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The Role of Court of Justice of the European Union in the Provisional Application of Mixed Agreements

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Abstract

The process of provisional application of international treaties deals with the microspheric level of international organizations as a subject of international law. The effects and legal nature of the provisional nature of treaties, especially within the context of European Union law, are part also of the present work. The method used by doctrine and jurisprudence aims to demonstrate consensus. The national norms and procedures followed by bodies that are integral to the phenomenon of the provisional nature of international agreements also serve as targets. Finally, the competences of mixed agreements, the jurisdiction of the Court of Justice of the European Union, national rules, and the influence and interpretation of the rules of the Vienna Convention on the Law of Treaties are points of further analysis.

Keywords: European Union Law, mixed agreements, termination of agreement, provisional application of treaties in EU law, national rules, jurisdiction, VCLT, hybrid decision, loyal cooperation

1. Introduction

Our analysis initiate with the principle of consensus, the distribution of competences and the provisional application of mixed agreements. In particular the practice of provisional application for mixed agreements has raised questions about the Union's ability to commit provisional application for mixed agreements at international level. In the CETA Treaty, provisional application has highlighted the Union's ability in this area for mixed agreements. The uncertainties and the identification for the parties to an agreement on the provisional application of mixed agreements include a national dimension for the Member States. The distribution of competences through the Union and Member States to a general regime of provisional application reconstructs and highlights the treaty-making power of the Union, which is limited to the stipulation for agreements that are provided for under Art. 216, par. 1 TFEU (Blanke & Mangiamelli, 2021; Kellerbauer, Klamert & Tomkin, 2024).

Equally important, Art. 5, par. 2 TEU highlights the: "(…) principle of conferral. The Union acts exclusively within the limits of the competences conferred upon it by the Member States in the Treaties to achieve the objectives established by them (…)". The Union does not undertake international commitments for matters of exclusive competence of the Member States. It is stated that the Union acts in the role of ultra vires for the provisional application of mixed agreements (Gatti, 2017; Suse & Wouters, 2018).

This limits the Union's ability to conclude an agreement on provisional application as an exclusive object for the provisions that are related to the sector of competence of its own matter (Kleimann & Kubek, 2016)[1].

On the other hand, the Council has decided to continue the provisional application for mixed agreements and the extensive interpretation according to Art. 218, par. 5 TFEU. This rule is not limited to the capacity of the Union, where in a unitary manner it puts the practice that is followed by the Union and the Member States to highlight that the Member States attribute to the Union the competences to conclude agreements on the provisional application for mixed agreements. Mixed agreements are applied in a provisional and integral manner to the Union within the practice that suggests the interpretation of the division of competences between the Union and the Member States in the provisional application of the Treaties.

The clause contains the agreement on provisional application that takes place between the third contracting state and the Union. Furthermore, the material scope of provisional application of the provisions falls within the areas of competence of the Union. The agreement on provisional application of mixed agreements that are concluded between a Member State and the Union also provides for the implementation of only those provisions that are related to the matters of competence of the Union. The Union has followed the provisional application of mixed agreements in their entirety. As for the Member States did not arise obligations at international level. The parties to the agreement on provisional application of the treaty are the Union and the third state that concluded the agreement. In particular, we recall Art. 15.10, par. 5 a), of the Free Trade Agreement between the Union, the Member States and South Korea. It is stated, in this regard, that: "(…) is provisionally applied from the first day of the month following the date on which the EU Party and Korea have notified each other of the completion of their respective relevant procedures (…)". The text of the provision that was part of the agreement on provisional application includes the European Union and South Korea.

Provisional application is voluntary, optional and based on a precise consent for the subjects, who assume rights and obligations on a provisional basis. The multinational practice, for the states and organizations which have taken part in the negotiation of the treaty, accepts its provisional application. The Member States that are considered as parties to the agreement for the application of a mixed agreement have expressed their consent and are considered parties to an agreement for the application of a mixed agreement at the moment that the consent has anticipated execution. The agreement on provisional application that has been concluded between the Union and the third state does not produce effects at international level with respect to Member States that are not party to the agreement (Sybesma Knol, 1985)[2].

The express consent of the Union for provisional application in mixed agreements implies the commitments at international level by the Union. Mixed agreements are classified as agreements of a bilateral nature and stipulated by the Union and Member States and from one third state to another (Rosas, 2014). Mixed agreements in bilateral treaties are based on the distribution of obligations that arise from mixed agreements that establish: "(…) obligations that can only be separated in the relationship between the Union and the Member States on the one hand and a third party on the other (…) factual bilateralisation (…) the need to configure the Union and the states as a substantially unitary entity before the counterparties (…)" (Kaspiarovich & Levrat, 2021).

Member States and the Union participate in the negotiation for the conclusion of mixed agreements, which are distinct. Member States

[1] Kleimann D., G. Kubek, affirms that: "(…) remains noteworthy, however, that the Council appeared to be of the legal opinion, reflecting past practice, that it is empowered to apply treaty parts provisionally, which, according to the views expressed by them ember states in the Opinion 2/15 proceedings (…) the scope of EU exclusive competences (such as maritime transport) or even within the scope of member states exclusive competence (i.e. portfolio investment). In sum, member states have, in past practice, evidently supported and enabled the provisional application of treaty parts that they otherwise deem to fall within the scope of shared or exclusive member states competences (…) the distinct nature of provisional application as an international legal instrument and EU treaty conclusion. Decisions of the Council under Article 218 (5) TFEU, in accordance with EU law and practice, may give effect to treaty provisions irrespective of the division of competences (…)".

[2] Draft articles on the law of treaties between States and international organizations and between international organizations, in *ILC Yearbook*, 1982, vol. II, p. 43.

participate in the conclusion of mixed agreements in matters of exclusive competence and in the capacity of sovereign states, where the agreements are concluded for international organisations without binding the Member States at international level. Special Rapporteur Reuter has developed the draft of Art. 36 bis entitled as: "Obligations and rights arising for states members of an international organization from a treaty to which it is a part". It is affirmed, in this regard, that: "(...) obligations and rights arise for states members of an international organization from the provisions of a treaty to which that organization is a party when the parties to the treaty intend those provisions to be the means of establishing such obligations and according such rights and have defined their conditions and effects in the treaty or have otherwise agreed thereon, and if: a) the States members of the organization, by virtue of the constituent instrument of that organization or otherwise, have unanimously agreed to be bound by the said provisions of the treaty; and b) the assent of the States members of the organization to be bound by the relevant provisions of the treaty has been duly brought to the knowledge of the negotiating States and negotiating organizations (…)"[1]. The draft article met with different positions at the Vienna Conference of 1986. Art. 74 framed in an unprejudiced manner the question of suitability for treaties concluded by international organizations which thus produce effects for the Member States.

Advocate General Sharpston stated in Opinion No. 2/15 that: "(…) an international agreement is concluded at the same time by the European Union and its constituent Member States, both the Union and the Member States are, under international law, parties to that agreement (…)". And in this spirit the CJEU stated that: "(…) a mixed agreement concluded with third countries is, on the one hand, the Union and, on the other, the Member States (…)".

The same observations of the content concerned the opinion 1/19 about the accession of the European Union and the Conventions of the Council of Europe that had to do with the prevention and fight against women violence and domestic violence according to the Istanbul Convention. In this case, the CJEU has highlighted that the Member States acted within the respective competences of each contracting party. It has also highlighted the failure of one or more Member States to access the relevant convention that does not prevent the Union from concluding the agreement on the accession of the convention for the parties that are included in the matters of competence. The CJEU stated, in this regard, that: "(…) the Member States and the Council cannot validly argue that, in the absence of accession to the Istanbul Convention by one or more Member States in the matters of the Convention falling within their competence, the accession of the Union to that Convention would interfere with the competences of those Member States and would thus infringe the principles of conferral, sincere cooperation, legal certainty and unity of the external representation of the Union (…)[2] the conclusion of an international agreement by the Union is subject exclusively to the decision of the Council, reiterating that no competence is recognised to the Member States for the adoption of such a decision (…) the Council is not required to await, before deciding on the conclusion of the accession agreement by the Union, the common agreement of the Member States to be bound by the Istanbul Convention in the matters falling within their competence (…)".

From the above paragraphs, we can understand that the CJEU could confirm the impossibility for the Union and the Member States to consider with a separate manner at international level the provisional application of the relevant provisions, that are under the exclusive competence of the Member States. In this way, it implies the assumption of independent subjects

[1] Reuter P., Fourth report on the question of treaties concluded between States and international organizations or between two or more international organizations, op. cit.

[2] CJEU, Opinion 1/19 of 6 October 2021, ECLI:EU:C:2021:198, par. 257, 258-260: "(…) in negotiating and concluding a mixed agreement, the Union and the Member States must act within the scope of the competences which they have and with due regard for the competences of any other contracting party (…) the conclusion of a mixed agreement by the Union and the Member States does not imply that the latter exercise Union competences or that the Union exercises competences of those States, but that each of those parties acts exclusively within the scope of its own competences, without prejudice to the possibility for the Council, recalled in point 248 of this opinion, to decide that the Union alone exercises a competence which it shares with the Member States in the policy area in question, provided that the majority required for that purpose is reached within the Council (…) the Member States decide not to conclude a mixed agreement which the Union decides to conclude, on the basis of the competences conferred on it alone (…)".

and of the Member States that have considered the agreement in the presence of a precise consent of the same.

2. Hybrid Decisions and Loyal Cooperation Between Member States of the Union Before the Provisional Application

In the national context, the agreement on the provisional application has resulted in the adoption of decisions by common agreement of the Member States with the Union. In this spirit, we recall the agreement on air transport of 2007 and the two Euro-Mediterranean agreements in the field of air transport of 2010 and 2013. As well as the agreements with Israel and Jordan, where the signature of the provisional application of the agreements has authorized the decisions that are adopted by the Council and by the representatives of the governments in the Council in a consensual manner[1].

These are decisions that are defined as hybrid acts. Such an act includes the decision of the Council for matters that are within the competence of the Union as well as the decision of the representatives of the governments for matters that are of exclusive competence of the Member States (Sanchez-Tabernero, 2015; Pieter Van Der Mei, 2016). These decisions provided that the Union and the Member States have provisionally applied the agreements and their respective national procedures for the national legislations, that are applicable according to the signature on the date indicated by them[2].

Hybrid decisions have been a practical expedient for the purposes of provisional application for mixed agreements and ensure the full participation of the Member States in the relevant national procedure of the Union. It is noted that provisional application agreements for treaties are part of conventional clauses and mixed agreements. Furthermore, the contracting parties have provisionally executed the conventional provisions for signature, as we noted in the case of the agreement on air transport between the Union, the Member States and the United States. Particularly, art. 25, par. 1 stated that: "(…) the Parties agree to apply this Agreement from 30 March 2008 (…)". The Euro-Mediterranean Air Transport Agreement between the Union, the Member States and Jordan is in the same spirit. Article 29, paragraph 2 stated that: "(…) by way of derogation from paragraph 1 of this Article, the Contracting Parties agree to apply this Agreement provisionally from the first day of the month following the date of the last note in an exchange of diplomatic notes between the Contracting Parties confirming that all procedures necessary for the provisional application of this Agreement have been completed, or, subject to internal procedures and/or national legislation, as the case may be, of the Contracting Parties, on the date occurring 12 months after the date of signature of this Agreement, whichever is earlier (…)". Equally important is the Euro-Mediterranean Air Transport Agreement between the Union, the Member States and Israel, where Article 30, paragraph 1 noted that: "(...) this agreement shall be applied provisionally, in accordance with the national legislation of the Contracting Parties, from the date of signature by the Contracting Parties (…)".

The signing of the text of the agreements assumes for the Union and the Member States the international obligation to ensure the early execution of them. The choice to proceed with the adoption of hybrid decisions is presented in a coherent manner and the obligations that are related to the provisional application of mixed agreements that the Union and the Member States have signed the relative text of the agreements ensure their cooperation.

The legality of the hybrid decisions was subject to review by the CJEU through an action for annulment of the European Commission and the decision of the Council and its representatives of the governments that authorised the signature of the provisional application of the 2011 air

[1] 2012/750/EU: Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 15 October 2010 on the signature and provisional application of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and The Hashemite Kingdom of Jordan, of the other part. OJ L 334, 6.12.2012, p. 1–2. 2013/398/EU: Decision of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 20 December 2012 on the signing, on behalf of the European Union, and provisional application of the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Government of the State of Israel, of the other part, OJ L 208, 2.8.2013, p. 1-2.

[2] 2007/339/EC: Decision of the Council and the Representatives of the Governments of the Member States of the European Union, meeting within the Council of 25 April 2007 on the signature and provisional application of the Air Transport Agreement between the European Community and its Member States, on the one hand, and the United States of America, on the other hand, OJ L 134, 25/05/2007, p. 1–3.

transport agreement with the United States[1]. The proposal of the European Commission for the provisional application of the agreement had nothing to do with the participation of the Member States as was argued by the European Parliament. The hybrid decision violated Art. 13, par. 2 TEU and pars. 2, 5 and 8 of Art. 218 TFEU under two aspects. First, the European Commission ruled that the primary law of the Union was identified by the Council as the only institution of a nature competent to adopt the relevant decision on the authorisation of the signature for the provisional application of agreements with third countries and international organisations. The Member States participating in the adoption of a hybrid decision as provided for by Art. 218 TFEU aims at a unilateral derogation for the Council from the procedures that outline its own provision according to the rules and principles for the functioning of the European institutions.

The CJEU highlighted the: "(…) clear distinction between the areas of activity of the Union and the areas in which the Member States retain the right to exercise their competences (...) to merge an intergovernmental act and an act of the Union, since such a merger would distort the Union procedures provided for in Art. 218 TFEU, depriving them of their object (...)"[2].

The participation of the Member States concerning the formation of the act authorising the signature and provisional application of the agreements creates confusion in international relations and the legal personality of the Union, as it violates the objectives of the Treaties regarding the principle of sincere cooperation ,as provided for by Art. 13TEU according to the institution of acting without weakening the general institutional framework of the Union. The European Commission complained that the decision was in conflict with the voting rule and Art. 100, par. 2 TEU and 218, par. 8TFEU regarding the Council acting by qualified majority. Thus, the hybrid decision was adopted unanimously.

