing transparent procurement processes are essential.<sup>10</sup> For instance, clear audit requirements and third-party oversight on large energy contracts can help ensure accountability and prevent

<sup>1</sup> <https://theelectricityhub.com/cameroon-targets-6-5-billion-private-investment-to-power-energy-plan/>

<sup>2</sup> Ibid.

<sup>3</sup> Ndongmo, B., & Sun, Y. (2021). Op. Cit., P. 61.

<sup>4</sup> Ibid.

<sup>5</sup> Amadi, M. (2021). Electricity Infrastructure and Investment in African Nations. *Journal of Energy Policy Studies*, 15(3), 210-225.

<sup>6</sup> Edith N. O. (2024). Electricity in Cameroon: What is the Way Forward? Denis & Lenora Foretia Foundation, p. 6.

<sup>7</sup> Zarma, R. (2019). The Case for Renewable Energy in Cameroon. *African Journal of Renewable Energy*, 7(3), 139-153.

<sup>8</sup> Kariuki. (2020). Op.Cit., P. 50.

<sup>9</sup> Che, N. (2021), Op. Cit., P. 110.

<sup>10</sup> Miloš, Resimić. (2023). Corruption and anticorruption efforts in Nigeria's electricity sector, U4 Helpdesk Answer, p. 7.

fund diversion.<sup>1</sup> Moreover, fostering a culture of transparency through the publication of financial statements, project timelines, and progress updates can enhance accountability and help deter corrupt practices. Implementing these measures would not only improve reliability but also strengthen public confidence in the sector, paving the way for greater support for infrastructure projects and regulatory reforms. Successful examples from Nigeria's power sector reform show that anti-corruption policies and transparency initiatives can contribute significantly to sectoral efficiency and reliability.<sup>2</sup>

#### 4. Protecting Consumer Rights in the Electricity Sector

Law No. 2011/022 explicitly recognises consumer protection as one of the core aims of the electricity regulatory framework. Article 1 of the Law states that, in addition to modernising and developing the electricity sector, the law lays down the rules governing the protection of consumers' interests in terms of prices, conditions of supply and safety of the services.<sup>3</sup>

##### 4.1 Establishing a Consumer Rights Charter

A crucial step in safeguarding consumers in Cameroon's electricity sector is the establishment of a formal Consumer Rights Charter. This charter would provide a structured framework to set out clear service standards, including reliability expectations, and guarantee compensation for service failures such as power outages or inconsistent supply.<sup>4</sup> A robust Consumer Rights Charter would define the minimum quality of service that consumers should expect from electricity providers, alongside transparent processes for addressing complaints, reporting inefficiencies, and seeking redress in cases of service failure.<sup>5</sup> A statutory charter should include minimum reliability standards and outage thresholds; transparent pricing obligations grounded in pricing rules (e.g., Section 82 pricing principles) to prevent arbitrary billing<sup>6</sup>; and clear consumer grievance and redress procedures enforceable against corporate entities.

This framework would also help mitigate the vulnerability of consumers to unreliable electricity services, ensuring that they have clear and enforceable rights, which in turn fosters trust in the electricity supply chain and enhances overall consumer satisfaction.

##### 4.2 Empowering Consumers

Empowering consumers is essential to protecting their rights and ensuring that they are informed of their entitlements within the electricity sector. Consumer education campaigns, which provide accurate information on their rights and responsibilities, can significantly enhance public awareness and help consumers understand how to navigate the electricity sector's service and complaint mechanisms. Through collaborations between ARSEL, electricity providers, and civil society organizations, these campaigns can reach a wider audience, addressing common gaps in understanding about how to file complaints, demand improvements, and access compensation.

Access to clear and simple complaint mechanisms is also a vital component of consumer empowerment. Consumers must have readily available and transparent avenues for lodging complaints, whether related to billing disputes, frequent outages, or technical issues. Providing toll-free helplines, online platforms, and dedicated customer service desks ensures that consumers are not discouraged by bureaucratic hurdles.<sup>7</sup>

Although the Law places the primary responsibility for consumer protection on the electricity sector regulatory agency, ARSEL, under Article 72, it does not provide specific mechanisms for dispute resolution<sup>8</sup>. Consequently, ARSEL must ensure that customer complaints are addressed efficiently and within reasonable timeframes, making active consumer engagement a central element of sectoral reform.

##### 4.3 Consumer Advocacy and Legal Recourse

Encouraging the formation of consumer advocacy groups is another critical step to protect consumers in the electricity sector. These groups can represent consumers' interests in policy discussions, ensuring that their needs and concerns are included in regulatory reforms and sector planning. By forming coalitions, consumers can present a united front, advocating for policy changes that prioritize reliability, affordability, and fairness in

<sup>1</sup> Okoye et al. (2018). Op. Cit., P. 98.

<sup>2</sup> Mbah, P. (2022). Electricity and Consumer Rights in Cameroon: Legal Perspectives. *Cameroon Law Review*, 8(4), 15-33.

<sup>3</sup> LAW N° 2011/022 of 14 December 2011 Governing the electricity Sector in Cameroon, Section 1.

<sup>4</sup> Mbah. (2022). Op. Cit., P. 25.

<sup>5</sup> Teke. (2022). Op. Cit., P. 40.

<sup>6</sup> LAW N° 2011/022 of 14 December 2011 Governing the electricity Sector in Cameroon Section 82.

<sup>7</sup> Teke, D. (2022). Op. Cit., P. 37.

<sup>8</sup> LAW N° 2011/022 of 14 December 2011 Governing the electricity Sector in Cameroon Section 72.

service delivery.<sup>1</sup> Additionally, well-established advocacy groups can hold electricity providers accountable by lobbying for improvements and engaging with regulatory authorities to bring about reforms.

Moreover, it is essential to ensure that there are clear legal pathways for consumers to seek redress when their rights are violated. Establishing well-defined procedures for legal recourse, whether through administrative tribunals or civil courts, ensures that consumers can effectively challenge poor service delivery, such as power outages or unjustified billing increases.<sup>2</sup> Legal recourse mechanisms would ensure that consumers have a clear understanding of how to assert their rights and demand accountability from electricity providers. For example, in countries like Kenya and South Africa, legal frameworks allow consumers to directly challenge utilities through court systems, which has led to enhanced service delivery and more responsive policies in the energy sector.<sup>3</sup>

In Cameroon, the creation of such legal pathways, coupled with the establishment of specialized energy courts or consumer protection bodies, would guarantee that consumer rights are adequately protected. As in other jurisdictions, these legal avenues can play a transformative role in enhancing consumer confidence and improving the overall functioning of the electricity sector.

## 5. Challenges to Implementation

Cameroon's energy sector is of potential value to economic growth and social development. Nonetheless, its degree of potentiality to contribute to the country's economy is questionable based on the numerous challenges faced by the sector.<sup>4</sup>

### 5.1 Institutional and Bureaucratic Obstacles

One of the primary challenges to implementing reforms in Cameroon's electricity sector is institutional inertia and the bureaucratic barriers that slow down decision-making and policy enforcement. These barriers are often due to the entrenched interests within state-owned companies, regulatory bodies, and other stakeholders who may be resistant to change or lack the capacity to adapt to new policies.<sup>5</sup> For example, while the Electricity Sector Regulatory Agency (ARSEL) is tasked with overseeing the electricity supply, it faces challenges such as insufficient staffing, limited technical expertise, and weak enforcement capabilities. These challenges often lead to inefficiencies in regulatory oversight and delay the implementation of necessary reforms.

To mitigate these challenges, targeted regulatory reforms are required. This includes revising the mandates of regulatory bodies to give them more power and resources to monitor and enforce service standards effectively. Capacity-building initiatives for both the regulators and service providers would also be crucial in overcoming institutional inertia. By strengthening the institutional framework and providing training in areas such as policy enforcement, technical standards, and customer service, Cameroon can build a more responsive and efficient regulatory system.<sup>6</sup> Additionally, streamlining bureaucratic processes would allow for quicker decision-making and more timely implementation of reforms aimed at improving power supply reliability.

### 5.2 Financial Constraints

Cameroon's electricity sector is heavily constrained by financial limitations, which restrict its ability to invest in modern infrastructure, renewable energy, and improved service delivery. The government's limited budget for energy infrastructure has led to underinvestment in key areas, including the upgrading of transmission networks and generation capacity, as well as the expansion of renewable energy sources.<sup>7</sup> With insufficient public funds, implementing large-scale infrastructure projects and transitioning to renewable energy sources becomes increasingly difficult.

However, there are ways to address this issue. One potential solution is to leverage international funding from development partners, such as the World Bank, the African Development Bank, and bilateral aid from countries like France and the United States. These institutions can provide financial assistance through grants or low-interest loans specifically aimed at enhancing energy infrastructure and promoting renewable energy projects.<sup>8</sup> Additionally, Cameroon could incentivize private investment in the energy sector by offering

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<sup>1</sup> Amadi, M. (2021). Op. Cit., P. 220.

<sup>2</sup> Che, N. (2021). Op. Cit., P. 110.

<sup>3</sup> Zarma, R. (2019). Op. Cit., P. 150.

<sup>4</sup> Egong, M.A. (2020). Op. Cit., P.2.

<sup>5</sup> Mbah, P. (2022). Op. Cit., P. 20.

<sup>6</sup> Teke, D. (2022). Op. Cit., P. 45.

<sup>7</sup> Zarma, R. (2019). Op. Cit., P. 148.

<sup>8</sup> Okoye, P. et al. (2018). Op. Cit., P. 108.

favorable tax policies and establishing public-private partnerships (PPPs). By attracting private sector involvement, Cameroon can reduce the burden on the national budget while ensuring much-needed investments in the power sector.<sup>1</sup>

### 5.3 Public Awareness and Buy-In

Public awareness and buy-in are crucial components of any successful reform initiative. In the case of Cameroon's electricity sector, consumers must be well-informed about their rights, responsibilities, and the benefits of the planned reforms. Without public support, even the best-intentioned policies are likely to face resistance, and their effectiveness will be undermined. Education campaigns that target consumers' understanding of their rights in relation to power supply, billing, and complaint resolution are essential for building a foundation of trust and cooperation.<sup>2</sup>

These campaigns should not only inform the public about their consumer rights but also emphasize the importance of renewable energy and energy efficiency in improving power reliability. Public buy-in could also be enhanced by ensuring that consumers feel empowered to participate in the decision-making process, such as through consultations or feedback mechanisms. When the public understands the rationale behind reforms and feels involved in the process, they are more likely to support the implementation of new policies, even if these involve some short-term disruptions for long-term gains.<sup>3</sup> Additionally, civil society organizations, media outlets, and regulatory bodies like ARSEL should work together to ensure that information reaches all consumer segments, particularly those in rural and underserved areas.

## 6. Conclusion

This article has examined the structural, regulatory, and governance challenges confronting Cameroon's electricity sector, with particular emphasis on service reliability and consumer protection. It has demonstrated that, despite the existence of a comprehensive statutory framework, significant regulatory gaps persist, limiting effective enforcement and weakening consumer safeguards. In this regard, the institutional capacity and authority of the Electricity Sector Regulatory Agency (ARSEL) remain central to any meaningful reform, as enhanced powers, adequate resources, and greater operational independence are necessary to ensure compliance with service standards and fair billing practices. The study further highlights the persistent infrastructural deficits affecting generation, transmission, and distribution networks, which continue to undermine the stability and reliability of electricity supply. Addressing these challenges requires sustained investment in modern infrastructure, including the rehabilitation of transmission and distribution systems and the expansion of generation capacity. Public private partnerships, alongside increased deployment of renewable energy sources such as solar and wind, offer viable pathways for mobilising capital and improving long-term energy security. Importantly, adopting a corporate law and regulatory governance perspective reveals that the effectiveness of sectoral reforms depends not only on technical and financial interventions but also on the strength of corporate governance obligations imposed on electricity operators. While recent policy initiatives signal a renewed commitment to reform, their largely prospective nature underscores the need for enforceable corporate accountability, transparent management practices, and robust consumer protection mechanisms. Aligning electricity sector governance with core corporate law principles particularly transparency, accountability, fairness, and stakeholder protection would strengthen regulatory oversight and enhance consumer confidence. If effectively implemented and sustained, such an approach would significantly contribute to a more resilient, efficient, and consumer-oriented electricity sector capable of supporting inclusive socio-economic development.

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<sup>1</sup> Amadi, M. (2021). Op. Cit., P. 220.

<sup>2</sup> Che, N. (2021). Op. Cit., P. 117.

<sup>3</sup> Njomo, A. (2020). Op. Cit., P. 213.

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# Mitigating Systemic Risks and Freedom of Expression According to the Digital Services Act Model

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## Abstract

The present paper aims to investigate the co-regulatory model of Regulation 2022/2065 for mitigating systemic risks arising from disinformation. The ultimate goal, according to the European legislator, is to respect the freedom of expression of users of online platform services and search engines in the context of VLOPs and VLOSEs. We are interested in the compatibility of the regulatory model and the principle of legality enshrined in the Charter of the Fundamental Rights of the European Union (CFREU), as well as the related risks and limitations of the regulation itself to mitigate systemic risks that do not conform to the principle of proportionality. Doubts, problems and criticisms remain numerous and certainly warrant thorough consideration of the suitability of co-regulation and the discipline and activity that entails the full moderation of content originating from online users.

**Keywords:** Digital Service Act, disinformation, freedom of expression, CFREU, European Union Law, systemic risks, VLOPs, VLOSEs, proportionality principle, online platforms, regulatory functions

## 1. Introduction

Regulation (EU) 2022/2065 on the Digital Services Act (DSA) (Mantelero, 2022)<sup>1</sup> sought to regulate the related risks associated with providers and intermediary services concerning the transport, temporary storage of information and information concentration (hosting). The DSA has highlighted specific regulations for online platform providers, Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), as well as their intermediaries, according to Article 33 of the DSA. Intermediary platforms assign self-regulatory functions that comply with the adoption of measures to address their systemic risks posed by their services and the related dissemination of harmful and illegal content online. Thus, intermediaries are granted discretion in implementing the DSA.

This system most likely entails a limitation on the exercise of freedom of expression for the recipients of VLOPs and VLOSEs, according to Article 3 of the DSA (entitled: Definitions). In certain situations, intermediaries can remove malicious users and implement a specific system, compliant with Union law, that limits the exercise of fundamental rights. Our investigation focuses on criticisms regarding users' freedom of expression and the regulatory powers of the DSA, which seek to mitigate systemic risks in VLOPs and VLOSEs. The regulatory

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<sup>1</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance), PE/30/2022/REV/1, OJ L 277, 27.10.2022, pp. 1-102. see also: POLICY AND LEGISLATION, 17 November 2025, Report on application of Article 33 of Regulation (EU) 2022/2065 (DSA) and the interaction of that Regulation with other legal acts. <https://digital-strategy.ec.europa.eu/en/library/report-application-article-33-regulation-eu-20222065-dsa-and-interaction-regulation-other-legal>

approach takes as an example the mitigation of systemic risks caused by the dissemination of qualified content, including disinformation. Disinformation practically requires the adoption of a code of conduct by VLOPs and VLOSEs in order to fulfill obligations that mitigate DSA risks. The DSA's risk mitigation obligations are general considerations on issues arising from the delegation of regulatory functions, a precise analysis of the functioning of DSA provisions towards the fight against disinformation and the use of a code of good practices in this sector from 2022<sup>1</sup>.

## 2. Regulation, Co-Regulation of DSA and Freedom of Expression

The DSA regulation was an important milestone in the evolution of European Union law in the fields of anti-discrimination and new technologies in order to prevent and reduce the spread of illegal and harmful content online. This EU regulation seeks to defend fundamental rights in the digital world globally by regulating digital content, also influencing non-European legislation. This phenomenon is characterized by the Brussels effect, which has led to various non-EU legislation based on the General Data Protection Regulation (GDPR)<sup>2</sup> as well as on the protection of personal data (Benedik & Stuerzer, 2023). Subsequently, the Artificial Intelligence Act (AIA) (Schott, 2024)<sup>3</sup> is an important milestone in the field of new technologies, becoming one of the main global standards bases for the regulation of AI (Floridi, 2021).

Cultural differences and different European national systems cause conflicts and difficulties even in countries outside the Union, such as the USA. The legislative benchmark is an innovative model (Zingales, 2022). The content of the DSA text takes into account the principles of the e-commerce directive<sup>4</sup> and the regulations regarding the liability of intermediaries and content disseminated online by third parties pursuant to Articles 3, 4, 5, and 6 of the DSA. The DSA regulation is a regulatory paradigm relating to liability and content disseminated through online intermediary services, moving from an approach that includes the ex-post liability of intermediaries to an ex-ante regulation of their activities (Buiten, 2022). The articles from the e-commerce directive and the exemption regime for liability apply to a category of intermediaries. This category concerns VLOPs and VLOSEs, as the DSA applies additional obligations regarding the risks posed to society by the circulation of harmful information online.

The DSA regulation includes a series of obligations that definitively and precisely regulate intermediaries through a self-assessment that complies with the regulations and external control systems of supervision by competent authorities. This approach offers discretion to those implementing the DSA, thus establishing continuous monitoring of their operations. It is part of section five of the DSA, dedicated to VLOPs and VLOSEs, thus assigning intermediaries the task of acting as self-regulators of their own systemic risks inherent in the use of their services (Zingales, 2022). Supervision and control by the European Commission are carried out by independent experts.

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<sup>1</sup> European Commission the Strengthened Code of Practice on Disinformation 2022, 16 June 2022. <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>

<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, pp. 1–88.

<sup>3</sup> Proposal for a regulation of the European Parliament and of the Council of 21 April 2021 establishing harmonised rules on artificial intelligence (AI Act) and amending certain Union legislative acts. COM/2021/206 final.

<sup>4</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, pp. 1–16.

Article 34 of DSA<sup>1</sup> requires VLOPs and VLOSEs to assess systemic risks to the Union arising from the general design and operation of their service and related systems, including algorithmic systems for the use of their services. This assessment is conducted annually by introducing a critical impact of the identified systemic risks. Article 34 of DSA does not provide a complete list of systemic risks, but rather assesses certain categories of systemic risks related to the dissemination of illegal content, such as potential negative effects on the protection of fundamental rights despite the related civic debate, electoral processes of public safety, the negative effects of violence in general and the negative consequences for the physical and mental well-being of one's person. Article 34, therefore, regulates: "(...) risk assessments by the date of application referred to in the second subparagraph of Article 33, paragraph 6, and at least annually thereafter, and in any case before the introduction of functionalities that may have a critical impact on the risks identified pursuant to this Article. The risk assessment must be specific to their services and proportionate to the systemic risks, taking into account their severity and likelihood, and must include the following systemic risks: - the dissemination of illegal content through their services; - any current or foreseeable adverse effects on the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including freedom and pluralism of the media, enshrined in Article 11 of the Charter, and to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child, enshrined in Article 24 of the Charter, as well as the high level of consumer protection enshrined in Article 38 of the Charter; - any current or foreseeable negative effects on civic debate and electoral processes, as well as on public safety; - any current or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences for the physical and mental well-being of the person (...)".

The risks identified in the VLOPs and VLOSEs are based on Article 35 DSA, which adopts measures that mitigate the risks in a reasonable, proportionate and effective manner. Article 35, paragraph 1 highlights: "(...) the providers of very large online platforms and of very large online search engines shall adopt reasonable, proportionate and effective mitigation measures, adapted to the specific systemic risks identified pursuant to Article 34, paying particular attention to the effects of such measures on fundamental rights (...)".

We must highlight the co-regulatory system whereby supervisory authorities work with intermediaries and define implementing measures pursuant to Article 35 of the DSA. In this spirit, Article 45, paragraph 2, states: "(...) a significant systemic risk within the meaning of Article 34, paragraph 1, arises affecting several very large online platforms or several very large online search engines (...) invite the relevant providers of very large online platforms or the relevant providers of very large online search engines and other providers of very large online

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<sup>1</sup> "Article 34, Risk assessment - the Digital Services Act (DSA). (1) Providers of very large online platforms and of very large online search engines shall diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services (...) Article 33(6), second subparagraph, and at least once every year thereafter, and in any event prior to deploying functionalities that are likely to have a critical impact on the risks identified pursuant to this Article. This risk assessment shall be specific to their services and proportionate to the systemic risks, taking into consideration their severity and probability, and shall include the following systemic risks: (a) the dissemination of illegal content through their services; (b) any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high-level of consumer protection enshrined in Article 38 of the Charter; (c) any actual or foreseeable negative effects on civic discourse and electoral processes, and public security; (d) any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person's physical and mental well-being. (2) When conducting risk assessments, providers of very large online platforms and of very large online search engines shall take into account, in particular, whether and how the following factors influence any of the systemic risks referred to in paragraph 1: (a) the design of their recommender systems and any other relevant algorithmic system; (b) their content moderation systems; (c) the applicable terms and conditions and their enforcement; (d) systems for selecting and presenting advertisements; (e) data related practices of the provider. The assessments shall also analyse whether and how the risks pursuant to paragraph 1 are influenced by intentional manipulation of their service, including by inauthentic use or automated exploitation of the service, as well as the amplification and potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions. The assessment shall take into account specific regional or linguistic aspects, including when specific to a Member State. (3) Providers of very large online platforms and of very large online search engines shall preserve the supporting documents of the risk assessments for at least three years after the performance of risk assessments, and shall, upon request, communicate them to the Commission and to the Digital Services Coordinator of establishment (...)".

platforms, very large online search engines, online platforms and other intermediary services, where appropriate, as well as the relevant competent authorities, civil society organisations and other interested parties, to participate in the development of codes of conduct, including by establishing commitments to adopt specific risk mitigation measures as well as a framework for regular reporting on the measures taken and their results (...)"

A collaboration between intermediaries and the European Commission defines codes of conduct for systemic risk mitigation measures identified by Article 34. In this regard, Article 35 DSA is linked to the reduction of systemic risks arising from illegal content that is harmful and systematically disseminated in certain ways, especially in the case of disinformation. Article 35 is implemented through moderate measures of users' online content that interferes with their fundamental rights. It is noted that Article 35 DSA allows for the precise and regular functioning of VLOPs and VLOSEs, which are linked to the supervision of the European Commission and implement measures capable of limiting the exercise of fundamental rights for users and their freedom of expression. This regulatory approach criticizes compliance with and conditions that restrict the rights protected by the Charter of the Fundamental Rights of the European Union (CFREU) according to the form and substance of the resulting applications.

Criticisms in this regard refer to systemic risks caused by disinformation and are adopted by the code of conduct implemented by Article 35 and provided for by Article 45 of the DSA. Considerations regarding the functioning of the DSA, which regulates the mitigation of systemic risks of disinformation, are not precise and are only briefly outlined in the preambles of the DSA, namely Articles 83, 84, and 88. These articles effectively address the systemic risks of evaluation, the negative effects on civic debate, public safety, public health for minors and the physical and mental well-being of individuals. Obviously, criticisms regarding the protection of freedom of expression and of users arise from the implementation of Article 35 of the DSA.

### **3. Limitations on Freedom of Expression Resulting from the Implementation of Article 35 DSA and the Code**

Article 35 DSA mitigates the risks posed by disinformation. Its interference with users' freedom of expression and with their protection is enshrined in Article 11 CFREU, which provides for the right to freedom of expression and the interference of public authorities without border restrictions. Article 35 DSA interferes with users' freedom of expression in many ways. This article applies to the variety of situations and purposes that fall within the scope of freedom of expression, as implemented by the entities required to do so. The reference to the measures adopted mitigates the risks posed by disinformation considering also the Code, which includes measures that address restrictions on users' freedom of expression, as well as measures concerning the signatories that comply with Article 35 DSA.

The relevant commitments set forth in Articles 18 and 21 of the Code, highlight the signatories and the limits concerning the harmful dissemination of information. These commitments adopt consistent measures according to the prohibition of the restriction of the visibility of content and of the parameters of recommendation systems. This is how the measures constituting the relevant restrictions on freedom of expression are assessed under Article 11 CFREU.

The CFREU's position aims to prioritize the obligations of the Union and of its member states, while avoiding violations of freedom of expression. The provisions also apply to the institutions, bodies of the Union and to member states, according to Article 51 of the CFREU. There are no obligations for private individuals, but only respect for the fundamental rights of the CFREU and of their relationships with other private individuals. The VLOPs and VLOSEs impose limits on the enjoyment of freedom of expression, according to Article 35 of the DSA. The CFREU applies to restrictions that arise directly from fulfilling an obligation under European law. The commitments of the Code implement the means for its signatories to fulfil obligations under Article 25 of the DSA. The application of Article 35 establishes the restriction of a fundamental right as its source. The quality of restriction is based on a European legislative act, which is precisely necessary for the restriction to comply with the CFREU. This assumption is consistent with the CFREU's restriction within the scope of vertical effects imposed by the Charter itself and the institutions of the Union. The effects on private individuals, according to the Court of Justice of the European Union (CJEU), recognize the horizontal effectiveness of freedom of expression, which does not exclude what is provided for in Article 51, paragraph 1, CFREU (Brkan, 2019; Kellerbauer, Klamert & Tomkin, 2024; Silveira, Araújo Coelho, Costa & Cabral, 2024).

The interpretation of this provision takes into account the case law of the CJEU<sup>1</sup>, the General Court<sup>2</sup> and the European Court of Human Rights (ECtHR) with the application of Article 10 of the European Convention on Human Rights (ECHR), which includes freedom of expression. The relevant connection is explained in Article 52, paragraph 3 CFREU. The connection with the ECHR is made explicit in Article 52, paragraph 3 CFREU, which provides that the charter includes rights that correspond to those guaranteed by the ECHR, i.e., rights that are equal and conferred by the convention, without including Union law, which provides for extended protection. The protection of fundamental rights is established by the ECHR and guarantees, as a minimum standard, the application of the CFREU, except for the possibility that the charter confers greater protection. This connection between the ECHR and the CFREU is important for the interpretation of freedom of expression in Union law in connection with the fact that the ECHR's case law on freedom of expression develops and finds application in the case law of the CJEU.

Freedom of expression is protected from disinformation under Article 11 (Bayer, Katsirea, Batura, Hoplznagel, Hartmann & Lubianiec, 2021)<sup>3</sup>. The ECHR protects freedom of information, especially from information that is considered false (Villiger, 2023)<sup>4</sup>, as well as from information and ideas that are disturbing and offensive<sup>5</sup>. The corresponding disinformation articles content protects freedom of expression of online users according to the principle that false content is disseminated without interference from public authorities. Case law can highlight the interference with freedom of expression and users in the case of VLOPs and VLOSEs and in the prohibition of their content from the code. This position is based on Article 18 of the code, which restricts the visibility of content and the measures envisaged that set recommendation systems in a specific way that exclude users' content from search engine results. The interference with freedom of expression is evident and complies with the ECHR and CJEU's content removal requirements. The violation of Articles 10 and 11 requires compliance with a specific legal obligation. The restriction takes into account the general principles of freedom of expression, despite the content not being removed in itself but limiting its circulation through the media.

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<sup>1</sup> CJEU, 20 December 2017, C-434/15, *Elite* ECLI:EU:C:2017:981, published in the electronic Reports of the cases. 19 December 2019, C-390/18, *Airbnb Ireland*, ECLI:EU:C:2019:1112, published in the electronic Reports of the cases. 3 December 2020, C-62/19, *Star Taxi*, ECLI:EU:C:2019:980, published in the electronic Reports of the cases.

<sup>2</sup> General Court, 19 November 2025, T-367/23, *Amazon EU Sàrl*, ECLI:EU:T:2025:1038, published in the electronic Reports of the cases. 3 October 2025, *Zalando*, T-348/23, ECLI:EU:C:2025:821, published in the electronic Reports of the cases. 10 September 2025, T-58/24, *TikTok*, ECLI:EU:T:2025:843, published in the electronic Reports of the cases. 10 September 2025, T-55/24, *Meta Platform Ireland Ltd*, ECLI:EU:T:2025:842, published in the electronic Reports of the cases. 1st March 2024, T-139/24, *WebGroup Czech Republic v. Commission* in progress. order 1st March 2024, T-138/24, *Aylo Freesites v. Commission*, published in the electronic Reports of the cases. 6 February 2025, T-92/25, *Google Ireland v. Commission*, in progress. 20 September 2024, T- 486/24, *NKL Associates v. Commission* in progress. In this regard, the General Court can be said to have deemed the relevant quantitative mechanism. It is based on a designation that ultimately seeks to reject the theory used in the Amazon case for related online platforms and marketplaces, which also involve lower risks and respect social networks. The difference lies in the objectives of its designation. Thus, the cases also raise, as was obvious, some criticisms regarding the DSA, especially regarding the designation of VLOPs and VLOSEs as a quantitative mechanism that appears to be important for calculating the Average Monthly Number of Active Recipients, which are applied uniformly whenever necessary. The General Court held that the criteria indicated and based on Article 33 of the DSA do not violate the relevant principle in general terms, nor do they violate legal certainty in connection with the TikTok and Meta cases. This is also suggested by the relevant criteria, which are sufficient and require further precise integration within the framework of the European Commission, given that it exercises the relevant delegation power proposed by the regulation itself. Intermediary service providers have also implemented moderation practices for their content adopted by DSA for legitimate content that violates the terms and conditions of disinformation. Thus, we can say that the DSA is fully applied to the moderation of legitimate content and has assumed a fundamental role, important for the supervisory authority, which also guides the practices and supervised entities towards the direction of respect for the fundamental rights of their users. The conduct affirmed through the management of VLOPs and VLOSEs, as appropriately adapted by DSA, is consistent with the principle of proportionality and in accordance with the concerns and doubts expressed by the Kirchenberg judges.

<sup>3</sup> According to the authors, freedom of expression has found a relative limit through disinformation aimed at manipulating public debate. This behavior lays the foundation for the protection of freedom of expression. Thus, debate develops, which is not immediately apparent, according to the legitimate use associated with freedom of expression and its abuse.

<sup>4</sup> ECtHR, *Salov v. Ukraine*, num. 65518/01, (2005), par. 113. *Dareskizb v. Armenia*, num. 61737/08, (2021), par. 71ss.

<sup>5</sup> ECtHR, *Handyside v. United Kingdom*, num. 5493/72 (1976), par. 49; *Observer and Guardian v. United Kingdom*, num. 13585/88, (1991), par. 59.

Article 10 of the ECHR applies not only to its own content but also to the means of dissemination.<sup>1</sup> The ECHR affirms freedom of expression when accessing its content.<sup>2</sup> It is noted that recommendation systems also become means of dissemination and shape the online experience for users through the expression of online expressions. According to recommendation systems, intermediaries are free to regulate their own operations, which facilitate the dissemination of content that complies with the CFREU and the ECHR. Disseminating content creates a legal obligation that imposes on the Union and its Member States not to restrict the exercise of freedom of expression.

The relevant interference describes and legitimizes the legal order of the Union only if the requirements of Article 52, paragraph 1, CFREU, namely the principles of legality, legitimacy and proportionality, are respected. These restrictions do not affect the essential content of freedom of expression. The assessment of compliance with these requirements is brought to the attention of the jurisprudence of the ECHR, as are the restrictions on freedom of expression and the restrictions permitted by the CFREU, which do not exceed the relevant applications of the ECHR. The requirement and the level of protection offered by the CFREU are not lower than that guaranteed by the ECHR itself.

The formulation of obligations under Article 35 raises doubts regarding their compatibility with the principle of legality. The related attribution of responsibilities, governing the obligated parties within the framework of the co-regulatory system, paves the way for the principle of proportionality. The conditions set forth in Article 52, paragraph 1, CFREU, which relates to the legitimacy of restrictions and compliance with the relevant essential content of fundamental rights, are not evident. The objectives of this contribution are exposed to criticisms presented by its co-regulatory position and with reference to the fight against disinformation and the protection of the principles of legality and proportionality. These problems begin with criticisms relating to the principle of legality under Article 52, paragraph 1, CFREU.

#### **4. Regulatory Officials, Delegation and Affinity with the Principle of Legality: Co-Regulation of DSA and Evidence**

Limitations arising from Article 52, paragraph 1, CFREU (Kellerbauer, Klamert & Tomkin, 2024; Silveira, Araújo Coelho, Costa & Cabral, 2024) regarding the exercise of the rights and freedoms guaranteed by the Charter are provided for by the law itself. Interpreting this requirement is essential to the case law, especially from the ECHR and less from the CJEU. It is the same legislation that imposes restrictions on the fundamental rights guaranteed by the Charter. However, it respects the principle of legality. It provides precise rules (Kuner, 2018)<sup>3</sup> and defines the relative scope of limitations on the right being impinged upon<sup>4</sup>. The ECtHR has similarly conditioned respect for the principle of legality in the CJEU by affirming a similar principle that respects its restriction according to a legal basis of national law, to be accessible and also foreseeable (Villiger, 2023)<sup>5</sup>. The relevant jurisprudence of the ECtHR as a law that characterizes the material and not its formal meaning includes various categories of written law but not legislative measures and positive norms at a secondary rank as well as measures adopted by bodies that regulate the professionalism of standard-setting powers independently of their delegates from the European Parliament<sup>6</sup>.

The ECtHR includes the notion of “law” as an unwritten right, given that norms derive from case law. “Law” is used when the applicable norm is interpreted by judges who determine the application of the principle of legality within the scope of Article 52, paragraph 1, CFREU. The CJEU has not explicitly invoked the notion derived from the ECHR, thus providing guidance that reflects the notion of its incorporation into European law. The

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<sup>1</sup> ECtHR, *Autronic AG v. Swiss*, num. 12726/87, (1990), par. 47. *Murphy v. Ireland*, num. 44179/98, (2003), par. 61; *Ahmet Yildirim v. Turkey*, num. 3111/10, (2012), par. 50; *Pirate Bay: Neij and Sunde Kolisoppi v. Sweden*, num. 40397/12 (2013); *Pendov v. Bulgaria App*, num. 44229/11, (2020), par. 53.

<sup>2</sup> ECtHR, *Pendov v. Bulgaria*, num. 44229/11, (2020), par. 53. The ECtHR considered the restriction of freedom of expression and functionality on the website to be a compromise as the website remains technically accessible.

<sup>3</sup> CJEU, 17 December 2015, C-419/14, *WebMindLicenses Kft. v. Nemzeti Adóés Vámhivatal Kiemelt Adóés Vám Főigazgatóság*, ECLI:EU:C:2015:832, published in the electronic Reports of the cases, par. 81. 21 December 2016, C-203/15 and C-698/15, *TELE2Sverige*, ECLI:EU:C:2016:970, published in the electronic Reports of the cases, par. 109.

<sup>4</sup> CJEU, 26 July 2017, opinion 1/15, *Accord PNR EU-Canada*, ECLI:EU:C:2017:656, published in the electronic Reports of the cases, par. 139. 16 July 2020, C-311/18, *Facebook Ireland v. Schrems*, ECLI:EU:C:2020:559, published in the electronic Reports of the cases, par. 175. 22 April 2022, C-401/19, *Republic of Poland v. European Parliament and Council of the European Union*, ECLI:EU:C:2022:297, not published, par. 64.

<sup>5</sup> ECtHR, *Sunday Times v. United Kingdom*, num. 6538/74, (1979), par. 49; *Ahmet Yildirim v. Turkey*, num. 3111/10, (2012), par. 59.

<sup>6</sup> ECtHR, *Sanoma Uitgevers B.V. v. The Netherlands*, num. 38224/03, (2010), par. 83.

ECHR principles, as a minimum threshold of protection for human rights and the ECtHR have interpreted the term “law” to ensure a higher level of protection. The lack of precise guidance from the CJEU is based on the precision of the norm, which allows for a restriction that describes its scope and foreseeability for those affected. The quality of norms constitutes a restrictive legal basis and less formal qualification.

### **5. Adequacy of Harmony Between the Principle of Legality and Article 35 of the DSA**

Ascertaining compliance with the principle of legality in an absolute manner, aiming for legal certainty and predictability, means applying the rule that entails the restriction of a fundamental right in a manner necessary for the law to formulate the terms sufficiently, thus allowing for the adaptation of the various types of terms that arise. The moderation obligations for online content and the nature of the specific case regulate and require the provision that formulates the varied terms. In this spirit, the CJEU<sup>1</sup> also recalls the legitimacy of Article 17 of Directive 2019/790, i.e., the DSM directive<sup>2</sup>. In fact, the Kirchenberg judges affirmed the relevant provisions and cases of Article 17, which required broad time limits that leave entities obligated to decide on the precise measures to adopt to fulfill the obligations that conclude the provisions that are part of Article 17 and respect the principle of legality pursuant to Article 52, paragraph 1, CFREU.

The CJEU has confirmed the regulatory legitimacy of delegating important regulatory tasks to private entities, which moderate content and allow for a wide range of discretionary powers to implement actions that significantly impact the exercise and freedom of expression. The criticisms and conclusions of the CJEU under Article 17 concern the assessment and compliance with the principle of legality, highlighting the shortcomings of Article 35 of the DSA with regard to the specification determining the conditions and imposition of restrictions on freedom of expression and the definition of the scope of these restrictions. The relevant CJEU ruling, in conjunction with Article 17 of the DSM Directive, highlights that Article 35 fully complies with the principle of legality, and the different wording, in its application, falls under Article 17 of the DSM Directive. The main criticisms arising from Article 35 respect the principle of legality and define the systemic risks and the conditions under which risk measures and the scope of the resulting restrictions are adopted. The aspects affect the predictability and interference of freedom of expression.

Systemic risks justify the adoption of adaptation measures that are not sufficient and definable within the DSA but identify the VLOPs and VLOSEs. Article 34, paragraph 1, highlights non-exhaustive examples, systemic risks that are formulated for the most part in a varied and broad manner. This approach does not seem sensible and takes into account the European legislator, who does not foresee the systemic risks that arise with the evolution of technology and society. In this context, the VLOPs and VLOSEs are better positioned. The definition of systemic risks as an essential step determines the conditions that, according to Article 35 of the DSA, highlight the adoption of mitigation measures. This is a specific legislation that defines systemic risk, according to Article 34, as a method of identifying risks and criteria for qualitative and quantitative parameters, including cases of risk that have become systemic. The list of public interests is thus at risk. Paragraph 1 is not exhaustive and leaves a question mark regarding the public interests justifying the application of Article 35 and the question of public interests. It is thus justified a risk that arbitrarily applies that article. The list provides broad, definitive public interests given the negative effects of civic debate involving electoral processes, public safety, public health (especially that of minors) and the physical and mental well-being of one’s own person. Combating misinformation by defining the public interest as the protection of civic debate and electoral processes delicately strengthens the subject of divergent interpretations.

Online users are unlikely to have any idea about the adaptation measures and the risks they pose civic debates and electoral processes. The accepted criteria generally harm civic debate and electoral processes. Disinformation and measures conflict with public interests according to the provisions of the DSA. The preambles, as social phenomena, are linked to Article 34. Systemic risks are sufficient and define the dissemination of illegal content as having a negative impact on fundamental rights. Illegality includes and verifies the basis of laws within the scope of the Union, which includes the legislation in force and the case law of a fundamental right that appears to be violated.

The legislative text does not provide guidance regarding the severity of systemic risk. It justifies the adaptation of measures leaving their assessment to the discretion of the obliged entities. The legislative text and the preambles, especially Articles 79 to 91, provide detailed examples that apply to Article 35, which specifies

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<sup>1</sup> CJEU, 22 April 2022, C-401/19, Republic of Poland v. European Parliament and Council of the European Union, op. cit., parr. 73, 74 and 75.

<sup>2</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.), PE/51/2019/REV/1, OJ L 130, 17.5.2019, pp. 92-125.

non-exhaustive examples without providing other general guidance and conditions for its applicability. The conditions relating to the applicability of the article are social phenomena that are not easily measurable given the lack of general guidance and significant uncertainties of an application nature. Assessing and controlling risks by the application date pursuant to Article 33, paragraph 6, letter b) has a critical impact on the risks identified under that article. The risk assessment specifies its services in a manner proportionate to systemic risks, taking into account the severity and probability, which includes systemic risks such as the dissemination of illegal content through its services; foreseeable negative effects on the exercise of fundamental rights relating to human dignity, taking into account Article 1 of the CFREU and private and family life pursuant to Articles 7, 8, 11, 21, 24 and 38 of the CFREU; foreseeable negative effects on civic debate, electoral processes, and public safety; and any foreseeable, current negative effects on the violation in general and on the protection of public health for minors, as well as the negative consequences for the physical and mental well-being of one's person.

Regulating systemic risks is not an entirely new development in European legislation. It finds precedent in the discipline relating to the supervision of financial institutions<sup>1</sup>. The difference between European legislation and prudential supervision of financial institutions and systemic risks highlights the relative conditions for applicability and the provisions that can be calculated for the indications on calculation methods present in the legislation. Within this sphere, social phenomena are included, from DSA and the general definitions, indications on calculation methods. Disinformation, measurement with an impact on civic debate and electoral processes take into account measures that conflict with activities that are different, with heterogeneous approaches and methods (Green, Gully, Roth, Roy, Tucker & Wanless, 2023) that appear difficult, if not impossible (Nimmo, 2020; Altay, Berriche & Acerbi, 2023). Such reasoning makes the law necessary and the criticisms relating to the definition of systemic risk. Article 35 does not define its own mitigation measures and freedom of expression. Article 1 already requires VLOPs and VLOSEs to pay attention to their effects, the fundamental rights measures that provide a list and examples of mitigating measures. Intermediaries thus have the power to adopt moderation measures relating to their content, which necessarily make it necessary to restrict the visibility of content from blocking it to content from a user account that evaluates and ensures respect for freedom of expression. This makes it difficult for users to predict restrictions that are imposed in the near future.

Article 17 of the DSM Directive as well as the CFREU, have already deemed compatible, according to the principle of legality, to use open-ended concepts to regulate the moderation of online content. Article 17, which indicates restrictions on users' freedom of expression defines the practical modalities for mitigating them. Article 17, paragraph 4, benefits from the exemption and liability regime for communication to the public as well as for content that is shared online, which protects copyright. Service providers and the content that can be shared online, depend on the circumstances. Although they do not determine the practical measures and obligations, users who foresee the type of restrictions that arise from the application of Article 17 within Article 35 do not indicate restrictions that can be imposed by the legislative text.

The gap that highlights legal uncertainty does not appear to be reconcilable with the principle of the CJEU and the legislation imposing a restriction on fundamental rights that define the scope of the restriction itself. Article 35, through its wording, does not clarify the implications that preclude potential limitations on the freedom of expression of the online users. The discretion of intermediaries defines the scope of application of Article 35 and the European Commission monitors and controls its application, i.e., the administrative practice. It is questionable whether the gaps in the legislative text are filled and provided for by the codes of conduct and by guidelines that allow the European Commission to adopt standards pursuant to Article 35, paragraph 3. The codes of conduct, guidelines of the European Commission, and voluntary initiatives will be adopted in the near future in a non-mandatory and non-guaranteed manner. They are not binding sources and do not produce legal effects. Consequently, it will be difficult to classify them as "laws" pursuant to Article 52, and paragraph 1 CFREU. This term derives from ECHR jurisprudence<sup>2</sup>. The regulation of DSA and the mitigation of systemic risks appear to be inconsistent with the conditions that require the restriction of fundamental rights according to the CFREU and the principle of legality.

From the previous paragraphs, we understand that we are faced with a situation that ensures legal certainty through transactions that conflict with the self-regulation of the platforms themselves. The legislator's democratic legitimacy guides its regulatory intervention with a top-down rule based on Article 114 TFEU. By attempting to regulate the lack of legitimacy, negative externalities and platforms, which define the related powers of control over providers and their users, are left under the subsidiarity and proportionality principles.

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<sup>1</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance, OJ L 176, 27.6.2013, pp. 1-337.

<sup>2</sup> ECtHR, *Sanoma Uitgevers B.V. v. the Netherlands*, num. 38224/03 (2010), par. 8.

These principles demonstrate and contribute to the removal of obstacles within a single digital market, which is useful for harmonizing a horizontal solution that guarantees a certain flexibility for Member States. The protection of providers and rights holders precludes the prohibition of discrimination. The inapplicability of the law stems from a justice system that fulfills a nomophylactic function, verifying referrals that lead to a consequence of applicability for the solutions offered. This is due to factual data that do not exclude the quality, the power of the platforms and the actions that imply a conflict with the single digital market, paving the way for a response that will be provided through the rulings of the Kirchenberg judges.

## **6. Proportionality and Application of Article 35 DSA: Protection of Freedom of Expression and Content Moderation**

The delegation of regulatory responsibility to DSA intermediaries, as a consequence of delegation within the framework of the proportionality principle of Article 52, paragraph 1 CFREU, proposes and demonstrates the general structure of DSA, which appears to highlight the protection afforded by restrictions that arise within the framework of compliance with the proportionality principle and the rationale underlying the case within the substance of an application practice.

The DSA provides procedural safeguards to protect freedom of expression to intermediary service providers that are proportionate and non-arbitrary. The procedural choices set out in the DSA regulation include the review of decisions restricting freedom of expression adopted by intermediaries against erroneous or arbitrary decisions, ensuring that no interference is limited. Article 20, paragraph 1 of the DSA, highlights the obligation for online platform providers to provide users with an effective national complaints system that allows for and submits complaints that challenge restrictions and decisions on freedom of expression<sup>1</sup>. Article 20 requires decisions and complaints to justify the supervision of personnel, which does not occur through automated tools. Article 21, paragraph 1 of the DSA provides that affected users have the right to choose their own certified out-of-court dispute resolution body for disputes related to their decisions. Users have the right to appeal to the competent courts of a Member State complaining of a violation of fundamental rights. The signatories to the Code submit their users' complaints to a transparent system pursuant to Article 24 of the same Code. The procedural system facilitates proportionate enforcement pursuant to Article 35 DSA, in accordance with the case law of the CJEU.<sup>2</sup>

Regulation DSA calls for compliance with the principle of proportionality according to Article 14, par. 4.0,<sup>3</sup> which requires its intermediaries to highlight restrictions related to the service used, including content, acting

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<sup>1</sup> “Internal complaint-handling system: (1) Providers of online platforms shall provide recipients of the service, including individuals or entities that have submitted a notice, for a period of at least six months following the decision referred to in this paragraph (...) provider of the online platform upon the receipt of a notice or against the following decisions taken by the provider of the online platform on the grounds that the information provided by the recipients constitutes illegal content (...): (a) decisions whether or not to remove or disable access to or restrict visibility of the information; (b) decisions whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients; (c) decisions whether or not to suspend or terminate the recipients' account; (d) decisions whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients. (2) The period of at least six months referred to in paragraph 1 of this Article shall start on the day on which the recipient of the service is informed about the decision in accordance with Article 16(5) or Article 17. (3) Providers of online platforms shall ensure that their internal complaint-handling systems are easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints. (4) Providers of online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, non-discriminatory (...) sufficient grounds for the provider of the online platform to consider that its decision not to act upon the notice is unfounded or that the information to (...) it shall reverse its decision referred to in paragraph 1 without undue delay. (5) Providers of online platforms shall inform complainants without undue delay of their reasoned decision in respect of the information to which the complaint relates and of the possibility of out-of-court dispute settlement provided for in Article 21 and other available possibilities for redress. 6. Providers of online platforms shall ensure that the decisions, referred to in paragraph 5 (...).”

According to art. 21, par. 1: “Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified (...) Providers of online platforms shall ensure that information about the possibility for recipients of the service to have access to an out-of-court dispute settlement, as referred to in the first subparagraph, is easily accessible on their online interface, clear and user-friendly (...) right of the recipient of the service concerned to initiate, at any stage, proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law.”

<sup>2</sup> CJEU, 22 April 2022, C-401/19, Republic of Poland v. European Parliament and Council of the European Union, op. cit., par. 94.

<sup>3</sup> According to art. 14, par. 4: “Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service (...).”

diligently, objectively and proportionately towards the recipients of the service and freedom of expression. The obligation of Article 14, par. 4 limits the application and conditions of the services offered by its users, introducing standards of conduct for intermediaries that respect the relationship with users, including the implementation of moderation practices and their own content. The relevant provision is interpreted as a type of obligation relating to its intermediaries that protects the fundamental rights of users, introducing the indirect horizontal effectiveness of the rights realized through the terms of conditions and services offered by intermediaries (Quintais, Appelman & Fathaigh, 2023). Article 35, par. Article 1 includes adaptation measures for systemic risks that are reasonable, proportionate, effective and that pay particular attention to the effects and measures of fundamental rights. These articles highlight the legislative approach that assigns the regulatory responsibility of intermediaries that become independent co-regulatory regulators to dialogue with the executive (Mylly, 2021). It is clear that the delegation approach of Article 14, paragraph 4, and Article 35, paragraph 1, in conjunction with Article 45, encourages the adoption of codes of conduct in operations with all parties that adequately define the systemic risks identified under Article 34.

This position establishes obligations that respect fundamental rights (Senftleben & Quintais, 2023) and presupposes that intermediaries are responsible for moderation measures and content that complies with the principles of the CFREU and the principle of proportionality. Moderating their own content is a voluntary initiative for intermediaries who fulfill the obligations of Article 35. The definition of fundamental aspects establishes freedom of expression for certain contexts between private entities. Article 14, paragraph 1 highlights intermediary service providers who provide general conditions and information regarding content restrictions and the recipients of their service with reference to the procedures, policies, measures and tools used for content moderation, which include algorithmic decision-making and human review, as well as the procedural rules of a national complaint management system. The user of the services is made aware of possible limitations as a subject through a contractual document and as a guarantee to be able to distinguish the restrictions of his own law in a voluntary manner made available to his intermediaries.

## **7. Respect for the Principle of Proportionality and Practice of DSA**

The willingness and ability of intermediaries ensure a restriction that, in a proportionate manner, seeks to specify the modalities that occur and are problematic for various reasons. A logical intermediary moderates the content that complies with the legislative obligation that drives and decides the measures that, in practice, implement commercial reasoning that respects fundamental rights. The tendency is to adopt an approach that minimizes the risk of non-compliance with the law by strengthening content moderation for risky situations. This risk imposes restrictions on content (overblocking). This risk also highlights and refers to content moderation pursuant to Article 17 of the DSM Directive (Zumbansen, 2007; Hartzog, Melber & Salinger, 2013; Perel & Elkin Koren, 2016; De Gregorio, 2022; Senftleben & Quintais, 2023), which seeks to address the delegation of intermediaries and the related respect for fundamental rights. Disinformation and intermediaries act with users and/or fact-checkers according to the commitments made through the code that prepares sophisticated web manipulation techniques using generative artificial intelligence applications (Goldstein, Sastry, Musser, Di Resta, Gentzel & Sedova, 2023; Akhtar, 2023; Patel & Sattler, 2023).

We cannot ignore the use of automated tools that are becoming increasingly appropriate and combat certain techniques for disseminating disinformation. The use of automated tools poses a risk of overblocking for intermediaries. Article 17 of the DSM Directive and Article 14, paragraph 4 of the DSA (Senftleben, Quintais & Meiring, 2023) transfer to intermediaries the responsibility to define and respect the fundamental rights of their users, which in specific cases can serve as a model in practice. Criticisms arise and concern intermediaries' adoption and interpretation of open concepts as a path to due diligence and proportionality and as a precise application that aligns with their commercial interests and the need to protect the fundamental rights of their users. Consequently, the circumstances concerning the conflict of interests of intermediaries with their users become an aspect of attention for the independent regulators. The principle of proportionality does not respect, refer to, or define the legislative text, i.e., it does not create a distinction between the category of political or commercial content and the category for the creators of their own content, the watchdogs and/or simple users.

Applying proportionality and respecting the fundamental rights imposed by DSA requires intermediaries to consider their own costs and efficiency when structuring the internal processes that govern their content. VLOPs and VLOSEs have a certain degree of discretion implemented between open concepts that constitute a logical, aligned choice that predominantly has commercial interests. VLOPs and VLOSEs effectively encourage the principle of proportionality and risk-based obligations that depend on an obligated entity's resources and characteristics. The connection with cost and efficiency considerations regarding DSA obligations and due

diligence is evident in Article 41 of the preamble to DSA.<sup>1</sup> DSA obligations and their characteristics expose each intermediary to the risk of considerations and costs that take on significant weight in the implementation of Article 35 of the DSA.

There are doubts regarding the principle of proportionality as well as with the moderation of the content of compliance with Article 35 of the DSA, and especially whether VLOPs and VLOSEs act in favor of the public interest and that of users. The DSA highlights disproportionate restrictions on freedom of expression and on control systems. Users use a system of remedies at certain levels. The DSA highlights a system of supervision and regular monitoring of the operations of VLOPs and VLOSEs, which is based at the European level on the European Commission's supervisory authority. Thus, the judicial and extrajudicial control systems redress mechanisms and the European Commission's oversight offer a remedy for the risks of outsourcing and regulatory functions on the part of intermediaries.

### **8. DSA Extrajudicial Procedures and Complaint Mechanisms**

The complaint and redress mechanism proposed by DSA protects restrictions on users' freedom of expression. The provision of this type of mechanism requires, according to Article 20 of DSA, a series of decisions that seek to limit users' freedom of expression. Article 54 of the DSA requires users to seek compensation from providers and intermediary services for damages and losses incurred as a result of violating the obligations established by DSA. The relevant mechanisms seek to mitigate the risk to intermediaries and the erroneous and arbitrary decisions related to moderating content deemed incompatible or illegal with the general conditions. The mechanisms thus effectively fulfill their function. Also, the users are able to fulfill their role in identifying violations and the relevant legislation that affects the means to take action. This guarantees effective and precise redress. An effective remedy that has ensured respect for users' fundamental rights, in accordance with the general principle of effectiveness, which seeks to justify and enforce erroneous and arbitrary decisions by intermediaries. The argument that a complaint mechanism is managed by intermediaries does not guarantee effective protection for their users' freedom of expression. Another argument concerns the risk that the intermediaries do not adequately implement the complaint and appeal mechanisms. Article 20 of the DSA does not provide precise guidance on the structural mechanism. The general terms and tense used reflect the process of designing online interfaces to ensure the exercise of users' complaints and appeal rights.

Article 20, together with Articles 14 and 35, formulates the standard of conduct that requires user-friendly and accessible systems that allow the submission of complaints that are precise, sufficiently reasoned and comprehensive. Online platform providers must handle complaints in a timely, non-discriminatory, non-arbitrary and diligent manner. Compliance with the principle of proportionality pursuant to Articles 144 and 34 helps online platform providers enjoy a certain discretion in deciding and implementing the relevant standards. Doubts and problems arise regarding the timeframes for handling complaints. Article 20, paragraph 4, of the DSA does not fail to provide precise instructions and require providers to rescind the decision without delay. Perhaps the fact that it includes content published on online platforms that lose relevance within a short period of time seems insufficient. In certain cases, they promptly remove the restriction imposed on the content until the remedy is effective for their user. Article 20 does not expressly include a supplier who takes into account the nature and content of the contract as the object of restriction. It differs from the response time requirement due to the late reversal of its decision. We can say that the obligation to differentiate is based on circumstances that aim to interpret the obligations in this regard.

Article 20 does not guarantee online platform providers, but effectively considers any circumstances indicating the need to proceed urgently with the decision review process. A logical provider tends to establish appeal and complaint procedures that involve the least costs, as long as they are granted. Misinformation, shortcomings of Article 20 and the practical implementation of appeal and complaint mechanisms are not remedied by the Code,

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<sup>1</sup> According to preamble 14 DSA: "(...) The concept of "dissemination to the public", as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, meaning making the information easily accessible to recipients of the service in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question (...) information requires registration or admittance to a group of recipients of the service, that information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access (...) defined in Directive (EU) 2018/1808 of the European Parliament and of the Council, such as emails or private messaging services, fall outside the scope of the definition of online platforms as they are used for interpersonal communication between a finite number of persons determined by the sender of the communication (...) Regulation for providers of online platforms may apply to services that allow the making available of information to a potentially unlimited number of recipients (...) the meaning of this Regulation only where that dissemination occurs upon the direct request by the recipient of the service that provided the information (...)".

but are miscellaneous matters under Article 24. The combination of the legislative text of the DSA and the Code supports online platform providers, who enjoy discretion in structuring complaint mechanisms. Appeals based on risk-related considerations and needs are the basis for inefficient and ineffective mechanisms that do not adequately protect users' freedom of expression. Users who are not motivated to take action and who do not have effective and efficient access to the remaining protections against the illegal conduct of providers and online platforms.

In this way, users create problems for notification and complaint systems as intermediaries (West, 2018; HateAid Report, 2022; Senftleben, Quintais & Meiring, 2023). A certain proactivity is relied upon users seeking redress against decisions restricting freedom of expression, that is, an approach based on a false assumption. It has been shown that users are largely unmotivated. The users file complaints against decisions that seek to limit freedom of expression (Urban & Quilter, 2006). They seek to act and proceed without waiting for an intermediary response (West, 2018). We must expect that in the case of disinformation, the application of the restriction and its own content generates a certain chilling effect that is capable of producing deterrent effects on users. A restriction is thus applied to false content that prevents the user from acting with full awareness. The spread of fake news is affected by the stigma attached to the content's classification and the perceived misinformation resulting from participation in a seemingly inappropriate public debate. This reasoning is discouraging for a user, namely, filing a complaint against a decision made by an intermediary. This does not ensure the proper functioning of complaint mechanisms and related appeals, which are mitigated for the protection and freedom of expression of its users.

### **9. Finding Out-Of-Court Dispute Resolutions**

Article 21 of the DSA<sup>1</sup> provides users with the right to submit complaints. According to Article 20, access to out-of-court dispute resolution through intermediaries is through a valid, specific and certified body in accordance with Article 20, paragraph 3 of the DSA. Out-of-court dispute resolution bodies are certified by the Digital Services Coordinators, which meet the requirements of impartiality and independence. These bodies are independent, external and respectful of the parties involved in the dispute. The bodies are competent to resolve disputes that proceed quickly, effectively and efficiently. In the case of Meta Oversight Board, the court introduced some safeguards that guarantee the independence and reliability of a reorganization that meets the requirements for the dispute resolution (Kuczerawy, 2023).

The certification requirements for out-of-court dispute resolution bodies address the criticisms raised about complaints and appeal mechanisms, which are based on the fact that these bodies are external, independent and respectful of intermediaries by acting expeditiously and motivating users to appeal. The bodies' structured certifications, in the future and the possibility of significant divergences among Member States, have the power to impose dispute resolution procedures that are binding on the parties, all that is provided for in Article 21, paragraph 2 of the DSA. Intermediaries decide to comply with the decisions of out-of-court bodies. Users thus turn to these bodies. Effective protection of freedom of expression is not guaranteed for intermediaries who decide not to comply with the decision-making party's requests. The conclusion reached for complaints and appeal mechanisms does not guarantee effective protection of freedom of expression for users in the event of erroneous decisions that are abusive to intermediaries.

### **10. Courts and Related Appeals**

Appeals filed with the intermediary that has turned to alternative dispute resolution bodies retain the right to appeal to a court. For users, the ability to access a judgment from an independent body means obtaining binding decisions that remedy the shortcomings of other remedial options.

There are no criticisms regarding judicial recourse based on the independence and competence of its own body, which is competent given the doubts regarding users' motivation to act, as well as effective protection for the time required for judicial resolution of disputes within the Union.<sup>2</sup> Judicial procedures are very time-consuming and costly for EU member states. The restrictions applied to online content depend on the possibility of

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<sup>1</sup> Article 21, par. 1: "Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with paragraph 3 of this Article (...) Providers of online platforms shall ensure that information about the possibility for recipients of the service to have access to an out-of-court dispute settlement, as referred to in the first subparagraph, is easily accessible on their online interface, clear and user-friendly (...) prejudice to the right of the recipient of the service concerned to initiate, at any stage, proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law (...)"

<sup>2</sup> European Commission 2025: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2025 EU Justice Scoreboard, 01.07.2025 COM (2025) 375 final.

obtaining precautionary measures, which are not always possible. The news published online take into account the time constraints and the possibility of obtaining precautionary measures.

### **11. The Role of the European Commission and the Oversight Mechanisms for VLOPs and VLOSEs Through the DSA Regulation**

The discretion of VLOPs and VLOSEs is linked to oversight systems, with investigative powers of a sanctioning nature and oversight for the correct implementation of the DSA. These screening and oversight systems, through the European Commission, seek to verify the contribution of the principle of proportionality, which respects the effective protection of users' freedom of expression.

The DSA regulation and the control mechanisms provided for in Articles 35, paragraphs 2 and 3, 37, 40, 45, paragraphs 3 and 4, and 65 and the following indicate ex ante that VLOPs and VLOSEs are suitable and that they comply with the DSA obligations and the ex post control mechanisms on their operation.

Article 35, paragraphs 2 and 3 establish a committee that collaborates with the European Commission and publishes the reports and practices of VLOPs and VLOSEs that monitor identified systemic risks. This allows the ability to guide its providers towards applying DSA obligations that best respect the fundamental rights of its users, limiting the discretion offered by the DSA text.

It is immediately apparent that, pursuant to Article 40, paragraph 1 of the DSA,<sup>1</sup> the European Commission may request access to VLOP and VLOSE data for the purpose of monitoring and evaluating its compliance with the DSA's operations and provisions. Another ex-post control concerns the independent review required by Article 37, paragraph 1, for VLOPs and VLOSEs. This has to do with the evaluation of the systemic risk mitigation obligations, which are related to the codes of conduct, protocols and the signatories' crisis management.<sup>2</sup> The relevant reviews conducted by the organizations meet the requirements of independence and professional ethics. Thus, each type of review complies with the relevant obligations and commitments of VLOPs and VLOSEs, whether positive, negative, and/or positive with observations. A negative review opinion is accompanied by a report that provides operational recommendations for remedial and implementation measures. The VLOPs and VLOSEs receive negative reviews, which take into account their recommendations and address any shortcomings that arise in order to adopt a report suitable for review, describing the measures adopted. In this way, operational recommendations, reasoning for selection and alternative measures are implemented. The review system takes into account that the European Commission has access to the reports of the independent organizations of the VLOPs and VLOSEs pursuant to Article 40 of the DSA. And this pursuant to the European Commission's supervisory and investigative powers exercise provided for in Articles 67, 68, 69, and 72 of the DSA.

Information gathering is necessary for carrying out inspections and monitoring actions. This is a supervisory and control system independent of the European Commission. It is logical that the European Commission, through independent auditors, carries out these actions on behalf of the VLOPs and VLOSEs.<sup>3</sup> This remedy prevents any audit judgments that are negative and require financial sanctions pursuant to Articles 70, 71, 73, and 74 of the DSA.

Another ex ante control mechanism is linked to the European Commission's direct investigative powers, which are based on Articles 66 et seq. of the DSA. The European Commission thus initiates an investigative procedure that adopts its own decision, which is not compliant with the imposition of financial sanctions as established in Articles 73 and 74 of the DSA. Within this framework, provisional measures exist through a procedure established in Article 70 of the DSA. However, according to Article 71 of the DSA, the European Commission makes the commitments undertaken by a VLOP or a VLOSE binding. The European Commission has exercised its powers of control and oversight over information through control systems established by the DSA

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<sup>1</sup> Art. 40, par. 1: "(...) Providers of very large online platforms or of very large online search engines shall provide the Digital Services Coordinator of establishment or the Commission, at their reasoned request and within a reasonable period specified in that request, access to data that are necessary to monitor and assess compliance with this Regulation (...)"

<sup>2</sup> Art. 37, par. 1: "(...) Providers of very large online platforms and of very large online search engines shall be subject, at their own expense and at least once a year, to independent audits to assess compliance with the following: (a) the obligations set out in Chapter III; (b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 45 and 46 and the crisis protocols referred to in Article 48 (...)"

<sup>3</sup> According to art. 37, par. 6: "(...) Providers of very large online platforms or of very large online search engines receiving an audit report that is not 'positive' shall take due account of the operational recommendations addressed to them with a view to take the necessary measures to implement them (...) adopt an audit implementation report setting out those measures (...) shall justify in the audit implementation report the reasons for not doing so and set out any alternative measures that they have taken to address any instances of non-compliance identified (...)"

autonomously as appropriate. Article 45 includes the relevant intervention by the European Commission and the Committee regarding the development and implementation of codes of conduct. Thus, the European Commission and the Committee influence the content of codes of conduct. Recipients who, according to the DSA rules, indirectly influence the content, which facilitates and encourages their own development according to Article 45, par. 11, do not participate in the drafting of their own codes.<sup>1</sup>

In this spirit, the European Commission and the Committee monitor the adaptation of the codes of conduct through their own mechanism and through the measures that adopt the results envisaged by the code itself, according to Article 45, par. 3 DSA.<sup>2</sup> Section X of the code already provides that the signatories are committed to submitting their periodic reports to the European Commission. The signatories must also adapt to the code and to the resulting results envisaged in Articles 38 and 44. The European Commission and the Committee seek to assess whether the codes of conduct can meet the purposes that take into account any key indicators for providing services through their conclusions and publications. Article 45, par. 4 systematically provides for the codes of conduct. The European Commission and the Committee invite the signatories to also adopt the relevant measures that are necessary in this regard.

## 12. European Commission Supervision: Problems and Solutions

From the previous paragraphs, we have learned that mechanisms and tools exist to protect the fundamental rights of platform users as well as online search engines. This ensures a level of scrutiny and broad discretionary control, which is attributed to VLOPs and VLOSEs through fulfillment of the obligations of Article 35 of the DSA. The European Commission thus acts *ex ante* by adopting practices, guidelines and recommendations on mitigation measures that influence the content of codes of conduct developed pursuant to Article 45. It also ensures, pursuant to Article 35, that it does not excessively interfere with its users' right to freedom of expression. The European Commission thus has numerous tools for *ex post* monitoring of codes of conduct, particularly through independent reviews. The European Commission thus benefits from a continuous flow of information relating to the obliged entities, which is effective under its investigative powers.

The reasoning is based on the European Commission's control through mechanisms that do not allow for the protection of users' freedom of expression. The DSA, as an authority with administrative powers, together with the European Commission, continuously monitors VLOPs and VLOSEs. According to Article 66 of the DSA, the European Commission initiates administrative proceedings if it suspects VLOPs or VLOSEs of attempting to violate the provisions of the DSA. The European Commission's conferral of powers is quite problematic since the European Commission is not an independent authority but an executive body that, through ties to political power, lays the foundations of the Union's institutional system, pursuant to Article 17, paragraph 7, TEU (Kellerbauer, Klamert & Tomkin, 2024). Political pressure plays a primary role in defining applicable rules to the infrastructures managed by the so-called gatekeepers. This arrangement thus presents obvious risks to users' freedom of expression, considering the oversight of countermeasures. Close cooperation and ongoing dialogue with the entities overseen by the European Commission are linked to the political authorities, which participate in defining mechanisms that decide whether or not content and restrictions are acceptable.

The resulting risks of attribution to the European Commission's supervisory powers result in the participation of the European Digital Services Committee in the decision-making processes for the supervision and activities of VLOPs and VLOSEs, in accordance with Section 5 of the DSA, as well as Section 6, which refers to codes of conduct and related crisis protocols. The Committee participates in the relative supervision of VLOPs and VLOSEs, which is mitigated according to the political considerations influencing the European Commission's decisions. The Committee includes and represents the Digital Services Coordinator (DSC) in accordance with Article 62, paragraph 1 of the DSA.

Article 50 of the DSA requires member states to ensure that the DSC operates with full independence and autonomy to manage the budgets and adequate resources required for its functions. The impartiality and independence guarantee the Committee's work. The Committee's independence includes to the states the factors

<sup>1</sup> Art. 45, par. 1: "(...) The Commission and the Board shall encourage and facilitate the drawing up of voluntary codes of conduct at Union level to contribute to the proper application of this Regulation (...) challenges of tackling different types of illegal content and systemic risks, in accordance with Union law in particular on competition and the protection of personal data (...)".

<sup>2</sup> Art. 45, par. 3: "(...) When giving effect to paragraph 1 and 2, the Commission and the Board, and where relevant other bodies, shall aim to ensure that the codes of conduct clearly set out their specific objectives, contain key performance indicators to measure the achievement of those objectives and take due account of the needs and interests of all interested parties, and in particular citizens, at Union level. The Commission and the Board shall also aim to ensure that participants report regularly to the Commission and their respective Digital Services Coordinators of establishment on any measures taken and their outcomes, as measured against the key performance indicators that they contain (...)".

that foresee the participation of other national authorities. The DSA does not require compliance with independence requirements. The European Commission chairs the Committee and provides approval for the adoption of internal regulations, although it does not have a veto right under Article 62 of the DSA. The Committee has an advisory role as well as the task of supporting the European Commission within the scope of the DSA. As an independent body, it has its own effects and does not have supervisory powers of a sanctioning or corrective nature. The Committee's presence is not sufficient to address the risks arising from the attribution of supervisory functions to the European Commission as a mitigating measure for these types of risks and as a structure that acts in a specific manner.

In practice, the oversight system highlights the content of DSA as part of the intermediaries with weaknesses. The risks to users' freedom of expression attribute the supervisory functions to an independent institution that participates in the same committee, without balancing its connection with the political power of the European Commission.

### 13. Conclusions

The work of DSA is based on co-regulation that seeks to regulate VLOPs and VLOSEs with the aim of bringing future benefits. In this context, the rules adapt flexibly to the specific situations and systemic risks that arise. These benefits are accompanied by risks that affect the freedom of expression of users within the DSA framework. Mitigating systemic risks occurs through Article 52 CFREU. The shortcomings of the DSA regulation, which respects the principle of legality, are evident. DSA appears to respect the principle of proportionality. Its application is highlighted due to the risk of disproportionate restrictions, as well as the risk posed by the control and actions of intermediaries that do not guarantee effective protection of their users' freedom of expression.

Intermediary services prioritize their content before adopting DSAs, which operate legitimately and precisely in terms that influence disinformation.

The DSA regulation has broad application within the moderation of legitimate content, occurring at a level of direct obligation under its own law. The European Commission thus assumes an important role as a supervisory authority, guiding practices for supervised entities in a direction that respects the fundamental rights of users. The right direction is possible from VLOPs and VLOSEs, which adapt DSAs in a manner that respects the principle of proportionality and the problems that have arisen. However, the problem remains that the European Commission, as an executive branch and as an institution, has political influence and decides on sensitive aspects concerning the exercise of freedom of expression online. Its interference with freedom of expression results in the implementation of Article 35, which does not respect the principle of legality. The practical implications of DSA and the level at which the European Commission is able to guide towards a greater, more precise adaptation and implementation of the content of the regulation under investigation remain debatable.

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# An Assessment of the Effectiveness of the Common Initiatives of Cameroon and Nigeria to Fight Piracy in the Gulf of Guinea

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## Abstract

Piracy in the Gulf of Guinea has posed persistent threats to maritime trade, regional stability, and coastal livelihoods, prompting increased legal and operational responses from littoral states. This study evaluates the effectiveness of the common initiatives of Cameroon and Nigeria in combating piracy, using a doctrinal legal methodology anchored in maritime security and human security theory. It examines the domestication of international maritime norms, institutional coordination mechanisms, and operational collaboration between the two states, while also assessing structural constraints that shape enforcement outcomes. The findings reveal a significant shift from fragmented and reactive enforcement toward coordinated maritime governance. Strengthened domestic legislation, improved prosecutorial frameworks, joint patrols, and enhanced intelligence cooperation have contributed to measurable improvements in maritime security and deterrence credibility. However, effectiveness remains conditional. Resource volatility, institutional fragmentation, uneven judicial specialization, intelligence integration gaps, and persistent socio-economic drivers of maritime crime limit the durability of current gains. The study advances scholarship by proposing a multidimensional governance-based framework for assessing anti-piracy effectiveness, moving beyond incident-count reduction to incorporate legal compliance, institutional capacity, operational coordination, and structural sustainability. It further reframes piracy suppression as a governance consolidation challenge rather than merely a naval enforcement issue. The study concludes that while Cameroon and Nigeria have made substantive progress in strengthening maritime governance, long-term stability in the Gulf of Guinea will depend on sustained institutional resilience, regional coordination, and structural reform.

**Keywords:** assessment, effectiveness, Cameroon, common initiatives, Nigeria, piracy, Gulf of Guinea

## 1. Introduction

Maritime insecurity in the Gulf of Guinea has, over the past two decades, transformed from sporadic criminality into a complex and organized transnational security threat. The Gulf of Guinea stretching from Senegal to Angola constitutes a vital maritime corridor for international trade, hydrocarbon exports, and regional commerce. It serves as a strategic maritime space for both coastal and landlocked African states, linking Central and West Africa to global markets. However, the region has consistently recorded high incidences of piracy, armed robbery at sea, kidnapping for ransom, oil theft, and other forms of maritime criminality.<sup>1</sup> At its peak, the Gulf of Guinea accounted for the majority of global kidnappings of seafarers, underscoring the gravity and

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<sup>1</sup> International Maritime Bureau. (2023). *Piracy and armed robbery against ships: Annual report 2023*. ICC International Maritime Bureau.

violence associated with attacks in the region.<sup>1</sup>

The roots of piracy in the Gulf of Guinea are closely linked to broader structural challenges, including weak maritime governance, limited naval capacity, porous maritime boundaries, corruption, youth unemployment, and the proliferation of small arms particularly in the Niger Delta region.<sup>2</sup> Unlike Somali piracy, which primarily occurred on the high seas, piracy in the Gulf of Guinea often takes place within territorial waters and exclusive economic zones, raising complex jurisdictional and legal enforcement questions under the United Nations Convention on the Law of the Sea (UNCLOS). The predominance of attacks within national waters has required coastal states to assume primary responsibility for enforcement, thereby highlighting capacity constraints and gaps in domestic legal frameworks.

Within this context, Nigeria has historically emerged as the epicenter of piracy incidents in the region, largely due to militancy, oil theft networks, and criminal syndicates operating from the Niger Delta. The country's strategic position as a major oil exporter and maritime hub renders it particularly vulnerable to maritime crime. Cameroon, sharing maritime boundaries and economic interdependence with Nigeria especially around the Bakassi Peninsula and adjacent waters has experienced spillover effects, including attacks on commercial vessels and offshore installations. The transboundary nature of these threats underscores the inadequacy of unilateral enforcement measures and the necessity of coordinated responses.

Recognizing these challenges, Cameroon and Nigeria have progressively developed common initiatives aimed at suppressing piracy and strengthening maritime security governance. Bilateral naval cooperation, coordinated patrols, intelligence sharing, and capacity-building efforts have complemented participation in broader regional frameworks. Notably, the 2013 Yaoundé Summit on Maritime Security led to the establishment of the Yaoundé Architecture for Maritime Security, a framework integrating West and Central African states in joint efforts against piracy and other maritime crimes.<sup>3</sup> Through cooperation under sub-regional bodies such as the Economic Community of West African States and the Economic Community of Central African States, both countries have sought to institutionalize collective maritime security mechanisms.

At the domestic level, legal reforms have further shaped the anti-piracy landscape. Nigeria's Suppression of Piracy and Other Maritime Offences Act 2019 represents a landmark legislative development, domesticating international obligations and enabling prosecution of piracy offenses within national courts. Cameroon has similarly strengthened its maritime security institutions and naval capabilities. Despite these measures, empirical debates persist regarding the actual effectiveness of bilateral and regional initiatives. While piracy statistics indicate fluctuations and, in certain periods, notable reductions in incidents<sup>4</sup>, questions remain about sustainability, coordination efficiency, prosecutorial outcomes, and long-term deterrence.

Against this background, this article assesses the effectiveness of the common initiatives undertaken by Cameroon and Nigeria to combat piracy in the Gulf of Guinea. It evaluates operational collaboration, legal harmonization, and institutional coordination to determine whether these joint mechanisms have translated into measurable and sustainable improvements in maritime security. By situating the analysis within broader discourses on regional security governance and collective action in Africa, the study contributes to ongoing scholarly and policy debates on maritime cooperation and anti-piracy enforcement.

## 2. Conceptual Clarification

This section clarifies the major concepts underpinning the study: assessment effectiveness, common initiatives, piracy, Gulf of Guinea, Cameroon, and Nigeria. Clear conceptual definitions ensure that the study's theoretical and analytical framework is precise and aligned with existing literature.

### 2.1 Assessment

Assessment refers to the systematic evaluation of policies, programs, or interventions to determine their value, quality, or effectiveness. According to the Oxford Advanced Learner's Dictionary (2015),<sup>5</sup> assessment is "the

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<sup>1</sup> United Nations Office on Drugs and Crime. (2022). *Maritime crime in the Gulf of Guinea: Assessing the threat and legal responses*. UNODC.

<sup>2</sup> Onuoha, F. C. (2012). Piracy and maritime security in the Gulf of Guinea: Trends, concerns and propositions. *Journal of the Middle East and Africa*, 3(2), 267–293.

<sup>3</sup> Ate, B. E. (2014). The Gulf of Guinea and maritime security: The Yaoundé process and the prospects for regional cooperation. *African Security Review*, 23(2), 145–160.