Some member countries such as the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Portugal, the United Kingdom, Northern Ireland, and Sweden in Council have tried to adopt a hybrid decision for the provisional application of a mixed agreement that has guaranteed the objectives for a unique representation of the Union in international relations. It was also a direct expression of the principle of loyal cooperation in collaboration between Member States and the Union. The Council highlighted that the adoption of a hybrid decision has demonstrated in a direct way the participation of the Member States, which appeared consistent with the mixed character of the agreements in this regard. The arguments and the dispute seem to present a tension between the need for autonomy of the organization and the prerogatives of the Member States as sovereign states participating in the negotiation and conclusion of mixed agreements. The European Commission, the European Parliament, the Council and the Member States have intervened and expressed their positions, that were contrary to the principles and rules that governed the functioning of the Union.

According to Art. 13, par. 2TEU the CJEU acts within the limits of the powers that are conferred by the Treaties and the procedures in terms of finality that are provided for. Furthermore, the CJEU highlights the formation of the will of the institutions of the Union that are not derogable for the institutions and the Member States. According to Art. 218, par. 5TFEU the CJEU and the Member States have not had competence to adopt decisions relating to the provisional application of international agreements. The mixed character of the agreement does not seem to modify Art. 218 TFEU in the area of negotiation and conclusion of agreements. The CJEU stated, in this regard, that: "(...) a mixed agreement concluded with third countries are, on the one hand, the Union and (...) the Member States (...) (for the) negotiation and conclusion of such an agreement, each party must act within the limits of the competences that are attributed to it and with due respect for the competences of any other contracting party (...)"[3].

The division of competences between the Union and the Member States has highlighted that both parties have taken the relevant decisions, which were distinct for the provisional application and mixed agreements. The participation of the

[1] CJEU, C-28/12, Commission v. Council of 29 April 2015, ECLI:EU:C:2018:282, published in the electronic Reports of the cases.

[2] CJEU, C-28/12, Commission v. Council of 29 April 2015, op. cit.

[3] CJEU, C-28/12, Commission v. Council of 29 April 2015, op. cit.

Member States has taken distinct decisions for the report of the provisional application of mixed agreements. The participation for the Member States and the formation of the will of the Union on the provisional application of the agreement entails the relative interference for the Member States within the sphere of competence of the Union. The Council has participated in the formation of an act, which falls within the exclusive competence of the Union. The Council has participated in the formation of the act, which does not fall within the exclusive competence for the individual Member States and that each Member State should adopt the regulations according to domestic law. The CJEU stated, in this regard, that: "(…) in reality two distinct acts, namely, on the one hand, an act concerning the signature, on behalf of the Union, of the agreements in question and their provisional application by the latter (…) concern the provisional application of those agreements by the Member States, without it being possible to distinguish the act reflecting the will of the Council from that expressing the will of the Member States (…)"[1].

In this regard, the Advocate General Mengozzi specified that: "(…) the participation of the Member States in the internal procedure for the formation of the Union's will to the provisional application constitutes a dangerous precedent of contamination of the autonomous decision-making process of the Union institutions capable of undermining the autonomy of the European Union as its own legal system (…) It may generate the impression that the Union cannot autonomously decide to proceed with the signature and provisional application of agreements within which it exercises its competences (...)" [2]. These are positions that are shared by the CJEU and which have not failed to refer to the autonomy of the European legal order and to the legal system that distinguishes the international legal system from the legal systems of the Member States.

The CJEU has highlighted the principle of sincere cooperation between Member States and the Union. It puts into practice a close cooperation for the negotiation, execution, conclusion of mixed agreements that does not involve the derogation of procedural rules, where Art. 218 TFEU has clearly expressed. The Council could not do away with the rule of majority voting, where qualified its provision since the related act of the will of the Member States for the provisional application of the agreement implied the unanimous consent for the representatives of the governments. The provisional application of the treaties must maintain in a distinct manner the scope of procedures, that are not unified and integrated in nature. The CJEU has concluded that the decision challenging the violation of Art. 13 TEU and Art. 218 TFEU has followed its annulment (Verellen, 2016) [3] based on consolidated guidelines for the jurisprudence of the CJEU, where that certainly creates criticisms in this regard. The rationale for the CJEU was the privilege for the protection of the principle of autonomy of the legal order of the Union and the independence for the organization in its external action. In this spirit, the concept of national autonomy of the legal order of the Union is understood as independent for the Union and the legal systems of the Member States. The principle of autonomy of the legal order of the Union presents itself as a limit for the principle of loyal cooperation for the Member States and the Union. It is admitted that the action through Member States and the Union is not resolved with the adoption of a mixed decision, that manifests the will of the Union and the Member States that are gathered in Council.

The CJEU has highlighted that the non-derogability of procedural rules governing the formation for the will and the functioning of the European institutions are based on the principle of sincere cooperation within mixed agreements that do not justify the deviation of procedural rules of Art. 218 TFEU and the rule of qualified majority voting, which establishes the provision only in the cases provided for by the Treaties. The principle of sincere cooperation between Member States and the Union has to do with the majority voting rule as a known limit.

[1] CJEU, C-28/12, Commission v. Council of 29 April 2015, op. cit.

[2] See also the conclusions of the Advocate General Paolo Mengozzi presented on 29 January 2015 in case: C-28/12, Commission v. Council, ECLI:EU:C:2015:43, published in the electronic Reports of the cases.

[3] Verellen affirms that: "(...) a context of mixity, not only the autonomy of the Union legal order must be protected, but the autonomy of the individual Member States qua sovereign States under international law as well. Only this reading would fit with international law's foundational doctrine of sovereignty. From this point it follows that it is not sufficient for the ECJ to ground the argument in favour of the full effectiveness of Article 218TFEU in the "New Legal Order" claim (…)".

The CJEU has tried to examine the use of hybrid decisions for the provisional application of mixed agreements, which operate in the interpretative effort that tries to reconcile the principle of autonomy and majority voting with the principle of sincere cooperation under the adoption of hybrid decisions. In decisions of this nature, the provisional application of mixed agreements allows the Union and the Member States to ensure the participation of the Member States in an agreement on the provisional application. The adoption of hybrid decisions within the scope of provisional application of mixed agreements has avoided disagreements between Member States and the Union, thus highlighting what the Constitutional Court of Germany has evidenced in relation to the CETA agreement. It was the same court that relied on the Union and the Member States, namely the conclusion of an agreement on the provisional application of CETA and the implementation through the adoption of common positions, that are adopted by the Council itself through Art. 218, par. 9 TFEU[1].

The logic of the court was in favor of the privilege for the guarantee of compliance with the rules that regulate the relative functioning of the institutions of the Union, observing that the argument was contrary to hybrid decisions according to the principle of autonomy of the Union, that was surmountable of the different expressions of will of the two different subjects. Hybrid decisions according to the determination of the Council and relative to the provisional application of the Union and the provisions that fall within their own competence matters are determined by the representatives of Member States that apply, between the parties of the agreement, the matters of relative competence of the Member States. The admissibility for hybrid decisions and the relative rule of qualified majority voting affirms compliance with these rules for the functioning of the institutions. They guarantee the transparency of the work of the institutions, the interpretations that are restrictive and excessive for the procedural rules, that prevent the modalities of organization for the adoption of organization according to the unforeseen needs in time. It is obvious that the need for new forms of collaboration between Member States and the Union acts in a unitary manner towards the provisional application of mixed agreements.

3. Mixed Agreements, Termination and Provisional Application

Art. 218 TFEU through the relative silence for the decision of the termination of provisional application by the Union and par. 5 of the same article relating to decisions for the authorization of provisional application (Van Der Loo & Wessel, 2017) deal with the termination that reaches the hands of the Council. The related issues deal with disputes that do not concern the identification of a national procedure that follows the formation of the will of the Union and that thus provisionally terminates the relationship between Member States and the Union through the termination for the provisional application of mixed agreements.

The position and ability of Member States to terminate the provisional application of mixed agreements is part of a difficult work for the provisional application of CETA. This work highlights the possibility for Member States to unilaterally terminate the provisional application of mixed agreements. Member states unilaterally terminate the provisional application of CETA, which according to the German Constitutional Court in the judgment of the 2016 the: "(...) Federal Government should not be able to undertake the courses of action it proposed for avoiding a potential ultra vires act or a violation of the constitutional identity, it has, as a final resort, the possibility of terminating the provisional application of the Agreement by means of a written notification (...)"[2].

The applicants' instance was annulled and the German court stressed that the Member States

[1] "(…) constitutional identity (Art. 79(3) GG) brought about by the competences and procedures of the committee system can-in the context of the provisional application at any rate-be countered in various ways. An inter-institutional agreement, for example, might ensure that decisions taken pursuant to Art. 30.2(2) of the CETA draft may only be passed on the basis of a common position unanimously adopted by the Council pursuant to Art. 218(9) TFEU (see also BVerfGE 142, 123 211 and 212 para. 171) (…) would also correspond to state practice (cfr. Art. 3(4) of the Decision of the Council and the representatives of the Governments of the Members States of the European Union, meeting within the Council, on the signature and provisional application of the Protocol to Amend the Air Transport Agreement between the United States of America, of the one part, and the European Community and its Member States, of the other part, Official Journal EU no. L p. 223/2) (…)".

[2] BVerfG, Sentence of 13 October 2016, 2 BvR 1368/16-, ECLI:DE:BverfG:2016:rs20161013.2bvr136816, par. 1-73, and especially par. 3: http://www.bverfg.de/e/rs20161013_2bvr136816en.html.

neutralised the effects of a decision ultra vires per the Council, according to which the provisional application of an agreement unilaterally puts the application in the manner foreseen by an agreement. The provisional application of CETA is based on the provisions on matters of exclusive competence for the Member States. It means that each Member State has the right not to continue the provisional application of the agreement. The declaration n. 21 signed by Austria and Germany and the declaration n. 22 of Poland in the Council highlighted the cessation of provisional application of the CETA. It is noted, in this regard, that: "(...) Parties to CETA, may exercise the rights resulting from Art. 30.7., par. 3, letter c) (…)". Particularly, Art. 30.7, lett. c) terminates the application and provisional title of the CETA thus allowing a written communication with legal effects from the first day of the month following the notification. Therefore, the agreement on the provisional application of the CETA had as its content art. 30.7 and the cessation of the provisional application.

The provisional application of CETA has highlighted that the agreement on provisional application of the Union and Canada only concerns matters within their competence. Member States are not party to an agreement on provisional application of CETA. The statements of Poland, Germany and Austria are clear and do not distinguish a treaty applied provisionally from a provisional application agreement such as the case between Canada and the Union, creating thus a relative confusion for the position of the Union and Member States within the scope of the provisional application of CETA. Member States can unilaterally interrupt the nature of a provisional application when they are parties to an agreement on provisional application. Any Member State that has expressed its consent to provisional application can autonomously exit from it in accordance with the modalities provided for by the lack of a rule based on art. 25VCLT.

The Advocate General Sharpston stated in this regard that: "(…) an international agreement is signed by both the European Union and its Member States, each Member State remains free, under international law, to terminate that agreement in accordance with the procedure provided for that purpose in the agreement itself (…) that state participates in the agreement as a sovereign State Party, and not as a mere appendix of the European Union (and in this respect it is entirely irrelevant that the European Union played the leading role in negotiating the agreement) (…) acting autonomously as a subject of international law reflects the fact that it retains its international competence (…)"[1]. The termination of the provisional application of one or more Member States does not overturn the position of the Union, since mixed agreements and the Union and the Member States are distinct.

Another important aspect that is controversial and causes effects of provisional application of mixed agreements is to ask for ratification the Union and the Member States according to Art. 25 VCLT (Bartles, 2012; Van Der Loo & Wessel, 2017; Suse & Wouters, 2018; Tovo, 2019). The will of one or more Member States that have not ratified the mixed agreement has to do with the termination of its provisional application. The Council's declaration on the cessation of provisional application of CETA states that: "(...) the ratification of CETA is permanently and definitively prevented by a judgment of a Constitutional Court or by the completion of other constitutional processes and by formal notification by the government of the state concerned, provisional application must and will be terminated (...) will be taken in accordance with EU procedures (...)".

In the CETA agreement, the provisional application clause of the agreement seeks to expressly regulate the modalities according to which the parties terminate their provisional application. The termination of provisional application according to par. 2 of Art. 25VCLT is based on the parties to the agreement regarding provisional application, who have not agreed anything on the matter. Thus, provisional application terminates and notifies the conclusion of a treaty for other states and organizations that give rise to provisional application. The provisional application of mixed agreements with exclusive mode for the Union and third states as provided by par. 2 of Art. 25VCLT for the termination of provisional application, is exclusively linked with the Union.

At international level, the expression of the will

[1] See also the conclusions of the Advocate General Eleonor Sharpston presented on 21 December 2016 in the opinion 2/15, Accord de libre-échange avec Singapour of ECLI:EU:C:2016:992, published in the electronic Reports of the cases, par. 77.

of one or more Member States not to ratify the agreement does not automatically mean the cessation of the provisional application of the agreement by the Union. Political opportunities push the Union to put an end to the provisional application of the agreement, which is not ratified by one or more Member States.

4. Jurisdiction in Mixed Agreements, Violation of National Rules and Provisional Application

Mixed agreements are perhaps the only cases in which the Union has expressed its consent for the provisional application of a full type outside the framework of the competences it attributes to the treaties. There are two different points that deserve to be examined. On the one hand, we have the enforcement of agreements applied provisionally for the violation of rules on competence in provisional application. On the other hand, we have a second level, according to which violations of the validity of the agreement have provisional application as their object. We recall again the guidance on provisional application of the ILC. International organizations cannot call upon the national rules of organizations that go outside the obligations that derive from provisional application. The Union is bound to the application of a mixed agreement that violates its own national rules and regulate the competence to stipulate matters for the Member States. The Union fails to fulfil its obligations arising from the provisional application of a mixed agreement, where the third State invokes the international responsibility of the Union and the relevant requirements which are relevant for international law are met. The Union was not contrary to the national rules of the organization relating to the division of competences between the Union and the Member States, which remove the responsibility arising from a failure to implement provisions, which have as their object the provisional application.