<sup>4</sup> *Ibid.*

<sup>5</sup> Oxford University Press. (2015). *Oxford advanced learner's dictionary* (9th ed.). Oxford University Press.

act of judging or forming an opinion about somebody or something.” In legal contexts, Black’s Law Dictionary<sup>1</sup> defines assessment as “the determination of the amount of something, such as damages, tax, or liability, through a formal evaluation process.” In public policy research, assessment involves measuring outcomes against objectives using structured criteria and empirical evidence.<sup>2</sup> Within this study, assessment refers to the structured appraisal of the Cameroon–Nigeria joint initiatives against piracy in the Gulf of Guinea.

## 2.2 Effectiveness

Effectiveness denotes the degree to which intended objectives are achieved. The Oxford Advanced Learner’s Dictionary<sup>3</sup> defines it as “the degree to which something is successful in producing a desired result.” In legal and policy terms, it refers to the capacity of an institution, law, or intervention to produce its intended outcomes.<sup>4</sup> Drucker<sup>5</sup> differentiates effectiveness from efficiency, emphasizing that effectiveness is about “doing the right things.” In the present study, effectiveness concerns the extent to which Cameroon–Nigeria joint initiatives have successfully reduced piracy incidents and strengthened maritime security governance.

## 2.3 Gulf of Guinea

The Gulf of Guinea refers to the strategic maritime zone along the western coast of Africa. While the Oxford Advanced Learner’s Dictionary (2015) defines it as part of the Atlantic Ocean off Africa, scholarly sources highlight its importance for international shipping, offshore oil production, and regional trade.<sup>6</sup> It is also a hotspot of maritime insecurity, where weak governance, piracy, and transnational criminal networks converge. In this study, the Gulf of Guinea is the geographical and operational environment within which Cameroon and Nigeria’s anti-piracy initiatives are implemented.

## 2.4 Cameroon

Cameroon is a Central African coastal state bordering the Gulf of Guinea. Legally, it is a sovereign state exercising jurisdiction over its territorial waters and exclusive economic zone under international law.<sup>7</sup> Cameroon participates in regional maritime security frameworks such as the Economic Community of Central African States (ECCAS) and the Yaoundé Architecture for Maritime Security.<sup>8</sup> Its strategic location along shared maritime boundaries with Nigeria, especially near the Bakassi Peninsula, makes it a key actor in bilateral and regional anti-piracy cooperation.<sup>9</sup> In this study, Cameroon refers to its state institutions, naval capabilities, and legal frameworks engaged in maritime security.

## 2.5 Nigeria

Nigeria is a West African coastal state on the Gulf of Guinea. Nigeria has historically been the epicenter of piracy incidents in the region, particularly in the Niger Delta.<sup>10</sup> The country exercises sovereign authority over its maritime zones and has implemented significant domestic legislation, including the *Suppression of Piracy and Other Maritime Offences Act 2019*, which domesticates international piracy obligations.<sup>11</sup> Nigeria also plays a leadership role in producing a desired result.

## 2.6 Common Initiatives

Common initiatives refer to coordinated plans or actions undertaken jointly by two or more actors to address shared problems. In the Oxford Advanced Learner’s Dictionary (2015), *common* denotes “shared by two or more

<sup>1</sup> Garner, B. A. (Ed.). (2019). *Black’s law dictionary* (11th ed.). Thomson Reuters.

<sup>2</sup> Vedung, E. (1997). *Public policy and program evaluation*. Transaction Publishers.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Drucker, P. F. (2007). *The effective executive* (Revised ed.). Harper Collins.

<sup>6</sup> Ate, B. E. (2014). The Gulf of Guinea and maritime security: The Yaoundé process and the prospects for regional cooperation. *African Security Review*, 23(2), 145–160.

<sup>7</sup> United Nations. (1982). *United Nations Convention on the Law of the Sea*.

<sup>8</sup> *Ibid.*

<sup>9</sup> International Crisis Group. (2019). *Stopping piracy in the Gulf of Guinea*. International Crisis Group.

<sup>10</sup> Onuoha, F. C. (2012). Piracy and maritime security in the Gulf of Guinea: Trends, concerns and propositions. *Journal of the Middle East and Africa*, 3(2), 267–293.

<sup>11</sup> United Nations Office on Drugs and Crime. (2022). *Maritime crime in the Gulf of Guinea: Assessing the threat and legal responses*. UNODC.

people or groups,” and *initiative* is “a new plan or action intended to solve a problem or improve a situation.”<sup>1</sup> In international relations, joint initiatives represent coordinated actions by states to address transnational threats.<sup>2</sup> In this study, common initiatives comprise bilateral naval patrols, intelligence sharing, legal harmonization, and participation in regional maritime security frameworks undertaken jointly by Cameroon and Nigeria.

### 2.7 Piracy

Piracy is a central security and legal concept in this study. The Oxford Advanced Learner’s Dictionary (2015) defines piracy as “the crime of attacking ships at sea in order to steal from them.” Black’s Law Dictionary<sup>3</sup> defines piracy as “robbery or forcible depredation on the high seas, committed without lawful authority and done with intent to steal.” Article 101 of the United Nations Convention on the Law of the Sea (1982) further clarifies piracy as illegal acts of violence, detention, or depredation committed for private ends on the high seas. In the Gulf of Guinea context, piracy often overlaps with armed robbery at sea and kidnapping for ransom.<sup>4</sup> Thus, piracy in this study encompasses both classical legal definitions and operational realities, as reflected in regional maritime security frameworks such as ECOWAS and the Yaoundé Architecture. In this study, Nigeria is analyzed as a principal maritime security actor whose legal, operational, and policy initiatives shape regional anti-piracy outcomes.

### 3. Methodology

This study employed a qualitative research design to assess the effectiveness of the common initiatives of Cameroon and Nigeria in combating piracy in the Gulf of Guinea. A qualitative approach was adopted because it allows for an in-depth understanding of legal frameworks, institutional coordination, and stakeholder perceptions, which cannot be captured fully through quantitative measures.<sup>5</sup> Specifically, a descriptive-qualitative design was used to provide a detailed account of the anti-piracy initiatives and to evaluate their effectiveness from the perspectives of key actors and documented evidence.

The study focused on the Gulf of Guinea, particularly the territorial waters and exclusive economic zones under the jurisdiction of Cameroon and Nigeria. This region is of strategic importance due to its dense shipping lanes, offshore oil exploration, and high incidences of piracy.<sup>6</sup> Key areas of interest included Nigeria’s Niger Delta maritime zones, Cameroon’s coastal waters near the Bakassi Peninsula, and adjacent commercial shipping routes. These locations were chosen because they represent the operational theaters of bilateral naval patrols and other collaborative initiatives.

The population for the study consisted of maritime security experts, naval officers, policymakers, legal practitioners, and academics specializing in maritime law and security. A purposive sampling technique was used to select participants with direct knowledge and experience of anti-piracy initiatives, ensuring that data were collected from individuals with the most relevant expertise.<sup>7</sup> In addition to interviews, document sources were purposively selected to include legal instruments such as Nigeria’s *Suppression of Piracy and Other Maritime Offences Act 2019* and Cameroon’s naval regulations, policy documents from the Yaoundé Architecture and ECCAS/ECOWAS frameworks, and reports from the UNODC and IMB. These documents provided critical secondary data to triangulate the findings from interviews.

Data collection was conducted through semi-structured interviews and document analysis. Semi-structured interviews allowed participants to share their perspectives on the operational effectiveness of joint naval patrols, coordination between Cameroon and Nigeria, legal and institutional mechanisms for prosecuting piracy, and perceived successes and challenges of the initiatives. The flexibility of semi-structured interviews enabled the exploration of emerging issues while maintaining focus on the research objectives (Creswell & Creswell, 2018). Document analysis complemented interviews by providing official evidence on legal frameworks, operational reports, and policy measures, which was essential for triangulating and validating the findings.<sup>8</sup>

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<sup>1</sup> *Ibid.*

<sup>2</sup> Keohane, R. O. (1984). *After hegemony: Cooperation and discord in the world political economy*. Princeton University Press.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (5th ed.). Sage Publications.

<sup>6</sup> Onuoha, F. C. (2012). Piracy and maritime security in the Gulf of Guinea: Trends, concerns and propositions. *Journal of the Middle East and Africa*, 3(2), 267–293.

<sup>7</sup> Patton, M. Q. (2015). *Qualitative research & evaluation methods* (4th ed.). Sage Publications.

<sup>8</sup> Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40.

Data were analyzed using thematic content analysis to identify recurring patterns and themes related to operational collaboration, legal enforcement, institutional coordination, challenges, and recommendations for policy improvement. The process involved repeated reading of transcripts and documents, coding significant statements, and synthesizing these codes into broader themes. This approach facilitated a systematic interpretation of qualitative data and provided insights into the effectiveness of bilateral anti-piracy initiatives.

Ethical considerations were strictly observed throughout the study. Participants provided informed consent prior to interviews, and their confidentiality and anonymity were assured. Data were securely stored and used solely for research purposes. The study also obtained ethical clearance from the relevant institutional review board to ensure compliance with standard research ethics. Limitations of the study include restricted access to classified naval operations and sensitive security documents, as well as the potential for bias in participant responses due to political or institutional considerations. These limitations were mitigated by triangulating interview data with multiple document sources and cross-referencing findings with publicly available official records.

#### 4. Theoretical Framework

This study is anchored in Maritime Security Theory and Human Security Theory, which together provide a multidimensional framework for assessing the effectiveness of the common initiatives of Cameroon and Nigeria in combating piracy in the Gulf of Guinea. While Maritime Security Theory emphasizes state responsibility for securing maritime domains, Human Security Theory prioritizes the protection of individuals and communities affected by insecurity. Their combined application enables a structured evaluation of both institutional performance and human impact.

##### 4.1 Maritime Security Theory

Maritime Security Theory draws its intellectual foundation from classical naval strategic thought, particularly Alfred Thayer Mahan's *The Influence of Sea Power upon History* (1890), which underscored the centrality of sea control to national power and economic prosperity.<sup>1</sup> Contemporary maritime scholarship, notably Geoffrey Till (2009), broadened this perspective by conceptualizing maritime security as encompassing not only naval defense but also maritime governance, law enforcement, economic protection, and international cooperation.

In its modern articulation, maritime security includes the safeguarding of shipping lanes, offshore energy infrastructure, fisheries, and coastal communities from threats such as piracy and armed robbery at sea.<sup>2</sup> The normative legal foundation of maritime security governance is grounded in the United Nations Convention on the Law of the Sea (1982), which provides the international legal definition of piracy and allocates enforcement jurisdiction among states.<sup>3</sup> At the regional level, cooperative mechanisms such as the Yaoundé Code of Conduct institutionalize information sharing, joint patrols, and coordinated maritime enforcement in West and Central Africa.

#### 5. Legal Framework

The international legal framework provides the foundational norms that define piracy, allocate enforcement jurisdiction, establish state obligations, and promote international cooperation against maritime crime. For coastal states such as Cameroon and Nigeria, which face persistent threats from piracy and armed robbery at sea in the Gulf of Guinea, robust incorporation and implementation of international legal instruments is indispensable for a legally coherent and operationally effective maritime security strategy.

At its core, the international legal regime for combating piracy is grounded in the principle that piracy constitutes a threat to international peace and security requiring collective action. This framework encompasses treaty law, Security Council mandates, and international standards developed by specialized agencies such as the International Maritime Organization (IMO). Together, these instruments define piracy, set out enforcement jurisdiction, and obligate states to cooperate in suppression efforts.

##### 5.1 United Nations Convention on the Law of the Sea (UNCLOS), 1982

The United Nations Convention on the Law of the Sea (UNCLOS) is the cornerstone of contemporary maritime law and the principal instrument for defining and regulating piracy. Often characterized as the "constitution for the oceans," UNCLOS establishes legal norms governing navigation, jurisdictional zones, and the suppression of piracy<sup>4</sup> the placement of devices likely to destroy or damage vessels.<sup>5</sup>

<sup>1</sup> Mahan, A. T. (1890). *The influence of sea power upon history, 1660–1783*. Little, Brown and Company.

<sup>2</sup> Till, G. (2009). *Seapower: A guide for the twenty-first century* (2nd ed.). Routledge.

<sup>3</sup> United Nations Development Program. (1994). *Human development report 1994: New dimensions of human security*. Oxford University Press.

<sup>4</sup> International Maritime Organization. (1988). *Convention for the suppression of unlawful acts against the safety of maritime navigation*.

Under UNCLOS, piracy is defined and regulated as follows:

- ✓ Article 100 imposes a general obligation on all states to “cooperate to the fullest possible extent in the repression of piracy on the high seas.”<sup>1</sup> This reflects the collective interest of states in suppressing acts that threaten international maritime order.
- ✓ Article 101 defines piracy as illegal acts of violence or detention committed for private ends against another ship on the high seas or outside the jurisdiction of any state.<sup>2</sup>
- ✓ Article 105 confers universal jurisdiction, permitting any state to seize pirate ships and arrest offenders regardless of nationality or place of seizure (United Nations, 1982, art. 105). Articles 107–108 limit seizure authority to warships or clearly marked government vessels acting under appropriate authority.<sup>3</sup>

UNCLOS’s definition of piracy is widely recognized as reflecting customary international law, and its universal jurisdiction clause has been affirmed by international courts and scholars (Treves, 2009; Mensah, 1999). However, UNCLOS’s focus on high seas acts means that violent acts occurring within a coastal state’s territorial waters often fall outside its strict definition, necessitating complementary instruments.

### 5.2 United Nations Security Council Resolutions on Piracy in the Gulf of Guinea

United Nations Security Council (UNSC) resolutions, while not formally part of treaty law, carry significant legal and political weight under the UN Charter and serve to reinforce international legal obligations relating to maritime security.

The Security Council has expressly addressed piracy in the Gulf of Guinea through a series of resolutions that exhort states to adopt comprehensive legal and cooperative responses:

- UNSC Resolution 2018 (2011) condemned acts of piracy and armed robbery in the Gulf of Guinea, urged affected states to develop comprehensive maritime security strategies, and called on external partners to provide capacity-building support.<sup>4</sup>
- UNSC Resolution 2039 (2012) reiterated the need for domestic criminalization of piracy, enhanced regional cooperation, and improved information sharing among regional states.<sup>5</sup>
- UNSC Resolution 2634 (2022) welcomed progress made by coastal states in strengthening maritime security, encouraged continued implementation of cooperative frameworks such as the Yaoundé Architecture, and emphasized legal and operational capacity building.<sup>6</sup>

Although Security Council resolutions do not themselves create treaty obligations, they reinforce existing international law and provide political legitimacy for domestic and regional efforts to address piracy and maritime crime. In the context of the Gulf of Guinea, these resolutions have catalyzed both legislative reform and cooperative arrangements among coastal states.

### 5.3 International Maritime Organization (IMO) Standard and Guideline

The International Maritime Organization (IMO) plays a critical supporting role in the development of international maritime security norms and has issued a range of non-binding instruments and resolutions complementing treaty law. These include recommendations for national maritime security legislation, guidelines on information sharing, and capacity-building strategies targeted at piracy-affected regions.

For instance, IMO Assembly Resolution A.32(22) urged member states to strengthen legal frameworks and enforcement mechanisms to address maritime insecurity and enhance cooperation in implementation of international instruments against maritime crime.<sup>7</sup> IMO’s guidance has informed the development of domestic anti-piracy laws in many states, including those in the Gulf of Guinea. Article 6 requires states to establish jurisdiction where the offence is committed against a ship flying the state’s flag, within its territory, or by its national.<sup>8</sup> Article 10 codifies the principle of *aut dedere aut judicare* (“extradite or prosecute”), which obligates

<sup>5</sup> *Ibid.*

<sup>1</sup> United Nations. (1982). *United Nations Convention on the Law of the Sea*.

<sup>2</sup> Article 101 of the United Nations Convention on the Laws of the Sea, 1982.

<sup>3</sup> Article 107 and 108 of the United Nations Convention on the Laws of the Sea, 1982.

<sup>4</sup> United Nations Security Council. (2011). Resolution 2018 (2011).

<sup>5</sup> United Nations Security Council. (2012). Resolution 2039 (2012).

<sup>6</sup> United Nations Security Council. (2022). Resolution 2634 (2022).

<sup>7</sup> International Maritime Organization. (2021). IMO Assembly Resolution A.32(22).

<sup>8</sup> Article 6 of the International Maritime Organization. (1988).

states to either prosecute or extradite offenders found within their territory.<sup>1</sup>

Unlike UNCLOS, the SUA Convention explicitly covers offences whether committed on the high seas or within territorial waters, thereby empowering coastal states to prosecute maritime crimes that would otherwise evade UNCLOS's narrow piracy definition. Its combination of criminalization, jurisdictional reach, and prosecutorial obligation has been influential in shaping domestic maritime security laws worldwide.<sup>2</sup>

#### 5.4 *Convention on the High Seas, 1958*

Although largely superseded by UNCLOS, the Convention on the High Seas (1958) contributed foundational principles to modern maritime law, including the freedom of the high seas and jurisdictional bases for the repression of piracy. Its provisions influenced the drafting of UNCLOS and remain relevant as part of the customary law background against which contemporary piracy law is interpreted.<sup>3</sup>

The international legal framework for combating piracy is robust, multifaceted, and grounded in treaty obligations, Security Council mandates, and global standards. UNCLOS provides the primary legal definition and enforcement jurisdiction for piracy, while the SUA Convention extends prosecutorial reach to acts within territorial waters. Security Council resolutions and IMO guidance further reinforce state obligations to criminalize piracy and engage in cooperative enforcement. For Cameroon and Nigeria whose efforts to repress piracy in the Gulf of Guinea are shaped by the transnational nature of maritime crime effective implementation of these international instruments is indispensable. Alignment with these norms underpins domestic legislation, regional cooperation mechanisms, and bilateral enforcement initiatives.

### 6. Regional Legal Framework

The regional legal framework governing maritime security in the Gulf of Guinea represents a structured attempt to operationalize international anti-piracy norms within a geographically specific and institutionally complex maritime environment. While international law particularly UNCLOS and the SUA Convention establishes foundational obligations to repress piracy, the effectiveness of those obligations depends significantly on regional mechanisms capable of translating abstract duties into coordinated enforcement practice.<sup>4</sup>

In the Gulf of Guinea context, piracy and armed robbery at sea frequently occur within territorial waters and exclusive economic zones (EEZs), often exploiting jurisdictional fragmentation and uneven enforcement capacity.<sup>5</sup> Regional legal architecture therefore performs a bridging function: it harmonizes legal norms, institutionalizes cooperation, and reduces enforcement asymmetries between coastal states. For Cameroon and Nigeria, whose maritime zones are contiguous and strategically interconnected, regional frameworks are central to sustained and effective anti-piracy initiatives.

The principal regional instruments shaping this architecture include the Yaoundé Code of Conduct (2013), sub-regional strategies under ECOWAS and ECCAS, continental frameworks of the African Union, and coordinating mechanisms such as the Gulf of Guinea Commission.

#### 6.1 *Yaounde Code of Conduct, 2013*

The *Code of Conduct Concerning the Repression of Piracy, Armed Robbery against Ships, and Other Illicit Maritime Activity in West and Central Africa* (Yaoundé Code of Conduct) constitutes the normative and institutional cornerstone of regional maritime security cooperation in West and Central Africa.<sup>6</sup>

Although formally categorized as a non-binding instrument, the Code reflects what scholars describe as “soft law institutionalization,” wherein political commitment is reinforced through operational structures and routinized cooperation.<sup>7</sup> Its legal and operational significance lies in three core dimensions:

#### (a) Regionalization of the Duty to Cooperate

Article 3 of the Code mirrors Article 100 of UNCLOS by committing signatories to cooperate to the fullest

<sup>1</sup> Article 10 of the International Maritime Organization. (1988).

<sup>2</sup> Mensah, T. A. (1999). *The international law of the sea*. Oxford University Press.

<sup>3</sup> United Nations. (1958). *Convention on the High Seas*.

<sup>4</sup> Treves, T. (2009). Piracy, law of the sea, and use of force. *European Journal of International Law*, 20(2), 399–414.

<sup>5</sup> Onuoha, F. C. (2013). Piracy and maritime security in the Gulf of Guinea. *African Security Review*, 22(4), 267–27.

<sup>6</sup> ECCAS, ECOWAS, & Gulf of Guinea Commission. (2013). *Code of conduct concerning the repression of piracy, armed robbery against ships, and illicit maritime activity in West and Central Africa*.

<sup>7</sup> Bueger, C., & Edmunds, T. (2017). Beyond seablindness: A new agenda for maritime security studies. *International Affairs*, 93(6), 1293–1311.

extent in repressing piracy and armed robbery at sea. By embedding this obligation within a geographically defined framework, the Code transforms a universal duty into a regionally actionable mandate.<sup>1</sup>

### **(b) Legal Harmonization**

Articles 4–6 encourage participating states to criminalize piracy and related offences consistent with international law and to ensure effective investigation and prosecution mechanisms. Harmonization of definitions and penalties is critical in avoiding jurisdictional vacuums and safe havens a recurrent challenge in the Gulf of Guinea.<sup>2</sup>

### **(c) Institutional Architecture**

Perhaps the most innovative feature of the Yaoundé Code is its creation of the *Yaoundé Architecture for Maritime Security (YAMS)*, comprising:

- The Inter-Regional Coordination Centre (ICC) in Yaoundé;
- Regional Maritime Security Centres for West and Central Africa;
- Zonal maritime coordination center;
- National maritime operations centres.

This multi-tiered structure institutionalizes maritime domain awareness, intelligence sharing, and coordinated operational responses. Bueger (2015) characterizes this architecture as a significant example of regional maritime governance innovation, emphasizing its capacity to embed cooperation beyond episodic naval patrols. Similarly, Vreÿ(2016) argues that the Yaoundé framework represents a shift from reactive crisis management toward structured maritime governance.

For Cameroon and Nigeria, participation in the Yaoundé Architecture provides a structured legal-operational platform through which joint patrols, coordinated surveillance, and intelligence exchange can be institutionalized rather than improvised.

#### *6.2 ECOWAS Integrated Maritime Strategy (EIMS)*

The ECOWAS Integrated Maritime Strategy (EIMS) situates maritime security within the broader framework of regional economic integration and collective security.<sup>3</sup> Unlike the Yaoundé Code, which is inter-regional, EIMS operates within West Africa and emphasizes governance-based security reform.

The Strategy promotes:

- Harmonization of maritime crime legislation across member states;
- Development of maritime domain awareness infrastructure;
- Integration of naval and civilian maritime agencies;
- Capacity building in prosecution and judicial processes.

The governance-oriented design of EIMS reflects contemporary understandings of maritime security as a multidimensional construct encompassing law enforcement, economic stability, and regulatory oversight.<sup>4</sup> By embedding maritime security within regional economic development frameworks, ECOWAS recognizes that piracy undermines trade flows, energy exports, and maritime commerce thereby threatening collective prosperity.<sup>5</sup>

For Nigeria, as a dominant maritime actor within ECOWAS, the EIMS framework reinforces legislative reforms and supports coordination with neighboring states, including Cameroon under broader inter-regional mechanisms.

#### *6.3 ECCAS Maritime Security Framework*

The Economic Community of Central African States (ECCAS) developed maritime security coordination mechanisms prior to the Yaoundé process, emphasizing joint patrols, integrated command structures, and legal

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<sup>1</sup> *Ibid.*

<sup>2</sup> *Ibid.*

<sup>3</sup> ECOWAS Commission. (2014). *Integrated maritime strategy (EIMS)*.

<sup>4</sup> Bueger, C., & Edmunds, T. (2017). Beyond seablandness: A new agenda for maritime security studies. *International Affairs*, 93(6), 1293–1311.

<sup>5</sup> Murphy, M. N. (2009). *Small boats, weak states, dirty money: Piracy and maritime terrorism in the modern world*. Columbia University Press.

convergence among Central African coastal states. ECCAS initiatives sought to address chronic enforcement weaknesses and fragmented jurisdiction in Central African waters.<sup>1</sup> Their integration into the Yaoundé Architecture reflects a layered model of regionalism one in which sub-regional security communities are nested within a broader inter-regional framework. Such institutional layering enhances resilience and normative coherence.

For Cameroon, ECCAS mechanisms provide complementary operational support and reinforce harmonization with Central African maritime governance structures.

#### 6.4 Gulf of Guinea Commission (CGC)

The Gulf of Guinea Commission serves primarily as a diplomatic and policy coordination platform rather than a binding legislative authority. However, regional governance scholarship emphasizes that policy coordination forums contribute significantly to normative convergence and trust-building among states.<sup>2</sup> Through dialogue facilitation and policy alignment, the GGC strengthens the political foundations of maritime cooperation. Its influence reinforces regional commitment to legal harmonization and cooperative enforcement critical elements in combating piracy effectively.

#### 6.5 African Union 2050 Africa's Integrated Maritime Strategy

The African Union's 2050 Africa's Integrated Maritime Strategy<sup>3</sup> provides a continental normative framework linking maritime security to sustainable development, blue economy governance, and institutional reform.<sup>4</sup>

The Strategy conceptualizes piracy as part of broader transnational organized crime networks and calls for:

- ✓ Integration of international maritime conventions into domestic law;
- ✓ Strengthening of judicial and enforcement institutions;
- ✓ Inter-regional cooperation mechanisms;
- ✓ Long-term maritime governance reform.

By situating anti-piracy efforts within structural governance reform, the 2050 AIM Strategy aligns security enforcement with developmental objectives an approach consistent with contemporary maritime security theory.<sup>5</sup>

For Cameroon and Nigeria, the effectiveness of bilateral anti-piracy initiatives is inseparable from the vitality of this regional legal architecture. The regional framework does not merely supplement international law; it operationalizes and contextualizes it within the Gulf of Guinea's unique security landscape.

### 7. National Legal Framework

The national legal framework is the decisive arena in which anti-piracy commitments move from diplomatic aspirations to enforceable reality. International conventions and regional codes impose obligations, but it is domestic constitutional design, legislative incorporation, and judicial enforcement that determine whether piracy is effectively criminalized, prosecuted, and punished. In Cameroon and Nigeria, national law defines jurisdictional reach, prescribes penalties, regulates naval and law-enforcement authority, and structures cooperation with neighboring states. The strength, coherence, and implementation of these domestic legal systems ultimately determine whether regional and international maritime security framework translate into tangible suppression of piracy in the Gulf of Guinea.

#### 7.1 Cameroon Legal Framework

Cameroon, strategically situated along the Gulf of Guinea, boasts an expansive coastline that presents both economic opportunities and security challenges. As the country seeks to harness its maritime potential, ensuring the safety and security of its territorial waters, ports, and adjacent infrastructure has become paramount<sup>6</sup>. The threat landscape is complex, with piracy, armed robbery, and maritime terrorism compromising regional stability, while illegal fishing, pollution, and smuggling exacerbate environmental degradation and economic losses. In

<sup>1</sup> VreÿF. (2016). Maritime security in the Gulf of Guinea: Issues and responses. *Journal of the Indian Ocean Region*, 12(1), 70–89.

<sup>2</sup> *Ibid.*

<sup>3</sup> African Union. (2012). *2050 Africa's integrated maritime strategy (2050 AIM Strategy)*.

<sup>4</sup> *Ibid.*

<sup>5</sup> Bueger, C. (2015). What is maritime security? *Marine Policy*, 53, 159–164.

<sup>6</sup> In response, Cameroon has established a comprehensive national legal framework, comprising laws, decrees, and regulations that align with international conventions and best practices. This framework, underpinned by the Port and Maritime Code, the Maritime Navigation and Safety Law, and the Fight against Piracy and Maritime Robbery Law, empowers institutions like the National Maritime Authority, the Port Authority of Douala, and the Cameroon Navy to safeguard national interests.

response, Cameroon has established a comprehensive national legal framework, comprising laws, decrees, and regulations that align with international conventions and best practices. This framework, underpinned by the Port and Maritime Code, the Maritime Navigation and Safety Law, and the Fight against Piracy and Maritime Robbery Law, empowers institutions like the National Maritime Authority, the Port Authority of Douala, and the Cameroon Navy to safeguard national interests. However, effective implementation remains a challenge, necessitating enhanced regional cooperation, capacity building, and investment in maritime infrastructure and technology to combat the evolving threats and ensure the secure exploitation of Cameroon's vast maritime resources.<sup>1</sup> This paragraph sets the context of Cameroon's maritime environment and security challenges; highlights key threats like: piracy, terrorism, illegal fishing, pollution, and smuggling; introduces the national legal framework: Laws, decrees, and regulations identifies responsible institutions: National Maritime Authority, Port Authority, and Cameroon Navy.

#### 7.1.1 Law No. 95/011 of 27 December 1995: Port and Maritime Code

Cameroon's Port and Maritime Code, Law No. 95/011 of 27 December 1995, stands as a seminal legislation in the country's quest for maritime security and economic development. Enacted in the wake of escalating maritime threats and regional instability, this comprehensive law harmonizes national and international standards to safeguard Cameroon's strategic coastline, bustling ports, and thriving maritime industry. By establishing a robust framework for maritime safety, security, and law enforcement, the Code addresses the complex interplay between economic interests, national sovereignty, and regional cooperation. Through its provisions, Cameroon demonstrates adherence to global maritime conventions and best practices, bolstering efforts to prevent piracy, armed robbery, and maritime terrorism, while fostering a secure environment for international trade, investment, and cooperation.

For the purposes of this Code, maritime security means the protection of persons, ships, goods and ports against acts of violence, piracy and other unlawful acts.<sup>2</sup>

Article 32 provides that:

"Ship owners, operators and masters shall implement security measures to prevent unlawful acts against their ships, crew, passengers and cargo."<sup>3</sup> Security protocols for ports, ships and cargo shall include: access control measures, surveillance systems, alarm systems, security personnel, emergency response plans.<sup>4</sup> Security personnel shall: be trained and certified, wear uniforms and badges, carry identification, be empowered to inspect ships and cargo.<sup>5</sup>

Article 35 provides that:

"Access to ports and ships shall be restricted to authorized persons, who shall: Possess valid identification, undergo security screening, comply with security protocols."<sup>6</sup> Piracy, armed robbery and maritime terrorism are prohibited and unauthorized boarding, theft or damage to ships or cargo is punishable. Maritime authorities may inspect ships and cargo to ensure compliance.<sup>7</sup> Ships and persons may be detained for security breaches. Cameroon shall cooperate with neighboring countries and international organizations to combat maritime insecurity.<sup>8</sup>

Law No. 95/011 of 27 December 1995, Cameroon's Port and Maritime Code, stands as a landmark legislation, harmonizing national and international maritime standards. This comprehensive framework ensures the safety, security, and efficiency of Cameroon's maritime industry, fostering economic growth, regional cooperation, and global trade. In conclusion, Law No. 95/011 demonstrates Cameroon's commitment to a secure, efficient, and environmentally conscious maritime industry, contributing to the country's economic development and global maritime community.

#### 7.1.2 Law No. 2001/021 of 21 December 2001: Maritime Navigation and Safety

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<sup>1</sup> By Cameroon putting up these laws, one can say undoubtedly that it is her commitment in ensuring that these laws are not only documented but enforced accordingly.

<sup>2</sup> Article 31 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>3</sup> Article 32 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>4</sup> Article 33 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>5</sup> Article 34 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>6</sup> Article 35 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>7</sup> Article 51 Law No. 95/011 of 27 December 1995: Port and Maritime Code.

<sup>8</sup> *Ibid.*

Law No. 2021/021 of 21 December 2021, Cameroon's Maritime Navigation and Safety Act, marks a significant milestone in the country's quest for enhanced maritime security and safety within the Gulf of Guinea. This landmark legislation harmonizes national and international standards, addressing the complex interplay between maritime navigation, safety, and security. The Gulf of Guinea, a critical maritime hub, faces persistent threats from piracy, armed robbery, and maritime terrorism. Law No. 2021/021 strengthens Cameroon's maritime security framework, bolstering regional cooperation and international collaboration to combat these threats.

Key aspects of the law include:

- 1) Enhanced navigation standards and safety protocols
- 2) Strengthened vessel inspection and certification
- 3) Improved emergency response and search and rescue operations
- 4) Increased penalties for maritime security breaches
- 5) Alignment with International Maritime Organization (IMO) conventions

By enforcing these provisions, Cameroon demonstrates its commitment to safeguarding national interests, regional stability, and global maritime trade. Effective implementation of Law No. 2021/021 will mitigate maritime security risks, ensure safer navigation, and promote economic growth within the Gulf of Guinea.

#### 7.1.3 Law No. 2011/012 of 6 May 2011: Fight Against Piracy and Maritime Robbery

Cameroon's Law No. 2011/012 of May 6, 2011, represents a paradigmatic shift in the country's quest to fortify maritime security in the Gulf of Guinea, a region beset by the scourge of piracy and maritime robbery. This landmark legislation constitutes a robust response to the burgeoning threats to regional stability, global trade, and economic development. By criminalizing piracy, maritime robbery, and related offenses, the law establishes a comprehensive framework for prevention, suppression, and prosecution. Key provisions include the definition of piracy and maritime robbery, penalties for offenders, and measures for cooperation with neighboring states and international organizations. Notably, the law mandates the creation of a National Commission for the Fight against Piracy and Maritime Robbery, responsible for coordinating national efforts, sharing intelligence, and collaborating with regional and international partners. Furthermore, Law No. 2011/012 harmonizes Cameroon's legislation with international instruments, such as the United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organization's (IMO) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA). By enacting this law, Cameroon reaffirms its commitment to safeguarding maritime security, protecting seafarers, and ensuring the uninterrupted flow of goods and services through the Gulf of Guinea, a vital artery of global commerce. This legislative milestone underscores Cameroon's proactive stance in addressing the complex security challenges confronting the region and demonstrates its resolve to collaborate with regional and international stakeholders in combating maritime insecurity. The Gulf of Guinea has been plagued by piracy and maritime robbery, threatening regional stability and global trade. Cameroon's Law No. 2011/012 represents a significant response to these challenges. This article examines the law's provisions, analyzing its definitions, offenses, penalties, investigation and prosecution mechanisms, international cooperation, and institutional framework.

Based on offenses and penalties, articles 3 and 4<sup>1</sup> outline piracy and maritime robbery offenses, including:

- Attack or hijacking of ships
- Theft or damage to cargo or property
- Violence or intimidation against crew or passengers

Penalties range from 5-20 years' imprisonment and XAF 5-50 million fines, with confiscation of assets (Article 5). These penalties align with regional and international standards. Articles 6-8 establish investigative powers, procedures for arrest, detention, and prosecution, and cooperation between law enforcement agencies and judicial authorities. These provisions ensure effective investigation and prosecution of piracy and maritime robbery cases.<sup>2</sup> Based on international cooperation, articles 9-11 mandate cooperation with neighboring states and international organizations, including:

- Extradition and mutual legal assistance, and
- Information sharing and intelligence gathering.

This cooperation is crucial for regional maritime security. Articles 12-14 establish the National Commission, responsible for:

<sup>1</sup> Article 3 and 4 of Law No. 2011/012 of 6 May 2011: Fight against Piracy and Maritime Robbery.

<sup>2</sup> Article 6-8 of Law No. 2011/012 of 6 May 2011: Fight against Piracy and Maritime Robbery.

- Coordinating national efforts
- Sharing intelligence
- Collaborating with regional and international partners

The Commission's composition and structure are outlined, ensuring effective coordination.

Cameroon's Law No. 2011/012 represents a significant step towards combating piracy and maritime robbery in the Gulf of Guinea. Its provisions align with regional and international frameworks, ensuring effective investigation, prosecution, and cooperation.

### 7.2 Nigeria Legal Framework

According to Babatunde & Abdulsalam, there are two categories of Maritime domestic laws. The first category includes the 1991 constitution of Nigeria as amended, the admiralty jurisdiction Act, and the admiralty jurisdictional procedure rules of 2011. For example, section 252(1) of the federal republic of Nigeria Constitution grant the federal high court exclusive jurisdiction over maritime related matters. While the second categories of laws deal with the immediate application and proactive measures require for better maritime security within the Nigeria waters. These comprises the Nigerian Maritime administration and safety agency (NIMASA)Act, The Merchant Shipping Act (MSA), The coastal and inland shipping (Cabotage) Act, and the National inland water way Authority Act (NIWA) This institution has the power and authority to enforce maritime law.

#### 7.2.1 The SPOMO Act 2019

This Act was enacted by the Nigerian President in 2019 in an effort to combat piracy, armed robbery at sea, and other threats to maritime security (NIMASA, 2019). The Act is a tool designed to domesticate the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), as well as its protocols, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Furthermore, the Act's provisions apply to ships, aircraft, and other maritime vessels, as well as fixed and floating platforms; therefore, they apply to everyone aboard any of the aforementioned facilities, whether in Nigerian territorial waters or internal waters, international waters, or the territory of other nations signatories to the applicable international maritime security agreements. Moreover, prior to the passage of the SPOMO Act into law, prosecuting those suspected of maritime piracy in Nigeria was difficult because there was no explicit municipal legislation restricting the act, and prosecution of piracy was impossible due to the concept of "no punishment without law."

The prosecution of individuals alleged of engaging in maritime piracy was difficult in Nigeria prior to the implementation of the legislation, because there was no national law that specifically specified the offence of piracy.<sup>1</sup> According to section 36 (12) of Nigeria's 1999 constitution as amended a person may not be convicted of a crime unless the crime in question is specifically established by the existing law.<sup>2</sup> And despite the fact that the SUA convention of 1988 and its protocol have been in force since the beginning of the Merchant Shipping Act (MSA) 2007 as stated in section 216 (h) of that law; maritime stakeholders were unsure if that was sufficient in meeting the requirements of the constitution to domesticate the convention. <sup>3</sup>This matter is resolved by the provision of section 3 of the SPOMO Act which defines "Piracy" as any of the following:

- (a) "Illegal act of violence, act of detention or any act of depredation, committed for private ends by crew or any passenger of a private ship or private aircraft and directed,
- (i) In international waters against another ship or aircraft or against a person or property on board the ship or aircraft, or
  - (ii) Against a ship, aircraft, person or a property in a place outside the jurisdiction of any state;
- (b) Act of voluntary participation in the operation of a ship or an aircraft with knowledge of facts making it a pirate ship or aircraft; and
- (c) Act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b) of this section" (SPOMO Act, 2019).<sup>4</sup>

Notably, the aforementioned definition aligns with the concept of universal jurisdiction as stated in Article 101 of UNCLOS. This provision gives states the power to lawfully detain and prosecute individuals, ships, or aircraft suspected of engaging in piracy, irrespective of whether the pirate or the targeted vessel is under a foreign flag or

<sup>1</sup> Enebeli, V., & Njoku, D. (2021). A critical appraisal of the anti-piracy law of Nigeria. *Journal of law, policy and globalization*, 113, 17.

<sup>2</sup> Section 36(12) of the 1999 constitution of Nigeria.

<sup>3</sup> Section 216 of the 2007 Merchant Shipping Act of Nigeria.

<sup>4</sup> Section 3 of the SPOMO Act of 2019.

crew, in accordance with their domestic laws. The definition also includes violent acts perpetrated in the exclusive economic zone of Nigeria against fixed and floating platforms, aircraft and other property besides ships.<sup>1</sup>

The SPOMO Act 2019, which addresses maritime piracy and related maritime offences, is a significant measure in safeguarding the nation's coastal areas and waters. The enactment of the SPOMO Act in 2019 in Nigeria, is key in determining the role of maritime enforcement agencies in combating piracy in Nigeria. It shed more light on issues that facilitate the antipiracy actions in maritime enforcement agencies in Nigeria.

### 7.2.2 Nigeria Anti-Piracy Law of 2019

Nigeria has realized the implication of maritime piracy and its implication on human, economic political and social cost, and haven recognize the weaknesses of the international regulations and their inadequateness, decided to introduce domestic laws, to cater for piracy within its waters and international waters, for example, a law was initiated by the presidency called the suppression of piracy and other maritime offences bill 2019 and sent to the national assembly for passage. This bill was passed by the national assembly and the president Assent the bill on June 24, 2019. The Nigeria anti-piracy law provided the following as part of its effort to suppress maritime piracy in its shore. The bill has the following features:

- ❖ It adopted the UNCLOS 1982 and the SUA1988 Convention and its protocol. It is stated in the opening statement of the bill that Nigerian is a party to UNCLOS and SUA Convention and that the bill still recognizes and affirms their essence and the Nigeria's commitment to promoting them.
- ❖ The law fulfills the international requirement for standalone regulations on piracy.
- ❖ The law provides a distinct definition of piracy and other maritime sea offences which are in line with the UNCLOS submission.
- ❖ The punishment upon conviction for the maritime crimes which includes taking to court foe the jail of several years for fine or both.
- ❖ Return of assets of the owner of violated maritime properties or forfeiture or proceeds of maritime crimes to the Nigerian government.
- ❖ Establishment of piracy and maritime offences fund with special source of funding which will be a channel in the implementation of the bill.
- ❖ The exclusive power of jurisdiction for sea piracy is given to the federal high court.
- ❖ The bill also empowers the courts to seize vessels or aircrafts used for maritime crimes in Nigeria and international waters.<sup>2</sup>

### 7.2.3 Code of Military Justice

Law number 2017/012 of 12 July 2017 Lays down the code of military justice.<sup>3</sup> By the tenor of section 8 of the Code, Section 8 states that the military tribunal shall have exclusive jurisdiction to hear and determine.

(a) Military offence and war crimes.

(b) Crimes against humanity and crimes of Genocide.

(c) Offence relating to act of terrorism and the security of the state.

(d) Offences of piracy and unlawful acts against the safety of maritime navigation and platforms.<sup>4</sup>

Chapter 3 lays down the criminal investigation of the military justice. Section 11 states that offences referred to section 8 (d) shall be investigated and recorded in a report drown up by civil or military criminal investigation offices. In all cases, criminal investigation office shall conduct their investigations in accordance with the rules set out in the criminal procedure code.<sup>5</sup>

Piracy arm robbery at the Gulf of Guinea and other maritime offences, the increasing rise in piracy in the Gulf of Guinea has become alarming. Until recently, the concern about piracy has been the Gulf of Eden operated by Somalia pirates; however, piracy has witnessed a drastic shift to the Gulf of Guinea. Armed robbery against ships

<sup>1</sup> Enebeli V., & Njoku. (2021). Acritical appraisal of anti-piracy law of Nigeria. *Journal of law, policy and globalization*, 113, 47–62.

<sup>2</sup> Siraja Zamfara Ibrahim. (2019). Strength and witnesses of the legal strategies to combat piracy in the Nigeria. *World maritime university*, 41–42.

<sup>3</sup> Law number 2017/012 of 12 July 2017.

<sup>4</sup> Section 8 of the Code of military justice 2017.

<sup>5</sup> Section 11 of the Code of military justice 2017.

and cargo theft has also risen uncontrollably within Nigerian territorial and internal waters. These activities pose a serious threat to national, regional and global security and economy.

As part of curbing the problem of piracy, armed robbery against ships and other Maritime offences, the President assented to the piracy bill, sponsored by NIMASA titled; The Suppression of Piracy and Other Maritime Offences Act herein after know as (SUPMOA) 2019. The Act gives effect to the United Nations Convention on the Law of the Sea (UNCLOS) 1982, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) 1988 and its Protocols.

Purpose of the Act is that the SUPMOA 2019 seeks to prevent and suppress piracy, armed robbery and other unlawful act against a ship, aircraft and other maritime craft, howsoever propelled, including fixed or floating platform. The act applies to any person on board a ship or aircraft navigating in, on or above the territorial and internal waters of Nigeria or on above international waters; or fixed or floating platform in, on or above the territorial and internal waters of Nigeria or on or above international waters. It also includes circumstances where the offender or alleged offender is found outside Nigeria but is in the territory of a State who is a party to other International Maritime Conventions. Section 3 of the SUPMOA 2019 provides the definition of piracy and practically adopted the definition provided under Article 101 of United Nations Convention on the Law of the Sea (UNCLOS) 1982.<sup>1</sup>

With regard to the Prosecution, one aspect of the act that is commendable is the fact that it empowered NIMASA to prosecute offences under SUPMOA albeit with the consent of the Attorney General. Section 5 (1) provides that the Attorney General; any law officer so designated by the Attorney General; or the Nigerian Maritime Administration and Safety Agency (NIMASA) with the Attorney General's consent are empowered to prosecute offences under SUPMOA.<sup>2</sup>

## **8. Effectiveness of the Common Initiatives of Cameroon and Nigeria in Combating Piracy in the Gulf of Guinea**

Effectiveness in maritime security governance must be evaluated through a multidimensional analytical lens. It is not reducible to incident statistics alone. Rather, it requires assessment of norm internalization, institutional capacity, enforcement credibility, inter-state coordination, deterrence signaling, and structural resilience.<sup>3</sup> Within this framework, the cooperative architecture between Cameroon and Nigeria represents a transitional model of regional maritime security consolidation in a historically fragile maritime space.

### *8.1 Norm Internalization and Legal Consolidation*

At the national level, effectiveness begins with the domestication of international norms. Legal transplantation without enforcement capacity produces symbolic compliance; internalization produces behavioral change (Treves, 2009).

Nigeria's *Suppression of Piracy and Other Maritime Offences Act* (2019) is doctrinally significant because it bridges the gap between Article 101 of UNCLOS and enforceable domestic criminal jurisdiction. By codifying piracy, armed robbery at sea, and ancillary offences such as conspiracy and facilitation, the Act transforms abstract treaty obligations into prosecutable crimes. Crucially, it establishes jurisdictional competence and penalties severe enough to generate deterrent signaling.

Cameroon's 2016 Penal Code reform similarly embeds piracy within its domestic criminal law architecture. Article 45 of its Constitution, which grants supremacy to ratified treaties, further strengthens the normative penetration of international maritime law into domestic adjudication. From a compliance theory perspective, these reforms signal a shift from passive treaty adherence to active enforcement commitment. The successful prosecution of piracy cases in Nigeria under the 2019 Act represents not merely legal activity but the operationalization of international criminalization norms a key indicator of regime effectiveness.<sup>4</sup>

### *8.2 Institutional Capacity and Maritime Domain Awareness*

Normative clarity is ineffective without institutional capacity. Maritime security governance depends upon surveillance infrastructure, asset deployment, command coordination, and rapid interdiction capability.<sup>5</sup>

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<sup>1</sup> Section 3 of SUPMOA 2019.

<sup>2</sup> Section 5(1) of SUPMOA.

<sup>3</sup> Bueger, C. (2015). What is maritime security? *Marine Policy*, 53, 159–164.

<sup>4</sup> Guilfoyle, D. (2013). *Shipping interdiction and the law of the sea*. Cambridge University Press.

<sup>5</sup> Bueger, C., & Edmunds, T. (2017). Beyond seablindness: A new agenda for maritime security studies. *International Affairs*, 93(6), 1293–1311.

Nigeria's Deep Blue Project introduced an integrated maritime security architecture combining aerial surveillance, special mission vessels, and centralized command structures. This model reflects an evolution from reactive naval patrols to intelligence-driven maritime domain awareness a shift consistent with contemporary maritime security doctrine.

Cameroon's enhancement of naval patrols and participation in zonal coordination mechanisms similarly contributes to reducing ungoverned maritime spaces. The strategic importance of contiguous waters between both states makes coordinated surveillance essential. Fragmented enforcement historically enabled piracy networks to exploit jurisdictional seams.<sup>1</sup> Institutional synchronization mitigates this vulnerability.

Empirically, the decline in reported kidnapping incidents in the Gulf of Guinea after 2021 corresponds with intensified naval presence and coordination.<sup>2</sup> While correlation does not prove causation, consolidation is widely regarded as a primary explanatory variable in piracy suppression literature.<sup>3</sup>

### 8.3 Enforcement Credibility and Deterrence Signaling

Deterrence theory emphasizes that the certainty of punishment often outweighs severity.<sup>4</sup> Historically, piracy in the Gulf of Guinea persisted partly due to arrest-and-release practices and weak prosecutorial follow-through. The successful conviction of piracy offenders under Nigeria's 2019 statute alters this dynamic. Enforcement credibility transforms maritime security from symbolic presence to punitive capability. This strengthens both general deterrence (discouraging potential offenders) and specific deterrence (incapacitating convicted perpetrators).

Moreover, visible prosecution enhances reputational signaling. States that demonstrate enforcement competence reinforce investor confidence, reduce insurance premiums, and strengthen perceptions of maritime governance reliability.

### 8.4 Regional Security Architecture and Cooperation Governance

Piracy in the Gulf of Guinea is transnational in organization and opportunistic in operation. National solutions in isolation are structurally insufficient.<sup>5</sup> The Yaoundé Architecture institutionalizes regional coordination through interconnected maritime operations centers. Cameroon and Nigeria's participation within this framework reflects a shift toward cooperative security governance where sovereignty is exercised collaboratively rather than competitively.

From a regime theory perspective, effectiveness emerges when states internalize shared security norms and institutionalize information-sharing mechanisms.<sup>6</sup> The interoperability of surveillance systems and joint patrol arrangements reduces enforcement asymmetries and constrains criminal mobility.

However, regime durability depends on financial sustainability, technical maintenance, and political continuity. Maritime security institutions require constant investment; underfunding risks regression into fragmented enforcement.

### 8.5 Human Security and Structure Driver

An effectiveness assessment must incorporate human security dimensions. Piracy in the Gulf of Guinea has been characterized by violent kidnapping, often involving prolonged hostage detention (Murphy, 2009). The documented decline in such incidents directly enhances seafarer safety and reduces psychological trauma among maritime workers.

Economically, improved security protects offshore energy infrastructure, fishing industries, and port operations. For Nigeria a major hydrocarbon exporter and Cameroon a strategic transit state maritime stability directly correlates with fiscal security.

Yet enforcement-based gains risk fragility if structural drivers persist. Youth unemployment, illegal oil bunkering, and governance deficits provide recruitment pools for maritime criminal networks. Sustainable effectiveness therefore requires integration of law enforcement with coastal economic development strategies.

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<sup>1</sup> Onuoha, F. C. (2013). Piracy and maritime security in the Gulf of Guinea. *African Security Review*, 22(4), 267–278.

<sup>2</sup> ICC International Maritime Bureau. (2022). *Piracy and armed robbery against ships report*.

<sup>3</sup> Murphy, M. N. (2009). *Small boats, weak states, dirty money: Piracy and maritime terrorism in the modern world*. Columbia University Press.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

### 8.6 Structural Limitations and Resilience

Despite measurable progress, several constraints temper conclusions of full effectiveness:

- ✓ Naval asset maintenance costs and operational sustainability challenges;
- ✓ Limited prosecutorial specialization in maritime crimes;
- ✓ Intelligence coordination gaps;
- ✓ Vulnerability to political transitions and budgetary volatility.

Maritime security effectiveness is cumulative rather than episodic. It depends on institutional entrenchment and adaptive governance capacity. The trajectory in Cameroon and Nigeria reflects consolidation, but resilience will depend on sustained norm internalization, institutional funding, and integration of security with socioeconomic policy.

The cooperative initiatives between Cameroon and Nigeria demonstrate substantive progress across key indicators of maritime governance effectiveness: legal domestication and prosecutorial activation; institutional modernization and maritime domain awareness; regional coordination under the Yaoundé Architecture; observable decline in piracy-related kidnapping incidents; and strengthened deterrence signaling and economic stabilization.

However, effectiveness remains conditional and structurally contingent. The durability of piracy suppression in the Gulf of Guinea will ultimately depend on whether enforcement consolidation is matched by sustained institutional investment and structural reform. The trajectory is analytically significant: it represents a shift from fragmented maritime vulnerability toward coordinated regional maritime governance.

## 9. Challenges to the Effectiveness of Cameroon and Nigeria's Anti-Piracy Initiatives

The fight against piracy in the Gulf of Guinea is a complex governance challenge that transcends vessels and coastlines. While Cameroon and Nigeria have made notable cooperative strides, their effectiveness is constrained by legal, institutional, socio-economic, and regional structural dynamics. Each challenge below is discussed in depth to highlight why it matters, how it undermines sustained effectiveness, and what the literature says about its impact.

### 9.1 Compliance and Legal Implementation Gaps

A central challenge lies in translating international and regional law into effective domestic legal practice. Although Cameroon and Nigeria have adopted anti-piracy legislation aligned with international norms Nigeria's *Suppression of Piracy and Other Maritime Offences Act* (2019) and Cameroon's Penal Code reforms. Compliance does not automatically translate into enforcement. Legal compliance theory emphasizes that the presence of laws alone does not guarantee behavioral change or enforcement outcomes; rather, the internalization of norms depends on judicial capacity, procedural clarity, and institutional commitment.<sup>1</sup> Evidence suggests that incomplete legal frameworks or procedural ambiguities can weaken prosecutorial effectiveness, particularly in complex maritime cases where chain-of-custody and expert testimony are critical.

Moreover, prosecutorial and judicial capacity remains uneven. Criminalizing piracy in statute is necessary, but enforcement depends on specialized expertise, robust evidentiary procedures, and timely adjudication. Weak forensic infrastructure, limited maritime case law experience among judges, and inconsistent mutual legal assistance protocols can delay or derail successful prosecutions.<sup>2</sup> Without these capacities, courts may dismiss cases or impose symbolic penalties that fail to deter organized maritime crime. Thus, compliance gaps in implementation undermine deterrence, weaken legal predictability, and perpetuate perceptions of legal vulnerability among maritime offenders.

### 9.2 Resource Constraints and Operational Sustainability

Maritime security is inherently resource intensive. Effective anti-piracy operations require sustained funding for patrol vessels, surveillance aircraft, maritime domain awareness systems, personnel training, and maintenance of technical assets. Cameroon and Nigeria have invested in operational capacity for example, Nigeria's Deep Blue Project introduced an integrated command and surveillance infrastructure but long-term sustainability remains uncertain due to budgetary volatility and competing domestic priorities.<sup>3</sup> In environments where security budgets are constrained, consistent funding for maritime assets may be compromised, particularly during national economic downturns or reallocation to pressing land-based security concerns.

<sup>1</sup> Abbott, K. W., & Snidal, D. (2000). Hard and soft law in international governance. *International Organization*, 54(3), 421–456.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

Beyond funding, technical and logistical capacities are also limited. Asset maintenance, spare parts procurement, and technical expertise require ongoing investment and partnerships. Without systemic planning, advanced equipment can fall into disrepair or remain underutilized, reducing effective patrol frequency and domain awareness. Scholars highlight that fragmented or episodic investment in maritime security leads to enforcement cycles rather than enduring capability.<sup>1</sup> Consequently, operational sustainability is challenged not only by resource quantity but by planning, coordination, and institutionalization of long-term maritime security infrastructure.

### *9.3 Political Economy and Structural Drivers of Maritime Crime*

Piracy in the Gulf of Guinea is not simply a security issue; it is deeply rooted in local political economies marked by unemployment, illicit resource extraction, and governance deficits. Economic rationales for engagement in piracy are supported by classic economic models of crime, which posit that individuals engage in criminal activity when the expected utility outweighs the expected cost of punishment.<sup>2</sup> In coastal communities where alternative livelihoods are sparse and informal oil bunkering or smuggling have embedded economic roles, maritime crime can be perceived as a rational survival strategy rather than aberrant behavior.

This structural embedding of maritime criminality complicates enforcement-focused approaches. Suppression efforts can displace activity or temporarily defer it, but without economic alternatives and community integration, underlying motivations persist.<sup>3</sup> A security response divorced from socio-economic investment risks superficial success.

### *9.4 Institutional Fragmentation and Coordination Deficits*

Maritime security governance requires synchronized action across multiple agencies: navies, coast guards, customs, intelligence services, immigration authorities, and the judiciary. However, coordination across these institutions is often weak or ad hoc.

While Nigeria and Cameroon engage in joint patrols and integrate elements of the Yaoundé Architecture, internal bureaucratic silos can impede seamless information sharing and inter-agency cooperation.<sup>4</sup> Fragmentation manifests in duplicated efforts, inconsistent response protocols, and missed opportunities for intelligence fusion, reducing operational coherence.

Institutional fragmentation is not simply a technical challenge; it reflects deeper governance limitations. Effective coordination requires shared strategic objectives, compatible communication infrastructure, and routine joint planning features that depend on robust institutional linkages and trust. Where agencies guard information or operate in parallel rather than in integrated networks, maritime governance remains fragmented, allowing criminal networks to exploit gaps and timing discrepancies. As governance scholars note, effective security sector coordination is both organizational and relational; without it, enforcement gains remain fragile and episodic.

### *9.5 Intelligence Integration and Technological Gaps*

Modern maritime security is increasingly intelligence-driven. Predictive analysis, real-time data sharing, and integrated surveillance platforms are essential for anticipating and intercepting piracy threats.<sup>5</sup> However, Cameroon and Nigeria like many Gulf of Guinea states struggle with technological fragmentation and limited intelligence fusion capacity. Compatibility issues among national systems, lack of standardized data protocols, and limited secure communication infrastructure constrain effective intelligence integration.

Intelligence deficits undermine early warning systems and erode response precision. Without real-time data feeds from radar, satellite AIS (Automatic Identification System), or shared risk databases, response times can lag or misallocate assets. As maritime security analysts emphasize, intelligence architecture is not merely a technical investment but an organizational practice requiring trust, interoperability, and governance oversight. Persistent technological gaps therefore limit the proactive dimensions of maritime security and weaken deterrence.

## **10. Summary of Findings**

<sup>1</sup> Bueger, C., & Edmunds, T. (2017). Beyond seablindness: A new agenda for maritime security studies. *International Affairs*, 93(6), 1293–1311.

<sup>2</sup> Becker, G. S. (1968). Crime and punishment: An economic approach. *Journal of Political Economy*, 76(2), 169–217.

<sup>3</sup> Murphy, M. N. (2009). *Small boats, weak states, dirty money: Piracy and maritime terrorism in the modern world*. Columbia University Press.

<sup>4</sup> Bueger, C. (2015). What is maritime security? *Marine Policy*, 53, 159–164.

<sup>5</sup> *Ibid.*

This study assessed the effectiveness of the common anti-piracy initiatives of Cameroon and Nigeria in the Gulf of Guinea through a qualitative doctrinal and analytical approach. Anchored in maritime security theory and human security theory, and grounded in international, regional, and national legal frameworks, the findings reveal measurable progress coupled with structural fragilities.

First, the study finds that legal consolidation has significantly strengthened the anti-piracy regime. Both states have moved beyond rhetorical commitment to operational domestication of international obligations. Nigeria's *Suppression of Piracy and Other Maritime Offences Act (2019)* stands out as a transformative instrument, converting treaty norms into prosecutable offences and reinforcing jurisdictional clarity. Cameroon's Penal Code reforms similarly embed piracy within domestic criminal law. These developments reflect deeper normative internalization and improved legal coherence. Yet, the findings underscore that legislative reform, while necessary, is insufficient without consistent enforcement capacity and judicial specialization.

Second, the evidence indicates that bilateral operational cooperation has enhanced deterrence and interdiction capability. Joint patrols, intelligence coordination, and participation in the Yaoundé Architecture have reduced operational gaps previously exploited by maritime criminal networks. Improvements in maritime domain awareness and coordinated naval deployments have contributed to observable declines in certain categories of piracy incidents. These developments align with core maritime security principles: visibility, coordination, and credible enforcement. Nonetheless, operational gains remain dependent on sustained funding and institutional continuity.

Third, from a human security standpoint, the study finds that enhanced enforcement has improved seafarer safety and maritime economic stability. Declines in kidnapping incidents and strengthened patrol presence have positively affected shipping confidence and offshore resource protection. However, these gains remain vulnerable where socio-economic drivers particularly youth unemployment, illicit oil economies, and coastal marginalization persist. Security outcomes remain precarious if structural incentives for maritime crime are left unaddressed.

Fourth, the findings identify enduring structural constraints. Resource volatility, institutional fragmentation, uneven prosecutorial expertise, intelligence-sharing limitations, and regional capacity asymmetries continue to weaken the depth of effectiveness. Compliance theory suggests that such implementation gaps often stem from institutional limitations rather than normative resistance. Accordingly, sustained effectiveness hinges on bureaucratic resilience, technical capacity, and political will.

Fifth, the study emphasizes that bilateral success is inseparable from regional coherence. Maritime criminal networks are adaptive and transnational. Capacity disparities across Gulf of Guinea states create potential displacement effects, limiting the aggregate impact of localized suppression. Thus, while Cameroon and Nigeria's cooperation marks a significant step forward, long-term stability requires broader regional consolidation and equitable burden-sharing.

In sum, the findings demonstrate that Cameroon and Nigeria have shifted from fragmented maritime enforcement toward coordinated governance. Legal clarity has improved, operational capacity has strengthened, and deterrence credibility has increased. However, effectiveness remains conditional rather than absolute. Durable maritime security in the Gulf of Guinea will depend on institutional resilience, socio-economic integration, sustained political commitment, and deeper regional harmonization.

## 11. Conclusion

This study examined the effectiveness of the common initiatives of Cameroon and Nigeria in combating piracy in the Gulf of Guinea through doctrinal legal analysis grounded in maritime security and human security theory. The findings reveal a decisive shift from fragmented enforcement to coordinated maritime governance. The domestication of international maritime norms has strengthened jurisdictional clarity and prosecutorial authority, while joint patrols and intelligence coordination have reduced operational gaps historically exploited by maritime criminal networks.

Maritime governance in both states is now more structured, coherent, and credible. Yet effectiveness remains conditional. Resource constraints, institutional fragmentation, uneven judicial specialization, intelligence integration gaps, and persistent socio-economic pressures continue to test the durability of anti-piracy gains. Enforcement has improved, but sustainability depends on institutional depth and structural reform. Maritime security progress in the Gulf of Guinea is real but it is not self-sustaining.

This study reframes anti-piracy effectiveness from a narrow focus on incident reduction to a governance-based assessment grounded in law, institutions, and operational coordination. By providing a focused bilateral analysis of Cameroon and Nigeria, it moves beyond generalized regional narratives and demonstrates how structured state cooperation shapes maritime stability. It further advances scholarship by positioning piracy suppression as a governance consolidation challenge rather than merely a naval enforcement issue, thereby offering a sharper lens

for evaluating maritime security in comparable regions. In sum, Cameroon and Nigeria's common initiatives represent substantive progress in maritime governance.

Legal frameworks are stronger. Coordination is tighter. Deterrence is more credible. The trajectory is positive. The enduring question is whether these gains will be institutionalized deeply enough to withstand evolving criminal adaptation and structural strain. The durability of maritime stability in the Gulf of Guinea will depend on that answer.

## **12. Recommendations**

Drawing from the findings of this study, the following recommendations are proposed to consolidate and sustain the gains made by Cameroon and Nigeria in combating piracy in the Gulf of Guinea.

### *12.1 Deepen Legal Harmonization and Judicial Specialization*

While both states have strengthened domestic anti-piracy legislation, continued harmonization of legal definitions, evidentiary standards, and prosecutorial procedures is essential to eliminate residual jurisdictional friction. Bilateral legal coordination mechanisms should be institutionalized to facilitate mutual legal assistance, extradition efficiency, and streamlined prosecution of transnational maritime crimes.

In addition, the establishment or expansion of specialized maritime courts or designated judicial divisions would enhance consistency, technical expertise, and prosecutorial efficiency in piracy-related cases. Legal strength must translate into predictable judicial outcomes to reinforce deterrence credibility.

### *12.2 Institutionalize Intelligence Integration and Maritime Domain Awareness*

Sustainable suppression of piracy requires seamless intelligence sharing. Cameroon and Nigeria should formalize interoperable intelligence protocols that link naval forces, coast guards, maritime administrations, and regional coordination centers. Real-time data integration reduces response latency and closes operational blind spots.

Investment in maritime domain awareness technologies surveillance systems, vessel tracking, and information fusion platforms should be treated as strategic infrastructure rather than discretionary expenditure. Maritime security effectiveness depends as much on information dominance as on physical patrol presence.

### *12.3 Ensure Sustainable Funding and Capacity Development*

Maritime security gains remain vulnerable to fiscal volatility. Both states should adopt medium- to long-term maritime security financing frameworks insulated from political and budgetary fluctuations. Dedicated maritime security funds, supported by port revenues and maritime industry contributions, could provide greater financial predictability. Continuous professional training for naval personnel, prosecutors, and maritime enforcement agencies should also be institutionalized. Capacity development must evolve alongside the adaptive strategies of maritime criminal networks.

### *12.4 Strengthen Bilateral and Regional Operational Coordination*

Although cooperation has improved, it should move from episodic joint patrols to fully institutionalized operational frameworks. Regularized joint exercises, shared operational doctrines, and standardized communication protocols would enhance interoperability and reduce coordination delays during cross-border incidents.

Furthermore, Cameroon and Nigeria should leverage and reinforce regional maritime security architectures to ensure that bilateral efforts complement broader Gulf of Guinea stabilization strategies. Piracy networks operate transnationally; enforcement responses must do the same.

### *12.5 Address Structural and Socio-Economic Drivers of Maritime Crime*

Enforcement alone cannot guarantee long-term suppression of piracy. Both states must integrate maritime security policy with coastal development strategies targeting youth unemployment, economic marginalization, and governance deficits in littoral communities. Investment in legitimate maritime economic opportunities fisheries regulation, port development, maritime logistics, and blue economy initiatives can reduce recruitment pools for maritime criminality. Sustainable maritime stability ultimately rests on inclusive development and institutional legitimacy.

The future of maritime security in the Gulf of Guinea depends less on episodic enforcement surges and more on institutional durability. Cameroon and Nigeria have laid a credible foundation. The next phase must consolidate legal harmonization, operational integration, financial sustainability, and socio-economic reform. Durable maritime stability will emerge not from patrols alone, but from governance consolidation.

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- Organization*, 54(3), 421–456.
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# Transitional Justice in Africa Armed Conflicts: Examining the Limits of the United Nations SDG 16 in Delivering Accountability and Sustainable Peace

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## Abstract

Transitional justice has emerged as a cornerstone for addressing the legacies of armed conflict, promoting accountability, reconciliation, and institutional reform in post-conflict societies. Despite its widespread adoption, the effectiveness and limitations of these mechanisms remain unevenly understood in African contexts. This study examines transitional justice in Rwanda and Sierra Leone within the framework of Sustainable Development Goal 16 (SDG 16), focusing on how judicial and non-judicial processes contribute to durable peace and governance. The research is theoretically anchored in Liberal Peace Theory, which underscores the role of democratic governance, rule of law, and human rights in sustaining peace, and Institutional Governance Theory, which emphasizes the critical role of institutional capacity, legitimacy, and structural conditions in the successful implementation of justice initiatives. Using a qualitative case-study methodology, the study analyzes legal frameworks, regional and international instruments, and socio-political factors shaping transitional justice processes. Findings reveal that while transitional justice has advanced accountability, strengthened institutions, and facilitated reconciliation, its transformative potential is constrained by political interference, resource limitations, and uneven implementation. The study concludes that integrating transitional justice with broader governance, socio-economic, and institutional reforms is essential to achieving sustainable peace. By linking theory, practice, and SDG 16, this research contributes to a comprehensive understanding of transitional justice's potential and limitations in African post-conflict settings.

**Keywords:** accountability, armed conflict, Africa, transitional justice, United Nations SDG 16, sustainable peace

## 1. Introduction

Armed conflicts across Africa continue to produce profound legacies of gross human rights violations, systemic displacement, institutional fragility, and sociopolitical fragmentation.<sup>1</sup> Civil wars, protracted insurgencies, and post-electoral crises have significantly undermined state legitimacy, weakened governance structures, and eroded public trust in judicial and political institutions. In response, transitional justice has emerged as a critical mechanism for post-conflict accountability, reparatory justice, and the restoration of civic and institutional legitimacy.<sup>2</sup>

Concurrently, the international community, through the United Nations, has embedded peace, justice, and institutional integrity as central objectives within global development frameworks, particularly SDG 16. This

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<sup>1</sup> Branch, A. (2011). *Displacing human rights: War and intervention in Northern Uganda*. Oxford University Press.

<sup>2</sup> United Nations. (2010). *Guidance note of the Secretary-General: United Nations approach to transitional justice*. United Nations.

goal emphasizes the promotion of peaceful and inclusive societies, equitable access to justice, and the construction of accountable, effective, and transparent institutions.<sup>1</sup> In theory, African transitional justice mechanisms — encompassing truth commissions, hybrid tribunals, community-based justice systems, reparations and restitution frameworks, and institutional reforms are designed to advance these normative objectives.<sup>2</sup>

Despite these aspirational frameworks, the operationalization of transitional justice across African states remains uneven, with persistent compliance deficits, enforcement gaps, and institutional constraints. Notable mechanisms, such as the Truth and Reconciliation Commission, the Gacaca courts, and the Special Court for Sierra Leone, illustrate both the jurisprudential and normative potential of transitional justice and its limitations in ensuring systemic accountability, effective redress for victims, and sustainable institutional reform.<sup>3</sup>

A central normative and operational dilemma persists: political settlements intended to terminate hostilities often prioritize expedient peace over legal accountability, incorporating amnesty clauses, political power-sharing arrangements, or deferred prosecutions.<sup>4</sup> While such settlements may mitigate immediate insecurity, they can simultaneously erode the rule of law, entrench impunity, compromise institutional legitimacy, and weaken public confidence in post-conflict governance. Conversely, strict legal enforcement measures may risk destabilizing fragile post-conflict environments, creating a tension between normative obligations to justice and pragmatic imperatives for peace. This tension raises critical questions regarding the extent to which African transitional justice processes substantively advance the objectives of SDG 16 and the mechanisms through which these global normative standards are translated into domestic and regional realities.

This study critically examines the limits of the United Nations SDG 16 in delivering accountability and sustainable peace in African armed conflicts. By engaging in a comparative jurisprudential analysis of selected case studies and regional policy instruments, particularly the African Union Transitional Justice Policy,<sup>5</sup> the paper interrogates the efficacy, legitimacy, and enforcement outcomes of transitional justice mechanisms. It situates African transitional justice within the broader global normative and development agenda, highlighting gaps between aspirational standards and practical implementation, and exploring avenues for strengthening institutional accountability, rule of law consolidation, and reparatory mechanisms in post-conflict settings.

## 2. Conceptual Framework

This conceptual framework provides the normative, theoretical, and analytical scaffolding for examining transitional justice in African armed conflicts, particularly through the evaluative lens of Sustainable Development Goal 16 (SDG 16). It conceptualizes transitional justice not merely as a post-conflict legal response, but as a multidimensional governance architecture embedded within international legal obligations, institutional reform processes, peacebuilding paradigms, and postcolonial political realities.

### 2.1 Transitional Justice

Transitional justice is broadly understood as the set of judicial and non-judicial measures adopted by societies emerging from armed conflict or authoritarian rule to address legacies of mass atrocity, ensure accountability, recognize victims, and prevent recurrence.<sup>6</sup> It operates at the intersection of international human rights law (IHRL), international humanitarian law (IHL), and international criminal law (ICL).

According to the United Nations (2010), transitional justice encompasses:

“The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”<sup>7</sup> More so, it encompasses criminal prosecutions, truth-seeking mechanisms (example, truth commissions), reparation programs, institutional reforms, vetting and lustration processes.

Scholarly literature further conceptualizes.

<sup>1</sup> United Nations. (2015). *Transforming our world: The 2030 agenda for sustainable development (A/RES/70/1)*. United Nations.

<sup>2</sup> Sriram, C. L. (2007). *Transitional justice and peacebuilding on the ground: Victims and ex-combatants*. United States Institute of Peace Press.

<sup>3</sup> Hayner, P. B. (2011). *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2nd ed.). Routledge.

<sup>4</sup> Snyder, J., & Vinjamuri, L. (2003). Trials and errors: Principle and pragmatism in strategies of international justice. *International Security*, 28(3), 5–44.

<sup>5</sup> African Union. (2019). *African Union transitional justice policy*. African Union Commission.

<sup>6</sup> Teitel, R. G. (2000). *Transitional justice*. Oxford University Press.

<sup>7</sup> United Nations. (2010). *Guidance note of the Secretary-General: United Nations approach to transitional justice*. United Nations.

Ruti G. Teitel conceptualizes transitional justice as a distinct jurisprudential paradigm associated with periods of political transformation. Law in transitional contexts is both retrospective and constitutive addressing past wrongs while shaping a new normative constitutional order.<sup>1</sup>

Priscilla B. Hayner defines transitional justice as a response to systematic human rights violations aimed at recognizing victims and fostering reconciliation and democracy. Her work foregrounds truth commissions as mechanisms of moral acknowledgment and historical clarification.<sup>2</sup>

Pablo de Greiff advances a theory of normative integration, emphasizing that prosecutions, reparations, truth-seeking, and institutional reform must operate coherently to guarantee non-repetition and reinforce democratic legitimacy.<sup>3</sup>

Neil J. Kritz underscores transitional justice as the process through which societies reckon with past abuses while simultaneously consolidating rule-of-law institutions.<sup>4</sup>

Transitional justice is a multi-pillar framework combining judicial and non-judicial measures designed to combat impunity, restore victim's dignity, reform institutions, and prevent recurrence of violence in post-conflict African states.

This conceptualization aligns with normative international standards while recognizing the political realities of post-conflict transitions.

## 2.2 African Armed Conflicts

Armed conflicts, under international humanitarian law, refers to the protracted armed violence between governmental authorities and organized armed groups or between such groups within a state.<sup>5</sup> African armed conflicts often involve civil wars, insurgencies, and identity-based violence linked to institutional fragility and governance breakdown.<sup>6</sup>

The continental peace and security framework is shaped by the African Union and its Peace and Security Architecture (African Union, 2014). In this study, African armed conflicts are conceptualized as: "structurally rooted political crises characterized by sustained organized violence, weak institutions, and systemic human rights violations."

## 2.3 SDG 16 (Peace, Justice, and Strong Institutions)

SDG 16 forms part of the 2030 Agenda adopted by the United Nations in 2015.<sup>7</sup> It seeks to promote peaceful and inclusive societies, ensure access to justice, and build effective institutions. Unlike binding treaties, SDGs operate as soft-law governance commitments, relying on voluntary implementation and political will.<sup>8</sup> SDG 16 includes targets related to rule of law (Target 16.3), reduction of violence (Target 16.1), anti-corruption (Target 16.5), and institutional accountability (Target 16.6).<sup>9</sup>

In this research, SDG 16 is conceptualized as a global normative-developmental framework linking justice, governance reform, and peacebuilding to sustainable development outcomes.

## 2.4 Accountability

Accountability refers to the obligation of actors to explain and justify their conduct and face consequences for violations.<sup>10</sup> Within transitional justice, accountability encompasses criminal prosecution, institutional reform,

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<sup>1</sup> *Ibid.*

<sup>2</sup> Hayner, P. B. (2011). *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2nd ed.). Routledge.

<sup>3</sup> De Greiff, P. (2012). Theorizing transitional justice. In M. Williams, R. Nagy, & J. Elster (Eds.), *Transitional justice* (pp. 31–77). New York.

<sup>4</sup> Kritz, N. J. (Ed.). (1995). *Transitional justice: How emerging democracies reckon with former regimes* (Vol. 1). United States Institute of Peace Press.

<sup>5</sup> Prosecutor v. Tadić, Case No. IT-94-1-A (International Criminal Tribunal for the former Yugoslavia Appeals Chamber July 15, 1999).

<sup>6</sup> Collier, P., & Hoeffler, A. (2004). Greed and grievance in civil war. *Oxford Economic Papers*, 56(4), 563–595.

<sup>7</sup> United Nations. (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*. United Nations.

<sup>8</sup> Fukuda-Parr, S. (2016). From the Millennium Development Goals to the Sustainable Development Goals: Shifts in purpose, concept, and politics of global goal setting. *Gender & Development*, 24(1), 43–52.

<sup>9</sup> *Ibid.*

<sup>10</sup> Grant, R. W., & Keohane, R. O. (2005). Accountability and abuses of power in world politics. *American Political Science Review*, 99(1), 29–43.

and mechanisms designed to end impunity for atrocity crimes under international law.<sup>1</sup>

International criminal accountability is often exercised through institutions such as the International Criminal Court.<sup>2</sup> In this study, accountability is defined as “the enforceable legal and institutional responsibility imposed on perpetrators of serious violations, coupled with systemic reforms that deter recurrence and restore public trust.”

### 2.5 Sustainable Peace

Sustainable peace extends beyond the absence of violence and involves addressing the structural causes of conflict to prevent relapse.<sup>3</sup> The United Nations has adopted the concept of “sustaining peace” as an integrated approach linking development, human rights, and security.<sup>4</sup> Sustainable peace therefore includes institutional legitimacy, rule-of-law consolidation, inclusive governance, and socio-economic reconstruction.<sup>5</sup>

For this study, sustainable peace is understood as “a durable condition of political stability and institutional legitimacy in which accountability, governance reform, and inclusive development collectively prevent recurrence of armed conflicts.”

### 2.6 Limit (Normative and Structural Constraints)

The term “limits” refers to political, structural, and normative constraints that restrict the operational effectiveness of SDG 16 in post-conflict settings. Soft-law frameworks such as the SDGs lack binding enforcement mechanisms, making implementation dependent on state capacity and political will.<sup>6</sup> Additionally, tensions between peace negotiations and criminal accountability may undermine justice processes.<sup>7</sup> Thus, “limits” are conceptualized as “structural and political constraints that narrow the transformative potential of SDG 16 in delivering substantive accountability and sustainable peace in African post-conflict.”