The provisional application of mixed agreements involves a certain disruption to the institutional balance concerning the relations between Member States and the Union within the field of external relations. The Union with respect to the provisional application of mixed agreements has acted in violation of national rules, that are relevant to its own stipulation. The Union and the Member States with respect to the provisional application of mixed agreements are concentrated on governments and institutions. The adoption of hybrid decisions gives rise to the violation of rules and principles that regulate the relative functioning of the Union. The violations and the annulment of decisions that also authorize the provisional application are examined by the CJEU.

The CJEU by annulling the decisions that are contested provides the effects of the decisions according to Art. 264, par. 2 TFEU. The effects of the decision for the acceptance of the relative request for annulment have been requested by the Council and by the European Commission with the support of the European Parliament, Czech Republic, Germany, France, Finland and Portugal.

The procedure for annulling decisions contested under paragraph 1 of Article 264 has effects *erga omnes* and *ex tunc*. The CJEU has highlighted that the effects of the annulled act provide for the maintenance of such effects until the issuing of an act that is free from defects. The effects of the annulment can have serious negative consequences when the immediate effects of the annulment entail negative consequences for the legitimacy of the contested act, that is contested for reasons of incompetence and for defects of substantial form[1].

The CJEU highlighted the conditions for the maintenance of the contested effects by stating that: "(…) the contested decision made it possible for the Union to apply provisionally the Accession Agreement and the Additional Agreement (…) the immediate adoption of such a decision could have serious consequences for the Union's relations with the third states concerned as well as for economic operators operating on the air transport market, who were able to benefit from the provisional application of the said agreements (…)"[2]. The reasons of legal certainty according to the CJEU highlighted that the maintenance of the effects of the contested decisions until their entry into force within the time limit set for the ruling should be decided by the Council according to paragraphs 5 and 8 of Art. 218 TFEU.

5. Conclusions

As we understand until now legal certainty justifies the maintenance of effects for decisions

[1] CJEU, C-103/12. European Parliament and European Commission v Council of the European Union of 26 November 2014, ECLI:EU:C:2012:2400, published in the electronic Reports of the cases.

[2] CJEU, C-103/12. European Parliament and European Commission v Council of the European Union of 26 November 2014, op. cit., par. 61.

that are challenged and require serious consequences for annulment with immediate effects as well as the decision that is challenged in the Union with other parties of the provisional application. The annulment by the CJEU, the decision of the Council and the representatives of the Member States allow the authorization for the provisional application of an agreement that does not produce direct consequences for the relevant national legal systems of the Member States of the Union. The provisional application discipline for treaties regulates exclusively international law. The validity of their agreements that are concluded between organizations and states and not directly and subordinated to compliance with procedural and substantive rules, regulates the competence of organizations in matters of provisional application. Violating national rules on competence in matters of treaties does not imply the invalidity of consent for an agreement on the international level thus giving basis to most of an asymmetry in the legal status of the act. The considerations are part of a context of international organizations in a general way and in a special way in the law of the Union. It is concluded that annulling decisions of the Council, which are related to provisional application in the matter of mixed agreements does not overturn the validity of a consensus of the Union regarding provisional application at international level.

This is a position that is confirmed by the guidance on provisional application of the ILC and the general rules of treaty law between states and international organizations, including agreements on provisional application. International organizations do not challenge the validity of a consent of provisional application on the basis of violations of national norms and in the competence of provisional application. The guidance of the ILC as an exception to the relative principle of violations manifested by national norms on the competence of the provisional application has an interesting importance that is also specified in the analogical application of the norm according to Art. 46 of the Vienna Convention of 1986. In it, the national norms are fundamental and also integrate the exception for the norms that are relative for the distribution of competence between organizations and Member States. Exceptions for manifest violations require the consent to provisional application for mixed agreements, as expressed in the relevant norms on competence.

Extending, exceeding according to Art. 46 of the Vienna Convention of 1986 with application to the spirit of the Union highlights the poor application of a practice as well as many perplexities and complexities relating to the distribution of competence in the matter of treaties between Member States and the Union. The national rules of the Union in the area of the treaty making power and the distribution of competences between Member States and the Union are complex to a violation that is hardly manifested in an objective way by the organizations and states. The ordinary and good faith practice is not always a reality for the determination of competences for purposes of provisional application within the general scheme of the distribution of competences according to the conclusion of agreements with the same difficulties presented.

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African Children in Armed Conflict: An Examination of Legal Protection and Practical Challenges

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Abstract

Armed conflict remains one of the most significant threats to the rights and well-being of children in Africa, despite the existence of an extensive body of international, regional, and domestic legal protections. This article examines the effectiveness of the legal protection of African children in armed conflict by analyzing the applicable normative frameworks alongside judicial interpretations and practical realities across conflict-affected African states, with particular reference to Cameroon. Adopting a doctrinal and qualitative methodology, the study analyses international humanitarian law, international human rights law, African regional instruments, relevant case law, and reports from the United Nations and other international bodies. The findings reveal a persistent gap between strong normative commitments and weak implementation, driven by fragile domestic institutions, limited accountability, and protracted conflicts. Although African regional instruments provide context-sensitive protections, enforcement mechanisms remain underdeveloped, and impunity continues to undermine deterrence. The article contributes to existing scholarship by offering a holistic, multi-layered legal analysis that links normative frameworks, jurisprudence, and empirical challenges affecting children in armed conflict in Africa. It concludes that while legal protection is normatively robust, its practical effectiveness remains limited, and meaningful improvement requires strengthened domestic enforcement, child-centered reintegration strategies, and enhanced regional and international cooperation.

Keywords: African children, armed conflict, children in armed conflict, legal protection, and practical challenges

1. Introduction

Armed conflicts across Africa have disproportionately affected children, exposing them to extreme physical, psychological, and social harm. Children in conflict zones are often recruited, coerced, or forced into participation in hostilities or support roles, such as messengers, porters, or spies, violating their fundamental rights and undermining their development.[1] Despite efforts by national governments and international actors, recruitment and use of children in armed groups persist in many

[1] Haupt, N. (2025). Keeping the spotlight on Africa's child soldiers. Institute for Security Studies.

regions, particularly in West and Central Africa, where verified cases have shown thousands of children associated with government forces or armed movements.[1] These patterns highlight a grim reality: children remain among the most vulnerable populations in conflict, subjected to risks far beyond the intended protections of existing laws.

International and regional legal frameworks provide a comprehensive basis for protecting children in armed conflict. The United Nations Convention on the Rights of the Child (CRC) and its Optional Protocol on the involvement of children in armed conflict set minimum standards for protecting children from recruitment and participation in hostilities, with the CRC's Optional Protocol explicitly raising the age of voluntary and compulsory recruitment to 18 years.[2]

Additionally, regional instruments such as the African Charter on the Rights and Welfare of the Child reinforce these protections within African contexts and affirm states' obligations to safeguard children's rights during armed conflict. Despite this robust normative framework, enforcement remains inconsistent, and significant gaps persist between legal norms and the lived realities of children in conflict settings.[3]

Scholarly analysis suggests that the persistence of child recruitment and continued violations reflect not only enforcement challenges but also broader political, social, and economic factors that weaken protection mechanisms on the ground. Research has characterized much of the current legal protection as "paper protection," where treaties and conventions have limited practical impact due to weak implementation, lack of resources, or competing political priorities. [4] Moreover, the psychosocial consequences experienced by former child soldiers underscore the depth of harm and the need for integrated legal, humanitarian, and rehabilitative responses beyond legal prohibition alone. [5] This article examines the effectiveness of international and regional legal frameworks in protecting African children affected by armed conflict and identifies the practical challenges that continue to limit meaningful protection and recovery.

2. Conceptual Clarification

This section addresses key concepts related to this study. They shall be addressed seriatim.

2.1 African Children

Statutorily, a child is defined as every human being below the age of eighteen years under Article 1 of the Convention on the Rights of the Child (CRC, 1989)[6] and Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC, 1990). [7] Black's Law Dictionary[3] defines a child as "a person under the age of majority," highlighting legal incapacity and the need for special protection. In this study, 'African children' refers to all persons below eighteen years residing in African states who are affected by armed conflict, whether directly or indirectly. This includes children recruited or used by armed forces or groups, displaced by violence, subjected to sexual exploitation, denied access to education, or exposed to psychological trauma. Insights from Nkwiyir K.A (2024)[8] emphasize that civilians in conflict zones, including vulnerable populations, often suffer from weak protection mechanisms and enforcement gaps, which also indirectly affect children.

2.2 Armed Conflict

International humanitarian law distinguishes between international and non-international armed conflicts as reflected in the Geneva

[1] *Ibid.*

[2] Ang, L. (2022). Article 38: The right to protection from armed conflict. In *Children in human rights and humanitarian law* (pp. 379–390). Springer.

[3] Mushoriwa, L., & Nortje, W. (2025). A failure by African states or a gap in the law? An appraisal of the African and international legal framework for the protection of child soldiers. *International Criminal Law Review, 25*(1), 51–74.

[4] Francis, D. J. (2007). 'Paper protection' mechanisms: Child soldiers and the international protection of children in Africa's conflict zones. *The Journal of Modern African Studies, 45*(2), 257–282.

[5] Hynd, S. (2020). Trauma, violence, and memory in African child soldier memoirs. *Culture, Medicine, and Psychiatry, 45*(1), 74–96.

[6] United Nations. (1989). Convention on the Rights of the Child. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[7] Organization of African Unity (OAU). (1990). African Charter on the Rights and Welfare of the Child.

[8] Nkwiyir, K. A. (2024). Prospects and challenges of the protection of humanitarian relief workers in the underway armed conflicts in the Northwest and Southwest regions of Cameroon. *International Journal of Research and Innovation in Social Science, 8*(09), 891–908. https://rsisinternational.org/journals/ijriss/Digital-Library/volume-8-issue-9/891-908.pdf

Conventions of 1949[1] and Additional Protocol II (1977).[2]

Black's Law Dictionary[3] defines armed conflict as "a state of hostility involving armed forces," encompassing both internal and international hostilities. Jurisprudence and scholarly commentary agree that armed conflict exists where there is protracted violence between state forces and organized armed groups, or among such groups within a state. In this study, armed conflict includes all forms of internal and cross-border hostilities in Africa that directly affect children, with particular reference to protracted insurgencies and separatist conflicts such as those in Cameroon, which have severely disrupted civilian protection.[4]

2.3 Children in Armed Conflict

Statutorily recognized in Article 38 of the CRC[5] and Article 22 of the ACRWC,[6] children in armed conflict are those who are recruited, used, or otherwise affected by hostilities. This includes both direct involvement as combatants, porters, messengers, or spies and indirect harm through displacement, sexual violence, attacks on schools, or psychological trauma. Scholarly definitions emphasize victimhood; legal scholars describe these children as "persons whose physical, psychological, and social development is disrupted by exposure to organized violence." This study adopts a victim-centered perspective, recognizing that any participation by children in hostilities is typically coerced rather than voluntary.

2.4 Legal Protection

Statutory frameworks for legal protection include Articles 19, 38, and 39 of the CRC,[7] the Optional Protocol to the CRC on the involvement of children in armed conflict (2000),[8] Article 22 of the ACRWC, and relevant provisions of the Rome Statute of the International Criminal Court[8], which criminalize the conscription and use of children under fifteen in hostilities. Black's Law Dictionary[3] defines legal protection as "the safeguarding of rights through the application and enforcement of law." Insights from Nkwiyir[9] emphasize that protection frameworks are ineffective without functional institutional mechanisms, enforcement, and compliance monitoring, highlighting the implementation gaps that exist in conflict-affected Cameroon.

2.5 Practical Challenges

Practical challenges refer to real-world obstacles that impede the enforcement of legal protection for children in armed conflict. Academic literature conceptualizes these as "structural and contextual constraints that limit the effectiveness of normative frameworks." UN reports and scholarly studies identify displacement, school closures, lack of access to justice, psychological trauma, poverty, and persistent impunity as major practical challenges. In Africa, these challenges are amplified by protracted conflicts and fragile governance structures, creating a significant gap between legal standards and lived realities, demonstrating that protection cannot be ensured by law alone.[10]

3. Methodology

This study employs a qualitative research design,[11] using doctrinal and analytical approaches to examine the legal protection of African children in armed conflict and the practical challenges associated with enforcing these protections.[12] Given that the research focuses on legal instruments, policies, and documented experiences of children in conflict zones, a qualitative methodology allows for an in-depth exploration of both normative legal frameworks and the real-world challenges affecting their implementation.[13] This approach aligns with the theoretical framework, integrating Human Rights Theory and Child-Centered Protection Theory to analyze both the legal and practical dimensions of child

[1] International Committee of the Red Cross (ICRC). (1949). Geneva Conventions of 12 August 1949.

[2] International Committee of the Red Cross (ICRC). (1977). Additional Protocol II to the Geneva Conventions.

[3] Garner, B. A. (Ed.). (2019). *Black's Law Dictionary* (11th ed.). Thomson Reuters.

[4] United Nations. (2000). Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] *Ibid.*

[10] International Criminal Court. (1998). Rome Statute of the International Criminal Court.

[11] Patton, M. Q. (2015). *Qualitative research & evaluation methods* (4th ed.). Sage.

[12] Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Sage.

[13] *Ibid.*

protection.[1]

The study relies on a desk-based review of primary and secondary sources. Primary sources include international legal instruments such as the United Nations Convention on the Rights of the Child (CRC), the Optional Protocol on the involvement of children in armed conflict, and regional instruments like the African Charter on the Rights and Welfare of the Child (ACRWC).

Secondary sources include peer-reviewed journal articles, reports from international and regional organizations (e.g., International Committee of the Red Cross, UNICEF, Institute for Security Studies), and policy analyses relevant to child protection in African armed conflicts. [2] These sources provide both normative and empirical insights into the effectiveness of legal protections and the challenges in their enforcement.