## 3. Methodology

This study adopts a qualitative research design grounded in doctrinal and socio-legal analysis to examine the limits of SDG 16 in delivering accountability and sustainable peace within the framework of transitional justice in African armed conflicts. A qualitative approach is appropriate because the research seeks to interpret legal norms, institutional practices, and governance structures rather than establish statistical causality.<sup>8</sup> The study is anchored in interpretivist epistemology, which enables critical evaluation of how international normative frameworks particularly SDG 16 under the 2030 Agenda<sup>9</sup> interact with domestic transitional justice processes. This design allows for in-depth assessment of the extent to which global commitments translate into enforceable accountability mechanisms in post-conflict African states.<sup>10</sup>

The research relies on documentary and doctrinal methods of data collection, drawing from both primary and secondary sources. Primary sources include international legal instruments such as the Rome Statute of the International Criminal Court (1998), United Nations policy frameworks on transitional justice, and reports on sustaining peace. Regional governance instruments, including African Union peace and security frameworks, are also examined. Secondary sources consist of peer-reviewed journal articles, academic texts, and policy reports addressing transitional justice, post-conflict peacebuilding, and institutional reform.<sup>11</sup> Documentary analysis is particularly suitable for policy and legal research, as it allows systematic examination of institutional commitments and implementation gaps.<sup>12</sup>

<sup>1</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

<sup>2</sup> *Ibid.*

<sup>3</sup> World Bank. (2011). *World development report 2011: Conflict, security, and development*. World Bank.

<sup>4</sup> United Nations. (2016). *Report of the Secretary-General on sustaining peace*. United Nations.

<sup>5</sup> Paris, R. (2004). *At war's end: Building peace after civil conflict*. Cambridge University Press.

<sup>6</sup> *Ibid.*

<sup>7</sup> Sriram, C. L. (2007). Justice as peace? Liberal peacebuilding and strategies of transitional justice. *Global Society*, 21(4), 579–591.

<sup>8</sup> Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage Publications.

<sup>9</sup> *Ibid.*

<sup>10</sup> Teitel, R. G. (2000). *Transitional justice*. Oxford University Press.

<sup>11</sup> Arthur, P. (2009). How “transitions” reshaped human rights: A conceptual history of transitional justice. *Human Rights Quarterly*, 31(2), 321–367.

<sup>12</sup> Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40.

Data analysis is conducted using thematic and qualitative content analysis, which facilitates identification of recurring patterns such as enforcement deficits, political resistance institutional fragility, and peace-versus-justice dilemmas.<sup>1</sup> Through comparative analysis of selected African post-conflict contexts, the study evaluates whether SDG 16's soft-law character limits its effectiveness in strengthening accountability institutions. The analytical framework contrasts the normative aspirations of SDG 16 particularly targets relating to rule of law and institutional accountability with empirical realities of transitional justice implementation in African settings.<sup>2</sup>

To enhance validity and reliability, the study employs triangulation by cross-referencing international legal instruments, scholarly literature, and institutional reports.<sup>3</sup> Analytical rigor is maintained through contextual interpretation of legal and policy texts within broader political and governance environments. Ethical considerations are minimal, as the research relies exclusively on publicly available documents and does not involve human participants. Overall, this methodological framework provides a systematic and theoretically grounded approach to assessing the structural and normative limits of SDG 16 in advancing transitional justice and sustainable peace in African armed conflict contexts.

#### 4. Theoretical Framework

This study is grounded in an interdisciplinary theoretical framework that explains the relationship between transitional justice, accountability, institutional reform, and sustainable peace in post-conflict African contexts. To critically examine the limits of SDG 16 in delivering accountability and durable peace, the research draws from Transitional Justice Theory, Liberal Peacebuilding Theory, and Institutional Governance Theory. These theoretical perspectives provide complementary lenses for understanding how global normative commitments interact with domestic institutional realities in fragile states.

Transitional Justice Theory is the body of ideas that explains how societies deal with past human rights violations during periods of political change in order to achieve justice, peace, and reconciliation. Transitional Justice Theory forms the primary analytical foundation of this study. This theory was mainly developed by Ruti Teitel, who is regarded as the principal scholar of the theory, although other scholars such as Priscilla Hayner, Martha Minow, and Neil Kritz also contributed to its development who emphasized truth-seeking, reparations, and institutional reform as mechanisms for addressing past atrocities. Minow (1998)<sup>4</sup> argues that societies emerging from mass violence must balance justice with reconciliation to rebuild legitimacy, while Hayner (2011)<sup>5</sup> highlighted that the role of truth commissions in strengthening democratic governance and preventing recurrence of conflict. These perspectives align with global transitional justice practice institutionalized by the United Nations through its transitional justice framework. Within the context of SDG 16, which promotes rule of law and accountable institutions,<sup>6</sup> Transitional Justice Theory provides the normative benchmark for assessing whether accountability mechanisms in African post-conflict states are sufficient to deter impunity and rebuild trust.

Liberal Peacebuilding Theory provides a second theoretical lens. Liberal peacekeeping theory is the idea that sustainable peace can be achieved through peacekeeping operations that promote democracy, rule of law, human rights, and economic development in post-conflict societies. This theory originates from the ideas of Immanuel Kant and was later developed by modern scholars such as Michael Doyle and Roland Paris, who emphasized the role of democracy, institutions, and international cooperation in maintaining peace.<sup>7</sup> SDG 16 reflects liberal peace assumptions by linking justice, institutional reform, and inclusive governance to sustainable development outcomes.<sup>8</sup>

Institutional Governance Theory is the theory that explains how institutions such as laws, rules, and organizations shape governance and influence political and economic development in society. The theory was mainly developed by Douglas North, who argued that institutions are the "rules of the game" that structure human interaction and determine the effectiveness of governance. North clearly presented this theory in his book

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<sup>1</sup> Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Minow, M. (1998). *Between vengeance and forgiveness: Facing history after genocide and mass violence*. Beacon Press.

<sup>5</sup> Hayner, P. B. (2011). *Unspeakable truths: Transitional justice and the challenge of truth commissions* (2nd ed.). Routledge.

<sup>6</sup> United Nations. (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*. United Nations.

<sup>7</sup> Kant, I. (1795). *Perpetual Peace, A Philosophical Sketch*. London: George Allen & Unwin.

<sup>8</sup> *Ibid.*

*Institutions Institutional Change and Economic Performance, 1990.*<sup>1</sup> However, in many African post-conflict settings, institutional weakness, corruption, and limited enforcement capacity undermine transitional justice implementation. Institutional Governance Theory therefore explains the structural gap between normative commitments and practical accountability outcomes.

In synthesis, Transitional Justice Theory (Minow, 1998; Hayner, 2011) establishes the moral and legal necessity of addressing past violations; Liberal Peacebuilding Theory (Doyle, 1986; Richmond, 2006) explains the emphasis on governance reform as a pathway to durable peace; and Institutional Governance Theory (March & Olsen, 1989; Acemoglu & Robinson, 2012) highlights the structural constraints affecting implementation. Together, these theories provide a comprehensive analytical foundation for evaluating whether SDG 16 meaningfully advances accountability.

## **5. Legal Framework of Transitional Justice in African Armed Conflict**

The legal framework for transitional justice constitutes the foundational architecture through which accountability, reconciliation, and institutional reform are operationalized in post-conflict societies. It embodies a multi-layered constellation of norms, obligations, and mechanisms that span international, regional, and domestic jurisdictions, thereby creating a coherent yet complex regulatory environment for addressing mass atrocities and systemic human rights violations. At the international level, treaties, conventions, and customary law articulate states' obligations to investigate, prosecute, and prevent egregious violations, while specialized institutions such as the International Criminal Court codify and enforce accountability for crimes against humanity, war crimes, and genocide. Complementing these are regional instruments, particularly within the African context, including the African Charter on Human and Peoples' Rights, the Protocol establishing the African Court on Human and Peoples' Rights, and African Union transitional justice policy frameworks, which contextualize global norms to the sociopolitical realities of the continent. National legal instruments operationalize these obligations through domestic legislation, specialized courts, truth commissions, and institutional reforms, ensuring the practical implementation of justice mechanisms.

### *5.1 International Legal Instruments in Transitional Justice*

International law provides the overarching normative and institutional foundation for transitional justice. It articulates states' obligations to prevent, investigate, and prosecute serious human rights violations and humanitarian law breaches. International legal instruments form the backbone of transitional justice, providing the normative and institutional scaffolding necessary to address mass human rights violations, prosecute perpetrators, ensure reparations, and guide institutional reform. They operate at the intersection of international law, human rights, and global governance, translating universal norms into enforceable standards while framing state responsibilities in post-conflict reconstruction. Their effectiveness relies on both the clarity of legal obligations and the practical mechanisms through which violations can be addressed at national and regional levels. Each of these instruments shall be examined seriatim.

#### **A. Treaties and Conventions**

Treaties and conventions define the legal duties of states, establish protections for victims, and provide substantive and procedural frameworks for transitional justice.

#### **The Geneva Conventions of 1949 and Additional Protocols (1977)**

The Geneva Conventions of 1949 and their Additional Protocols of 1977 constitute the cornerstone of modern International Humanitarian Law (IHL) and provide a normative framework that is indispensable to transitional justice processes in post-conflict societies. Although primarily designed to regulate the conduct of hostilities and protect victims of armed conflict, these instruments also establish legal standards that support accountability, reparations, and institutional reform core pillars of transitional justice. By defining grave breaches and imposing obligations on states to prosecute perpetrators, the Geneva legal regime strengthens the juridical basis for post-conflict justice and reconciliation.

The Four Geneva Conventions of 1949 collectively protect different categories of victims of armed conflict. The First and Second Conventions protect wounded and sick combatants on land and at sea, respectively, while the Third Convention governs the treatment of prisoners of war. The Fourth Geneva Convention, particularly relevant to transitional justice, protects civilian populations during armed conflicts and occupations. Articles 27–34 of the Fourth Convention guarantee fundamental protections such as humane treatment and protection against violence, torture, and collective punishment, while Article 146 obliges states to search for and prosecute persons suspected of committing grave breaches. These provisions create a legal obligation that supports

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<sup>1</sup> North, D.C. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.

transitional justice mechanisms such as war crimes tribunals and truth commissions.<sup>1</sup>

Equally significant are the Additional Protocols of 1977, which expanded the scope of humanitarian protections and adapted IHL to contemporary forms of conflict. Additional Protocol I (1977) applies to international armed conflicts and strengthens protections for civilians. Article 48 establishes the principle of distinction between civilians and combatants, while Article 75 codifies fundamental guarantees, including prohibition of torture and cruel treatment. These provisions form a normative basis for prosecuting violations in post-conflict settings and reinforce accountability mechanisms central to transitional justice.<sup>2</sup>

Additional Protocol II (1977) is particularly important for African contexts because it applies to non-international armed conflicts, which constitute the majority of conflicts on the continent. Article 4 provides fundamental guarantees for persons not participating in hostilities, including prohibitions against violence to life and dignity, while Article 6 outlines fair trial guarantees. These provisions are directly relevant to transitional justice in internal conflicts such as civil wars and insurgencies, including situations comparable to the Anglophone crisis in Cameroon. Protocol II thus bridges the gap between humanitarian law and human rights law by ensuring that even internal conflicts are governed by enforceable legal standards.<sup>3</sup>

From a transitional justice perspective, the Geneva Conventions and Additional Protocols perform three crucial functions. First, they establish legal norms that define violations and crimes requiring accountability. Second, they impose state obligations to investigate and prosecute grave breaches, thereby reinforcing the accountability pillar of transitional justice. Third, they provide a normative framework for victim protection and reparations, which are essential for sustainable peace and reconciliation. Consequently, these instruments are not merely wartime regulatory tools but also foundational legal sources for post-conflict justice systems.

#### **Convention on the Prevention and Punishment of the Crime of Genocide (1948)**

The Convention on the Prevention and Punishment of the Crime of Genocide (1948) constitutes a foundational legal instrument for transitional justice by codifying genocide as an international crime and imposing binding obligations on states to prevent and punish mass atrocities. Emerging from the moral and legal imperatives of the post-Second World War era, the Convention provides a normative framework that strengthens accountability, combats impunity, and reinforces the rule of law in post-conflict societies. Its provisions remain central to transitional justice processes aimed at addressing large-scale violations of human rights.

Article I establishes genocide as a crime under international law and imposes a dual obligation on states to prevent and to punish. This preventive and punitive framework aligns closely with transitional justice objectives by linking accountability with guarantees of non-recurrence.<sup>4</sup> Article II defines genocide as acts committed with intent to destroy, wholly or partially, a national, ethnic, racial, or religious group, including killing, causing serious harm, and imposing destructive living conditions. This definition provides the juridical standard for prosecuting mass atrocities in transitional justice settings.<sup>5</sup> Article III extends criminal responsibility to conspiracy, incitement, attempt, and complicity in genocide, thereby enabling transitional justice mechanisms to address systemic and organized patterns of violence rather than isolated acts. Article IV affirms that all perpetrators, including state officials and political leaders, are subject to punishment, reinforcing the principle of individual criminal responsibility and rejecting official immunity. Article VI requires prosecution before competent national or international tribunals, establishing the legal foundation for international criminal justice institutions and hybrid courts used in transitional justice processes.<sup>6</sup>

Taken together, the Convention provides a concise yet robust legal framework for defining atrocity crimes, ensuring accountability, and supporting sustainable peace. It therefore remains a central normative pillar of transitional justice in societies emerging from armed conflict.

#### **International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)**

The International Covenant on Economic, Social and Cultural Rights (1966) provides an important legal foundation for transitional justice by emphasizing that durable peace requires the realization of socio-economic rights alongside accountability for violations. As a core component of the International Bill of Human Rights,

<sup>1</sup> Henckaerts, J.-M., & Doswald-Beck, L. (2005). *Customary international humanitarian law: Volume I: Rules*. Cambridge University Press.

<sup>2</sup> Sassòli, M., Bouvier, A. A., & Quintin, A. (2011). *How does law protect in war?* International Committee of the Red Cross.

<sup>3</sup> Roberts, A., & Guelff, R. (2000). *Documents on the laws of war* (3rd ed.). Oxford University Press.

<sup>4</sup> Schabas, W. A. (2009). *Genocide in international law: The crime of crimes* (2nd ed.). Cambridge University Press.

<sup>5</sup> Cassese, A. (2013). *International criminal law* (3rd ed.). Oxford University Press.

<sup>6</sup> *Ibid.*

the Covenant imposes obligations on states to promote social justice through the protection of rights relating to work, health, education, and adequate living standards. In post-conflict contexts, these guarantees help address structural inequalities that often fuel armed conflicts.<sup>1</sup>

Article 2(1) obliges states to take deliberate steps toward the progressive realization of economic, social, and cultural rights through available resources and international cooperation. This provision supports institutional reform and socio-economic reconstruction central to transitional justice processes.<sup>2</sup> Article 6 and Article 7 protect the right to work and fair conditions of employment, while Article 11 guarantees the right to an adequate standard of living, including food and housing. These rights reinforce the reparative dimension of transitional justice by promoting the restoration of dignified living conditions. Article 12 recognizes the right to health, and Article 13 guarantees the right to education, both of which are essential for recovery, reconciliation, and long-term peacebuilding in post-conflict societies.<sup>3</sup>

Taken together, the Covenant strengthens transitional justice by linking accountability with socio-economic transformation and sustainable peace.

## **B. International Criminal Law Framework**

International criminal law ensures individual accountability, operationalizing the prosecutorial dimension of transitional justice.

### **Rome Statute of the International Criminal Court (1998)**

The Rome Statute of the International Criminal Court (1998) provides a central legal framework for transitional justice by institutionalizing international criminal accountability for serious violations of human rights and humanitarian law. The Statute establishes the International Criminal Court as a permanent judicial institution with jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression. By reinforcing the principle that perpetrators of mass atrocities must be held accountable, the Rome Statute strengthens the rule of law and supports sustainable peace in post-conflict societies.<sup>4</sup>

Article 5 defines the core crimes within the jurisdiction of the Court, while Articles 6, 7, and 8 provide detailed definitions of genocide, crimes against humanity, and war crimes respectively. These provisions establish the legal standards for prosecuting grave international crimes and form the normative basis for accountability mechanisms in transitional justice settings.<sup>5</sup>

The Statute further reinforces transitional justice through the principle of complementarity under Article 17, which requires national courts to exercise primary jurisdiction while the Court intervenes only where states are unwilling or unable to prosecute. In addition, Article 75 provides for reparations to victims, thereby linking criminal accountability with victim restoration. Together, these provisions make the Rome Statute a key legal instrument for combating impunity and promoting durable peace in post-conflict societies.

### **Ad hoc Tribunals**

Ad hoc international criminal tribunals were established to address specific instances of mass atrocity and serve as early operational models for transitional justice. Unlike permanent institutions, these tribunals were created by the United Nations to prosecute individuals responsible for grave violations of international humanitarian law in particular conflicts. They played a critical role in demonstrating that leaders, state officials, and other perpetrators of war crimes and genocide could be held individually accountable, thus reinforcing the normative framework for post-conflict justice.<sup>6</sup>

The International Criminal Tribunal for the former Yugoslavia<sup>7</sup> was established to prosecute serious violations of the laws and customs of war during the Balkan conflicts. Articles 2 and 3 of its Statute criminalized grave breaches and violations of humanitarian law, providing a legal basis for accountability and serving as a jurisprudential model for subsequent tribunals and domestic prosecutions. Similarly, the International Criminal

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<sup>1</sup> Alston, P., & Goodman, R. (2013). *International human rights*. Oxford University Press.

<sup>2</sup> Craven, M. (1995). *The International Covenant on Economic, Social and Cultural Rights: A perspective on its development*. Oxford University Press.

<sup>3</sup> *Ibid.*

<sup>4</sup> Schabas, W. A. (2017). *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press.

<sup>5</sup> *Ibid.*

<sup>6</sup> Weissbrodt, D. (2003). *International human rights law: Cases and materials*. West Academic Publishing.

<sup>7</sup> International Criminal Tribunal for the Former Yugoslavia Statute, May 25, 1993, 32 I.L.M. 1203.

Tribunal for Rwanda<sup>1</sup> focused on genocide and complicity in genocide, as defined in Article 3 of its Statute, prosecuting those responsible for the 1994 Rwandan genocide and establishing precedent for crimes against humanity.<sup>2</sup>

These tribunals not only delivered justice to victims but also contributed to the development of international criminal law by clarifying definitions of genocide, crimes against humanity, and war crimes. They reinforced transitional justice principles by emphasizing individual criminal responsibility, documenting atrocities for historical record, and providing a legal foundation for reparations and institutional reform. Their legacy informs both permanent international mechanisms, such as the International Criminal Court, and hybrid tribunals used in post-conflict contexts.

### C. United Nations Policy Instruments

United Nations (UN) policy instruments provide a practical and normative bridge between international law and post-conflict implementation, translating binding obligations into actionable strategies for justice, accountability, and reconciliation. Unlike treaties, these instruments guide states and UN actors in designing transitional justice measures that are context-sensitive, victim-centered, and institutionally transformative. By linking legal accountability with peacebuilding, governance, and development, UN frameworks ensure that transitional justice is not only about punishing perpetrators but also about restoring rights, reforming institutions, and promoting sustainable peace.<sup>3</sup>

#### Guidance Note of the Secretary-General on Transitional Justice (2010)

The Guidance Note of the Secretary-General on Transitional Justice provides comprehensive operational guidance for implementing transitional justice in post-conflict societies. It articulates the four pillars of transitional justice: criminal accountability, truth-seeking, reparations, and institutional reform, and emphasizes their integration as essential for sustainable peace and social reconciliation. The Note also stresses context-specific approaches, urging actors to adapt strategies to local political, social, and cultural realities, while ensuring that justice mechanisms are inclusive, participatory, and victim-centered.<sup>4</sup>

Critically, the Guidance Note underscores that transitional justice extends beyond prosecutions to include institutional reform and reparations, linking legal accountability with structural and social transformation. It also aligns transitional justice with broader peacebuilding and development goals, reinforcing the idea that justice, governance, and social stability are mutually reinforcing components of post-conflict recovery.

#### Sustainable Development Goal (2015)

Sustainable Development Goal (SDG) 16, adopted under the UN 2030 Agenda, emphasizes peace, justice, and strong institutions, making it directly relevant to transitional justice. SDG 16 promotes the rule of law, accountability, reduction of impunity, and transparent governance, all essential elements for post-conflict reconstruction. Its targets, including ending violence, prosecuting human rights violations, and building inclusive institutions, align closely with the core objectives of transitional justice.<sup>5</sup>

Analytically, SDG 16 extends transitional justice beyond legal accountability by linking it to sustainable development outcomes. By embedding justice within broader social, economic, and governance frameworks, SDG 16 positions institutional reform, protection of rights, and restoration of public trust as critical prerequisites for durable peace. Moreover, its emphasis on monitoring and measurable indicators encourages states to systematically track justice and governance reforms, enhancing the effectiveness and credibility of transitional justice interventions.

### 6. Regional Legal Framework in Transitional Justice

Regional legal instruments complement international treaties by localizing normative and operational standards for transitional justice within the specific political, cultural, and legal contexts of member states. In Africa, the African Union (AU) and the African Commission on Human and Peoples' Rights (ACHPR) provide binding and guiding frameworks that strengthen accountability, protect human rights, and support post-conflict recovery. These regional instruments bridge the gap between international obligations and domestic implementation,

<sup>1</sup> International Criminal Tribunal for the Former Yugoslavia Statute, May 25, 1993, 32 I.L.M. 1203.

<sup>2</sup> Akande, D. (2003). The jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda: An overview. *Leiden Journal of International Law*, 16(2), 345–374.

<sup>3</sup> Teitel, R. G. (2000). *Transitional justice*. Oxford University Press.

<sup>4</sup> United Nations. (2010). *Guidance note of the Secretary-General: United Nations approach to transitional justice*. United Nations.

<sup>5</sup> United Nations. (2015). *Transforming our world: The 2030 Agenda for Sustainable Development*. United Nations.

ensuring that transitional justice processes are responsive to local realities while aligned with global norms.<sup>1</sup>

#### 6.1 African Charter on Human and Peoples' Rights (1981)

The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, is the primary human rights instrument in Africa. It enshrines both civil and political rights and economic, social, and cultural rights, providing a broad normative framework for transitional justice. Key provisions relevant to transitional justice include:

- ✓ Article 4: Right to life, forming the basis for accountability for extrajudicial killings and mass atrocities.
- ✓ Article 5: Prohibition of torture and inhuman treatment, critical for prosecuting crimes against humanity.
- ✓ Article 7: Right to fair trial, guiding due process in post-conflict prosecutions.
- ✓ Article 21: Right to freely dispose of wealth and natural resources, relevant for addressing structural inequalities often linked to conflict (African Union, 1981).

The Charter not only establishes individual and state responsibilities but also provides mechanisms, such as communications to the ACHPR, for monitoring compliance and ensuring enforcement of human rights obligations.

#### 6.2 Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998)

The Protocol establishing the African Court on Human and Peoples' Rights (1998) complements the ACHPR by providing a judicial mechanism to adjudicate violations of human and peoples' rights. The Court's jurisdiction includes states parties and, in certain circumstances, individuals and NGOs. Its decisions strengthen transitional justice by: offering a binding adjudicatory forum for serious human rights violations, reinforcing state accountability for violations during and after conflicts, and providing reparations and remedies to victims, thereby supporting reconciliation.<sup>2</sup> By ensuring enforceable regional oversight, the Court serves as a bridge between international norms and domestic transitional justice mechanisms.

#### 6.3 African Union Policy Framework

African Union (AU) policy frameworks provide a continental normative structure for transitional justice by integrating human rights protection, accountability, and post-conflict reconstruction within an African institutional context. These frameworks emphasize holistic and context-sensitive approaches, recognizing that African armed conflicts often arise from complex political and socio-economic grievances. Consequently, AU instruments promote transitional justice mechanisms that combine legal accountability with reconciliation, institutional reform, and sustainable development.<sup>3</sup>

A key instrument in this regard is the African Union Transitional Justice Policy (2019), which provides a comprehensive continental framework for addressing mass atrocities and post-conflict reconstruction. The Policy sets out guiding principles such as victim-centered approaches (Section 7), gender sensitivity (Section 8), and national ownership (Section 9) in the design and implementation of transitional justice mechanisms. It further recognizes core transitional justice measures including accountability and prosecutions (Section 15), truth-seeking processes (Section 16), reparations (Section 17), and institutional reforms (Section 18). These provisions expand transitional justice beyond criminal trials by emphasizing reconciliation and structural transformation as prerequisites for sustainable peace.<sup>4</sup>

The AU peace and security architecture also supports transitional justice through institutional frameworks such as the Peace and Security Council. Under the Protocol Relating to the Establishment of the Peace and Security Council (2002), provisions such as Article 3(f) emphasize the promotion of democratic practices and good governance, while Article 7(1)(e) empowers the Council to support post-conflict peacebuilding and reconstruction. These provisions contribute to transitional justice by promoting institutional reform and preventing the recurrence of armed conflict.<sup>5</sup>

Another significant regional instrument is the African Charter on the Rights and Welfare of the Child (1990),

<sup>1</sup> Viljoen, F. (2012). *International human rights law in Africa* (3rd ed.). Oxford University Press.

<sup>2</sup> Biegon, J. (2013). The African Court on Human and Peoples' Rights: An overview of its jurisprudence and role in human rights protection. *African Human Rights Law Journal*, 13(1), 1–22.

<sup>3</sup> Murithi, T. (2009). The African Union's role in peace and security: Reflections on challenges and opportunities. *African Security Review*, 18(3), 1–12.

<sup>4</sup> African Union. (2019). *African Union Transitional Justice Policy*.

<sup>5</sup> *Ibid.*

which provides protection for children affected by armed conflicts. Relevant provisions include Article 22, which requires states to protect children during armed conflicts and ensure their care and rehabilitation, and Article 27, which protects children against exploitation and abuse. These provisions support transitional justice by ensuring the rehabilitation and reintegration of vulnerable groups in post-conflict societies.<sup>1</sup>

Analytically, AU policy frameworks strengthen transitional justice in three important respects. First, they provide regional legitimacy, ensuring that justice mechanisms reflect African socio-political realities. Second, they emphasize institutional reform and reconciliation, complementing international criminal accountability mechanisms. Third, they promote coordination between national and regional institutions, thereby enhancing the effectiveness and sustainability of transitional justice initiatives across Africa.

## 7. National Legal Framework

National legal frameworks constitute the operational backbone of transitional justice, translating international norms into enforceable domestic obligations. Through constitutional guarantees, legislative enactments, judicial mechanisms, and institutional reforms, states internalize accountability and embed the rule of law within post-conflict reconstruction. Domestic incorporation of international crimes such as genocide, crimes against humanity, and war crimes enables national courts to exercise jurisdiction, thereby reinforcing the principle of complementarity and ensuring that justice is not exclusively externalized to international tribunals. Robust national frameworks thus transform abstract international commitments into tangible legal remedies for victims and binding duties for states.<sup>2</sup>

### 7.1 Constitutional and Legislative Foundations

Constitutions and enabling statutes provide the normative architecture for transitional justice by entrenching fundamental rights, equality before the law, and access to justice. Many post-conflict states constitutionalize human dignity, non-discrimination, and due process as inviolable principles, thereby furnishing a juridical basis for truth-seeking, reparations, and institutional reform. Legislative measures frequently domesticate international humanitarian and human rights law, criminalize atrocity crimes, and establish specialized institutions such as truth commissions and reparations boards. In this sense, constitutional supremacy and legislative precision function as the juridical pillars upon which sustainable accountability regimes are constructed.<sup>3</sup>

### 7.2 Judicial and Quasi-Judicial Mechanisms

Domestic courts and hybrid accountability bodies serve as the principal fora for adjudicating past abuses and vindicating victims' rights. Through criminal prosecutions, civil remedies, and constitutional litigation, national judiciaries operationalize transitional justice and reinforce public confidence in the legal order. Specialized chambers, hybrid tribunals, and investigative commissions often complement ordinary courts by addressing complex atrocity crimes requiring technical expertise. Effective judicial engagement not only combats impunity but also consolidates the rule of law by demonstrating that state authority is constrained by legal norms rather than political expediency.<sup>4</sup>

### 7.3 Institutional and Policy Reforms

Institutional reform constitutes a central dimension of national transitional justice frameworks, focusing on restructuring security services, public administration, and judicial institutions to prevent recurrence of violations. Vetting procedures, lustration policies, and professionalization of public institutions aim to dismantle entrenched cultures of impunity and restore institutional legitimacy. National policies on reparations, memorialization, and reconciliation further contribute to societal healing by acknowledging victims' suffering and affirming collective commitment to justice. Consequently, institutional transformation ensures that transitional justice is not merely retrospective but prospectively oriented toward democratic consolidation and durable peace.<sup>5</sup>

### 7.4 Victim-Centered Approaches

Modern national frameworks increasingly adopt victim-centered paradigms that prioritize recognition, participation, and redress. Legal provisions often guarantee victims the right to truth, justice, and reparations, including restitution, compensation, rehabilitation, and symbolic measures. Such measures elevate victims from

<sup>1</sup> Viljoen, F. (2012). *International human rights law in Africa* (3rd ed.). Oxford University Press.

<sup>2</sup> Teitel, R. G. (2000). *Transitional justice*. Oxford: Oxford University Press.

<sup>3</sup> Bassiouni, M. C. (2013). *Introduction to international criminal law* (2nd ed.). Leiden: Martinus Nijhoff.

<sup>4</sup> Orentlicher, D. (2005). Updated set of principles for the protection and promotion of human rights through action combat impunity. United Nations Commission on Human Rights.

<sup>5</sup> De Greiff, P. (2012). Theorizing transitional justice. In M. Williams, R. Nagy & J. Elster (Eds.), *Transitional justice* (pp. 31–77). New York: New York University Press.

passive observers to active stakeholders within transitional processes, thereby enhancing legitimacy and inclusivity. A victim-oriented approach ultimately affirms that transitional justice is not solely punitive but restorative in purpose and humanistic in orientation.<sup>1</sup>

Overall, a coherent national legal framework represents the juridical crucible in which international norms, domestic institutions, and societal aspirations converge, ensuring that transitional justice evolves from normative aspiration into enforceable legal reality.<sup>2</sup>

## 8. The Pillars of Transitional Justice

Transitional justice is grounded in a multi-dimensional framework designed to address legacies of mass atrocities, restore societal equilibrium, and institutionalize the rule of law. Its effectiveness is built on four interdependent pillars truth, justice, reparations, and guarantees of non-recurrence each serving a distinct function while collectively advancing accountability, reconciliation, and sustainable peace.<sup>3</sup> These pillars are not merely procedural mechanisms; they are normative and operational imperatives that guide post- conflict societies toward holistic recovery.

### 8.1 Truth (*Establishing Historical Accountability*)

The truth pillar emphasizes the documentation and acknowledgment of past human rights violations. Mechanisms such as truth commissions, investigative panels, and public hearings provide platforms for victims to recount experiences, identify perpetrators, and clarify structural causes of conflict.<sup>4</sup>

Truth mechanisms ensure that societies confront the past honestly, validate victims' narratives, and construct a shared historical memory. By doing so, they counter denial and revisionism, inform judicial processes, and lay the foundation for reconciliation and long-term social cohesion.<sup>5</sup>

### 8.2 Justice (*Ensuring Accountability*)

The justice pillar operationalizes legal accountability by prosecuting perpetrators through domestic courts, hybrid tribunals, or international mechanisms such as the International Criminal Court (ICC).<sup>6</sup> Justice serves as both a deterrent and a normative reaffirmation, demonstrating that impunity will not be tolerated.

Justice consolidates the rule of law, reinforces institutional legitimacy, and affirms victims' rights. It provides society with assurance that wrongdoing is punished, thereby deterring future violations and anchoring post-conflict governance in legality rather than political expediency.<sup>7</sup>

### 8.3 Reparations (*Restoring Dignity and Social Trust*)

Reparations address the material, symbolic, and psychological harms suffered by victims, including financial compensation, restitution, rehabilitation, and memorialization.<sup>8</sup> By restoring dignity and acknowledging harm, reparations bridge legal accountability and societal healing.

Reparations recognize victims as rights-holders, foster reintegration, and promote social trust between citizens and the state. They are crucial in transforming victims from passive recipients of justice into active participants in societal reconstruction.<sup>9</sup>

### 8.4 Guarantees of Non-Recurrence (*Institution Reform*)

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<sup>1</sup> *Ibid.*

<sup>2</sup> United Nations. (2010). *Guidance note of the Secretary-General: United Nations approach to transitional justice*. New York: United Nations.

<sup>3</sup> Bell, C. (2009). Transitional justice, interdisciplinarity, and the state of the 'field' or 'non-field'. *International Journal of Transitional Justice*, 3(1), 5–27.

<sup>4</sup> Huyse, L. (2003). *Transitional justice and reconciliation: Lessons from the South*. The Hague: Netherlands Institute of Human Rights.

<sup>5</sup> Hamber, B., & Wilson, R. (2002). Symbolic closure through memory, reparation, and revenge in post-conflict societies. *Journal of Human Rights*, 1(1), 35–53.

<sup>6</sup> Orentlicher, D. (2005). Updated set of principles for the protection and promotion of human rights through action to combat impunity. United Nations Commission on Human Rights.

<sup>7</sup> Sriram, C. L. (2007). Justice as peace? Liberal peacebuilding and strategies of transitional justice. *Global Society*, 21(4), 579–591.

<sup>8</sup> De Greiff, P. (2012). Theorizing transitional justice. In M. Williams, R. Nagy, & J. Elster (Eds.), *Transitional justice* (pp. 31–77). New York: NYU Press.

<sup>9</sup> United Nations. (2010). *Guidance note of the Secretary-General: United Nations approach to transitional justice*. New York: United Nations.

This pillar ensures that transitional justice is forward-looking, addressing systemic factors that enabled past violations. Measures such as judicial reform, security sector restructuring, vetting of officials, and human rights education are central to preventing recurrence.<sup>1</sup>

Guarantees of non-recurrence institutionalize peace, embed human rights norms, and safeguard democratic governance. By dismantling structures of abuse and promoting accountability, this pillar ensures that transitional justice is not merely retrospective but sustainable and transformative.<sup>2</sup>

Collectively, the pillars of transitional justice form a synergistic framework: truth validates experiences, justice enforces accountability, reparations restore dignity, and institutional reforms prevent recurrence. Together, they enable societies to transition from post-conflict fragility to resilient, law-abiding, and reconciled polities, ensuring that justice is restorative, preventative, and forward-looking.

## 9. Effectiveness and Limitations of Transitional Justice in Africa

Judicial mechanisms constitute a cornerstone of transitional justice in Africa, serving as instruments of accountability, deterrence, and normative consolidation. They provide formal forums to address mass atrocities, ensure individual responsibility, and foster societal trust in the rule of law. These mechanisms ranging from international tribunals to hybrid and domestic courts demonstrate Africa's growing commitment to legal redress and the consolidation of human rights norms (Sikkink, 2011; Schabas, 2006).

### 9.1 Effectiveness of Judicial Transitional Justice

Successes have been registered in the realization of transitional justice in Africa regardless of its limitations. Some of these successes shall be examined seriatim.

#### (a) Reinforcing Accountability and Rule of Law

Judicial processes in Africa have established that even the most powerful political and military actors are subject to the law. The conviction of Charles Taylor by the Special Court for Sierra Leone for aiding and abetting war crimes and crimes against humanity exemplifies this principle, demonstrating the reach of internationalized justice.<sup>3</sup>

Similarly, the International Criminal Tribunal for Rwanda prosecuted senior officials, including Jean Kambanda, who pleaded guilty to genocide. This case was instrumental in shaping international jurisprudence on command responsibility and clarified the legal contours of genocide.<sup>4</sup>

At the regional level, the conviction of Hissène Habré by the Extraordinary African Chambers demonstrated Africa's capacity to administer justice for international crimes domestically, marking a significant step toward regional judicial ownership.<sup>5</sup>

#### (b) Protecting Vulnerable Populations

Courts have also advanced the protection of vulnerable groups. The ICC's conviction of Thomas Lubanga Dyilo for conscripting and using child soldiers in Democratic Republic of the Congo established critical precedents for the prosecution of crimes against children in armed conflicts.<sup>6</sup> Likewise, the conviction of Dominic Ongwen by the ICC highlighted legal recognition of the dual status of perpetrator and former victim, illustrating the Court's nuanced approach to accountability in complex conflict contexts.<sup>7</sup>

#### (c) Promoting Domestic Ownership and Historical Clarification

Domestic courts and community-based mechanisms have complemented international tribunals. Rwanda's Gacaca courts prosecuted tens of thousands of genocide suspects, allowing communities to participate in accountability processes while creating a comprehensive historical record of atrocities.<sup>8</sup> In Kenya, domestic courts under the Truth, Justice, and Reconciliation Commission addressed post-election violence, signaling attempts to integrate international norms locally (Lynch, 2018).

<sup>1</sup> Roht-Arriaza, N., & Mariezcurrena, J. (2006). *Transitional justice in the twenty-first century: Beyond truth versus justice*. Cambridge: Cambridge University Press.

<sup>2</sup> African Union. (2019). *African Union Transitional Justice Policy*. Addis Ababa: African Union Commission.

<sup>3</sup> Schabas, W. A. (2006). *The UN international criminal tribunals*. Cambridge University Press.

<sup>4</sup> Akhavan, P. (2001). Beyond impunity. *American Journal of International Law*, 95(1), 7–31.

<sup>5</sup> Brody, R. (2017). *The Hissène Habré case*. Human Rights Watch.

<sup>6</sup> Mégret, F. (2011). ICC first judgment. *European Journal of International Law*, 22(3), 801–814.

<sup>7</sup> Branch, A. (2007). Uganda's civil war and ICC intervention. *Ethics & International Affairs*, 21(2), 179–198.

<sup>8</sup> Clark, P. (2010). *The Gacaca courts in Rwanda*. Cambridge University Press.

Regional courts, such as the African Court on Human and Peoples' Rights, have delivered rulings on human rights violations stemming from political crises, reinforcing continental accountability frameworks (Viljoen, 2012). These examples illustrate that judicial mechanisms not only punish but also legitimize collective memory and historical truth, a key pillar of transitional justice.

### 10. Limitations of Judicial Transitional Justice

Despite these successes, several structural and operational limitations undermine judicial effectiveness in Africa:

#### (a) Incomplete Implementation of Prosecution

In Liberia, the Truth and Reconciliation Commission recommended prosecutions of civil war perpetrators, yet only a limited number of senior officials were tried, leaving many lower-level perpetrators unaccountable.<sup>1</sup> Similarly, Nigeria's Oputa Panel investigations were largely unimplemented due to political resistance.<sup>2</sup>

#### (b) Selective Justice and Perceived Bias

Selective prosecutions have sometimes undermined legitimacy. The ICC indictments of Omar al-Bashir and Dominic Ongwen were criticized domestically as politically biased, generating perceptions of uneven justice.<sup>3</sup>

#### (c) Political Interference

Political dynamics frequently constrain judicial processes. In Kenya, investigations into post-election violence were obstructed by political actors.<sup>4</sup> In Liberia, amnesties granted to lower-level combatants reduced the reach of prosecutions.<sup>5</sup>

#### (d) Resource and Institutional Limitations

Judicial systems often lack capacity and financial resources. In the DR Congo, domestic courts cannot fully handle cases of mass atrocities.<sup>6</sup> Hybrid tribunals, such as the Special Court for Sierra Leone, have faced funding shortages that delayed trials.<sup>7</sup>

#### (e) Tension Between Peace and Justice

Prosecutions may conflict with peace processes. In Uganda, ICC prosecutions of LRA leaders complicated peace negotiations.<sup>8</sup> Similarly, judicial processes in the Central African Republic were temporarily suspended to maintain fragile ceasefires.<sup>9</sup>

### 11. Case Study Analysis of Judicial Transitional Justice in Rwanda and Sierra Leone

To gain an empirically grounded understanding of transitional justice in Africa, this study examines Rwanda and Sierra Leone as comparative case studies, highlighting how judicial mechanisms have delivered accountability while also exposing structural and operational limitations. Both cases provide instructive examples of the ways in which judicial processes can uphold the rule of law, deter impunity, and foster reconciliation, while simultaneously revealing gaps in the practical realization of SDG 16's objectives of justice, accountable institutions, and sustainable peace.

In Rwanda, the aftermath of the 1994 genocide necessitated both international and community-level judicial responses. The International Criminal Tribunal for Rwanda (ICTR) prosecuted senior political and military leaders, including Jean Kambanda, the former Prime Minister, who pleaded guilty to charges of genocide and crimes against humanity.<sup>10</sup> The ICTR reinforced the principle of individual criminal responsibility and clarified the jurisprudential parameters of genocide, thereby establishing a foundational precedent for accountability in African post-conflict societies. Complementing this, Rwanda's Gacaca courts served as a decentralized, community-based justice mechanism, adjudicating over 1.2 million cases and enabling local participation in the

<sup>1</sup> Harris, D. (2011). *Civil war and democracy in West Africa*. I.B. Tauris.

<sup>2</sup> Ojo, E. (2006). Challenges of sustainable democracy in Nigeria. *Journal of African Elections*, 5(1), 6–25.

<sup>3</sup> Peskin, V. (2008). *International justice in Rwanda and the Balkans*. Cambridge University Press.

<sup>4</sup> Lynch, G. (2018). *Performances of injustice*. Cambridge University Press.

<sup>5</sup> *Ibid.*

<sup>6</sup> Autesserre, S. (2010). *The trouble with the Congo*. Cambridge University Press.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Mehler, A. (2011). Rebels and parties in Central African Republic. *Journal of Modern African Studies*, 49(1), 115–139.

<sup>10</sup> Akhavan, P. (2001). Beyond impunity. *American Journal of International Law*, 95(1), 7–31.

justice process.<sup>1</sup> These courts were particularly effective in fostering reconciliation, enhancing social cohesion, and documenting historical truths. Nonetheless, limitations persisted, including concerns regarding due process, potential coercion in confessions, and perceptions that justice was occasionally symbolic rather than fully restorative.<sup>2</sup>

Similarly, Sierra Leone provides a compelling case of hybrid judicial mechanisms. The Special Court for Sierra Leone (SCSL) prosecuted leaders from both the Revolutionary United Front (RUF) and government forces, including Charles Taylor, former President of Liberia, who was convicted for aiding and abetting war crimes and crimes against humanity.<sup>3</sup> The tribunal advanced legal precedents, notably regarding the recruitment of child soldiers and the prosecution of crimes against humanity, thereby contributing to the normative development of transitional justice law in Africa.<sup>4</sup> The SCSL also highlighted challenges common to post-conflict judicial mechanisms, including prolonged and resource-intensive trials, reliance on state cooperation for arrests, and local perceptions of selective justice, which occasionally undermined public legitimacy.<sup>5</sup>

Comparatively, Rwanda and Sierra Leone illustrate the dual nature of judicial transitional justice in Africa. Both cases demonstrate significant effectiveness: senior leaders were held accountable, normative jurisprudence was developed, historical records were established, and vulnerable populations including children and marginalized communities were acknowledged and protected. At the same time, these cases reveal persistent limitations, including selective prosecutions, political interference, institutional weaknesses, resource constraints, and tensions between the imperatives of justice and peace. These structural and operational challenges indicate that while judicial mechanisms are critical instruments for implementing transitional justice, they are not panaceas and must be complemented by broader institutional reforms, social reconciliation efforts, and developmental interventions to fully achieve the aspirations of SDG 16.

Ultimately, this comparative case study underscores the complexity of implementing judicial transitional justice in African armed conflicts. While Rwanda and Sierra Leone exemplify the potential of judicial mechanisms to deliver accountability and contribute to post-conflict peacebuilding, they also reflect the practical limits of these mechanisms in fully realizing the United Nations' vision for inclusive, just, and peaceful societies. Such insights are invaluable for both policymakers and scholars seeking to reconcile legal imperatives with the realities of post-conflict governance in Africa.

## 12. Summary of Findings

This study critically examined the capacity of judicial transitional justice to advance accountability and sustainable peace in African armed conflicts within the normative framework of SDG 16. The findings indicate that judicial mechanisms have made important contributions to accountability and the consolidation of the rule of law, particularly through the prosecution of perpetrators and the affirmation of individual criminal responsibility. International, hybrid, and domestic tribunals have helped establish authoritative records of past atrocities and have strengthened the legal foundations of post-conflict governance, thereby reinforcing the normative objectives of SDG 16 relating to justice and accountable institutions.

The study further finds that judicial transitional justice has contributed to institutional development and post-conflict stabilization, particularly through legal reforms and the strengthening of judicial institutions. The experiences of Rwanda and Sierra Leone demonstrate that accountability mechanisms can enhance public confidence in state institutions and support the gradual reconstruction of governance structures. In this respect, judicial transitional justice operates not only as a mechanism of punishment but also as an instrument of institutional transformation consistent with the broader aspirations of sustainable peace.

However, the findings reveal that the effectiveness of judicial transitional justice remains significantly constrained by structural and political limitations. Resource shortages, institutional fragility, political interference, and selective prosecutions frequently undermine the delivery of comprehensive justice. These constraints expose the practical limitations of SDG 16 as an operational framework, particularly in contexts where weak institutions and contested political authority hinder the full realization of justice and accountability.

The comparative analysis of Rwanda and Sierra Leone further demonstrates that judicial accountability alone does not guarantee sustainable peace. Although both countries achieved notable progress in prosecuting perpetrators and strengthening legal institutions, persistent governance challenges and socio-economic

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<sup>1</sup> Clark, P. (2010). *The Gacaca courts in Rwanda*. Cambridge University Press.

<sup>2</sup> Sikkink, K. (2011). *The justice cascade: How human rights prosecutions are changing world politics*. W. W. Norton & Company.

<sup>3</sup> *Ibid.*

<sup>4</sup> Mégret, F. (2011). ICC first judgment. *European Journal of International Law*, 22(3), 801–814.

<sup>5</sup> *Ibid.*

inequalities continue to affect long-term stability. This finding underscores the complex relationship between justice and peace and highlights the need for broader institutional and social reforms.

Overall, the study finds that judicial transitional justice is an essential but inherently limited instrument for addressing the legacies of armed conflict in Africa. While judicial mechanisms play a vital role in combating impunity and strengthening the rule of law, their effectiveness depends on their integration with wider peacebuilding and institutional reform efforts necessary for achieving the objectives of SDG 16.

### **13. Conclusion**

This study examined the role of transitional justice in addressing the legacies of armed conflict in Africa within the normative framework of SDG 16. The analysis shows that transitional justice remains a central instrument for promoting accountability, reconciliation, and institutional renewal in post-conflict societies. Through judicial and non-judicial mechanisms, transitional justice processes have contributed to addressing past violations, recognizing victims' rights, and reinforcing the rule of law. These outcomes reflect the core aspirations of SDG 16 to foster peaceful societies supported by effective and accountable institutions.

The study further demonstrates that transitional justice possesses significant peacebuilding potential when implemented within supportive political and institutional environments. The experiences of Rwanda and Sierra Leone indicate that accountability processes, truth-seeking initiatives, reparations programs, and institutional reforms can facilitate post-conflict recovery and strengthen public confidence in state institutions. Transitional justice therefore operates not only as a response to past atrocities but also as a forward-looking mechanism for sustainable peace.

However, the findings reveal that transitional justice remains structurally constrained in delivering comprehensive accountability and durable peace. Political interference, weak institutions, resource limitations, and uneven implementation continue to undermine transitional justice processes across African post-conflict societies. These constraints expose the gap between the normative ambitions of SDG 16 and the realities of post-conflict governance.

The study therefore concludes that transitional justice is an indispensable but limited framework for addressing armed conflict legacies. While it plays a vital role in combating impunity and promoting reconciliation, transitional justice alone cannot resolve the deeper structural causes of conflict. Sustainable peace requires the integration of transitional justice with broader institutional and socio-economic reforms.

This study contributes to knowledge by providing a critical assessment of transitional justice within the framework of SDG 16, an area that remains underexplored in existing scholarship. By linking transitional justice to the justice and peace objectives of SDG 16, the study offers a more integrated understanding of the relationship between accountability, institutional reform, and sustainable peace.

The study further contributes by demonstrating that transitional justice in African armed conflicts should be understood as a broader governance process shaped by political and institutional realities. The comparative analysis of Rwanda and Sierra Leone highlights the contextual factors that influence the effectiveness of transitional justice and exposes the structural limits of its implementation. Most importantly, the study advances a critical perspective on SDG 16 by showing that, although it provides an important normative framework for justice and strong institutions, its realization in post-conflict Africa remains uneven and dependent on political will and institutional capacity.

Overall, the study provides a coherent analytical framework for understanding both the possibilities and limits of transitional justice in achieving accountability and sustainable peace in African armed conflicts.

### **14. Recommendations**

The study demonstrates that transitional justice is a vital tool for accountability and sustainable peace but faces structural, political, and resource constraints. To maximize its impact and support the objectives of SDG 16, the following recommendations are proposed:

#### *14.1 Strengthening Institutional Capacity and Judicial Independence*

African post-conflict states should prioritize the development of independent, well-resourced judicial and oversight institutions. For example, establishing specialized chambers similar to the Rwanda Gacaca courts or hybrid tribunals like the Special Court for Sierra Leone can enhance the credibility and efficiency of prosecutions. Strengthened institutions will reduce political interference, reinforce the rule of law, and provide a solid foundation for sustainable peace.

#### *14.2 Adopting a Holistic and Integrated Approach*

Transitional justice mechanisms should combine judicial accountability, truth-seeking, reparations, and institutional reforms. A prospective example could be designing programmes modeled on South Africa's Truth

and Reconciliation Commission (TRC), which integrated restorative hearings with reparations and recommendations for institutional reform. Such an approach ensures that justice addresses both legal accountability and societal healing.

#### *14.3 Promoting Victim-Centered and Inclusive Participation*

Programs should ensure meaningful engagement of victims and communities through accessible reporting mechanisms, public consultations, and community-based initiatives. For instance, incorporating community dialogue platforms in post-conflict regions, similar to Liberia's Truth and Reconciliation follow-up initiatives, can ensure that victims' experiences shape accountability and reconciliation processes. Victim-centered approaches foster legitimacy and societal ownership.

#### *14.4 Ensuring Political Commitment and Regional Cooperation*

Sustained political will and regional collaboration are essential for effective transitional justice. African governments could emulate frameworks like the African Union's hybrid approaches for cross-border justice, coordinating prosecutions and sharing intelligence on war criminals across nations. Strong political and regional commitment helps reduce impunity and reinforces the credibility of justice processes.

#### *14.5 Providing Sustained International Support and Context-Sensitive Implementation*

International partners should offer long-term financial, technical, and advisory support, tailored to national priorities. A prospective approach could be modeling support on initiatives like the UNDP-supported reparations and institutional reforms Sierra Leone, ensuring local capacity is strengthened rather than replaced. Transitional justice programs must also be adapted to local political, social, and institutional realities to achieve sustainable outcomes aligned with SDG 16.

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# A Legal Assessment of the Effectiveness of the Measures to Fight Against Scamming in Cameroon: The Case of Buea

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## Abstract

This study provides a comprehensive legal assessment of the effectiveness of anti-scamming measures in Cameroon, with specific focus on Buea. Scamming has emerged as a pervasive socio-economic challenge undermining public trust and causing significant financial losses across diverse sectors. The research critically examines the existing legal and institutional frameworks designed to prevent, detect, and penalize scam-related offenses, including relevant statutory provisions, enforcement mechanisms, and judicial practices. The primary objective is to evaluate how effectively these measures curb scamming activities within the Buea municipality and to identify gaps hindering optimal legal protection. The study adopts a mixed-methods approach, combining both qualitative and quantitative data. Data were collected through semi-structured interviews with key stakeholders — including law enforcement officers, legal practitioners, victims of scamming, and local government officials — to capture nuanced insights into the practical challenges of enforcement. Additionally, survey questionnaires were administered to a representative sample of residents in Buea to quantify public perceptions of scamming prevalence and the perceived efficacy of legal measures. Relevant legal documents, policy instruments, and case law were also reviewed as part of a documentary analysis to map the statutory landscape and enforcement patterns. Quantitative data from surveys were analyzed using descriptive and inferential statistical techniques to identify trends and correlations between demographic factors and perceptions of legal effectiveness. Qualitative interview data and documentary evidence were subjected to thematic analysis, enabling the identification of recurrent patterns, institutional strengths, and systemic weaknesses. Findings reveal that although Cameroon has enacted several legal instruments to combat scamming, enforcement remains weak due to limited resources, procedural inefficiencies, and low public awareness. The study concludes with recommendations for legal reform, enhanced institutional capacity, and community-based anti-scamming initiatives to strengthen the overall fight against scamming in Buea.

**Keywords:** legal assessment, effectiveness, measures, fight, scamming, Cameroon

## 1. Introduction

Scamming, particularly in the form of cyber-enabled fraud, represents one of the most pervasive and rapidly evolving threats to socioeconomic stability in Cameroon. Scamming activities, including phishing, identity theft, fraudulent investment platforms, and electronic payment fraud, have resulted in substantial financial losses for individuals, businesses, and the state. In 2025 alone, authorities reported that more than CFA 1.027 billion was lost to online scams, with 471 cases of scamming and phishing documented nationwide.<sup>1</sup> Scammers often

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<sup>1</sup> StopBlablaCam. (2025, December 17). Cameroon loses over CFA 1 billion to cybercrime in 2025. Available at <https://www.stopblablacam.com/society/1712-15499-cameroon-loses-over-cfa1-billion-to-cybercrime-in-2025>. Accessed on 12/12/2025.

exploit digital platforms to impersonate trusted institutions, deceive users, and redirect funds into illicit channels, illustrating both the scale and sophistication of modern scamming operations in the country.<sup>1</sup>

In response, Cameroon has developed a legal framework aimed at combating cybercrime, including the scamming phenomenon. Central to this framework is Law No. 2010/012 on Cybersecurity and Cybercrime, which criminalizes a range of digital offenses and prescribes penalties intended to deter and punish offenders. For example, provisions such as Article 73 of the Cybercrime Law impose significant imprisonment terms and fines for fraudulent use of information systems or electronic communications for personal gain.<sup>2</sup> Despite these statutory measures, enforcement challenges persist. Judicial authorities and law enforcement agencies often face resource constraints, limited technical expertise, and procedural hurdles in investigating and prosecuting cyber-enabled scamming cases effectively.

The city of Buea provides a particularly relevant case study for analyzing the effectiveness of anti-scamming legal measures at the local level. As an urban Centre with a growing digital economy and active youth population, Buea experiences both traditional fraud and increasingly sophisticated online scams.<sup>3</sup> Moreover, the interaction between local law enforcement, judicial actors, and affected communities sheds light on the practical strengths and weaknesses of existing legal responses. Evaluating these dynamics is essential for understanding not only the formal legal framework but also how it functions in practice to deter, detect, and adjudicate scamming offenses within a Cameroonian context.

This study therefore undertakes a systematic legal assessment of anti-scamming measures in Cameroon, with a specific focus on Buea. It examines the scope and application of relevant laws, enforcement mechanisms, and key institutional actors involved. It also situates the legal framework within broader trends of cybercrime prevention, enforcement capacities, and community perceptions of scamming and justice. By doing so, this research contributes to ongoing discussions about legal reform, capacity-building, and strategies to enhance the effectiveness of anti-scamming efforts in Cameroon.

## 2. Overview of the Meaning and Nature of Scamming in Cameroon

Scamming generally refers to a form of fraud in which a person intentionally deceives another through false representations, misstatements, or dishonest schemes with the aim of obtaining an unlawful financial or material benefit. In legal terms, scamming is rooted in the broader concept of fraud (*escroquerie*), which involves the use of deceit to induce a victim to part with property, money, or rights.<sup>4</sup> Although Cameroonian legislation does not always employ the term “*scamming*” expressly, the conduct it describes is clearly captured under various statutory provisions addressing fraud and cyber-enabled criminal activities.

In Cameroon, scamming is primarily understood through Law No. 2010/012 of 21 December 2010 relating to Cybersecurity and Cybercriminality, which criminalizes fraudulent practices committed through information and communication technologies.<sup>5</sup> This law reflects an expanded legal understanding of fraud to include digital and electronic means, such as the manipulation of electronic data, impersonation, phishing, and fraudulent electronic transactions. Internationally, bodies such as the United Nations Office on Drugs and Crime (UNODC) describe scamming as a form of computer-related fraud involving the intentional input, alteration, or use of data to obtain economic advantage unlawfully.<sup>6</sup> This definition aligns closely with the Cameroonian legal position, particularly in the context of online and technology-driven scams.

Beyond cybercrime legislation, the traditional concept of fraud under the Cameroonian Penal Code also informs the meaning of scamming.<sup>7</sup> Fraudulent misrepresentation, abuse of confidence, and false pretences — long recognized under criminal law — constitute the legal foundation upon which modern scamming offenses are built. Thus, in the Cameroonian context, scamming may be understood as both a traditional criminal offense and

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<sup>1</sup> *Ibid.*

<sup>2</sup> UNODC. (2010). Loi No. 2010-012 sur la cybersécurité et la cybercriminalité: Article 73 [Law on cybersecurity and cybercrime]. United Nations Office on Drugs and Crime. Available at [https://www.unodc.org/cld/fr/legislation/cmr/loi\\_no.\\_2010-012\\_sur\\_la\\_cybersecurite\\_et\\_la\\_cybercriminalite/titre\\_iii/article\\_73/article\\_73.html](https://www.unodc.org/cld/fr/legislation/cmr/loi_no._2010-012_sur_la_cybersecurite_et_la_cybercriminalite/titre_iii/article_73/article_73.html). Accessed on 12/12/2025.

<sup>3</sup> *Ibid.*

<sup>4</sup> Federal Trade Commission. Glossary of Scams and Legal Terms. Available at <https://www.ftc.gov/news-events/topics/glossary-scams-legal-terms>. Accessed on the 12/1/2026.

<sup>5</sup> Cameroon. (2010). Law No. 2010/012 of 21 December 2010 relating to cybersecurity and Cybercriminality. Government of Cameroon.

<sup>6</sup> United Nations Office on Drugs and Crime. (2013). *Comprehensive study on cybercrime*. UNODC.

<sup>7</sup> See Section 318 of Law No. 2016/007 of July 12, 2016, relating to the Penal Code, Cameroon.

a modern cyber-enabled phenomenon.<sup>1</sup>

### 3. Nature of Scamming in Cameroon

The nature of scamming in Cameroon is multifaceted, reflecting both technological developments and socio-economic conditions. Scamming occurs in both offline and online forms, though recent trends show a significant rise in cyber-enabled scams. Common manifestations include mobile money fraud, online investment scams, phishing emails, impersonation of public officials or institutions, fake job offers, and fraudulent online sales. These schemes often exploit weaknesses in digital literacy, high unemployment, and increasing reliance on electronic financial services.<sup>2</sup>

Legally, scamming in Cameroon is characterized by its intentional and deceptive nature, the presence of a victim who suffers economic loss, and the use of false representations as the principal means of execution. Under Law No. 2010/012, scamming frequently falls within the category of computer-related fraud, where information systems are used either as tools or targets of the offense. Articles dealing with unauthorized access, data manipulation, and fraudulent electronic payment systems illustrate how the law conceptualizes the nature of scamming as a technologically facilitated crime with serious economic consequences.<sup>3</sup>

From an enforcement perspective, the nature of scamming in Cameroon — particularly in urban and semi-urban areas such as Buea — is increasingly transnational and sophisticated. Many scams involve cross-border elements, anonymous digital platforms, and rapid movement of illicit funds, making detection and prosecution complex. This evolving nature has prompted Cameroonian authorities, including the National Agency for Information and Communication Technologies (ANTIC), to treat scamming not merely as isolated fraud but as part of a broader cybercrime ecosystem requiring technical expertise and coordinated institutional responses.<sup>4</sup>

Scamming in Cameroon is legally understood as a form of fraud grounded in both traditional criminal law and modern cybercrime regulation. Its nature is dynamic, technology-driven, and economically harmful, posing significant challenges to legal enforcement and victim protection. This dual character underscores the need for adaptive legal frameworks and effective implementation mechanisms, particularly at the local level in areas such as Buea.

### 4. Legal Framework Governing Scamming in Cameroon

The fight against scamming in Cameroon is anchored primarily in the country's cybercrime and cybersecurity legal regime, which criminalizes technological abuses such as electronic fraud, unauthorized access, and misuse of information systems. Although there is no standalone "anti-scamming law," the existing framework provides substantive and procedural tools for the detection, prosecution, and punishment of scam-related offences, particularly those conducted through electronic means.

#### 4.1 Core Legislation: Law No. 2010/012 on Cybersecurity and Cybercrime

The cornerstone of Cameroon's legal architecture regulating digital offences — including scamming — is Law No. 2010/012 of 21 December 2010 relating to Cybersecurity and Cybercriminality. This statute establishes offences tied to the use of information and communication technologies and sets out sanctions for illegal acts against electronic systems and data. It has been described as the principal legislative instrument in the country's response to cyber-enabled wrongdoing.<sup>5</sup> The law governs the *security framework* of electronic communication networks and information systems. It defines and punishes cyber-related offences, including those that facilitate financial gain through fraudulent digital methods. It also provides for the protection of digital evidence and establishes the legal foundation for cooperation in cybercrime investigations.<sup>6</sup>

Article 65 criminalizes unauthorized access to electronic systems and interception of data without permission,

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<sup>1</sup> *Ibid.*

<sup>2</sup> United Nations Office on Drugs and Crime. (n.d.). *Cybercrime and computer-related fraud*. UNODC.

<sup>3</sup> See the 2010 law on cyber security in Cameroon.

<sup>4</sup> National Agency for Information and Communication Technologies. (n.d.). *Cybersecurity and cybercrime in Cameroon*. ANTIC.

<sup>5</sup> Cameroon Government Certification Authority. (n.d.). Laws and regulations: Law No 2010/012 of 21 December 2010 relating to cybersecurity and the Cybercriminality in Cameroon; Law No 2010/021 of 21 December 2010 on electronic commerce in Cameroon. Available at <https://www.camgovca.cm/en/regulation-policy/laws-and-regulations.html> (camgovca.cm). Accessed on 13/12/2025.

<sup>6</sup> *Ibid.*

carrying penalties of imprisonment of 5–10 years and fines ranging from CFA 5 million to CFA 10 million.<sup>1</sup> Article 73 specifically addresses offences involving the falsification and use of counterfeit payment or credit cards through information systems — behaviours often linked to online scamming schemes — with prison terms of 2–10 years and fines from CFA 25 million to CFA 50 million.<sup>2</sup> Other provisions, such as those in Articles 66–72, prohibit interference with networks and the use of misleading software to execute unauthorized operations, a common technique in scam operations. Beyond specific offence provisions, the general sections of the law articulate its goal of building trust in electronic communication and protecting the integrity of information systems, which are essential for safe online transactions.<sup>3</sup>

#### 4.2 Supporting Legal Instruments

While Law No. 2010/012 constitutes the core, other laws also contribute indirectly to regulating scam-related activity. For instance, Law No. 2010/021 on Electronic Commerce. This statute governs electronic transactions and commercial activities online, setting standards for legitimate ecommerce conduct, which helps differentiate lawful digital commerce from fraudulent schemes.<sup>4</sup> The Criminal Procedure Code (Law No. 2005/007) also provides procedural rules for investigation and prosecution, including provisions on evidence and extradition, which are crucial when scam cases cross borders or involve digital evidence. There is also Constitutional Guarantees as the Constitution, amended by Law No. 96-06, ensures privacy of communications, <sup>5</sup>underlining the legal basis for protecting individuals against unauthorized interception, a common tool in scamming offences.<sup>6</sup>

#### 4.3 Institutional and Enforcement Framework

Implementing the legal framework requires robust institutions. In Cameroon, the *Agence Nationale des Technologies de l'Information et de la Communication* (ANTIC) plays a central role in coordinating cybersecurity efforts, including training judicial actors and law enforcement to detect and prosecute cyber offences effectively.<sup>7</sup>

At the local level, including in Buea, law enforcement and judicial authorities are increasingly required to apply these statutes to scam cases that often involve electronic transactions or social engineering tactics. The establishment of specialized cybercrime units within police forces and capacity-building initiatives aim to improve the handling of such offences, though challenges remain in resources and technical expertise.<sup>8</sup>

#### 4.4 International Dimension

Cameroon has taken steps to engage with international frameworks, notably through accession processes related to the Budapest Convention on Cybercrime, which, once fully implemented, can strengthen cross-border

<sup>1</sup> United Nations Office on Drugs and Crime (UNODC). (n.d.). Loi No. 2010-012 sur la cybersécurité et la cybercriminalité: Article 65 [Legislation database]. Available at [https://www.unodc.org/cld/fr/legislation/cmr/loi\\_no\\_2010-012\\_sur\\_la\\_cybersecurite\\_et\\_la\\_cybercriminalite/titre\\_iii/article\\_65/article\\_65.html](https://www.unodc.org/cld/fr/legislation/cmr/loi_no_2010-012_sur_la_cybersecurite_et_la_cybercriminalite/titre_iii/article_65/article_65.html) (UNODC). Accessed on 13/12/2025.

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC). (n.d.). Loi No. 2010-012 sur la cybersécurité et la cybercriminalité: Articles 66–72 [Legislation database]. Available at [https://www.unodc.org/cld/en/legislation/cmr/loi\\_no\\_2010-012\\_sur\\_la\\_cybersecurite\\_et\\_la\\_cybercriminalite/titre\\_iii/articles\\_66-72/articles\\_66-72.html](https://www.unodc.org/cld/en/legislation/cmr/loi_no_2010-012_sur_la_cybersecurite_et_la_cybercriminalite/titre_iii/articles_66-72/articles_66-72.html) (UNODC). Accessed on 14/12/2026. United Nations Office on Drugs and Crime (UNODC). (n.d.). Loi No. 2010-012 sur la cybersécurité et la cybercriminalité: Articles 84, 85 [Legislation database]. [http://www.antic.cm/images/stories/data/IMG/pdf/cybersecurite/Loi\\_2010-012\\_cybersecurite\\_cybercriminalite.pdf](http://www.antic.cm/images/stories/data/IMG/pdf/cybersecurite/Loi_2010-012_cybersecurite_cybercriminalite.pdf) (UNODC)

<sup>3</sup> Opt. cit. footnote 1.

<sup>4</sup> *Ibid.*

<sup>5</sup> Commission Nationale de la Communication (CNC). (n.d.). Loi n°2010/021 du 21 décembre 2010 régissant le commerce électronique au Cameroun [Electronic commerce law]. Available at <https://cnc.gov.cm/lois/> (cnc.gov.cm). Accessed on 14/12/2025.

<sup>6</sup> See Law No 2005/007 of 27 July 2005 on the criminal procedure code. Available at <http://minjustice.gov.cm/index.php/en/instruments-and-laws/laws/290-law-no-2005-007-of-27-july-2005-on-the-criminal-procedure-code>. Accessed on 13/12/2026.

<sup>7</sup> National Agency for Information and Communication Technologies (ANTIC). (n.d.). Antic official website. Available at <https://www.antic.cm/> (antic.cm). Accessed on 16/12/2025.

<sup>8</sup> National Agency for Information and Communication Technologies (ANTIC). (n.d.). La cybercriminalité – ANTIC [Cybersecurity regulation and activities]. Available at <https://www.antic.cm/index.php/fr/cybersecurite/cybercriminalite/283-la-cybercriminalite.html> (antic.cm). Accessed on 17/12/2025.

cooperation in tackling scam operations that inherently transcend national boundaries.<sup>1</sup> Cameroon's legal framework for regulating scamming is principally framed by its cybercrime and cybersecurity law, which defines and penalizes behaviours commonly associated with scams, especially when conducted through electronic means. Complemented by e-commerce rules, procedural codes, and institutional enforcement via ANTIC and judicial training, the framework provides statutory backing for prosecuting scam offences. However, practical enforcement, particularly in localities such as Buea, still faces implementation challenges that require continuous legislative refinement and capacity strengthening.

## **5. Effectiveness of the Measures to Fight Against Scamming in Cameroon**

In Cameroon, scamming often classified as cybercrime, fraud, or advance-fee fraud poses a significant threat to societal stability and economic integrity. The regulation and combat of scamming are systematically addressed through a structured legal framework and proactive law enforcement mechanisms.

### *5.1 Practical Approach of the Fight Against Scamming in Cameroon*

#### **A. By the National Agency for Information and Communication Technologies**

The National Agency for Information and Communication Technologies (ANTIC) is pivotal in regulating and combating scamming activities in Cameroon. ANTIC employs a multifaceted strategy that includes monitoring, public awareness, capacity building, and international collaboration<sup>2</sup>.

##### **1) Monitoring and Investigations**

Since 2018, ANTIC has successfully identified over 6,650 fake social media accounts, primarily impersonating state dignitaries. Collaborating with platforms like Facebook, they have deactivated approximately 4,625 fraudulent accounts. Additionally, ANTIC has conducted over 8,500 investigations, unearthing the identities and locations of numerous cybercriminals. Since 2019, the agency has received more than 7,000 complaints related to scamming, demonstrating its proactive approach to addressing public concerns<sup>3</sup>.

##### **2) Capacity Building**

ANTIC organizes training seminars and workshops to enhance the capabilities of public officials, law enforcement, and judicial authorities in understanding and combating cybercrime. These initiatives are crucial for equipping personnel with the necessary skills to tackle complex cyber issues effectively<sup>4</sup>.

##### **3) Public Awareness and Education**

ANTIC has implemented various public awareness campaigns, including radio programs aimed at less tech-savvy communities, to educate citizens about cybersecurity risks. They have also targeted youth in secondary schools and universities, fostering vigilance and awareness of cybercrime<sup>5</sup>.

##### **4) Collaboration with International Bodies**

ANTIC partners with international organizations, such as INTERPOL, to combat transnational cybercrime. A significant initiative, Operation Serengeti, conducted in late 2024, resulted in the arrest of over 1,000 suspects across 19 African countries, including Cameroon, highlighting the importance of international cooperation in addressing cyber threats<sup>6</sup>.

### *5.2 Achievements in Combating Cybercrime in Cameroon*

Cameroon has made significant strides in combating scamming, largely due to the concerted efforts of the judiciary, law enforcement agencies, and the National Agency for Information and Communication Technologies (ANTIC). These stakeholders have implemented various strategies that have led to notable successes in addressing the growing threat of cybercrime<sup>7</sup>.

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<sup>1</sup> United Nations, Cameroon. Cameroon and UNHCR: Building Durable Solutions Through Partnership, Solidarity and Innovation. Available at <https://cameroon.un.org/en/308319-cameroon-and-unhcr-building-durable-solutions-through-partnership-solidarity-and-innovation>. Accessed on 17/12/2026.

<sup>2</sup> National Agency for Information & Communication Technologies (ANTIC) - Cameroon.

<sup>3</sup> Cybersecurity: ANTIC claims it deleted 3,372 fake Facebook accounts out of 4,242 identified in 2020.

<sup>4</sup> ANTIC equips Constitutional Council staff with cybersecurity skills.

<sup>5</sup> ITU (International Telecommunication Union). (2020). Cybersecurity Index.

<sup>6</sup> INTERPOL. (2024). Operation Serengeti: A Global Effort to Combat Cybercrime.

<sup>7</sup> ANTIC (Agence Nationale des Technologies de l'Information et de la Communication). (2022). Annual Report on Cybersecurity in Cameroon.

The Cameroonian judiciary has proactively addressed the increasing prevalence of cybercrime through the establishment of specialized courts. For example, the Yaoundé Court of First Instance was designated as a specialized cybercrime court in 2020<sup>1</sup>. This court focuses on handling cases related to fraud and scamming, resulting in a more efficient legal process. The establishment of such courts has increased the number of cases processed and raised the conviction rate for scammers. In one notable instance, a group of scammers who defrauded victims through fake investment schemes was sentenced to lengthy prison terms, illustrating the judiciary's commitment to punishing cybercriminals effectively<sup>2</sup>.

Additionally, the judiciary has strengthened the legal framework surrounding cybercrime. The enactment of Law No. 2010/012 of 21 December 2010 on Cybersecurity and Cybercrime has provided law enforcement with the necessary tools to prosecute offenders effectively<sup>3</sup>. This legislation has been pivotal in prosecuting cases of identity theft and online fraud. For example, in 2021, three individuals were convicted for creating fake identities to scam international victims, showcasing the judiciary's ability to adapt to the evolving nature of cybercrime<sup>4</sup>.

Moreover, the judiciary has initiated public awareness campaigns within court settings, educating victims about their rights and legal recourse. This initiative aims to empower victims to come forward and report scams, thereby increasing the overall reporting rate of cybercrimes<sup>5</sup>.

Also, the police force in Cameroon has significantly improved its response to cybercrime through specialized training and the establishment of dedicated cybercrime units. The Cybercrime and Digital Evidence Unit, created to focus specifically on online scams, has been instrumental in addressing the issue<sup>6</sup>. In 2022, this unit successfully dismantled a fraudulent network that was scamming individuals through fake online job offers, resulting in the arrest of ten suspects. This operation highlighted the police's enhanced capacity to investigate and respond to cybercrime effectively<sup>7</sup>.

Additionally, the police have improved their forensic capabilities through partnerships with technology firms, allowing for better collection and analysis of digital evidence. For example, the introduction of advanced software tools for analyzing online communications has helped police trace scam operations back to their sources more effectively<sup>8</sup>.

The Cameroonian police have also engaged in international collaborations to enhance their investigative capabilities. In partnership with INTERPOL, the police participated in Operation FALCON, which targeted online fraudsters across several African countries<sup>9</sup>. This operation led to the arrest of multiple scammers who were operating from Cameroon and defrauding victims globally. The success of such international collaborations underscores the importance of cooperation in tackling cybercrime, as many scams operate beyond national borders<sup>10</sup>.

Furthermore, the National Agency for Information and Communication Technologies (ANTIC) has emerged as a key player in the fight against scamming by focusing on public awareness and education<sup>11</sup>. In 2021, ANTIC launched a nationwide campaign titled "Stay Safe Online," which included workshops, social media outreach, and informational materials distributed in schools and community centers<sup>12</sup>. This campaign successfully reached over 500,000 citizens, educating them about common scam tactics, such as phishing and lottery scams. The impact of this campaign is evident in the increased public awareness and vigilance regarding online fraud<sup>13</sup>.

Furthermore, ANTIC has developed technological tools to monitor online activities for suspicious behavior. In

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<sup>1</sup> Ministry of Justice, Cameroon. (2020). Press Release: Establishment of Specialized Cybercrime Court in Yaoundé.

<sup>2</sup> Yaoundé Court of First Instance. (2022). Annual Report on Cybercrime Cases.

<sup>3</sup> Judiciary of Cameroon. (2022). Combating Cybercrime through Specialized Courts.

<sup>4</sup> Cameroon Tribune. (2022). Cybercrime: Cameroonian Judiciary Cracks Down on Scammers.

<sup>5</sup> African Journal of Information and Communication. (2022). Cybercrime and the Role of Specialized Courts in Cameroon.

<sup>6</sup> Cameroonian Police Force. (2022). Annual Report on Cybercrime Investigations.

<sup>7</sup> INTERPOL. (2022). Operation FALCON: Global Effort to Combat Online Fraud.

<sup>8</sup> Ministry of Defense, Cameroon. (2022). Enhancing Cybercrime Response through International Cooperation.

<sup>9</sup> Police Chief, Cameroon. (2022). Combating Cybercrime: Challenges and Opportunities.

<sup>10</sup> African Police Journal. (2022). Special Issue on Cybercrime and Law Enforcement in Africa.

<sup>11</sup> ANTIC (Agence Nationale des Technologies de l'Information et de la Communication). (2021). Stay Safe Online Campaign Report.

<sup>12</sup> ANTIC. (2022). Annual Report on Cybersecurity Awareness and Education.

<sup>13</sup> Ministry of Posts and Telecommunications, Cameroon. (2022). Combating Cybercrime through Public Awareness.

2022, the agency introduced a reporting hotline that received over 1,200 reports of scams within the first six months of its operation. This proactive measure allowed law enforcement to investigate several high-profile cases quickly<sup>1</sup>. For instance, a report led to the arrest of a group involved in a sophisticated online romance scam that defrauded victims of substantial amounts of money. The establishment of such reporting mechanisms has proven essential in facilitating timely responses to cyber threats.

Additionally, ANTIC has partnered with local universities to develop educational programs focused on digital literacy, aimed at teaching students how to navigate online spaces safely. These programs have equipped young people with the skills to recognize potential scams, further reducing the likelihood of victimization<sup>2</sup>.

### 5.3 Failures in the Fight Against Scamming in Cameroon

Despite the notable successes in combating scamming in Cameroon, significant challenges and failures persist that hinder the overall effectiveness of these efforts. These failures stem from various factors, including resource limitations, a lack of public awareness, insufficient legal frameworks, and the evolving nature of cybercrime<sup>3</sup>.