In addition, the study uses case study analysis to illustrate practical challenges in specific African contexts. Cases from Nigeria, the Democratic Republic of Congo, and South Sudan are examined to highlight the recruitment of child soldiers, gaps in law enforcement, socio-economic vulnerabilities, and rehabilitation efforts. [3] Data from these cases were analyzed thematically to identify patterns, gaps, and practical obstacles to effective child protection. [4] This combination of doctrinal research and case study analysis allows for a comprehensive understanding of both the legal frameworks and the real-world circumstances that affect African children in armed conflict.

The methodology ensures that the study addresses the research objectives: assessing the adequacy of existing legal protections, evaluating enforcement challenges, and identifying actionable recommendations to improve the safeguarding of children. By linking legal analysis with practical observations, the study provides a nuanced understanding of both the normative obligations and the implementation gaps in protecting African children in conflict settings.[5]

4. Theoretical Framework

This study is anchored in Human Rights Theory and Child-Centered Protection Theory, which provide the conceptual basis for understanding the legal protection of children in armed conflict and the challenges in enforcing these protections. Human Rights Theory, as developed by Jack Donnelly (2013), [6] posits that all individuals, regardless of age, possess inherent rights that must be protected by states and the international community. In the context of armed conflict, this theory underscores the moral and legal obligation of states and non-state actors to safeguard the rights of children, including the right to life, education, health, and protection from recruitment into hostilities. It provides the normative justification for international treaties and regional instruments designed to protect children, such as the CRC, its Optional Protocol, and the African Charter on the Rights and Welfare of the Child.[7]

Complementing this, Child-Centered Protection Theory, advocated by Paulo Sérgio Pinheiro (2006), [8] emphasizes the specific needs and vulnerabilities of children in conflict settings, recognizing that children are not merely passive recipients of protection but have distinct developmental, psychological, and social needs that must be addressed for effective safeguarding. This theory helps explain why legal instruments alone may be insufficient if they are not supported by practical interventions such as rehabilitation, reintegration, and community- based protection programs.

The selection of these theories is deliberate. Human Rights Theory, as proposed by Donnelly, establishes the legal and moral imperative for protecting children, highlighting the obligation of states and international actors to enforce protective measures. Child-Centered Protection Theory, as advanced by Pinheiro, [9] draws

[1] Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.

[2] Mushoriwa, L., & Nortje, W. (2025). A failure by African states or a gap in the law? An appraisal of the African and international legal framework for the protection of child soldiers. *International Criminal Law Review, 25*(1), 51–74.

[3] Hynd, S. (2020). Trauma, violence, and memory in African child soldier memoirs. *Culture, Medicine, and Psychiatry, 45*(1), 74–96.

[4] Haupt, N. (2025). *Keeping the spotlight on Africa's child soldiers*. Institute for Security Studies.

[5] *Ibid.*

[6] Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.

[7] United Nations General Assembly. (2001). *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*.

[8] Pinheiro, P. S. (2006). *World report on violence against children*. United Nations Secretary-General's Study on Violence against Children.

[9] *Ibid.*

attention to the practical realities and vulnerabilities faced by children, emphasizing the need for interventions that go beyond law to include psychosocial support and rehabilitation. By integrating these perspectives, the study bridges the gap between normative legal frameworks and real-world challenges, allowing for a comprehensive analysis of both the adequacy of laws and the obstacles to their enforcement. This theoretical foundation guides the study in examining not only what protections exist, but also why they often fail to prevent the exploitation and endangerment of children in African armed conflicts.

5. Legal Framework on the Legal Protection of African Children in Armed Conflict

The protection of children in armed conflict is anchored in a multilayered legal architecture spanning international, regional, and domestic legal systems. This framework reflects the evolution of children from passive beneficiaries of humanitarian concern to autonomous rights-holders under international law.[1] While the proliferation of legal instruments demonstrates a strong normative commitment to shielding children from the effects of armed conflict, the persistence of child recruitment in Africa reveals a critical gap between legal obligation and effective implementation. This section therefore examines, seriatim, the legal framework governing the protection of children in armed conflict under international law, regional African law, and domestic legal systems.

5.1 International Legal Framework

International law provides the foundational norms for the protection of children in armed conflict through international human rights law, international humanitarian law, and international criminal law.

5.1.1 The United Nations Convention on the Rights of the Child (CRC) (1989)

The United Nations Convention on the Rights of the Child (CRC) (1989) represents the cornerstone of international child protection. Article 38 obliges States Parties to respect international humanitarian law applicable to children and to ensure that children under the age of fifteen do not take direct part in hostilities.[2] Scholars have noted that while the CRC marked a paradigm shift in recognizing children as rights-bearers, its age threshold reflected political compromise rather than optimal child protection standards.[3]

5.1.2 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) (2000)

In response to these shortcomings, the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) (2000) introduced the "straight-18" standard for compulsory recruitment and direct participation in hostilities. OPAC further prohibits non-state armed groups from recruiting or using children under any circumstances, thereby acknowledging the realities of contemporary conflicts dominated by irregular forces.[4] The Protocol has been widely regarded as a significant normative advancement in international child protection law.[5]

5.1.3 International Humanitarian Law

International humanitarian law reinforces these protections through the Geneva Conventions of 1949 and the Additional Protocols of 1977. Article 77 of Additional Protocol I and Article 4(3) of Additional Protocol II recognize children as a category requiring special protection and prohibit their recruitment below the age of fifteen.[6] These provisions are particularly relevant in Africa, where most conflicts are non-international in nature.[7]

5.1.4 International Criminal Law

International criminal law further strengthens the framework through the Rome Statute of the International Criminal Court (1998), which criminalizes the conscription, enlistment, or use of children under fifteen in hostilities. Jurisprudence from the ICC has reinforced the principle of individual criminal responsibility, thereby transforming child protection norms

[1] Happold, M. (2005). Child soldiers in international law: The legal regulation of children's participation in hostilities. *Netherlands International Law Review, 52*(1), 27–52.

[2] Article 38 The United Nations Convention on the Rights of the Child (CRC) (1989).

[3] Ang, L. (2022). Article 38: The right to protection from armed conflict. In *Children in human rights and humanitarian law*. Springer.

[4] McConnan, I., & Uppard, S. (2001). Children—not soldiers. Save the Children.

[5] Brett, R., & McCallin, M. (1998). *Children: The invisible soldiers*. Radda Barnen.

[6] Article 4(3) of Additional Protocol II 1977.

[7] Sassòli, M. (2019). *International humanitarian law: Rules, controversies, and solutions to problems arising in warfare*. Edward Elgar.

from aspirational standards into enforceable legal obligations.[1]

5.2 Regional African Legal Framework

Africa has developed a uniquely robust regional framework for the protection of children in armed conflict. The African Charter on the Rights and Welfare of the Child (ACRWC) (1990) represents a deliberate departure from the CRC by unequivocally prohibiting the recruitment and participation of children under eighteen in armed conflict. Article 22 reflects Africa's historical experiences with child soldiers and has been praised for adopting a higher protective threshold than its international counterpart.[2]

5.2.1 The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is mandated to monitor the implementation of the Charter. Through state reporting procedures, General Comments, and communications, the Committee has clarified states' obligations concerning prevention, accountability, rehabilitation, and reintegration of children affected by armed conflict. Although the Committee lacks direct enforcement powers, its jurisprudence contributes significantly to the development of African child rights law.[3]

5.2.2 The African Union (A.U.)

In addition, the African Union (AU) has adopted soft-law instruments and policy frameworks addressing the recruitment of child soldiers and the need for child-sensitive Disarmament, Demobilization, and Reintegration (DDR) programs. While not legally binding, these instruments reinforce treaty obligations and shape regional practice.[4]

5.3 Domestic Legal Framework

At the domestic level, states bear the primary responsibility for implementing international and regional obligations. Most African states have incorporated child protection norms into national constitutions, child rights statutes, criminal legislation, and military laws, often setting eighteen as the minimum age for recruitment and criminalizing violations by state and non-state actors.[5]

However, scholars consistently observe that domestic enforcement remains weak due to institutional fragility, limited judicial capacity, corruption, and the continued influence of non-state armed groups.[6] In many contexts, domestic laws exist largely on paper, offering what has been described as "paper protection" rather than effective safeguards for children.[7]

5.3.1 Enforcement, Accountability, and Remedies

Enforcement mechanisms remain a central weakness across all legal levels. Internationally, treaty bodies such as the Committee on the Rights of the Child rely on reporting and dialogue, while the ICC provides a punitive mechanism for serious violations.

Regionally, the ACERWC offers normative oversight but depends heavily on state cooperation. Domestically, accountability is often undermined by amnesty laws, political instability, and weak prosecutorial systems.[8]

Importantly, the legal framework emphasizes not only criminal accountability but also rehabilitation and reintegration. Both the CRC and the ACRWC impose obligations on states to ensure the physical and psychological recovery of children affected by armed conflict. Nonetheless, DDR programs in Africa frequently suffer from inadequate funding, limited psychosocial support, and poor long-term reintegration outcomes.[9]

5.3.2 Interrelationship of Legal Regimes

Taken together, international, regional, and domestic laws form a comprehensive normative framework for the protection of children in armed conflict. However, the persistence of violations in Africa illustrates that the problem lies not in normative deficiency but in implementation failure. The interaction between legal regimes is often fragmented, and the absence of effective enforcement mechanisms allows violations to continue with relative

[1] Schabas, W. A. (2017). *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press.

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

[3] *Ibid.*

[4] Francis, D. J. (2007). 'Paper protection' mechanisms: Child soldiers and the international protection of children in Africa's conflict zones. *The Journal of Modern African Studies, 45*(2), 257–282.

[5] *Ibid.*

[6] Drumbl, M. A. (2012). *Reimagining child soldiers in international law and policy*. Oxford University Press.

[7] *Ibid.*

[8] *Ibid.*

[9] Haupt, N. (2025). Keeping the spotlight on Africa's child soldiers. Institute for Security Studies.

impunity. This gap between law and practice underscores the necessity of examining the practical challenges that undermine the legal protection of African children in armed conflict.

6. Effectiveness of the Legal Protection of African Children in Armed Conflict

The effectiveness of the legal protection afforded to African children in armed conflict must be assessed not by the mere existence of legal norms, but by their capacity to prevent violations, ensure accountability, and promote recovery and reintegration. From a normative standpoint, the international and regional legal framework governing child protection is robust and, in some respects, progressive. However, the persistence of child recruitment and exploitation in African conflicts reveals enduring gaps between legal promise and practical protection.

6.1 Normative and Legal Clarity

At both international and regional levels, the prohibition of child recruitment is legally clear. Article 38 of the Convention on the Rights of the Child and Articles 2 and 4 of its Optional Protocol establish minimum standards, while Article 22 of the African Charter on the Rights and Welfare of the Child adopts a stricter "straight-18" rule.[1] This clarity has influenced domestic legislation in states such as South Africa, whose Defense Act sets eighteen as the minimum recruitment age, and Kenya, where the Children Act and military regulations reflect regional norms. Scholarly analysis[2] confirms that Africa's regional framework has advanced stronger normative standards than international law alone.[3] Yet, conflicts in Mali and South Sudan illustrate that legal clarity does not automatically translate into compliance where state authority is contested.[4]

6.2 Influence on State Behavior and Policy Reform

Legal norms have shaped state behavior in measurable ways. In Uganda, domestic incorporation of the CRC and OPAC, alongside the Amnesty Act, contributed to reforms within the Uganda People's Defense Force and facilitated cooperation with child protection agencies following the Lord's Resistance Army conflict.

In Chad, commitments under OPAC and engagement with UN mechanisms led to the formal demobilization of children from national forces in 2011. Scholars argue that such reforms demonstrate the agenda-setting power of international law, even where implementation remains fragile.[5] In Nigeria, the Child Rights Act domesticated CRC standards, but uneven adoption across states has weakened its protective reach against Boko Haram's recruitment of children.[6]

6.3 Enforcement and Accountability Mechanisms

Accountability remains a critical determinant of effectiveness. Article 8(2)(e)(vii) of the Rome Statute criminalizes the recruitment and use of children under fifteen,[7] a provision enforced in the International Criminal Court's prosecution of Thomas Lubanga Dyilo for crimes committed in the Democratic Republic of Congo. This case affirmed the justiciability of child recruitment under international criminal law. Similarly, the Special Court for Sierra Leone, drawing on international humanitarian law, recognized child recruitment as a serious crime. Scholarly commentary notes, however, that the rarity of prosecutions and limited domestic follow-up undermine deterrence across Africa.[8]

6.4 Regulations of Non-State Armed Group

Despite clear prohibitions under Common Article 3 of the Geneva Conventions and OPAC Article 4, non-state armed groups remain the principal violators of child protection norms. In Somalia, Al-Shabaab's systematic recruitment of children persists despite Somalia's obligations under the CRC[9] and ACRWC. In Central African Republic, peace agreements incorporating child protection clauses have failed to curb recruitment by militias. Scholarly analysis[10] highlights the structural limits of

[1] African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).

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

[3] Happold, M. (2005). Child soldiers in international law: The legal regulation of children's participation in hostilities. *Netherlands International Law Review, 52*(1), 27–52.

[4] Francis, D. J. (2007). 'Paper protection' mechanisms: Child soldiers and the international protection of children in Africa's conflict zones. *The Journal of Modern African Studies, 45*(2), 257–282.

[5] Drumbl, M. A. (2012). *Reimagining child soldiers in international law and policy*. Oxford University Press.

[6] *Ibid.*

[7] *Ibid.*

[8] Schabas, W. A. (2017). *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press.

[9] Convention on the Rights of the Child, 1577 U.N.T.S. 3 (1989).