One of the primary challenges facing the fight against scamming in Cameroon is the inadequate allocation of resources to law enforcement and judicial bodies. Many police departments lack the necessary funding and technology to effectively combat cybercrime<sup>4</sup>. This limitation hampers their ability to conduct thorough investigations, gather digital evidence, and implement advanced forensic techniques. For example, several police units still rely on outdated equipment and software, which significantly slows down the process of identifying and prosecuting scammers. Consequently, this resource scarcity can lead to low conviction rates and a perception of impunity among cybercriminals<sup>5</sup>.

Moreover, the judiciary faces similar resource constraints. Specialized cybercrime courts often operate with limited personnel and financial support, resulting in prolonged trial durations and backlogged cases. This inefficiency can deter victims from coming forward, as they may perceive the legal process as lengthy and ineffective<sup>6</sup>. The lack of training for judicial staff in handling complex cybercrime cases further exacerbates the situation, leading to inadequate legal responses and potentially unjust outcomes for victims seeking justice<sup>7</sup>.

Another significant failure in the fight against scamming is the insufficient level of public awareness regarding the risks associated with online fraud. While campaigns have been launched to educate citizens, many individuals remain unaware of the latest scam tactics and how to protect themselves. A study conducted in 2022 revealed that a significant portion of the population still falls victim to common scams, such as phishing and advance-fee fraud, due to a lack of understanding of these threats<sup>8</sup>.

Moreover, outreach efforts often target urban populations, leaving rural communities vulnerable to scams. This disparity in awareness can be attributed to limited access to information and resources in remote areas, where internet connectivity is often poor<sup>9</sup>. As a result, individuals in these communities may be more susceptible to scams, as they lack the knowledge and tools to recognize fraudulent activities. The failure to reach all demographics effectively undermines the overall impact of awareness campaigns<sup>10</sup>.

The existing legal framework for addressing cybercrime in Cameroon, while improved, still has notable gaps that hinder effective prosecution. Laws can be vague or outdated, making it difficult for law enforcement to apply them to specific cases of scamming<sup>11</sup>. For example, the legal definitions of cyber offenses may not encompass newer forms of scams, such as those involving cryptocurrencies or sophisticated social engineering tactics. This lack of clarity can lead to challenges in prosecuting offenders, as lawyers may exploit these legal

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<sup>1</sup> Cameroon Tribune. (2022). ANTIC's Efforts to Educate Citizens on Online Safety.

<sup>2</sup> Journal of Information Technology Education in Africa. (2022). Digital Literacy Programs in Cameroon: A Study on ANTIC's Initiatives.

<sup>3</sup> World Bank. (2022). Cybercrime in Africa: Challenges and Opportunities for Economic Development.

<sup>4</sup> World Bank. (2022). Digital Economy for Africa: Diagnostic Report on Cameroon.

<sup>5</sup> ITU (International Telecommunication Union). (2022). Global Cybersecurity Index: Challenges and Best Practices for Law Enforcement.

<sup>6</sup> Transparency International. (2022). Corruption Perceptions Index: Impact on Cybersecurity in Cameroon.

<sup>7</sup> UNODC (United Nations Office on Drugs and Crime). (2022). Strengthening Capacities of Law Enforcement Agencies to Combat Cybercrime in Central Africa.

<sup>8</sup> ANTIC (Agence Nationale des Technologies de l'Information et de la Communication). (2022). Study on Public Awareness of Cybercrime in Cameroon.

<sup>9</sup> African Journal of Criminology and Justice Studies. (2022). Special Issue on Cybercrime and Justice Systems in Africa.

<sup>10</sup> ITU (International Telecommunication Union). (2022). Measuring Digital Literacy in Africa: Challenges and Opportunities.

<sup>11</sup> UNODC (United Nations Office on Drugs and Crime). (2022). Assessment of Cybercrime Legislation in Central Africa.

ambiguities to defend their clients<sup>1</sup>.

Furthermore, the enforcement of existing laws is often inconsistent. Corruption within law enforcement agencies can impede investigations and lead to a lack of accountability for offenders<sup>2</sup>. Reports of bribery and collusion between scammers and officials have surfaced, undermining public trust in the system and discouraging victims from reporting incidents. This cycle of corruption and inefficiency not only hampers justice but also emboldens scammers to continue their activities with minimal fear of repercussions<sup>3</sup>.

In addition, the rapidly evolving nature of cybercrime presents another significant challenge in the fight against scamming in Cameroon. Scammers are increasingly employing sophisticated techniques and technologies to circumvent detection and exploit vulnerabilities<sup>4</sup>. For instance, the rise of social media and digital communication platforms has provided scammers with new avenues to target unsuspecting victims. Techniques such as identity theft, deep fake technology, and phishing attacks have become more prevalent, making it difficult for law enforcement to keep pace with emerging threats<sup>5</sup>.

Additionally, the global nature of cybercrime complicates efforts to combat scamming. Scammers often operate from different jurisdictions, making it challenging for Cameroonian authorities to apprehend offenders who may be located abroad<sup>6</sup>. The lack of international cooperation and legal frameworks to facilitate cross-border investigations further exacerbates this issue. As a result, many scammers remain at large, exploiting the weaknesses in both local and international systems.<sup>7</sup>

## 6. Conclusion

This study set out to assess the effectiveness of the legal measures put in place to combat scamming in Cameroon, using Buea as a case study. The analysis demonstrates that Cameroon has established a relatively comprehensive legal framework capable of addressing scamming, particularly through Law No. 2010/012 on cybersecurity and Cybercriminality, complemented by legislation on electronic commerce and relevant provisions of the Criminal Procedure Code. These laws provide a clear basis for the criminalization of scam-related activities, especially those carried out through information and communication technologies, and prescribe deterrent sanctions for offenders.

However, the findings of this study reveal that the existence of legal provisions alone does not automatically translate into effective protection against scamming in practice. In Buea, as in many other parts of Cameroon, the enforcement of anti-scamming laws is hindered by several challenges, including limited technical capacity among law enforcement officers, inadequate investigative resources, procedural delays, and difficulties in gathering and preserving digital evidence. Additionally, low levels of public awareness about scamming offenses and the applicable legal remedies further weaken the deterrent effect of the law, as many victims either fail to report incidents or lack confidence in the justice system.

The study also highlights the institutional role of agencies such as the National Agency for Information and Communication Technologies (ANTIC), which has made notable efforts in capacity building and awareness creation. Nonetheless, coordination between regulatory bodies, law enforcement agencies, and the judiciary remains insufficient, particularly at the local level in Buea. This gap reduces the overall effectiveness of the legal framework and allows scamming activities to persist, often in increasingly sophisticated forms.

In conclusion, while Cameroon's legal framework provides an adequate normative foundation for combating scamming, its effectiveness in Buea is constrained by enforcement and implementation challenges. Addressing these shortcomings requires not only legal reforms where necessary, but also sustained investment in institutional capacity, specialized training in cybercrime investigation, improved inter-agency cooperation, and enhanced public sensitization. Strengthening these areas will be crucial to ensuring that the law serves as a meaningful tool in the fight against scamming and contributes to greater public trust and digital security in Buea and Cameroon at large.

## 7. Recommendations

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<sup>1</sup> Transparency International. (2022). Corruption Perceptions Index: Impact on Justice Systems in Africa.

<sup>2</sup> African Journal of Criminology and Justice Studies. (2022). Special Issue on Cybercrime Laws and Enforcement in Africa.

<sup>3</sup> World Justice Project. (2022). Rule of Law Index: Cameroon Country Report.

<sup>4</sup> Europol. (2022). Internet Organized Crime Threat Assessment (IOCTA).

<sup>5</sup> INTERPOL. (2022). Global Threat Assessment: Cybercrime Trends and Challenges.

<sup>6</sup> World Economic Forum. (2022). Global Risks Report: Cybersecurity and the Future of Work.

<sup>7</sup> Journal of Cybercrime Research. (2022). Emerging Trends in Cybercrime: A Global Perspective.

Based on the findings of the study on the legal appraisal of the enforcement of regulations against scamming in Cameroon, particularly in Buea, the following recommendations are proposed to enhance the effectiveness of the fight against cybercrime:

#### *7.1 Increase Funding and Resources for Law Enforcement*

To effectively combat scamming, it is essential to allocate increased funding and resources to law enforcement agencies. This funding should focus on acquiring advanced technological tools for digital forensics, training programs for officers, and improving overall operational capabilities. Enhanced resources would enable law enforcement to conduct thorough investigations, gather digital evidence, and respond more swiftly to reports of scams.

#### *7.2 Strengthen Legal Frameworks*

Efforts should be made to revise and strengthen the existing legal framework governing cybercrime. This includes updating laws to encompass new forms of scams, such as those involving cryptocurrencies and complex social engineering tactics. Clear definitions and guidelines will empower law enforcement to prosecute offenders more effectively and reduce ambiguity in legal interpretations.

#### *7.3 Enhance Training for Judicial Personnel*

Training programs for judges, lawyers, and legal practitioners should be implemented to improve their understanding of cybercrime laws and digital evidence. This will ensure that legal professionals are equipped to handle the complexities of cybercrime cases, leading to fairer and more informed rulings. Continuous professional development opportunities should be made available to keep legal personnel updated on emerging trends in cybercrime.

#### *7.4 Expand Public Awareness Campaigns*

Public awareness initiatives should be expanded to reach a broader audience, particularly in rural and underserved communities. Campaigns should focus on educating citizens about the various types of scams, how to recognize them, and the importance of reporting suspicious activities. Partnerships with local organizations, schools, and community groups can enhance outreach efforts and ensure that information is accessible to all demographics.

#### *7.5 Establish Reporting Mechanisms*

The establishment of user-friendly reporting mechanisms, such as hotlines and online platforms, should be prioritized. These mechanisms should be widely publicized to ensure that citizens know how to report scams easily and anonymously. Quick response teams should be formed to handle reports effectively and investigate incidents promptly.

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# Reassessing the Palermo Protocol: Emerging Gaps in Prevention, Protection and Prosecution in the Digital and Conflict Era

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## Abstract

Trafficking in Persons (TIP) remains one of the most heinous transnational crimes that have evolved within the digital and conflict-driven landscape. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), constitutes the primary international legal instrument in the fight against TIP. While the Protocol establishes a tripartite framework of prevention, protection and prosecution, emerging global realities have exposed significant gaps hindering its effectiveness. This study adopts a qualitative research methodology and a doctrinal method to reassess the Protocol in light of contemporary trafficking dynamics. It argues that despite the Protocol's contribution to the harmonisation of legal trafficking definitions and its influence in the development of national anti-trafficking laws, digitalisation, armed conflicts and displacements have revealed structural gaps. The study suggests that the Palermo Protocol is outdated as it was initially designed for a state-centric system focused primarily on physical forms of trafficking. In contrast, contemporary trafficking is increasingly transnational, technologically-facilitated and embedded within conflict situations. The paper concludes that while the Protocol remains foundational, it requires substantial normative and institutional strengthening to meet the current digital and conflict-related trafficking. The study therefore recommends the adoption of supplementary guidelines to address technology-facilitated trafficking, legal responses to conflict-related exploitation and the adoption of a more adaptive, victim-centered approach capable of capturing emerging forms of trafficking.

**Keywords:** Palermo Protocol, prevention, protection, prosecution, digital, conflict

## 1. Introduction

Trafficking in Persons, often described as modern-day slavery, dates back to the era of the Trans-Atlantic Slave Trade.<sup>1</sup> This phenomenon has evolved into a complex and highly organised crime, affecting millions of individuals and generating huge illicit profits for criminal networks.<sup>2</sup> It continues to pose a threat to global security, human rights and development. In response to the growing global plight, the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons especially Women and Children was adopted by the UN General Assembly in 2000 and entered into force on December 25th, 2003 as a supplementary instrument to the United Nations Convention on Transnational Organised Crime and Drugs.<sup>3</sup> The Protocol introduced a unified legal framework built on three core pillars to prevent trafficking, protect victims and punish offenders.<sup>4</sup> This is

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<sup>1</sup> Gallagher, A. (2010). *The International Law of Human Trafficking*. New York: Cambridge University Press, p. 1.

<sup>2</sup> Shelley, L. (2014). *Human Trafficking: A Global Perspective*. Cambridge University Press.

<sup>3</sup> United Nations.

<sup>4</sup> Gozdziaik, E. (2020). Palermo at 20: Retrospective and Prospective. *Journal of Human Trafficking*, 6(2), 109-118.

known as the 3(P) approach. Its adoption marked a significant milestone in harmonizing international anti-trafficking efforts. However, over two decades after its adoption, the effectiveness of the Protocol is increasingly questioned. This raises concerns as to whether the Protocol adequately responds to armed conflicts, internal displacements and the rapid advancement in technology. The study highlights that while the Palermo Protocol is a foundational instrument in combatting trafficking in persons, it is structurally limited in addressing modern dynamics of the phenomenon and therefore requires a revision. For a more robust anti-trafficking framework, there is a need for the Protocol to reflect the harsh realities of trafficking in contemporary societies in order to effectively strengthen its prevention, protection and prosecution pillars.

## 2. Statement of the Problem

Despite an almost universal ratification of the Palermo Protocol, trafficking in persons continues to expand especially in conflict zones and in the contemporary digital landscape.<sup>1</sup> The Protocol's state-centric and peacetime framework renders it inadequate in addressing trafficking dynamics in conflict economies, where state authority is fragmented and non-state actors dominate. This raises questions about the continued effectiveness of the Protocol in contemporary societies.

## 3. Definition of Trafficking in Persons

The Palermo Protocol defines trafficking in persons in Article 3 as;

a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, or fraud, of deception, or the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal, manipulation or implantation of organs.

## 4. Methodology

The study employs the qualitative research methodology which analysis non-numerical data. The study examined the normative strengths and weaknesses of the Palermo Protocol. It adopts the doctrinal method of content analysis. The doctrinal approach is suitable for this study because primary data was obtained from treaties while secondary sources of data were obtained through journal articles, textbooks, policy reports and websites. This method is particularly suitable as it allows for a critical evaluation of the legal adequacy of the Protocol in light of emerging global realities.

## 5. Overview of the Palermo Protocol

The Palermo Protocol is relevant in codifying international anti-trafficking rules. The Protocol has three objectives; Prevention of trafficking, Protection of victims and the Prosecution of offenders.

### 5.1 Prevention

The prevention of trafficking requires States to engage in measures that address the root causes of trafficking in order to prevent it from happening. Effective prevention begins by tackling the very conditions that create vulnerability.<sup>2</sup> States are called to sensitise their populations on their fundamental human rights. This can be done through sensitisation in schools, seminars, workshops and media campaigns in order to raise awareness on the phenomenon. Sensitisation campaigns can reveal recruitment tactics used by traffickers and the risks exposed in irregular migration. Preventing measures can equally be done by providing quality access to education, alleviating poverty through poverty reduction schemes so as to reduce vulnerabilities of women and children especially. States are also called to prevent trafficking by enacting legislation and ensuring they align with international anti-trafficking standards.<sup>3</sup> Additionally, preventive measures can be done by engaging local and religious leaders to educate their people on their basic human rights, the need to respect the fundamental rights of others and a wake-up call to be vigilant to trafficking schemes as they carry out their daily activities.

### 5.2 Protection

The second objective of the Palermo Protocol focuses on the protection of victims. Once victims are identified, they require immediate and long-term assistance. The protection of victims consists of providing assistance to ensure their bodily and psychological integrity. This includes providing them with proper shelter, food, clean

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<sup>1</sup> Trafficking in conflict and humanitarian crises, <https://www.ohchr.org/en/special> last accessed 24th March, 2026.

<sup>2</sup> 25 Years On: Rethinking the Palermo Protocol, <https://www.beslaveryfree.com> last accessed 24<sup>th</sup> March, 2026.

<sup>3</sup> Palermo Protocol, 25 Years On, the fight goes on, <https://www.lastrada> last accessed 24<sup>th</sup> March, 2026.

water and enabling them to receive therapy/counseling sessions when needed.<sup>1</sup> Moreover, protecting victims also requires protecting their confidentiality and privacy. Names of victims are not to be disclosed to the public, neither are their images to be taken and shown to the public. Ethical considerations must be done when caring for victims. If a victim at any point decides to share their story to the public, they must be carefully protected. Additionally, in cases where the victim is a child, special protection is required since they are more vulnerable than adults.<sup>2</sup>

### 5.3 Prosecution

The prosecution of perpetrators comprises the criminalisation of all forms of trafficking in human beings globally.<sup>3</sup> This involves the need for proper implementation of anti-trafficking laws and ensuring the right procedures are followed with regards to pre-trial investigation and criminal proceedings. Per Article 5 of the UN Palermo Protocol, States are required to adopt legislation to criminalise trafficking. Domestic laws must clearly define trafficking in persons, follow international standards and outline their penalties. In Cameroon for example, trafficking has been criminalised through No. 2016/007 Relating to Trafficking in Persons. When it comes to prosecution, investigations are prioritised. Trials ought to be done fairly to avoid re-victimisation.

## 6. Strengths of the Palermo Protocol

The Palermo Protocol over the last 26 years has been a significant instrument in the fight against trafficking in persons.

### 6.1 Comprehensive Definition of Trafficking in Persons

The Palermo Protocol provided the first ever comprehensive definition of trafficking in persons and the parameters on who constitutes a victim.<sup>4</sup> It is in fact an international legal framework that serves as a benchmark for States to take action. In the definition of trafficking, the Protocol addresses the key elements necessary to categorise trafficking in persons. It talks of the act (recruitment, transportation, harbouring), the means (coercion, fraud, deception) and the exploitation of victims (abuse, violence).<sup>5</sup> This enhances legal clarity and effective identification of trafficking cases. States are able to differentiate trafficking from other from other related concepts.

### 6.2 Lays Down Standards for States and Criminalises Trafficking in Persons

It categorizes trafficking as a crime of transnational nature. States are duty-bearers and have the responsibility to ensure rights-holders enjoy their fundamental rights. The main objective of the Protocol as mentioned in Article 2, are to (a) prevent trafficking in persons (b) protect and assist the victims (c) promote cooperation among States to prosecute offenders. This is a holistic approach in addressing trafficking in persons as it aims at stopping the phenomenon from happening, caring for those who are already affected and punishing those who participated in the exploitation.

### 6.3 Recognition of Child Trafficking as a Unique Type of Trafficking

The Palermo Protocol considers children as distinct from adults. It is believed that children are more docile and easily manipulated than adults.<sup>6</sup> Children are persons below the age of 18 years per the Convention on the Rights of the Child, 1989. The Palermo Protocol defines trafficking in children as the recruitment, transfer, harbouring or receipt of persons below the age of 18 for exploitation. From this established threshold, it is clear that when it comes to the methods for child trafficking; only the act element and the exploitation elements are necessary. The means through which a child is recruited is always irrelevant.

### 6.4 Promotes Collaboration Among States

Palermo Protocol recognizes trafficking in persons as a transnational organised crime happening across States. When crimes are not only limited to the territory of a particular state, it becomes clear that the country cannot address that issue alone. Palermo calls on State Parties to intensify efforts and collaborate with each other towards the fight against trafficking. It brings out the fact that trafficking is often run by a network/syndicate of

<sup>1</sup> Stock, H et al. (2021). Human Trafficking and Violence: Findings from the largest global dataset of trafficking survivors. *Journal of Migration and Health*, 4.

<sup>2</sup> Mbella, N., & Mbella, M. (2025). Child Trafficking in Conflicts: An Appraisal of Cameroon's Legal Framework. *Journal of Tertiary and Industrial Sciences*, 5(1).

<sup>3</sup> Farell, A., et al. (2016). The Prosecution of State-Level Human Trafficking Cases in United States. *Anti-Trafficking Review*, (6), pp. 48-70.

<sup>4</sup> Gallagher, A. (2015). Two Cheers for the Trafficking Protocol. *Anti-Trafficking Review*, (4), pp. 14-32.

<sup>5</sup> Gallagher, A. (2017). *Human Rights and Human Trafficking*. Cambridge University Press.

<sup>6</sup> Brownie, L. (2021). Child Sex Trafficking: Strategies for Identification, Counseling and Advocacy. *Int J Adv Couns*, 43(2), pp. 113-125.

criminals and eliminating it requires the willingness and collective effort of all States. Some countries serve as countries of origin (where people are sourced) others as transit nations (transportation routes) and others as destination countries (where they are finally taken to and exploited).<sup>1</sup> The Protocol places the burden on States to collaborate in fighting the ill.

## 7. Weaknesses of the Palermo Protocol

### 7.1 *State-Centric Nature*

The Protocol is heavily dependent on State capacity and willingness to combat trafficking. This means if a state lacks the willpower to implement the provisions of the Protocol and is plagued by corrupt law enforcers, there is a tendency the phenomenon will continue to thrive in such an area. Although States are the primary subjects in international law, organisations like non-state actors, NGOs, community based groups, media platforms and the public are actively needed in the fight against trafficking. There is need for the Protocol to specifically address non-state actors and also provide responsibilities for their effective participation in the global fight.

### 7.2 *Fails to Address the Possibility of the Breakdown of Institutions in Conflicts*

The Protocol was adopted in 2000 at a time many States were not experiencing armed conflicts. In recent years, there has been an upsurge of conflicts among nations.<sup>2</sup> Conflicts influence the specific forms and manifestations of trafficking. Conflicts exacerbate trafficking in several contexts; people are trafficked into conflict zones, people are trafficked within conflict zones and people are trafficked out of conflict zones. Conflicts create favourable conditions for traffickers to prey on. The Protocol assumes countries have strong structural institutions in place to fight trafficking in persons, whereas many states lack it. The Protocol failed to take into consideration the possibility of a break in State institutions as a result of conflicts or natural disasters. In conflict zones such as the Anglophone Conflict in the English Speaking Regions of Cameroon, States have limited control over certain communities. This is largely due to insecurities, killings, attacks and bombing by separatists. The Protocol assumes States have well-functioning law enforcers, police and functioning courts. However, this is not always the reality as conflicts lead to the breakdown of such institutions. The prevention, protection and prosecution of trafficking in conflict areas requires more collaboration, security and strengthening of enforcement.

### 7.3 *The Emergence of Non-State Armed Groups/Actors*

The Protocol did not take into consideration the role played by non-state armed groups in the escalation of trafficking. Armed groups recruit children, force them into labour and exploit civilians. While the Palermo Protocol establishes a comprehensive framework for combating trafficking, its effectiveness is undermined by the growing influence of non-state armed groups/actors that operate beyond traditional state control and regulatory mechanisms. The increasing role of non-state actors including drug and weapons syndicates, armed groups and digital intermediaries has transformed trafficking into a more complex and adaptive phenomenon, challenging the traditional enforcement envisaged by the Palermo Protocol.

### 7.4 *Failure to Address Structural Drivers*

The prevention of trafficking objective under the Palermo Protocol emphasises the need for raising public awareness and adopting favourable socio-economic measures in the fight against trafficking. Traffickers prey on the vulnerabilities of people which are most often triggered by poverty, loss of livelihoods and conflict displacements. Yet, the Protocol does not sufficiently account for measures in which extreme poverty, conflict and displacements can be reduced. Conflict environments create heightened vulnerability, yet there is no tailored mechanism in the Protocol to address this particularly.

### 7.5 *Focuses on Trafficking as a Transnational Organised Crime*

While the Palermo Protocol formally applies to both internal and transnational trafficking, its structural alignment with transnational organised crime results in a disproportionate focus on cross-border trafficking. This limits the effectiveness in addressing internal trafficking dynamics, particularly in conflict situations where it is more prevalent. Modern-day trafficking is increasingly internal occurring in decentralized networks. Failing to specifically address such concerns is a gap which affects the proper implementation of the prevention pillar.

### 7.6 *Inadequacy in Addressing Modern Digital Trafficking Trends*

The Protocol was adopted in 2000 at a time when technology had not evolved so rapidly. There was mainly physical recruitment of victims, face-to-face coercion and movement across borders. In recent years, globalization and the rapid increase in technology has led to the development of new strategies traffickers use in

<sup>1</sup> Co-responsibility between countries of origin, transit and destination, <https://www.martenscentre> last accessed 24<sup>th</sup> March, 2026.

<sup>2</sup> Ibragimov, K. (2024). The Nature of Social Conflict. *American Journal of Social Sciences and Humanity Research*, 4(2), pp. 73-81.

recruiting their victims.<sup>1</sup> Traffickers use social media platforms and messaging apps such as WhatsApp, Tiktok, Facebook, Instagram for fake job adverts, scholarships and romance scams leading to exploitation.<sup>2</sup> The implication of Palermo Protocol on this modern development is that the Protocol does not explicitly address online recruitment. Its framework assumes physical movement and territorial control. Unlike traditional trafficking which was done physically, in contemporary times physical movements may not necessarily take place. People can be exploited sexually online making it harder to trace and prosecute perpetrators. Digital trafficking poses new threats to effective prevention and prosecution as law enforcers often lack the technological expertise to identify anonymous criminal networks online.

### 7.7 Survival Trafficking

Survival Trafficking has emerged as a contemporary reality due to the convergence of armed conflict, displacement and economic instability.<sup>3</sup> In such contexts, exploitation is often driven not by organised criminal structures but by systemic pressures that compel individuals to engage in exploitative arrangements as a means of survival.<sup>4</sup> In conflict affected areas, people exchange labour and sex for survival.<sup>5</sup> When they are in need of basic needs like food, shelter, they may resort to survival sex just so they can live.<sup>6</sup> This blurs the line between trafficking and survival strategies because although the notion of survival trafficking falls under the abuse of vulnerability in the Protocol, it frequently escapes recognition due to the absence of identifiable perpetrators and the nature of social coercion. Are survival trafficking victims actually victims? Should they be prosecuted? Are they entitled to special protection because of their vulnerability? These are some of the many unanswered questions the Protocol needs to address given the realities of the world today. There is a need for context-sensitive interpretation of trafficking, one that adequately reflects structural coercion.

### 7.8 No Monitoring Body to Follow up States

State Parties to the Protocol do not have a specific body to monitor their compliance with anti-trafficking provisions. This often leads to passivity among states as they are not accountable to anyone. It is usually in their discretion to determine when and how they want to carry out their anti-trafficking projects. With the urgency of this global issue, States should not be left to operate on their own but should be strictly monitored and allowed to make regular reports.

## 8. Conclusion

The Palermo Protocol marked a significant milestone in international anti-trafficking efforts. While the Palermo Protocol represents the landmark treaty in combatting trafficking in persons, its effectiveness is increasingly challenged by contemporary realities that were not anticipated at the time of its adoption.<sup>7</sup> Conflict-driven vulnerabilities and technology-facilitated trafficking represents significant gaps that limit its relevance in modern contexts. Addressing these gaps will require a shift from static legal framework to a more adaptive and responsive approach.

## 9. Recommendations

### 9.1 Incorporation of Conflict-Sensitive Provisions

There is the need to revise the Palermo Protocol to incorporate specific provisions addressing trafficking in conflict and post conflicts environments. These provisions should recognize the realities of weakened state structures, the role of non-state armed groups and the increased vulnerability of internally displaced persons. A conflict sensitive response will ensure anti-trafficking responses remain effective even in situations where the state authority is fragmented.

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<sup>1</sup> Zhang, S. (2022). Progress and Challenges in Human Trafficking Research: Two Decades after the Palermo Protocol. *Journal of Human Trafficking*, 8(1), pp. 4-12.

<sup>2</sup> Why Technology Facilitated Trafficking of Children Poses Growing Risks in Czecha, available at <https://www.czechia.iom.int> last accessed 24<sup>th</sup> March, 2026.

<sup>3</sup> Iwegbu, J. et al. (2025). Survival Sex as a Coping Mechanism: A Sociological Study among Economically Vulnerable University Students. *Asian Journal of Advanced Research*, 19(7), pp. 204-214.

<sup>4</sup> Preble, K. (2025). Understanding Survival Sex Engagement Among Sexual and Gender Minority Young Adults Experiencing Homelessness: A Seven-City Study Using Individual and Social Network Perspectives. *Journal of Human Trafficking*, 4.

<sup>5</sup> What is Survival Sex? <https://www.changing-lives.org.uk> last accessed 24<sup>th</sup> March, 2026.

<sup>6</sup> Survival Sex, Resource Beyond the Streets, <https://beyondstreets.org.uk>, last accessed 24<sup>th</sup> March, 2026.

<sup>7</sup> Henna, S. (2025). The Palermo Protocol: An Ineffective Treaty for Holding Human Traffickers Criminally Accountable and Protecting Victims of Human Trafficking. *Arizona Journal of International Comparative Law*, 438.

### 9.2 Expansion Beyond State-Centric Framework

There is the need for the Palermo Protocol to be revised in order to move beyond the state-centric approach of combatting trafficking. The Protocol needs to recognize that different groups are also involved in trafficking dynamics; non-state actors, informal networks, and private entities. There is a need to regulate the activities of all these persons and ensure accountability.

### 9.3 An Establishment of a Monitoring and Compliance Mechanism

To address enforcement gaps, there is a need for the establishment of an independent international monitoring body responsible for assessing State compliance with the Protocol. It would enhance accountability and reduce passive implementation by States. When States are aware that they are required to give regular reports on compliance or they are aware they might have impromptu checks from representatives, their efforts must be strengthened.

### 9.4 Regulation of Digital Platforms and Technology

With the rise of technology facilitated trafficking, the Protocol should be updated to include binding obligations on digital platforms to monitor, report and prevent trafficking related activities.

### 9.5 Capacity Building

States should invest in specialised training for law enforcement agencies in digital investigations and cybercrime detection. This will improve victim identification and help in the implementation of the Palermo Protocol.

### 9.6 Increase Victim Protection in Conflicts

There is a need to strengthen protection mechanisms for victims especially in conflict areas like safe shelters, psychosocial support and sustainable reintegration programs. Victims must have rights beyond the ones included in the Protocol like the right to be identified quickly, immediate protection and support, right to legal information and the need to decide whether and how to cooperate with the prosecution of offenders.

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# Realistic Responses to Misconceptions Surrounding Marx's Labor Theory of Value in the Age of Artificial Intelligence and Its Developmental Prospects

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## Abstract

The rise of AI-based modes of production has sparked debates over whether “machines create value,” thereby casting doubt upon the contemporary explanatory power of Marx’s labor theory of value. By elucidating the core principles of Marx’s labor theory of value and distinguishing key categories such as use value and value, living labor and objectified labor, this paper demonstrates that viewpoints such as “machines create value” are fundamentally rooted in theoretical confusion. The study finds that the current era of artificial intelligence is still far from realizing a “digital utopia”; behind automated production there remains a new form of complex labor, and the ultimate source of surplus value continues to be living labor. On this basis, the paper further reveals the new developmental landscape of the labor theory of value in the age of AI, namely the exponential expansion of use values and the profound restructuring of value production. Marx’s labor theory of value has not become obsolete; rather, the methodological insights embedded within it remain capable of analyzing contemporary social realities.

**Keywords:** artificial intelligence, automation, labor theory of value, living labor, use value and value, surplus value

## 1. Introduction

The rise of AI-based modes of production has accelerated both the digital industrialization of industries and the digital transformation of traditional sectors, leading to an exponential growth of use values. At the same time, questions concerning whether algorithms and robots can independently create value and whether Marx’s labor theory of value has become outdated have become the subject of intense academic debate. On the basis of a systematic exposition of the essential principles of Marx’s labor theory of value, this paper examines the actual development of artificial intelligence, clarifies the theoretical fallacies contained in contemporary critiques, and further analyzes the new developmental landscape of the labor theory of value in the contemporary era as well as the fundamental questions to which it must respond. Such an inquiry not only contributes to the further development of the labor theory of value itself, but also constitutes an inevitable requirement for safeguarding social fairness and justice and for promoting a sound interaction between technological progress and social development.

## 2. The Core Principles of Marx’s Labor Theory of Value and the Theoretical Misconceptions of the AI Era

### 2.1 *The Core Principles of Marx’s Labor Theory of Value*

In his early years, Marx was influenced by the supply-demand theory of value. However, through a deeper grasp of historical materialism and a systematic investigation of capitalist social reality, he ultimately became a firm

defender of the labor theory of value. In *Capital*, Marx took the commodity as his logical starting point and revealed the internal laws governing the movement of value under the conditions of capitalist commodity production, thereby laying the scientific foundation of the labor theory of value.

The key to understanding Marx's labor theory of value lies in comprehending the dual character of labor and the dual character of commodities. In *Capital*, Marx pointed out that "all labor is, on the one hand, an expenditure of human labor-power in the physiological sense, and in its character of identical abstract human labor, it creates the value of commodities. On the other hand, all labor is the expenditure of human labor-power in a special form and with a definite purpose, and in this character of concrete useful labor, it produces use values."<sup>1</sup> Accordingly, labor manifests itself both as concrete useful labor, which creates the use value of commodities, and as abstract human labor, which constitutes the value of commodities.

Regarding the determination of value, Marx further stated that commodities "now express merely that human labor-power has been expended in their production, that human labor is accumulated in them. As crystals of this social substance, common to them all, they are values—commodity values."<sup>2</sup> It is therefore evident that value is undifferentiated human labor congealed in commodities. As for the measure of value, Marx introduced the concept of socially necessary labor time, namely "the labor time required to produce any use value under the conditions of production normal for a given society and with the average degree of skill and intensity prevalent in that society."<sup>3</sup>

Value possesses both a sphere of production and a sphere of realization. Marx emphasized that the value of commodities can only be socially recognized when commodities are successfully transformed into money through exchange in the sphere of circulation. Only then can private labor acquire social validation. This process constitutes the crucial link through which value moves from abstract determination to concrete realization.

In the sphere of distribution, Marx uncovered the secret of capital accumulation through his analysis of surplus value. He argued that the worker's labor time is divided into socially necessary labor time and surplus labor time: the former reproduces the value of labor-power itself and appears in the form of wages, while the latter is appropriated by capital without compensation and constitutes surplus value. Surplus value is precisely the fundamental source of capital valorization. It is thus evident that Marx's labor theory of value not only explains the origin and determination of commodity value, but also profoundly reveals the essential antagonism between capital and labor under the capitalist mode of production.

It is the labor of the broad working class across all sectors of society that endows commodities with value. In this sense, an object produced without any participation of human labor may possess an exchange price, but it cannot possess value in the Marxian sense. The "living labor" embodied in commodities constitutes the substance of value. Living labor refers specifically to the process by which human beings apply both physical and intellectual capacities in commodity production, thereby transferring old value while simultaneously creating new value. Marx explicitly stated that "value itself has no other 'material' than labor itself," emphasizing that this understanding is a "historical abstraction"<sup>4</sup> grounded in specific social and historical conditions. Under capitalism, labor-power is subordinated to capital, and labor is carried out entirely for the purpose of exchange, serving both capital accumulation and the reproduction of labor-power itself. At the same time, under the conditions of commodity economy, private labors stands in fundamental opposition to one another. All labor is ultimately directed toward exchange, and only through successful exchange can private labor receive social recognition and realize its value.

From the above analysis of the fundamental principles of Marx's labor theory of value, it is evident that Marx consistently focused on the human beings behind commodities. In *Capital*, Marx vividly portrayed the excessive labor, domination by capital, and alienation of labor. These discussions were not merely humanitarian expressions of sympathy; rather, they aimed to reveal the internal logic of workers' conditions of existence, labor processes, and forms of production organization under the capitalist mode of production. Consequently, Marx's labor theory of value does not simply remain at the superficial proposition that "human labor creates use value and determines exchange value." What truly concerned Marx were the conditions of existence, modes of production, organizational forms, and distributional outcomes of the working class concealed beneath

<sup>1</sup> Marx, Karl. (2009). *Capital: Volume 1*. In *Collected Works of Marx and Engels* (Vol. 5, p. 60). Beijing: People's Publishing House. (In Chinese)

<sup>2</sup> Marx, Karl. (2009). *Capital: Volume 1*. In *Collected Works of Marx and Engels* (Vol. 5, p. 51). Beijing: People's Publishing House. (In Chinese)

<sup>3</sup> Marx, Karl. (2009). *Capital: Volume 1*. In *Collected Works of Marx and Engels* (Vol. 5, p. 52). Beijing: People's Publishing House. (In Chinese)

<sup>4</sup> Marx, K., & Engels, F. (1972). *Complete Works of Marx and Engels* (Vol. 29, p. 300). Beijing: People's Publishing House. (In Chinese)

commodity production under capitalism. He sought to reveal the disadvantaged position occupied by workers in social distribution, the exploitation they suffer, and the social reality that prevents them from achieving free and all-round development. This is the fundamental reason why the labor theory of value continues to possess enduring vitality.

However, with the arrival of the age of artificial intelligence, the material foundation of the industrial economy upon which Marx's labor theory of value emerged has undergone profound transformation. Emerging technologies represented by artificial intelligence are fundamentally reshaping social production and commodity circulation, thereby restructuring people's modes of life.

### *2.2 Theoretical Misconceptions Concerning the Labor Theory of Value in the Age of Artificial Intelligence*

The most salient characteristics of contemporary social production are the automatic generation capabilities of artificial intelligence, the substantial increase in labor productivity, and the relative withdrawal of concrete labor from the process of producing the use value of commodities. Digital factors have emerged as newly constituted factors of production in the present era. Empowered by algorithms, valuable products can now be generated rapidly and on a massive scale. For instance, systems such as DeepSeek and Google's Gemini are capable of automatically generating texts, images, and videos in response to human instructions. Automated production has also penetrated extensively into various sectors of manufacturing, where procedures such as welding, assembly, and spraying in automobile production are now largely completed by robots. Likewise, the explosive growth of the contemporary new energy industry has been profoundly shaped by automation technologies, which have greatly enhanced labor productivity and reduced error rates in component forging and precision processing. In addition, machines are capable of continuous operation without interruption, thereby transcending the physiological limitations of human beings.

On this basis, some scholars argue that the amount of labor directly expended by human beings in commodity production has significantly declined, while social wealth continues to expand. Consequently, they claim that the labor theory of value has become obsolete, that human labor is no longer the sole source of value, and that commodities produced by artificial intelligence likewise possess value.<sup>1</sup> Furthermore, some contend that AI machines possess the intelligent capacities required for production and are therefore capable of replacing production workers as the bearers of living labor and of independently creating value.<sup>2</sup>

Such "misconceptions" directed against Marx's labor theory of value profoundly shape contemporary value orientations and modes of judgment regarding current social issues, including platform exploitation, digital labor, algorithmic price discrimination based on big data, unemployment, and social polarization. Within a theoretical atmosphere that proclaims that "artificial intelligence creates value," should these problems still be taken seriously and addressed? Should society move toward technological supremacism? Should the logic underlying systems of distribution accordingly be transformed? All of these questions require a rigorous study and systematic response to Marx's labor theory of value in a manner consistent with the demands of the present era.