[10] *Ibid.*

international law in regulating armed groups operating beyond effective state control.[1]

6.5 Victim-Centered Protection, Rehabilitation, and Reintegration

Legal effectiveness must also be measured by victim-centred outcomes. Article 39 of the CRC and Article 22(3) of the ACRWC impose obligations relating to rehabilitation and reintegration. In Sierra Leone, these provisions informed post-conflict DDR program that prioritized the social reintegration of former child soldiers. In Uganda, community-based reconciliation mechanisms complemented legal norms, reducing stigma against returning children. Scholars observe that these examples reflect law's capacity to reshape post-conflict responses, even though underfunding and insecurity continue to limit success in states such as South Sudan and Central African Republic.[2]

6.6 Domestic Implementation and Structural Gaps

At the domestic level, implementation remains uneven. In the Democratic Republic of Congo, national child protection legislation exists alongside continued recruitment by armed groups, exposing enforcement weaknesses. In Cameroon, statutory child protection frameworks coexist with ongoing violence in the Anglophone regions, affecting children's safety and access to justice. Scholars describe this phenomenon as "paper protection," where legal commitments outpace institutional capacity and political will.[3]

6.7 Overall Assessment

Across Africa, statutory frameworks at international, regional, and domestic levels have succeeded in establishing strong legal norms and shaping state policies. However, scholarly evidence and empirical examples—from Sierra Leone and Uganda to Nigeria, Somalia, CAR, and Cameroon—demonstrate that effectiveness remains constrained by enforcement deficits, conflict dynamics, and weak institutions. Legal protection has therefore been normatively transformative but practically limited, underscoring the need for strengthened accountability, domestic implementation, and sustained child-centred interventions.

7. Practical Challenges African Children in Armed Conflict

Across Africa, armed conflict has generated a consistent pattern of grave challenges for children, irrespective of the conflict's geographic location, duration, or ideological character. While international and regional legal instruments establish extensive protections, evidence from United Nations monitoring mechanisms, regional bodies, jurisprudence, and scholarly research demonstrates that African children continue to experience systematic violations of their rights. These challenges are structural, recurrent, and observable in all African states that have experienced armed conflict.

7.1 Recruitment and Use of Children by Armed Actors

Despite explicit prohibitions under Article 38 of the Convention on the Rights of the Child (CRC),[4] Articles 1 and 4 of the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC),[5] and Article 22 of the African Charter on the Rights and Welfare of the Child (ACRWC), [6] children continue to be recruited by state and non-state armed actors. Judicially, the International Criminal Court (ICC) in *The Prosecutor v. Thomas Lubanga Dyilo* confirmed that conscripting and enlisting children under fifteen and using them to participate actively in hostilities constitutes a war crime under Article 8 of the Rome Statute (OAU, 1990), reinforcing that recruitment violates peremptory norms of international law. The Special Court for Sierra Leone (SCSL) similarly held in *Prosecutor v. Brima, Kamara, H & Kanu* that recruitment of child soldiers amounted to crimes against humanity and war crimes.

In Cameroon's Anglophone armed conflict, UN-verified reports document children used as fighters, messengers, and informants by armed separatist groups.[7] Scholarly research confirms

[1] Sassòli, M. (2019). *International humanitarian law: Rules, controversies, and solutions to problems arising in warfare*. Edward Elgar.

[2] *Ibid.*

[3] *Ibid.*

[4] Convention on the Rights of the Child, 1577 U.N.T.S. 3 (1989).

[5] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2173 U.N.T.S. 222 (2000).

[6] African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).

[7] Francis, D. J. (2007). 'Paper protection' mechanisms: Child soldiers and the international protection of children in Africa's conflict zones. *The Journal of Modern African Studies, 45*(2), 257–282.

that weak enforcement, displacement, and prolonged insecurity significantly undermine compliance with legal prohibitions across the continent.[1]

7.2 Sexual Violence and Gender-Specific Harm

Sexual violence against children remains pervasive despite statutory prohibitions (CRC Articles 19 and 34;[2] Geneva Conventions.[3] In *Prosecutor v. Bosco Ntaganda* (ICC), the Court confirmed that sexual violence against children constitutes a war crime and crime against humanity, underscoring that sexual violence in conflict is not collateral but central to patterns of abuse.[4]

In Cameroon, conflict-related sexual violence against displaced girls has been documented by UN agencies and corroborated by human rights reporting.[5] Scholars note underreporting due to stigma, fear of reprisals, and ineffective justice systems.[6]

7.3 Attacks on Educational and the Collapse of Schooling

Children's right to education remains protected even during conflict under CRC Articles 28 and 29 [7] and international humanitarian law. In *Prosecutor v. Dominic Ongwen* (ICC), representing the Lord's Resistance Army (LRA) insurgency, the ICC recognized attacks on civilian life and infrastructure including schools as part of a broader pattern of violence, though not specifically charged, underscoring the relevance of education infrastructure in international criminal jurisprudence.[8]

In Cameroon, prolonged school closures in conflict-affected regions deprived hundreds of thousands of children of schooling.[9] Research shows that denying education increases **v**ulnerability to recruitment and long-term socioeconomic exclusion.[10]

7.4 Displacement, Family Separation, and Legal Invisibility

The displacement of children during conflict is prohibited from resulting in statelessness or abandonment under CRC Article 7 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).[11] Yet, UN data show that conflict displacement disproportionately affects children, disrupting family unity and legal identity documentation.[12]

In Cameroon, more than one million people were displaced at the peak of the Anglophone crisis, with children making up a majority of the displaced. [13] Scholarly analysis shows that displacement compounds vulnerabilities by removing children from formal protection and social support systems.[14]

7.5 Inadequate Rehabilitation and Reintegration

Both Article 39 of the CRC and Article 22(3) of the ACRWC [15] obligate states to ensure the physical and psychological recovery of children affected by armed conflict. International jurisprudence, including SCSL decisions on reintegration programs for former child soldiers, highlight the normative expectation for holistic reintegration approaches.

Despite this, reintegration programs across Africa remain underfunded and short-term. In Cameroon, the absence of a child-specific DDR framework for former child combatants has limited rehabilitation outcomes. [16] Scholars emphasize that weak reintegration increases the risk of re-recruitment and social

[1] Happold, M. (2005). Child soldiers in international law: The legal regulation of children's participation in hostilities. *Netherlands International Law Review, 52*(1), 27–52.

[2] Drumbl, M. A. (2012). *Reimagining child soldiers in international law and policy*. Oxford University Press.

[3] Conventions of 12 August 1949 and Additional Protocols.

[4] Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (1998).

[5] Sivakumaran, S. (2010). Sexual violence against men in armed conflict. *European Journal of International Law, 21*(2), 253–276.

[6] *Ibid.*

[7] Novelli, M., & Lopes Cardozo, M. T. A. (2008). Conflict, education and the global south: New critical directions. *International Journal of Educational Development, 28*(4), 473–488.

[8] Schabas, W. A. (2017). *An introduction to the International Criminal Court* (5th ed.). Cambridge University Press.

[9] United Nations. (2023). *Report of the Secretary-General on children and armed conflict*. United Nations.

[10] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted 2009.

[11] Chimni, B. S. (2009). The birth of a "discipline": From refugee studies to forced migration studies. *Journal of Refugee Studies, 22*(1), 11–29.

[12] *Ibid.*

[13] *Ibid.*

[14] Chimni, B. S. (2009). The birth of a "discipline": From refugee studies to forced migration studies. *Journal of Refugee Studies, 22*(1), 11–29.

[15] United Nations. (2023). *Report of the Secretary-General on children and armed conflict*. United Nations.

[16] *Ibid.*

marginalization.[1]

7.6 Weak Justice System and Enduring Impunity

Domestic justice systems across Africa frequently lack capacity to prosecute violations against children. Although the Rome Statute criminalizes the conscription and use of children in hostilities,[2] many African states have not fully integrated such provisions into domestic law or lack the political will to enforce them.[3]

In Cameroon, limited investigations and prosecutions for grave violations against children have been noted, mirroring a continental pattern of impunity in conflict-affected states. The African Court on Human and Peoples' Rights has not yet issued decisions specifically on child recruitment, highlighting gaps in regional enforcement. Scholars argue that persistent impunity undermines the deterrent effects of legal norms and normalizes violations.[4]

7.7 Psychological Trauma and Long-Term Development Harm

The CRC recognizes children's right to mental health and development, yet conflict exposure inflicts severe psychological trauma. Research in African post-conflict contexts such as in Sierra Leone and Northern Uganda shows sustained mental health consequences among former child soldiers and conflict-affected children.[5]

In Cameroon, humanitarian assessments report significant psychosocial distress among children displaced by the Anglophone conflict, confirming that mental health needs in conflict extend beyond physical protection and require comprehensive psychosocial support.[6]

8. Findings

The study finds that African children in armed conflict are extensively protected in law but insufficiently protected in practice, revealing a persistent gap between normative legal commitments and on-the-ground realities. At the international level, instruments such as the Convention on the Rights of the Child, its Optional Protocol on the involvement of children in armed conflict, and international humanitarian law establish clear prohibitions against child recruitment, sexual violence, attacks on education, and other grave violations. These norms are reinforced by international criminal jurisprudence, particularly decisions of the International Criminal Court and the Special Court for Sierra Leone, which unequivocally criminalize the recruitment and use of children in hostilities. However, the findings demonstrate that the existence of binding legal norms and authoritative judicial precedents has not translated into consistent compliance across African conflict settings, including Cameroon.

Secondly, the study finds that regional African legal instruments provide a comparatively robust and context-sensitive framework, particularly through the African Charter on the Rights and Welfare of the Child and the Kampala Convention on internal displacement. These instruments reflect Africa's lived realities of armed conflict and displacement and impose positive obligations on states to protect, rehabilitate, and reintegrate conflict-affected children. Nonetheless, enforcement mechanisms at the regional level remain weak. The absence of extensive jurisprudence from the African Court on Human and Peoples' Rights specifically addressing child recruitment and conflict-related violations underscores a significant enforcement deficit, limiting the practical impact of regional norms.

Thirdly, the findings reveal that domestic implementation constitutes the weakest link in the protection regime. Across African states that have experienced armed conflict, national legal systems frequently lack the institutional capacity, political will, or security conditions necessary to enforce international and regional obligations. In Cameroon, despite being a party to major child protection treaties, children have continued to suffer recruitment, displacement, school closures, sexual violence, and psychological trauma during the Anglophone conflict. The study finds that limited prosecutions, weak child-specific DDR

[1] Drumbl, M. A. (2012). *Reimagining child soldiers in international law and policy*. Oxford University Press.

[2] Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (1998).

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[5] Betancourt, T. S., Borisova, I., Williams, T. P., Brennan, R. T., Whitfield, T. H., de la Soudière, M., & Gilman, S. E. (2010). Sierra Leone's former child soldiers: A follow-up study of psychosocial adjustment and community reintegration. *Child Development*, *81*(4), 1077–1095.

Sierra Leone's former child soldiers: A longitudinal study of risk, protective factors, and mental health. *Journal of the American Academy of Child & Adolescent Psychiatry, 49*(6), 606–615.

[6] *Ibid.*

mechanisms, and inadequate psychosocial services have significantly undermined legal protection at the national level.

Fourthly, the study finds that armed conflict systematically multiplies children's vulnerabilities, rendering legal protections largely aspirational without corresponding structural support. Recruitment of children, sexual violence, attacks on education, and forced displacement are not isolated violations but interconnected harms that reinforce one another. Evidence from Cameroon and other African conflicts shows that prolonged school closures increase recruitment risks, displacement erodes access to justice and identity documentation, and psychological trauma remains largely unaddressed in post-conflict recovery frameworks. These findings confirm that legal protection without integrated humanitarian, educational, and psychosocial interventions is insufficient.

Finally, the study finds that impunity remains a central obstacle to effective protection. While international case law establishes accountability norms, prosecutions remain rare within domestic jurisdictions across Africa. This persistent impunity weakens deterrence, normalizes violations against children, and perpetuates cycles of abuse in ongoing and post-conflict settings. The findings therefore confirm that the effectiveness of legal protection for African children in armed conflict is high in normative design but low in operational impact, largely due to enforcement failures, structural fragility, and the protracted nature of contemporary African conflicts.

9. Conclusions

This study has examined the legal protection of African children in armed conflict through an integrated analysis of international, regional, and domestic legal frameworks, supported by judicial decisions, scholarly literature, and practical evidence from conflict- affected states, including Cameroon. The analysis demonstrates that while the legal architecture governing the protection of children in armed conflict is extensive and normatively robust, its effectiveness remains fundamentally constrained by persistent implementation and enforcement failures. International and regional instruments clearly prohibit the recruitment and use of children in hostilities, sexual violence, attacks on education, and other grave violations, yet these protections have not translated into consistent safeguards for children across African conflict settings.

The study further establishes that the African regional legal framework offers context-sensitive and progressive protections, particularly through the African Charter on the Rights and Welfare of the Child and the Kampala Convention. However, the limited development of regional jurisprudence and weak enforcement mechanisms have curtailed the transformative potential of these instruments. At the domestic level, the findings are revealed.

Importantly, this study contributes to existing knowledge by providing a holistic, multi-layered legal analysis that bridges normative law, judicial interpretation, and empirical realities of African armed conflicts. Unlike studies that focus solely on international norms or isolated case studies, this article integrates international criminal jurisprudence, African regional instruments, and domestic implementation challenges to demonstrate how legal protections operate and fail across interconnected legal orders. By incorporating contemporary African conflict contexts, including Cameroon, and systematically linking legal norms to practical challenges such as displacement, education disruption, and psychosocial harm, the study advances a more nuanced understanding of the limits and potential of child protection law in Africa.

The study also underscores that the challenges faced by African children in armed conflict are interconnected and mutually reinforcing. Recruitment, displacement, denial of education, sexual violence, psychological trauma, and impunity do not occur in isolation but form a continuum of harm that legal norms alone cannot disrupt. While international criminal jurisprudence has affirmed accountability standards, the rarity of domestic prosecutions and the limited reach of international courts weaken deterrence and normalize violations. This reality highlights the limits of law when divorced from institutional capacity, social support structures, and sustained political commitment.

In conclusion, the effectiveness of legal protection for African children in armed conflict remains high in normative design but low in practical impact. Bridging this gap requires more than the proliferation of legal instruments;

it demands strengthened domestic implementation, functional accountability mechanisms, child-centered reintegration strategies, and robust regional and international cooperation. Without such measures, legal protections risk remaining symbolic rather than transformative. Ensuring meaningful protection for African children in armed conflict therefore remains not only a legal obligation but a moral and developmental imperative essential to sustainable peace and justice on the African continent.

10. Recommendations

Drawing from the findings of this study, which reveal a persistent disconnect between the existence of comprehensive legal protections and their limited practical impact on the lives of African children in armed conflict, this section advances targeted recommendations aimed at strengthening implementation, accountability, and protection outcomes. These recommendations are structured thematically to address the core deficiencies identified in the legal, institutional, and operational frameworks governing child protection in conflict settings. Collectively, they seek to transform normative commitments into effective safeguards capable of responding to the complex realities faced by children affected by armed conflict across Africa.

10.1 Domestic and Effective Enforcement of Child Protection Laws

African states should prioritize the full domestication and effective enforcement of international and regional legal instruments protecting children in armed conflict. Although most African countries are parties to the Convention on the Rights of the Child, its Optional Protocol on the involvement of children in armed conflict, and the African Charter on the Rights and Welfare of the Child, these obligations often remain weakly reflected in domestic legal systems. States should enact clear and comprehensive legislation criminalizing the recruitment and use of children by both state and non-state armed actors, in line with international criminal law standards, and ensure that such offences are justiciable before domestic courts. Child-sensitive procedures should also be incorporated to ensure that affected children are treated as victims rather than offenders.

10.2 Strengthening Accountability and Combating Impunity

The study demonstrates that impunity remains a central obstacle to effective protection. To address this, African states should strengthen domestic accountability mechanisms by enhancing the capacity of law enforcement agencies, prosecutors, and judiciaries to investigate and prosecute grave violations against children. Specialized units trained in child protection, international humanitarian law, and international criminal law should be established within national justice systems. Where domestic remedies prove ineffective, greater reliance should be placed on regional and international mechanisms, including the African Court on Human and Peoples' Rights and the International Criminal Court, to reinforce accountability and deterrence.

10.3 Institutionalization of Child-Specific DDR and Reintegration Programs

Child-specific Disarmament, Demobilization, and Reintegration (DDR) programs should be institutionalized as a core component of post-conflict recovery in Africa. Reintegration efforts must go beyond short-term demobilization to include sustained psychosocial support, access to formal education, vocational training, and community-based reconciliation mechanisms. The absence of comprehensive child-focused DDR frameworks in contexts such as Cameroon underscores the need for structured national policies aligned with Article 39 of the Convention on the Rights of the Child and Article 22 of the African Charter on the Rights and Welfare of the Child.

10.4 Protection of Education During Armed Conflict

The protection of education should be treated as a central pillar of child protection in armed conflict. States must take concrete measures to prevent attacks on schools, the military use of educational facilities, and prolonged school closures. Compliance with international humanitarian law obligations should be reinforced through national legislation, military doctrine, and training of armed forces. Post-conflict reconstruction strategies should prioritize the rapid rehabilitation and reopening of schools, recognizing education as both a protective tool against child recruitment and a foundation for long-term peace-building.

10.5 Integration of Psychological and Mental Health Support

The findings reveal that psychological trauma is

one of the most neglected consequences of armed conflict for African children. States, in collaboration with international organizations and civil society actors, should integrate psychosocial and mental health services into humanitarian responses and post-conflict recovery frameworks. Mental health support should be culturally appropriate, child-centered, and accessible to displaced and conflict- affected populations. Recognizing mental well-being as an integral aspect of child protection is essential to ensuring meaningful recovery and social reintegration.

10.6 Strengthening Regional and International Cooperation and Monitoring

Finally, enhanced regional and international cooperation is essential to improving protection outcomes. African Union institutions, particularly the African Committee of Experts on the Rights and Welfare of the Child, should intensify monitoring of state compliance with child protection obligations in conflict settings and issue more targeted, enforceable recommendations. Improved data collection, reporting mechanisms, and early-warning systems-particularly through collaboration with United Nations agencies would strengthen prevention, enable timely intervention, and ensure that legal protections translate into tangible improvements in the lives of African children affected by armed conflict.

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On the Construction of Administrative Mediation for Medical Disputes

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Abstract

The doctor-patient relationship is a type of civil legal relationship. Under normal circumstances, it is a contractual relationship based on the complete free will of both parties. In this relationship, patients voluntarily seek medical assistance from doctors, who in turn willingly accept them as patients. As one of the most important interpersonal relationships, the doctor-patient relationship is characterized by mutual interdependence and inseparability. Doctors exist and grow because of patients, and medical science advances in response to diseases—without patients, doctors would lose the foundation of their professional survival. On the other hand, patients suffering from illnesses rely on doctors' treatment to overcome diseases and regain health; without doctors' professional help, the protection of patients' health and lives would lack an effective safeguard. It can be said that patients are the "bread and butter" of doctors, while doctors are the messengers who help patients recover their health. Ideally, doctors and patients should maintain a relationship of mutual trust and harmonious coexistence. However, the conflicts in the doctor-patient relationship that have emerged in recent years have led to an increasing number of medical dispute cases, revealing that the tension between doctors and patients still persists.

In recent years, hospitals across the country have adopted various measures to improve their technical standards and medical quality, and strengthen the management of medical safety. Nevertheless, medical disputes and controversies still occur from time to time. These incidents seriously disrupt the normal order of medical work and activities, damage the legitimate rights and interests of medical institutions, medical staff and patients, and also undermine social harmony and stability. To further enhance the effectiveness of preventing and resolving medical disputes, hospitals have been continuously exploring experience in dispute handling and promoting a diversified dispute resolution mechanism. Administrative mediation of medical disputes is an important channel for settling such conflicts, and it is bound to play an even greater role in resolving medical disputes.

Keywords: medical dispute, resolution mechanism, administrative mediation, pathfinding

1. Overview of Medical Disputes

Medical disputes are generally believed to be divided into broad and narrow categories. In a broad sense, medical disputes refer to all

disagreements and conflicts arising between patients and their relatives and medical institutions and their staff during the course of medical consultations due to conflicts. This includes disputes arising from differing understandings of the outcomes of diagnosis and treatment or care, as well as disputes caused by non-diagnostic or non-care activities. In a narrow sense, medical disputes refer only to disagreements between doctors and patients over adverse outcomes and their causes during the diagnosis and treatment process. Any situation where patients or their relatives are dissatisfied with the diagnosis and treatment work, believe that medical staff have made mistakes in their medical care, hold them responsible for harm to the patient, and engage in conflicts with the medical side is considered a medical dispute. The most narrowly defined medical dispute refers to medical accident disputes, which are conflicts and disagreements caused solely by medical accidents.

The essential characteristic of medical disputes does not lie in who initiates them; the core issue is medical harm. Medical disputes should be considered from the perspective of medical harm when addressing tort liability. The establishment and improvement of the medical harm liability system should be guided by the broader context of China's medical system reform, laying a solid legal foundation for building a harmonious doctor-patient relationship. It is necessary to fundamentally change the current dual-track system for medical accidents and medical negligence, and to achieve unification between medical harm compensation and general personal injury compensation in terms of the scope of compensation and calculation standards.

Medical disputes are often caused by torts, that is, medical tort liability, which refers to the liability for compensation that medical institutions should bear for personal injury caused to patients due to negligence during the medical process. This includes medical accident liability and other medical tort liabilities. Medical disputes are usually caused by medical negligence and fault. Medical negligence refers to mistakes made by medical personnel during the diagnostic and care process. Therefore, the standard for determining a misdiagnosis is that such an error could not have been made by a reasonable doctor; only then can it be considered a misdiagnosis, and the doctor may bear compensation liability. Medical fault refers to errors made by medical personnel during medical activities such as diagnosis and care. These errors often lead to patient dissatisfaction or cause harm to the patient, resulting in medical disputes. With the increase in medical tort cases, the standards for determining medical fault have received growing attention. Traditionally, negligence is assessed from a human perspective, using the 'reasonable person' as an objective standard for determining fault. It considers the level of skill that 'a doctor with ordinary skills' exercising 'reasonable care' should reach, using 'the average, commonly possessed skills of medical staff' as the standard—the technical level a reasonable doctor should achieve when exercising reasonable care. Apart from medical disputes caused by medical fault and negligence, sometimes disputes may arise even when the medical side has no negligence or mistakes, solely due to the patient's unilateral dissatisfaction. Such disputes can be caused by the patient's lack of basic medical knowledge, misunderstanding of proper medical treatment, the natural course of disease, unavoidable complications, or medical accidents, or they may arise from the patient's unreasonable accusations.

2. Analysis of the Current Mechanisms for Resolving Medical Disputes

With the continuous increase in people's health needs, the gradual strengthening of awareness of rights and legal concepts, and the popularization of medical knowledge, the doctor-patient relationship in China has become increasingly tense, threatening the healthy development of the healthcare sector and social harmony. As a result, the mechanisms for resolving medical disputes have attracted widespread social attention and high-level government concern.

According to Article 22 of the Regulations on the Prevention and Handling of Medical Disputes, in the event of a medical dispute, both the medical institution and the patient can resolve the issue through the following means: (1) voluntary negotiation between both parties; (2) applying for people's mediation; (3) applying for administrative mediation; (4) filing a lawsuit with the people's court; (5) other methods stipulated by laws and regulations. Practice over the years has shown that the above dispute resolution channels have a certain positive effect

on resolving medical disputes and protecting the legitimate rights and interests of both medical institutions and patients. However, these channels also have their shortcomings, which often causes the handling of medical disputes to fall into a certain awkward situation.

2.1 Bilateral Consultation Mechanism

Negotiation has the advantages of convenience, high efficiency, and low cost, and can effectively reduce the burden on medical institutions, patients, and judicial authorities in handling medical disputes, lessen damage to the reputation of medical institutions, and help relieve increasingly tense doctor-patient conflicts. Therefore, it objectively meets certain needs of both parties. Negotiation is also referred to as self-determination. Self-determination is most suited to the individual nature of social conflicts, forming the original way humans resolve social disputes. It is precisely because of the moral superiority of 'harmony' that self-determination often becomes the primary, or even the sole, means of dispute resolution. Especially compromises and concessions in self-determination not only eliminate disputes but also resonate with moral concepts such as 'humility' and 'benevolence,' and are therefore widely esteemed. During the negotiation process, there should be no fraud, coercion, or opportunism, and no significant misunderstandings or unfairness; otherwise, even if a settlement agreement is reached, it would be invalid.

Negotiation is a resolution method completely undertaken by both parties within the scope of private autonomy, but the drawbacks of negotiation cannot be ignored either. In the process of negotiation, the positions of doctors and patients are unequal. The complexity and high risk of medical procedures, conflicts of interest between doctors and patients, doctors' reluctance to disclose information, and concealing medical misconduct all contribute to the asymmetry of medical information between the two sides. Under such circumstances, patients are at a disadvantage in negotiations. Doctors, leveraging their advantage in medical information, may conceal medical errors and downplay medical responsibility. Coupled with the vague handling of negotiations, inadequate compensation is also difficult to avoid. From a practical perspective, the urgent issue is how to maximize the positive effects of settlement while minimizing its negative effects. The negotiation mechanism should be standardized and made more specific.

2.2 Third-Party Mediation Mechanism

Throughout history, mediation has had a wide range of applications in China. Western scholars refer to Chinese mediation as an "Eastern experience." "Harmony" occupies the core of Confucian ethics. In resolving disputes among the people, the first consideration is 'emotion,' followed by 'ritual,' then 'reason,' and only lastly resorting to 'law.' There is a belief that 'it is shameful to litigate' and 'litigation leads to misfortune,' and even rulers or family authorities advocate avoiding litigation as much as possible to resolve conflicts. Traditional village mediation often serves as a necessary procedure before litigation. Mediation involves a third party who steps in, based on certain moral and legal standards, to persuade both parties in a dispute to reach understanding and concessions, thereby resolving the conflict and improving their relationship. Mediators can use various flexible methods to help parties overcome barriers, analyze the core issues of medical disputes and the interests of both parties, propose solutions for discussion, and facilitate negotiations and communication between them, persuading the parties to make wise choices that maximize their benefits. This culture and system have deeply rooted mediation in Chinese society. Private mediation protects the personal privacy of the parties involved; at the same time, because mediation is not strictly bound by the law and can be based on social morality and other principles, it makes it easier for parties to reach mutually satisfactory outcomes. Mediation serves as a dispute resolution system that acts as a buffer between resolving conflicts through autonomous dialogue and litigation.

Promote a diversified medical dispute mediation mechanism. According to the main entities or institutions that lead the mediation, mediation can be classified into forms such as private mediation, administrative mediation, and court mediation. As a mediation system is the most distinctive form within a diversified dispute resolution mechanism in China, its greatest advantage is that it overcomes the inherent shortcomings of legal norms, goes beyond the formal justice of law, achieves substantive justice, and helps protect individual interests and properly resolve disputes. Some scholars believe: 'Faced with the overwhelming

number of conflicts, disputes, and litigation or quasi-litigation cases, relying solely on state adjudicatory organs is insufficient, and simple reliance on judgment alone does not help fully resolve conflicts and disputes. It is essential to attach great importance to mediation and resolve conflicts and disputes by strengthening mediation.' In the context of building a harmonious society, adhering to and improving China's mediation system has become an inevitable choice for judicial reform. The mediation system should become the core of a diversified medical dispute resolution mechanism. To fully leverage the advantages and functions of mediation in resolving medical disputes, it is necessary to establish and improve a diversified medical dispute mediation mechanism that integrates administrative mediation, mediation by private organizations, and court mediation.