## **3. Realistic Analysis and Theoretical Response to Misconceptions Surrounding the Labor Theory of Value in the Age of Artificial Intelligence**

### *3.1 A Realistic Analysis of Misconceptions Concerning the Labor Theory of Value in the Age of Artificial Intelligence*

Both Karl Marx and Friedrich Engels emphasized that scientific inquiry must be grounded in objective facts that are beyond doubt. In order to clarify the misunderstandings and critiques directed at the labor theory of value in the age of artificial intelligence, it is first necessary to develop an objective understanding of the actual level of development reached by contemporary artificial intelligence.

First, contemporary AI-based production has not yet realized a "digital utopia." The vision of a society in which fully automated robots produce all goods required for social life remains merely an idealized aspiration. Human labor has by no means been completely liberated from a condition dominated by wage labor and production for exchange. The fundamental reason why many people perceive that commodities can seemingly be produced without human labor lies in the fact that such commodities essentially represent the transfer of "old value" preserved from humanity's past labor. From the perspective of the value-formation process, human labor creates

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<sup>1</sup> Hu, Bin, & He, Yunfeng. (2019). The Labor Value Theory and Labor System in the Era of Weak Artificial Intelligence. *Journal of Zhejiang Gongshang University*, (4), 12-21. (In Chinese)

<sup>2</sup> Virno, Paolo. (2017). *Grammar of the Multitude: An Analysis of Contemporary Forms of Life*. Translated by Dong Bicheng, Beijing: The Commercial Press, p. 82. (In Chinese)

value in two dimensions: first, through the transfer of old value; and second, through the creation of new value.<sup>1</sup> Commodities that appear to be generated without human labor in contemporary society—such as videos, images, and texts produced by algorithms including OpenAI’s ChatGPT and Google’s Gemini—are, in essence, the transfer and recombination of pre-existing old value. Although artificial intelligence technologies have undoubtedly accelerated the production of similar products, increased labor productivity within relevant sectors, and reduced the socially necessary labor time required in those sectors, they remain incapable of independently creating the video narratives and cultural content genuinely required by human beings, nor can they generate entirely new works never before produced by humanity. Rather, they merely reprocess and reproduce humanity’s existing intellectual achievements.

The much-discussed embodied intelligent robot “Lobster” may serve as an illustrative example. Such a robot does not experience physiological fatigue and can continuously perform labor day and night according to human commands, even formally realizing a situation in which “one person constitutes an entire company,” thereby replacing numerous traditional occupations. Nevertheless, the commodities it produces ultimately consist only in the continuous extraction, organization, and recombination of already existing old value, rather than the creation of genuinely new value.

Second, behind “automation” lies a new form of “complex labor.” At this point, one may encounter the following objection: AI-generated commodities also possess prices, and these prices are evidently not determined by the “undifferentiated human labor congealed in commodities”; therefore, AI-generated commodities must themselves possess value. The example of the “token” may be considered here. As the smallest informational unit processed by large AI models, the token has already become a pricing unit for generative AI services. On the surface, token transactions appear unrelated to labor. In reality, however, they depend upon a series of scheduling technologies and algorithmic optimization processes. The competitiveness of token-based services is fundamentally determined by four dimensions: electricity, computational power, models, and data. The optimization of these dimensions, interface invocation, and data governance all require extensive expenditures of physical labor, intellectual labor, and coordinated cooperation among human beings. The operation of an artificial intelligence enterprise requires not only maintenance engineers responsible for systems, data centers, and IT facilities, but also model and computational architecture engineers. The labor achievements of these new forms of labor engaged in maintenance, development, and system design manifest themselves as service capacities that merely appear to be “automatically generated.” In other words, the use value presented by artificial intelligence as a commodity is sustained precisely by new forms of human labor. In manufacturing industries such as electronics, automobile production, and pharmaceuticals, automated production lines may appear to eliminate repetitive labor on the surface, yet technical workers, quality inspectors, and control operators continue to exist within the production process.

The distinction between new forms of labor and traditional labor in terms of labor methods creates the illusion of the “withdrawal of labor.” As a commodity, “automation technology” has transformed the mode of repetitive labor formerly performed by workers, causing traditional manual laborers to become new forms of laborers who rely more heavily upon intellectual capacities than direct physical exertion. Labor is no longer necessarily carried out through direct manual activity, but instead through control platforms and computers, relying primarily upon mental labor. For this reason, the labor process appears no longer to involve “direct participation,” thereby producing the illusion that labor has withdrawn from production. Furthermore, although artificial intelligence has indeed displaced large numbers of traditional jobs, the workers excluded from these sectors have not ceased laboring altogether. Rather, they have been transferred into other sectors of employment, becoming food-delivery couriers, gig-economy workers, and other forms of digital laborers, as well as entering industries that still require human labor. In this way, they constitute an enormous laboring underclass. Every step taken by digital capitalist intelligent production toward “unmanned production” remains inseparable from the hidden participation of digital laborers behind the scenes.<sup>2</sup>

Third, the source of surplus value remains living labor. At the level of value production, capital actively employs laborers to engage in artificial intelligence research, continuously iterate algorithms, maintain intelligent machine production systems, and appropriate data generated through human activity as factors of production. This process is fundamentally driven by capital’s intrinsic pursuit of profit maximization. Automated production may compress variable capital, expand surplus value, and generate super-profits. However, in reality, the increases in labor productivity and profit rates brought about by technological development have not been

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<sup>1</sup> Marx, Karl. (2009). *Capital: Volume 1*. In *Collected Works of Marx and Engels* (Vol. 5, pp. 242-243). Beijing: People’s Publishing House, 2009. (In Chinese)

<sup>2</sup> Huang, Zaisheng. (2025). The Value Issues of ‘Fully Automated’ Production in the Age of Intelligence: Presentation and Analysis. *Contemporary Economic Research*, (8), 17-25. (In Chinese)

correspondingly reflected in rising wages for workers. Instead, they have produced, at the level of appearances, the illusion that “machines create surplus value.”

At the level of value realization, improvements in the efficiency of circulation and exchange likewise depend upon labor. In the era of the digital economy, capital possesses the capacity to capture data generated through people’s online behavioral activities, thereby enabling precision targeting, algorithmic price discrimination through big data, and the large-scale dissemination of consumerist ideology through advertising campaigns promoting commodities. These methods enhance the efficiency of exchange and facilitate the growth of profits. At first glance, such developments may appear to confirm that algorithms themselves “create” value. In reality, however, this is not the case. Algorithms are themselves designed by human beings, while the core means of production—namely data—derive from records of human activity within economic and social life. Moreover, the presentation and dissemination of various forms of informational content rely upon the new forms of labor performed by workers within internet enterprises. Consequently, in contemporary AI society, whether in the sphere of production or in the sphere of circulation and exchange, the ultimate source of surplus value remains living labor rather than algorithms or machines themselves.

### 3.2 Theoretical Responses to the Challenges Directed at the Labor Theory of Value

At present, several representative critiques have been raised against the labor theory of value. However, the common fallacy underlying these critiques stems from a confusion of Marx’s core conceptual categories.

First, some argue that machines have replaced human labor and generated enormous amounts of wealth; therefore, machines themselves must also be capable of creating value. Such critiques confuse Marx’s distinction between use value and value by mistakenly equating the use value of commodities with value itself. At the same time, this viewpoint is shaped by AI production under the domination of capital, which obscures the new forms of labor involved in processes such as data annotation and model development, thereby concealing the laborers behind commodities.

Second, some regard artificial intelligence as a form of “silicon-based human” fundamentally different from previous machines. According to this perspective, artificial intelligence possesses cognitive and laboring capacities equivalent to, or even surpassing, those of human beings, and can therefore completely replace human labor, while capital can continue to realize self-expansion through the exploitation of “silicon-based laborers.”<sup>1</sup> The flaw in this argument lies in the fact that if fully automated production and an immense abundance of material wealth were truly realized, exchange value would lose its foundation, wage labor would disappear, and capitalism itself would cease to exist. Under such conditions, the labor theory of value would naturally disappear as well. Precisely this outcome would represent the endpoint of the logic of capital and the material precondition for communism. Consequently, the notion of “exploiting silicon-based humans” in fact reveals the theoretical limitations of a mode of thinking still trapped within the logic of capital itself.

Third, some contend that contemporary labor involving interaction between human beings and intelligent agents constitutes merely “indirect labor,” which does not create value, while only direct labor produces value; according to this view, machines are therefore the true creators of value. This argument not only misjudges the current stage of technological development, which still requires vast amounts of labor, but also confuses concrete labor with abstract labor. Changes in the concrete form of labor do not alter its essential character as an expenditure of abstract human labor.

The reason why critiques of the labor theory of value fail to withstand scrutiny lies fundamentally in their confusion of use value and value, price and value, concrete labor and abstract labor, as well as profit and surplus value. Artificial intelligence undoubtedly creates enormous quantities of use values, yet use value is not identical with value. The prices of machine-produced commodities derive from the transfer of old value, the input of new forms of labor, and the acquisition of excess profits, rather than from the automatic possession of value by machines themselves. New forms of labor remain expenditures of abstract human labor and should not be denied simply because their concrete forms have changed. The profits generated through machines are, in essence, surplus value created by living labor; once intelligent technologies become universally adopted throughout an industry, excess profits will inevitably disappear. The present age of artificial intelligence remains far from a condition in which labor has been completely replaced. Living labor has merely transformed its concrete forms and entered new spheres of value creation. Therefore, the labor theory of value has not become obsolete; rather, it demonstrates even greater vitality in the digital era.

Contemporary critiques of the labor theory of value also intensify the antagonism between labor and capital. The logic through which capital pursues self-expansion consists in suppressing variable capital (v) while maximizing

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<sup>1</sup> Yan, Mengwei. (2025). Living Labor, Artificial Intelligence, and Marx’s Theory of Labor Value. *Seeking Truth*, 52(1), 18-28+187. DOI: 10.19667/j.cnki.cn23-1070/c.2025.01.003. (In Chinese)

the appropriation of surplus value (m), thereby achieving the maximization of exploitation. The claim that “artificial intelligence creates value” in reality serves to assist capital not only in appropriating the immense use values generated through AI technologies, but also in appropriating the surplus value created by the living labor concealed behind them. Ultimately, this tendency leads toward technological supremacism, causing both policy and society to become subordinated to technology itself, rather than adhering to a people-centered orientation.

In reality, commodities produced within a fully automated society entirely divorced from living labor would possess no value. This is because such a society would abolish wage labor and thereby bring capitalism itself to an end. Once the social foundation upon which the labor theory of value depends collapses, the theory itself would naturally withdraw from the historical stage. <sup>1</sup>Conversely, so long as commodity production, private ownership, and wage labor under the dominance of capitalism continue to exist, the labor theory of value cannot be regarded as obsolete. As Karl Marx stated: “If machinery were to annihilate the entire class of wage laborers, this would be a terrible thing for capital, for without wage labor capital ceases to be capital.”<sup>2</sup>

Within an idealized fully automated society, value itself would likely acquire new connotations. It is possible that only innovative products or purely handcrafted objects would then possess “value,” or perhaps entirely new systems for measuring value would emerge. What can nevertheless be affirmed with certainty is that the formation of value would no longer derive from wage labor or from labor performed for the purpose of exchange, nor would it require compensation for the expenditure of labor-power.

#### **4. The New Developmental Landscape of Marx’s Labor Theory of Value in the Age of Artificial Intelligence**

The traditional Marxist labor theory of value profoundly depicted the mode of production characteristic of industrial-era capitalism. In the age of artificial intelligence, however, capitalism continues to dominate the systems of social production, circulation, and distribution. Owing to its scientific methodology, the labor theory of value remains capable of penetrating contemporary social realities and therefore continues to retain vibrant theoretical vitality. The transformation of productive forces brought about by artificial intelligence has given rise to a new theoretical landscape for the labor theory of value, a landscape centrally characterized by the explosive expansion of use values and the profound restructuring of value production.

At the level of the use value of commodities, concrete labor, as the source of use value, has undergone three fundamental transformations in the age of artificial intelligence. Together, these transformations have driven the exponential expansion of use values.

First, automated production and uninterrupted production that transcends human physiological limitations have greatly liberated productive efficiency. Machines are capable of operating continuously day and night without being constrained by cycles of physical recovery, thereby dramatically increasing the scale of use-value production.

Second, intelligent agents such as AI integrate humanity’s accumulated intellectual achievements, enabling the cognitive capacities of individuals to become connected with the total intellectual labor of society, thereby enhancing the comprehensive capacities of individuals themselves. As a result, the fields encompassed by use values have been greatly expanded, while the quality of use values has also been comprehensively elevated. The emergence of new domains such as personalized services and virtual reality has opened entirely new frontiers for the production of use values.

Third, the industrial reserve army has been systematically absorbed into the new structure of the digital economy. Workers displaced by artificial intelligence and related technologies are compelled either to enter low-end service industries or to become part of the “digital proletariat.” At the cost of sacrificing their own development, they provide indispensable foundational “human” supplements and operational fuel for the intelligent economy, thereby constituting the harsh social foundation underlying this apparent prosperity.

At the level of commodity value, a silent transformation is likewise unfolding. Living labor, as the sole source of value, has undergone a profound structural reorganization.

First, there has been a structural transfer in value creation. The production of value has shifted away from the simple labor of large numbers of workers within workshops toward the intensive complex labor performed by scientists, engineers, and systems architects, while simultaneously extending toward new forms of ordinary labor such as data annotators, food-delivery couriers, and ride-hailing drivers. This transformation has rendered value

<sup>1</sup> Lü, Shaode, and Zhang, Shigui. (2022). Production Automation and the Future of Commodity Economy: Also on the Historical Mission of the Labor Theory of Value. *Guangdong Social Sciences*, (5). (In Chinese)

<sup>2</sup> Marx, Karl. (2012). *Wage Labor and Capital*. In *Selected Works of Marx and Engels* (Vol. 1, p. 331). Beijing: People’s Publishing House. (In Chinese)

creation both highly concentrated and increasingly “invisible” in spatial terms.

Second, the production of surplus value has been intensified to an unprecedented degree. The application of artificial intelligence and related technologies has raised labor productivity and reduced the amount of value embodied within individual commodities, thereby lowering the prices of means of subsistence and reducing the cost of reproducing labor-power. Since neither traditional laborers nor new forms of workers possess meaningful bargaining power within the distribution of value, the value of labor-power—that is, wages—has been further suppressed. Given an unchanged working day, necessary labor time is compressed while surplus labor time correspondingly expands, causing the rate of exploitation to rise to historically unprecedented levels. The intrinsic driving force of capital accumulation has always consisted in appropriating the largest possible share of an ever-expanding mass of value.

Third, there has been a massive transfer of old value accompanied by statistical illusions. Artificial intelligence systems themselves constitute expensive constant capital embodying vast quantities of past labor. Through accelerated depreciation, their value is transferred on a massive scale into the total social product, thereby generating the illusion that the total quantity of value itself is increasing at extraordinary speed.

The contradiction between productive forces and relations of production has likewise assumed a new historical form. From the standpoint of use value, AI technologies contain enormous potential for making material goods and services abundantly available, perhaps even approaching conditions of near gratuity. However, under capitalist relations of production, the realization of value and the self-expansion of capital necessarily depend upon social forms that intensify social polarization and deepen exploitation. Concretely, this process manifests itself in the growing polarization between a small number of high-value creators and a vast marginalized population. Within the sphere of distribution, the power of capital continues to occupy a dominant position, while Marxian principles of distributive justice are subjected to severe erosion.

Under existing relations of production, technological leaps are accompanied by profound reconstructions of the logic of value and by new forms of human existential predicament. The fundamental contradiction of the AI era lies in the tension between the immense potential unleashed by intelligent productive forces and the capitalist social form that constrains this potential from serving the free development of all people.

The labor theory of value is not an eternally fixed and absolute truth. Nevertheless, so long as commodity production and exchange relations continue to exist, it will retain both explanatory power and theoretical vitality. In the age of artificial intelligence, the labor theory of value must confront a series of new historical questions: How should new forms of platform monopoly and digital exploitation be understood? How should the challenges to fairness arising from the participation of data as a factor in distribution be addressed? How can the dignity and rights of living labor be safeguarded amid the accelerated iteration of technology? Ultimately, all of these issues converge upon one fundamental point: the essential significance of the labor theory of value today lies in continuing to focus upon human beings, living labor, and the healthy interaction between technology and society.

More fundamentally, production in the age of artificial intelligence compels humanity to reconsider three essential questions: Is the purpose of production the self-expansion of value or the free development of human beings? Should the fruits of production serve a small number of capital owners or society as a whole? Should production organization follow the vertical control of capital or the equal cooperation of laborers? The answers to these questions ultimately point toward a higher objective: enabling humanity to break free from the domination of capital, advance toward free and all-round development, and move toward what Karl Marx termed the “realm of freedom,” rather than descending into a polarized society characterized by technological domination and the enslavement of human beings by technology itself.

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# Narrative Struggle in the Judicial Arena: A Cross-Disciplinary Investigation of Court Discourse on the Hongqiao (Oyama) Incident in the Tokyo Trial

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## Abstract

Based on the original verbatim records of the International Military Tribunal for the Far East (IMTFE) from April 30 to May 1, 1947, this study focuses on judicial inquiries into the causal background of the *Hongqiao (Oyama) Incident* and the outbreak of the *August 13 Battle of Shanghai* in China. Using an integrated analytical framework of *critical discourse analysis*, *international criminal evidence rules*, and *modern Chinese–Japanese war history*, this paper establishes a three-layer model: *discursive construction* → *judicial falsification* → *historical disenchantment*. It systematically examines the discursive practices and power struggles among Japanese witnesses, the prosecution, and the Tribunal. The study finds that Japanese witnesses *Suemasa Okamoto* and *Isamu Takeda* fabricated a cohesive false narrative claiming that “*China breached the 1932 Shanghai Truce Agreement; Japan acted in legitimate self-defense*”. To conceal Japan’s premeditated provocation and war of aggression, they employed legitimizing rhetoric, pervasive reliance on impermissible hearsay, strategic evasion, spatial obfuscation, responsibility externalization, and victimhood reversal. The prosecution dismantled the false narrative through rigorous evidence-based cross-examination, while the Tribunal upheld judicial justice through procedural authority. Court discourse during the trial was not merely factual exchange but a three-dimensional struggle over *war responsibility*, *historical narrative authority*, and *international justice*. This study transcends disciplinary boundaries and provides both theoretical innovation and empirical evidence for historical justice, critical discourse studies, and China’s international narrative capacity.

**Keywords:** Tokyo Trial, Hongqiao (Oyama) Incident, judicial discourse, narrative struggle, war responsibility, critical discourse analysis

## 1. Introduction

The Hongqiao Oyama Incident on August 9, 1937, served as the direct trigger for Japan’s launching of the August 13 Songhu Battle and its full-scale invasion of China, as well as a key factual basis for identifying Japan’s crimes against peace in the Tokyo Trial. The original trial records preserved by the International Military Tribunal for the Far East completely present the high-density discursive games among Japanese witnesses, the prosecution, and the tribunal concerning the cause of the incident, responsibility attribution, and the legitimacy of military actions. As non-neutral judicial records, these archival materials constitute a crucial field for war responsibility identification, historical truth construction, and international power games, with extremely high academic research value in terms of discursive structure, rhetorical strategies, power relations and fact distortion methods.

Existing studies on the Tokyo Trial are mostly concentrated on historical fact verification, legal qualitative analysis of war guilt, and trial system sorting. Linguistic studies focus on formal discourse analysis, legal studies emphasize procedural rules, and historical studies prioritize historical fact restoration. These researches generally

suffer from disciplinary segmentation, insufficient depth, and disconnection between discourse and history, failing to achieve theoretical innovation through genuine interdisciplinary integration. Based on the first-hand trial corpus of May 1, 1947, this study takes critical discourse analysis and Foucault’s discourse power theory as the core link, incorporates international criminal evidence rules for judicial judgment, and combines Sino-Japanese historical empirical research to complete historical disenchantment. It constructs an integrated analytical framework of “discursive construction — judicial falsification — historical disenchantment”, realizing the in-depth integration of linguistics, jurisprudence and history. This interdisciplinary research reveals how Japan concealed its aggression guilt through systematic discursive strategies in court, and provides academic support for the historical narrative of the War of Resistance against Japanese Aggression, international communication, and the construction of foreign-related rule of law in the new era.

## 2. Theoretical Foundation and Corpus Overview

The theoretical framework of this study is jointly constructed by critical discourse analysis, discourse power theory, international criminal evidence rules and historical narrative theory. It emphasizes that discourse is not a neutral communication tool, but a social practice that constructs facts, distributes power and conceals responsibilities. Discourse is capable of shaping “truth”, defining responsibility attribution, legitimizing behaviors, and hiding power relations in seemingly natural, reasonable and objective forms. In the international judicial field, the discursive interaction among the prosecution, the defense and the tribunal directly affects fact identification, guilt judgment and historical qualitative evaluation. Therefore, the analysis of discursive strategies must combine legal rules and historical facts to achieve in-depth interpretation.

The research corpus of this paper consists of the original English trial records and full Chinese translations of the International Military Tribunal for the Far East on May 1, 1947. The core materials include the testimonies of defense witnesses Suemasa Okamoto (former Japanese Consul-General in Shanghai) and Isamu Takeda (former senior staff officer of the Japanese Shanghai Special Naval Landing Force), cross-examinations by the prosecution, procedural objections from both prosecution and defense, and tribunal rulings. The corpus is complete, with concentrated conflicts and clear structure, focusing on key controversial issues such as the Hongqiao Incident, Japanese garrison at Baziqiao (Eight-Character Bridge), interpretation of the 1932 Shanghai Truce Agreement, qualitative definition of the Oyama Incident, and the legitimacy of Japanese troop reinforcement. It serves as a typical sample for the study of judicial discourse on war guilt.

### 2.1 Theoretical Foundation

- Critical Discourse Analysis (CDA): Discourse shapes social reality and conceals relations of power.
- Foucault’s Discourse/Power: Discourse defines “truth” and allocates legitimacy and authority.
- International Criminal Evidence Rules: Hearsay exclusion, authenticity, relevance.
- Historical Disenchantment: Demystifying ideological myths to restore historical reality.

### 2.2 Corpus Overview

This study draws on the complete English verbatim records of the IMTFE for April 30 – May 1, 1947, including:

- Direct and cross-examination of Suemasa Okamoto (Japanese Consul-General in Shanghai)
- Direct and cross-examination of Isamu Takeda (Senior Staff Officer, Shanghai Special Naval Landing Force)
- Prosecution arguments, defense objections, and Tribunal rulings

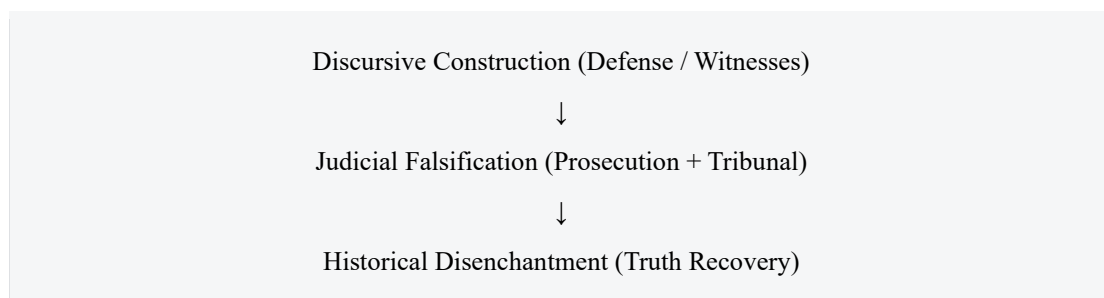


Figure 1. Analytical Framework

Table 1. Discourse Roles and Power Orientation

Participant	Identity Role	Core Discourse Goal	Power Orientation
Japanese Witnesses	Narrative Constructors	Legitimize “self-defense”	Evade war responsibility
Prosecution	Fact Investigators	Uncover deception & verify truth	Judicial falsification
Tribunal	Procedural Authority	Uphold evidence rules	Legitimate discourse definition

### 3. Discursive Construction of Japanese Witnesses’ Exculpatory Narratives: Strategies, Structures and Rhetoric

During the trial on May 1, 1947, Japanese witnesses Suemasa Okamoto and Isamu Takeda constructed a systematic judicial narrative aimed at evading war responsibility and whitewashing the nature of aggression through highly consistent discursive strategies. Both witnesses took the 1932 Shanghai Truce Agreement as the starting point of argumentation, and completed a narrative closed loop from “China’s breach of contract” to “Japan’s legitimate self-defense” through selective citation of treaty clauses, deliberate ambiguity of factual information, intentional confusion of key spatial geography, and continuous transfer of responsible subjects. From the perspective of internal discursive logic, this exculpatory narrative is not scattered verbal evasion, but a standardized legitimization rhetoric system with distinct hierarchy, stable structure and clear goals. Its core function is to conceal the real cause of the 1937 Hongqiao Incident and Japan’s truth of deliberately provoking incidents and expanding the war through linguistic techniques, so as to legitimize Japan’s aggressive behaviors in the international judicial field.

First, Japanese witnesses glorified the 1932 Shanghai Truce Agreement as a naturally legitimate international binding document and qualitatively defined China’s sovereign acts as “breach of contract”. In court statements, Okamoto repeatedly emphasized that China’s restoration of Wusong fortress exceeded the scope stipulated by the agreement.

*-- The Agreement of 1932 stipulated... the demilitarized zone was thus created... Woosung was situated within the said demilitarized area.*

He further claimed that any act of restoring military facilities should be regarded as a breach of contract.

*-- Any attempt... to restore the razed fortress could not but be construed as a serious contravention of the Agreement.*

Through such statements, the witnesses attempted to shape the agreement as a neutral, legal and valid international constraint, while deliberately concealing its essence as an unequal treaty. Takeda further described China’s military mobilization and security force expansion as hostile military preparations, leading to the preset conclusion of “China’s prior provocation”. From legal and historical perspectives, Japan not only violated the basic international law principle that unequal treaties are void ab initio, but also contradicted the fact that Japan itself illegally garrisoned troops at Baziqiao and took the lead in violating the agreement. Therefore, the legitimacy of its narrative is fundamentally untenable.

In terms of fact construction, Japanese witnesses relied heavily on hearsay and indirect statements, forming a weak-evidence discourse system characterized by ambiguity, indirectness and unverifiability. Okamoto explicitly admitted that all accusations against China were quoted from military reports.

*-- I received this report from the Japanese Naval Landing Party... I could not very well go to Woosung to make investigations myself.*

He even confessed that he doubted the authenticity of the reports.

*-- When I received this report I, of course, hoped that it would not be true.*

Nevertheless, he still took these unconfirmed reports as the basis for accusing China. Takeda’s statements on China’s military deployment and anti-Japanese remarks were also derived from newspapers and second-hand accounts without direct empirical evidence. Both witnesses extensively adopted sentence patterns with vague information sources, blurring the origin of information and hiding responsible subjects, thus forming a discourse barrier that could neither be directly refuted nor strictly verified. In accordance with evidence rules, such statements are typical inadmissible hearsay evidence. Discursively, their core purpose is to create a false impression of “China’s premeditated provocation” by repeatedly rendering uncertain information.

More importantly, Japanese witnesses presented highly homogeneous “strategic amnesia” when facing inquiries about core facts. For duty-related factual information such as the boundary of the concession and the specific location of Hongqiao Airport, Okamoto evaded inquiries by claiming cognitive uncertainty.

-- *I am not able to state accurately just where in Shanghai... the boundary of the Settlement begins and where it ends... I cannot state with accuracy just where each of these were located.*

He also prevaricated on the specific location of Hongqiao Airport.

-- *If I had a map here I could easily point this out... I cannot reply with accuracy just where it was located.*

Takeda also equivocated on key details including the on-site investigation of the Hongqiao Incident, Chinese casualties and incident disposal. This concentrated and unified “amnesia” is obviously a deliberately designed judicial resistance strategy. As senior diplomatic and military officials of Japan in Shanghai, the two witnesses were definitely familiar with these basic facts. Hence, their pretended memory loss constitutes deliberate concealment of historical facts and obstruction of judicial procedures.

Meanwhile, Japanese witnesses deliberately blurred spatial relations to undermine the objective basis for responsibility judgment. Geographic space is the core basis for judging the legitimacy of behaviors, yet both witnesses refused to accurately mark key locations on official maps. Okamoto continuously evaded geographical inquiries.

-- *I do not remember very well such small details.*

Though required to mark the locations, Takeda delayed and evaded the requirement on the grounds of insufficient map scale and clarity. The systematic blurring of spatial information by Japanese witnesses aimed to cover up a series of key facts, including Oyama’s trespass into China’s military zone, Japan’s illegal garrison and prior border provocation, depriving responsibility judgment of objective criteria and creating discursive space for their “self-defense” narrative.

In terms of responsibility allocation, Japanese witnesses adopted consistent strategies of responsibility externalization and narrative inversion, reshaping Japan from an aggressor to a passive victim. Okamoto frequently shifted responsibilities to the Japanese military and subordinates.

-- *I believe Commander TAKEDA would be better suited to answer this question... This was the report I got at that time from the naval landing party.*

Faced with key inquiries about the Oyama Incident, he directly refused to undertake investigation responsibilities.

-- *I didn’t make any special investigations concerning this point.*

Takeda deliberately emphasized the military disadvantage of Japanese troops and rendered a crisis atmosphere. Through responsibility transfer, identity reconstruction, causal rewriting and strength inversion, the witnesses attempted to eliminate war guilt at the linguistic level. However, no matter how sophisticated their discursive strategies were, they could not cover up the historical fact that the Hongqiao Incident was a deliberate pretext fabricated by Japan to launch a full-scale war of aggression against China.

Table 2. Exculpatory Discourse Strategies, Typical Characteristics and Empirical Basis of Japanese Witnesses

Discourse Strategy	Typical Discourse Characteristics	Trial Original Text Examples	Legal/Historical Judgment
Treaty Legitimization	Selective citation of treaties and emphasis on China’s breach of contract	“The 1932 agreement created a demilitarized zone”	Unequal treaty, legally invalid
Hearsay Evidence Abuse	Reliance on unverified reports and second-hand information	“I received reports from the naval landing party”	Inadmissible hearsay evidence
Strategic Amnesia	Pretended ignorance and unclear recollection of key facts	“I cannot accurately state the boundary of the concession”	Deliberate concealment of key facts
Spatial Ambiguity	Refusal to mark maps and confusion of geographical locations	“Cannot accurately confirm the location of Hongqiao Airport”	Cover-up of illegal border trespass facts
Responsibility Externalization and Inversion	Shirking responsibilities and rendering a vulnerable posture	“Military issues should be answered by Takeda”	Narrative whitewashing of aggressive acts

Overall, the exculpatory narrative constructed by Japanese witnesses in the trial constitutes a systematic

discursive system with clear goals, rigorous hierarchy and mature techniques. Nevertheless, judged from the three dimensions of discursive logic, judicial rules and historical facts, this narrative is full of internal contradictions, weak in evidentiary basis and seriously inconsistent with historical truth. It is essentially a typical discursive sample of Japan's systematic evasion of war responsibility and concealment of aggressive history in the Tokyo Trial.

#### 4. Prosecutorial Deconstructive Cross-Examination and Judicial Falsification of False Narratives

The prosecution's cross-examination is not a simple verification of facts, but a rigorous, precise and progressive deconstruction mechanism. Its core goal is to pierce the false narrative constructed by Japan, restore the real causes of the Hongqiao Incident and the August 13 Incident, and negate the legal effect of Japanese testimonies in accordance with evidence rules. Through continuous inquiries into information sources, factual details, spatial locations, responsible subjects and behavioral logic, the prosecution gradually dismantled the rationality, consistency and legitimacy of Japanese discourse, ultimately exposing the falsity and arbitrariness of the testimonies in court.

First, the prosecution targeted the source and verification process of evidence, pointing out that Japanese testimonies were entirely based on hearsay and lacked judicial credibility. Judge Ni continuously questioned Okamoto on the source and verification of relevant reports:

-- *Where did this report come from? Have you made any effort to confirm this report?*

-- *Why didn't you investigate yourself before you convened the meeting?*

The inquiry forced Okamoto to admit that he had never conducted on-site investigations, and all accusations were quoted from military hearsay without original documents or third-party verification. The traceable questioning completely exposed the hearsay nature of the testimonies, negating their admissibility judicially and making the tribunal clearly recognize that Japan's accusations lacked basic factual basis.

On this basis, the prosecution further locked in the key fact of Japan's prior breach of contract, fundamentally dismantling Japan's narrative of "China's breach vs. Japan's compliance". The prosecution directly questioned the legitimacy of Japanese troops garrisoned at Baziqiao:

-- *But you did admit that there was a detachment of Japanese soldiers in Paitzechao before the hostilities of 1937, did you?*

Okamoto was forced to admit that Japanese troops had been stationed in the area for a long time, which was explicitly prohibited by the Shanghai Truce Agreement. This questioning completely exposed Japan's double standards, enabling the tribunal to confirm that Japan was the first party to violate the truce agreement, rendering its claims of "self-defense" and "compliance" untenable.

Focusing on the core facts of the Hongqiao Incident, the prosecution conducted targeted inquiries into Oyama's behavioral purpose, task basis and official orders, thoroughly overturning Japan's false claim of "routine patrol and ambush". The prosecution continuously questioned the nature of Oyama's mission on the day of the incident:

-- *What mission was OYAMA on that day at that particular spot? Did you make any inquiry afterwards?*

Okamoto was forced to confess:

-- *I don't know what his mission was... I didn't make any special investigations.*

Combined with the historical fact that Oyama trespassed into Hongqiao Airport without official orders and authorization, the prosecution clearly revealed the essence of the incident: Oyama's behavior was not routine security patrol, but deliberate military provocation, serving as a pretext for Japan's large-scale troop reinforcement and full-scale war of aggression.

In general, the prosecution's cross-examination demonstrated highly professional discursive techniques and judicial logic. By verifying information sources, capturing logical contradictions, locking core facts and restoring causal relationships, the prosecution systematically deconstructed Japan's exculpatory narrative, providing a solid discursive and evidentiary foundation for the tribunal to restore historical truth and identify war responsibility.

#### 5. Tribunal's Authoritative Discourse and Power Regulation in the Judicial Field

In this trial, the tribunal acted as the maintainer of discourse order, enforcer of evidence rules and guarantor of judicial justice. With concise, clear and authoritative discourse, the presiding judge standardized the interrogation process, restrained irrelevant statements, repetitive arguments, procedural delays and emotional expressions of the defense, ensuring that the discursive game proceeded within a legal, orderly and fact-focused framework. Although the tribunal's intervention discourse was brief, it embodied strong judicial power, defining

valid statements, admissible evidence and appropriate interrogation manners.

The tribunal repeatedly restrained irrelevant arguments and required all statements to focus on core facts.

-- *We do not want to hear any more about it.*

-- *You are out of order.*

Meanwhile, the tribunal implemented strict control over evidence qualification.

-- *The maps are not covered by the certificate... no evidence as to their authenticity.*

The tribunal suppressed discursive manipulation through procedural authority and prevented false information from eroding judicial narration. From the perspective of discourse power theory, the tribunal's intervention behaviors are essentially judicial discursive practices. By regulating discourse boundaries, evidence qualification, interrogation modes and procedural rhythm, the tribunal established an objective, neutral and authoritative judicial image, ensuring that fact identification approximates historical truth. Occupying the top of the field power structure, the tribunal's discourse determines the validity of narratives, the admissibility of evidence and the final judicial conclusion, serving as the core force to safeguard judicial justice and curb historical distortion.

## 6. Historical Disenchantment and Interdisciplinary Conclusions

Through the triple mutual verification of discourse analysis, judicial falsification and historical demonstration, this study restores the historical truth of the Hongqiao Incident and the August 13 Incident: the August 9, 1937 Oyama Incident was not an accidental conflict, but a deliberate provocation fabricated by the Japanese military to launch a full-scale war of aggression against China; Japan's claims of "China's breach of contract" and "Japanese self-defense and overseas resident protection" are post-constructed legitimized narratives; the highly consistent testimonies of Okamoto and Takeda with identical loopholes and strategic logics constitute systematic, organized and unified perjury in the post-war trial.

- June 23, 1937: Japan convenes a joint committee on the pretext of China's "treaty breach"
- August 9, 1937: Second Lieutenant Oyama trespasses into Hongqiao Airport and is killed
- August 9–11, 1937: Japan conducts large-scale troop reinforcement and warship assembly in Shanghai
- August 12, 1937: Japan rejects diplomatic settlement proposals

Figure 2. Timeline of Japan's Premeditated Escalation of the Hongqiao-August 13 Incidents

The discursive game in the judicial field profoundly indicates that the Tokyo Trial was not merely a judicial judgment on war behaviors, but a fierce competition for historical narrative power. Discourse is not only a tool for recording history, but also a core medium for covering up aggression, evading war guilt and reconstructing historical cognition. Relying on a mature and systematic discursive system, Japanese witnesses attempted to whitewash aggressive history in the international court, yet their discursive camouflage was completely pierced by the prosecution's targeted cross-examination and the tribunal's procedural regulation.

The interdisciplinary framework of "discursive construction — judicial falsification — historical disenchantment" constructed in this study breaks through the limitations of previous single-discipline research and realizes the in-depth integration of linguistics, jurisprudence and history. It provides a replicable methodological model for micro-discourse research of the Tokyo Trial, war guilt research and international judicial discourse research. Meanwhile, this study offers solid theoretical support and historical reference for confronting historical revisionism, improving the narrative system of the War of Resistance against Japanese Aggression, and enhancing China's international discourse power and international communication capability.

## 7. Conclusion

The Tokyo Trial marks the first systematic judicial practice of China to investigate Japan's war responsibility in the international judicial field in modern times. Its trial discourse is not only a record of judicial procedures, but also a concentrated presentation of wars and memories, guilt and narration, as well as power and justice. Through the interdisciplinary analysis of the May 1, 1947 trial corpus, it can be seen that the discursive system constructed by Japan to evade aggression guilt is rigorous in strategy, distinct in purpose and highly organized.

Only by integrating discourse analysis, judicial falsification and historical disenchantment can we penetrate linguistic camouflage, restore historical truth and uphold international justice. In the new era of promoting the construction of China's international discourse power, strengthening international communication capabilities

and improving the foreign-related rule of law system, re-examining the discursive game in the Tokyo Trial bears important academic value and distinct practical significance. Only by respecting historical facts, adhering to the spirit of the rule of law and grasping the initiative of historical narration can we safeguard historical justice and promote the construction of a more just and reasonable international order.

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