If administrative agencies were to handle all civil and commercial disputes, it would inevitably increase their burden and affect the responsibilities they are supposed to undertake.[1] It is recommended to adopt a multi-faceted mediation model for dispute resolution, and to fully leverage the roles of administrative mediation, judicial mediation, and third-party mediation institutions.[2]

2.3 Litigation Handling Mechanism

Civil litigation for medical disputes refers to any party in a doctor-patient dispute filing a civil lawsuit with the people's court in accordance with regulations to seek resolution of the medical conflict. Litigation is a judicial remedy for resolving disputes. It is the most authoritative method of resolution and is also the most recognized by patients. However, due to the professional nature of medical cases, litigation consumes a large amount of time, effort, and money. Often, if a party is dissatisfied with the first-instance judgment, they may file an appeal, leading both parties into prolonged legal proceedings. Moreover, since litigation is a high-cost remedy system, any society inevitably considers the calculation of litigation costs and the pursuit of benefits as an important standard for measuring the value of litigation. This serves as a principle for procedural design and a fundamental goal for reforming the litigation system, and accordingly imposes certain limitations on litigation. This is not only difficult for patients to bear, but even hospitals find it hard to endure the resulting reputational damage. Therefore, litigation is less effective and highly inefficient in resolving medical disputes. In reality, countless disputes are resolved without litigation, through negotiations between the parties, mediation or arbitration by a third party, or other non-litigation methods, which far outnumber those resolved through trial.

Because court judgments in civil litigation resolve disputes through coercion rather than based on the consent of the parties involved, in many cases, after a confrontational struggle, patients may experience significant psychological barriers. It becomes difficult for them to return to the hospital where they previously had a lawsuit, which poses great challenges for further cooperation between doctors and patients. Litigation may make a dispute appear to be settled on the surface, but in reality, it does not eliminate the psychological confrontation between the parties involved. Since the current legal system is still gradually being perfected, judicial corruption, such as the setting or seeking of rents, and lack of judicial independence exist to some extent. This greatly reduces people's expected benefits from judicial remedies, leading them to seek assistance through private means of resolution more often.

3. Utilize the Role of Administrative Mediation in Medical Disputes

3.1 Administrative Mediation

Administrative mediation refers to an administrative act in which administrative authorities, in accordance with legal provisions and within the scope of their administrative powers, mediate specific civil and economic disputes, general illegal acts, and minor criminal cases on the principle of voluntary participation by the parties, in order to encourage the parties involved to resolve the disputes through negotiation.[3]

Administrative mediation refers to a method and activity for resolving civil disputes and certain administrative disputes, in which the parties involved, under the guidance of state

[1] Du Chengxiu. (2019). Administrative Mediation of Civil and Commercial Disputes and Its Legal Reconstruction. *Rule of Law Society*, (2).

[2] Ding Suying. (2017). Cognition and Reflection on Mediation of Doctor-Patient Disputes. *Chinese Medical Ethics*, (6).

[3] Lin Wenxue. (2008). *Research on the Mechanism for Resolving Medical Disputes*. Law Press, 2008 edition, pp. 122-127.

administrative bodies, voluntarily reach an agreement through friendly negotiation based on the country's legal norms, principles, and spirit, in order to resolve the dispute.[1]

Administrative mediation is a dispute resolution mechanism led by administrative authorities, based on national laws and policies, following the principle of equality and voluntariness, and mainly addressing civil and administrative disputes.[2]

The current administrative mediation procedure has problems of design deficiencies, which are caused by the fact that the existing procedure does not adequately take into account the characteristics of administrative disputes.[3]

Although there are certain problems with administrative mediation by health authorities. Because there are intricate connections between health authorities and medical institutions, it is difficult for health authorities to fully achieve neutrality. The authority of health administrative departments is not high, and people prefer to opt for litigation rather than go through administrative mediation. Health authorities and medical institutions have an administrative subordinate relationship, and under the influence of departmental protectionism and industry-centric attitudes, it is questionable whether the handling by health authorities can ensure fairness. The involvement of health authorities can serve as a restraining factor for hospitals, as out of courtesy to higher-level supervisory departments, they may be reluctant to openly express their own intentions.

Although the process of building the rule of law has been accelerating and judicial litigation is increasingly accepted by the public, the traditional notion of 'turn to the government when problems arise' remains deeply rooted. Administrative mediation, which is relatively gentle and highly humane, helps properly resolve disputes among close acquaintances and familiar individuals, and is conducive to reconciliation between the parties involved. Administrative mediation conducted by health administrative departments is also an important approach to resolving medical disputes, playing a significant role in mediating such conflicts. Through the involvement of health administrative departments in mediation, not only can the proactive role of these departments be demonstrated and patient complaints reduced, but medical institutions can also develop a sense of accountability and be more willing to reach a mediated resolution.

The procedures of administrative mediation are more flexible compared to litigation, offering significant time advantages and lower economic costs. In medical dispute administrative mediation, if a patient submits an application, once it is accepted, the patient does not need to wait for a long time.[4]

3.2 The Important Significance of Carrying out Administrative Mediation

Administrative mediation is an important way for administrative organs to practice the principle of serving the people and to build a service-oriented government. It is an important responsibility of administrative organs to serve the overall situation and maintain stability, and it is an essential part of a diversified system for resolving social conflicts and disputes. The Party Central Committee and the State Council attach great importance to administrative mediation work, aiming to improve the social governance system, adhere to and develop the 'Fengqiao Experience' in the new era, and resolve conflicts promptly at the grassroots level and at their nascent stages. Both the Fourth Plenary Session of the 18th Central Committee and the Fourth Plenary Session of the 19th Central Committee clearly proposed establishing and improving a diversified dispute resolution mechanism. The 'Implementation Outline for the Construction of a Rule-of-Law Government (2021-2025)' explicitly proposes strengthening administrative mediation work and promoting the effective coordination of the three mediation mechanisms.[5] On September 20, 2023, the

[1] Guo Qingzhu. (2011). Research on the Functional Mechanism of ADR in Resolving Social Conflicts—Taking Administrative Mediation as a Research Sample. *Journal of Law*, (32), 371.

[2] Hu Jianmiao. (2015). *Administrative Law*. Law Press, 2015 edition, p. 493.

[3] Liu Xin, Liu Hongxing. (2016). Research on Administrative Dispute Resolution Mechanisms. *Administrative Law Studies*, (4).

[4] He Meiju, Xu Yuanhong, Liu Cong, Zheng Xiangyue. (2020). A Brief Analysis of the New Mediation Mechanism for Doctor-Patient Disputes in Chengdu—The 'Mediation Dream Team' at Huaxi Dam. *China Health Law*, (3).

[5] Liao Yong'an, Wang Cong. (2021). A Discussion on the Legislation of Diversified Dispute Resolution Mechanisms in China: Observations and Reflections Based on Local Legislation. *Research on the Modernization of the Rule of Law*, (4).

General Secretary emphasized during his visit to the Fengqiao Experience Exhibition Hall that we must adhere to and develop the Fengqiao Experience in the new era, uphold the Party's mass line, properly handle contradictions among the people, rely closely on the masses, and resolve problems at the grassroots level and in their infancy. The national mediation work conference held in October 2023 required: 'We must improve administrative mediation laws and policies, strengthen the administrative mediation work system, and standardize the scope, procedures, effectiveness, and safeguards of administrative mediation.' The "Fujian Province Regulations on Diversified Dispute Resolution," the "Xiamen Special Economic Zone Regulations on Promoting Diversified Dispute Resolution Mechanisms," and the "Xiamen Municipal Rule of Law Government Construction Implementation Plan (2021-2025)" all provide clear provisions for strengthening administrative mediation work. Given that medical disputes are currently mainly mediated through doctor-patient dispute mediation committees, exploring administrative mediation channels for medical disputes is of great significance.

Under the current legal framework, administrative mediation plays a unique role in resolving medical disputes. Since health administrative departments possess both medical knowledge and a certain level of social credibility, and have industry and professional management functions over medical institutions, they can fully leverage the advantages of administrative mediation to mitigate disputes and promote their resolution if they can mediate quickly, objectively, and fairly.[1]

Give full play to the functions of administrative mediation. Under the current legal framework, administrative mediation is also a practical and feasible way to resolve disputes. This is because health administrative departments possess both medical knowledge and a certain level of social credibility, and they also have the authority to manage the industry and professional affairs of medical institutions. By establishing appropriate permanent institutions and conducting fast, objective, and fair intermediary mediation, the advantages of administrative mediation can be fully utilized to ease disputes and promote their resolution.[2]

As scholars have noted, not every judicial verdict achieves justice, but every judicial judgment consumes resources. Some medical disputes involve only minor harm or no harm at all, and resorting to litigation would inevitably lead to a significant waste of judicial resources. Compared to court staff, personnel in health administrative departments possess professional knowledge and communication experience, making them better equipped to properly resolve these contentious disputes. Unlike public trials in courts, they place greater emphasis on protecting the privacy of both parties.[3]

Compared with the judicial mediation system, on one hand, the reality of medical disputes is complex, and many disputes involve the identification and judgment of issues in medical and other professional fields, which may exceed the capacity of general judicial staff. In contrast, health administrative departments are involved in medical-related daily work, and their staff have the relevant knowledge and experience, allowing them to resolve medical disputes more professionally. On the other hand, judicial procedures are cumbersome and lengthy, whereas the work procedures of health administrative departments are relatively more flexible, simple, and practical, making them more conducive to the efficient handling of medical disputes.[4]

There is a large number of lawsuits in society, which has exceeded the capacity of judicial channels and civil mechanisms to resolve, making it unable to meet social needs. At the same time, based on the concept of a service-oriented government, administrative authorities must proactively respond to this situation.[5]

In the 1970s, the United States experienced an

[1] Shi Zhenfu, Li Guiling, Peng Yang, et al. (2007). Difficulties and Reflections on Handling Medical Disputes in Hospitals. *Chinese Hospital Management Journal*, *23*(4), 270-272.

[2] Zheng Li, Jin Ke, Yan Xueqin, et al. (2006). Analysis of 111 Cases of Medical Disputes. *Chinese Hospital Management Journal*, *22*, 250-252.

[3] Gong Wenjun. (2015). Administrative Mediation of Medical Disputes: Significance, Problems, and Improvement. *Journal of Yunnan Administrative College*, (2), 155-159.

[4] Wang Yue. (2018). Analysis of the 'Regulations on the Prevention and Handling of Medical Disputes'. *Chinese Hospital Director*, (20), 84-86.

[5] Fan Yu. (2008). A Preliminary Discussion on Issues of Administrative Mediation. *Guangdong Social Sciences*, (6).

explosion of medical lawsuits. Faced with an increasing number of medical dispute cases, the U.S. began attempting to use administrative health courts to handle disputes.[1] The main highlights of the Health Court are: the administrative officer determines the scope and amount of compensation for medical accidents based on a fixed compensation schedule, eliminating the jury and thereby reducing the length of tort litigation procedures, which to some extent lowers legal fees and reduces the financial burden on the parties involved. By establishing a system for publicly sharing medical malpractice information, patients' rights are better protected. It requires that in the event of medical malpractice, the reasons must be explained to the patient, compensation negotiated, and an apology issued, which in practice strengthens doctor-patient communication and is also a form of respect.

3.3 Laying a Practical Foundation for the Administrative Mediation of Medical Disputes

From the perspective of the mediator, most administrative staff in health authorities have professional medical knowledge, which makes it easier to distinguish right from wrong. Health authorities have supervisory and administrative powers over medical institutions and can punish their illegal activities. These are the advantages of health authorities acting as mediators.[2]

It has provided strong support for the in-depth promotion of litigation source governance, the effective improvement of the legal level of conflict and dispute prevention and resolution, and the comprehensive deepening of the development of a world-class international business environment. All units have consistently adhered to a people-centered approach, raised political awareness, strengthened a sense of responsibility, enhanced organizational leadership, carefully planned and arranged measures, and taken effective actions to give full play to the important role of administrative organs in resolving disputes and maintaining social harmony and stability.

According to relevant laws and regulations, administrative authorities shall establish a coordination mechanism between administrative mediation, people's mediation, and judicial mediation, promote the organic connection between administrative mediation and arbitration, administrative rulings, administrative reconsideration, and litigation, and legally carry out work such as identifying, reporting, diverting, collaboratively resolving, and maintaining stability for major administrative dispute risks that may arise in key areas. Administrative authorities shall specify the internal departments responsible for handling administrative mediation, or establish specialized mediation agencies responsible for the department's administrative mediation work. People's governments can take the lead in establishing, or jointly establish with relevant administrative authorities, a mediation center or a diversified dispute resolution center, responsible for administrative mediation within their administrative region or relevant fields.

The matters that administrative organs should mediate include civil and commercial disputes related to administrative management between citizens, legal persons, or other organizations that are mediated by administrative organs in accordance with the law; administrative disputes between citizens, legal persons, or other organizations and administrative organs arising from administrative compensation, administrative indemnity, and the exercise of discretionary powers by administrative organs in accordance with the law; and other disputes and controversies that can be mediated according to law. When administrative organs discover disputes and controversies in the course of performing their duties, they shall inform the parties that they can apply for administrative mediation.

3.4 Requirements for Effectively Handling Administrative Mediation of Medical Disputes

Carry out administrative mediation in accordance with the law, establish and improve a diversified mechanism for resolving conflicts and disputes, strictly conduct administrative mediation in accordance with the law, and continuously improve the quality and effectiveness of administrative mediation in medical disputes.

Improve system construction. Conduct a comprehensive review and evaluation of the current administrative mediation system, and carry out work such as legislation, revision, and abolition as appropriate. At the same time,

[1] Hong Ying, Xia Meng. (2014). The Mechanism for Resolving Medical Disputes in the United States and Its Implications. *China Judiciary*, (9), pp. 93-96.

[2] Wang Weijie. (2009, May). Building a mechanism to mediate and resolve medical treatment disputes. *Chinese Journal of Hospital Management*, *25*(5).

thoroughly review administrative mediation matters, clarify the basis for administrative mediation, implement administrative mediation responsibilities, actively promote the construction of supporting administrative mediation systems, and improve the administrative mediation system, using regulations to guide and standardize the practice of administrative mediation.

Clarify the division of responsibilities. Administrative agencies should effectively fulfill their duties of leading, managing, and guiding administrative mediation work, establish a joint meeting system for administrative mediation, improve the accountability system for administrative mediation, actively report to the Party committees and governments, and seek support for their work. Administrative agencies at all levels are the main bodies responsible for administrative mediation and should perform their duties in accordance with the law, refine the scope of administrative mediation, standardize administrative mediation procedures, strengthen the organization and team building of administrative mediation, ensure the necessary working conditions and funding for administrative mediation, and provide parties with higher-quality and more efficient administrative mediation services.

Focus on key areas. Currently, disputes and conflicts are prone to occur frequently in key areas such as the economy, finance, labor relations, ecological environment, land acquisition and demolition, traffic safety, real estate, education, healthcare, and emerging business formats. These disputes have complex causes, wide-ranging involvement, and heavy mediation tasks. In response, relevant departments should take the initiative according to the principle of 'whoever is in charge bears the responsibility,' actively fulfill their duties, strengthen and take responsibility, comprehensively reinforce the standardized construction of administrative mediation organizations in key areas, routinely carry out various forms of targeted inspections and special inspection actions, timely grasp potential risks, conduct in-depth analysis and judgment of their characteristics and patterns, and adopt targeted preventive and resolution measures to ensure precise prevention and effective resolution, strictly preventing the escalation of conflicts and disputes. For major administrative disputes that may arise from significant projects and key enterprises, work such as risk identification, reporting, diversion, coordinated resolution, and stability management should be carried out in accordance with regulations, lawfully and promptly.

Strengthen coordination and linkage. Deepen the development of mechanisms for diversified resolution of conflicts and disputes. It is necessary to adhere to early intervention and address minor issues, strengthen resource coordination, widely guide and mobilize social forces to participate in dispute resolution, and actively handle disputes referred by the 'one-stop' diversified dispute resolution centers at different levels. Improve and establish coordination mechanisms between administrative mediation, people's mediation, and judicial mediation, promote the organic connection of administrative mediation with arbitration, administrative rulings, administrative reconsideration, and litigation, complement the advantages of various dispute resolution methods, form joint efforts, advance litigation source governance, and resolve disputes substantively at the local level.

Strict supervision and assessment. Include administrative mediation work in the evaluation of public security construction, and link the assessment results to annual performance evaluations. Administrative organs should strengthen the supervision and assessment of administrative mediation organizations and mediators, and enhance work guidance to ensure that all tasks are properly implemented. Administrative organs at all levels should establish a reporting system for statistical analysis of administrative mediation work, analyzing the number of administrative mediation cases, types of disputes, outcomes, and other relevant information each quarter. If the responsibility system for administrative mediation is not implemented or the investigation and resolution of conflicts and disputes are ineffective, the competent authority shall handle it seriously in accordance with regulations, discipline, and law.

Demonstrate professionalism. Staff responsible for administrative mediation of medical disputes should have some experience in mediation. Administrative mediation is the ultimate test of the administrative department's

wisdom in resolving conflicts.[1] When handling medical disputes, administrative mediation staff not only need to be familiar with relevant laws, regulations, and medical knowledge, but also need to possess good mediation skills and experience. They must be able to listen to and understand the opinions and demands of both medical staff and patients, grasp the underlying causes of disputes, and coordinate both parties to reach a reasonable resolution. Therefore, in order to more effectively address the effectiveness of administrative mediation, it is necessary to further improve the relevant legal system, clarify the enforcement authority of administrative agencies, and provide parties with more channels to effectively safeguard their legal rights. To some extent, this "Opinion" does address the effectiveness issues that have troubled administrative mediation and carries certain positive significance.[2]

During the process of administrative mediation, it is necessary to further consider reasonable demands on a legal basis. Therefore, reference should be made to the future national-level unified legislation on administrative mediation, establishing a dynamic connection between administrative mediation and administrative law enforcement, arbitration, litigation, and other procedures, as well as improving the relevant systems and mechanisms of administrative mediation to prevent malicious exploitation and the loss of the advantages of administrative mediation.[3] At the same time, during the administrative mediation process, full consideration should be given to social ethics, moral standards, and good customs, ensuring that the outcome of the mediation meets the expectations and requirements of the people.[4]

The advantages of administrative mediation better meet the needs of resolving medical disputes. The relationship between administrative mediation and judicial litigation should be handled correctly, fully expanding the scope of administrative mediation in resolving medical disputes, and giving full play to the positive role of administrative mediation.[5]

4. Exploring Approaches to Effectively Conduct Administrative Mediation of Medical Disputes

4.1 Establish a Municipal-Level Medical Dispute Coordination and Handling Center

Medical disputes are numerous and complex, requiring dedicated and professional staff to handle them. Therefore, full-time mediators should be appointed to manage administrative mediation cases involving medical disputes. At the same time, medical dispute mediation work demands a high level of competence from mediators, who need knowledge in multiple areas such as medicine, law, and sociology. Thus, when selecting mediators for medical dispute administrative mediation committees, it is important to include personnel with professional knowledge or relevant work experience in law, medicine, or sociology. Furthermore, to ensure the effective implementation of administrative mediation, the professional skills of mediators should be strengthened through training, and a dedicated training and evaluation system should be established to build a team of outstanding administrative mediators.[6]

In order to make the medical safety supervision system more scientific, institutionalized, standardized, and systematic, comprehensively improve the quality of medical services, ensure medical safety, and prevent and reduce medical disputes, a Municipal Medical Dispute Coordination and Handling Center has been established. Members of the Coordination and Handling Center are dispatched from tertiary public hospitals across the city, and the duty personnel are jointly supervised and managed by the Medical Administration Department of the Health Commission and the hospitals. The

[1] Wang Bintong. (2022). The Governance Logic and Institutional Supply of the Large Mediation System from the Perspective of the "Fengqiao Experience". *Folk Law*, (1).

[2] Zeng Yan. (2021). The Origins, Development, and Breakthroughs of Challenges in Administrative Mediation in China. *Journal of Shenyang University of Technology (Social Science Edition)*, (2).

[3] Hunan Provincial Department of Justice. (2022). Research on the Administrative Mediation Mechanism—Taking the Administrative Mediation Work of Hunan Province as an Example. *People's Mediation*, (12).

[4] Diu Xiaodong, Xi Xiaofeng. (2021). On the Demands and Path Optimization of Environmental Administrative Mediation Mechanisms under the Complexity of Environmental Disputes. *Environmental and Sustainable Development*, (3).

[5] Zhang Yupeng. (2020, July). Research on Administrative Mediation in the 'Regulations on the Prevention and Handling of Medical Disputes'. *Chinese Health Law*, *28*(4).

[6] Yang Yuying, Guo Silun. (2023, May). The Application Dilemmas and Suggestions of the Administrative Mediation System for Medical Disputes. *China Health Law*, *31*(3).

Coordination and Handling Center can bring together resources and expertise from hospitals across the city to jointly research, learn, handle, and resolve medical disputes, guiding patients to resolve medical disputes outside medical institutions. By establishing the Municipal Medical Dispute Coordination and Handling Center, a medical quality and safety management system, evaluation system, and management regulations are created to prevent and reduce the occurrence of medical disputes.

First-contact responsibility system. Establish a 'one-stop' reception system and implement first-contact responsibility. Personnel at the coordination center should carefully listen to the issues raised by petitioners according to the principles of service, coordination, legality, and convenience, confirm the medical institutions related to medical disputes, and guide petitioners in accurately filling out the medical dispute complaint registration form; for disputes that require handling by medical institutions, on-duty personnel should immediately notify the relevant medical institution of the medical dispute after receiving the petition. Upon receiving the notification from the coordination center, the responsible personnel of the medical institution handling the dispute must arrive at the coordination center within the specified time to address the medical dispute.

Communication and coordination system. Educate the parties involved about the laws and procedures for handling medical disputes, and inform complainants that medical disputes can be resolved through various legal channels such as doctor-patient negotiation, administrative mediation, mediation by the Medical Dispute Management Committee (third-party), and legal litigation; guide complainants in applying for medical accident appraisal; coordinate with the Municipal Medical Dispute Management Committee to jointly participate in on-site comprehensive handling of major and serious medical disputes to prevent the situation from worsening.

Investigation and Evidence Collection System. During the handling of medical disputes, for investigation, evidence collection, doctor-patient communication, and other tasks arranged by the coordination center according to work requirements, all medical institutions must actively cooperate, provide the coordination center with truthful information about the patient's condition and treatment process, promptly supply medical records and other relevant materials, assist in the necessary investigations, and must not delay or evade without valid reasons.

Statistics and Reporting System. Medical disputes received through visits are to be compiled and reported in three forms: monthly, semi-annual, and annual. Regular reports should include the number of disputes, response times, handling methods, and outcomes for each medical institution (internal reports are also submitted to the committee leadership and relevant department heads). This helps each medical institution promptly identify issues in the handling of medical disputes.

Petition Transfer and Archive Management System. The Coordination Center shall, in accordance with relevant laws and regulations, carefully handle the transfer and response of various medical dispute complaints, such as letters and visits from the public and the Mayor's Hotline, within the stipulated time. The archival materials shall be stored and managed by year and by institution.

Coordination mechanism. Strengthen cooperation and coordination with the Municipal Medical Dispute Mediation Committee. Enhance collaboration with the municipal public security authorities and the Medical Accident Appraisal Office of the Municipal Medical Association, guiding the patients in a timely manner through medical accident appraisal and medical damage appraisal to further clarify responsibility for the incidents.

Division of labor and cooperation. Effectively raise awareness, strengthen organizational leadership, and send relevant personnel to participate in the rotation work of the coordination center as required. Medical institutions are the main bodies responsible for preventing and handling medical disputes, while health administrative departments are the supervisory bodies that guide and oversee medical institutions in preventing and handling doctor-patient disputes.

4.2 Establishment of Institutions for Administrative Mediation of Medical Disputes

After a medical dispute occurs, in order to have the patient choose administrative mediation as a way to resolve the dispute, it is necessary to dispel their doubts. Health administrative departments are responsible for supervising

medical institutions, and having them act as the mediator in administrative mediation may cause patients to question whether the health administrative department can remain neutral and fair during the mediation, leading to a lack of trust. [1] In practice, neutral third-party organizations, such as the People's Mediation Committee for Medical Disputes, are more favored by patients. Therefore, in order to reduce the parties' doubts about the health administrative departments being unable to remain impartial due to 'being both the player and the referee,' it is necessary to clearly delineate organizations specifically responsible for administrative mediation of medical disputes.

Determine the organizational setup for administrative mediation of medical disputes. Establish a specialized administrative mediation body within the health administrative authority, staffed with professionals in clinical medicine and pharmacy, insurance specialists, experts in health law, senior retired judges, representatives from bar associations, representatives from consumer associations, and other personnel. Clearly define their responsibilities, strengthen their sense of accountability, and ensure the professional, lawful, and reasonable resolution of various medical disputes.

Standardize the procedures for administrative mediation of medical disputes and determine the time limits for such mediation. Given that China still lacks specific legal provisions on administrative mediation procedures, health administrative departments at all levels should balance the conflict between the convenience of parties seeking administrative resolution and procedural standardization, clarify specific requirements and procedures for acceptance, review, and mediation stages, and, in cases where mediation is prolonged and harms the parties' interests, clearly set time limits for mediation to ensure its efficiency and fairness.

Ensure the neutrality of administrative mediation of medical disputes and enhance the social recognition of administrative mediation. The neutrality of administrative mediation in medical disputes is key to its success. Firstly, the mediator team should be strengthened, the concept of fairness reinforced, medical and legal knowledge enhanced, and mediation and communication skills improved; secondly, institutional management should be strengthened, implementing a hearing system and recusal system for administrative mediation of medical disputes to avoid subjective arbitrariness by health administrative departments, ensure the fairness of mediation outcomes, and improve the fairness and authority of administrative mediation in medical disputes; thirdly, health administrative authorities should communicate and promote more to the public, breaking the outdated notion of "father versus son" in people's minds.

4.3 Administrative Mediation Agreements Need to Have Enforceable Power

Article 46 of the Regulations stipulates various remedies, but the Regulations clearly state that administrative mediation should yield to litigation and people's mediation. If administrative mediation conflicts with litigation or people's mediation, it should be immediately terminated or not accepted.[2] This further limits the role of administrative mediation in handling medical disputes, and to a certain extent, undermines the applicability of administrative mediation in medical conflicts.

The lack of legislative procedures has led health administrative authorities to often set specific procedures on their own, making it difficult to ensure the fairness and standardization of mediation, which results in parties questioning the outcome of administrative mediation and, in turn, affects the credibility of administrative mediation.[3]

Regarding the issue of the neutrality of administrative mediation bodies, some scholars have proposed 'establishing a medical dispute mediation committee mainly composed of health administrative officials and judicial administrative officials.' This approach involves coordination between two agencies, which may affect the efficiency of administrative mediation.[4]

Under the current laws in our country,

[1] Wang Zhixin. (2018). Dilemmas and Solutions of Traditional Medical Dispute Resolution Mechanisms in a Risk Society. *Journal of Jinzhou Medical University (Social Science Edition)*, (3).

[2] Zhang Yupeng. (2020). Research on Administrative Mediation in the Regulations on the Prevention and Handling of Medical Disputes. *China Health Law*, (4).

[3] Wu Dan. (2017). A Study on the Administrative Mediation System for Medical Disputes in China. Heilongjiang University, 47-48.

[4] Chen Meiya. (2006). Comparative Study on Extrajudicial Mechanisms for Medical Dispute Resolution. *Journal of Law and Medicine*, (3), 181-190.

administrative mediation agreements are not enforceable. Even if health administrative personnel perform their duties to mediate and both the medical staff and patients reach an agreement, the mediation agreement has no binding force if one party reneges, making the administrative mediation process seem redundant. The professional and efficient process, therefore, becomes ineffective. Specifically, in order to make an administrative mediation agreement operational, the parties can apply to the court for judicial confirmation of the agreement's validity in accordance with the law. If one party refuses to perform or does not fully perform, the other party can apply to the people's court for compulsory enforcement of the administrative mediation agreement. The judicial confirmation process is relatively short and does not significantly increase the parties' time costs, making it a good way to give full play to the role of administrative mediation. The most thorough solution would be to grant corresponding enforceability to the mediation agreement from the moment it is reached, ensuring the effectiveness of administrative mediation and enhancing the parties' willingness to choose administrative mediation.[1]

It is necessary to pay attention to the validity of administrative mediation agreements in medical disputes. Some scholars in academia have proposed directly granting administrative mediation agreements the same enforceability as the decisions, awards, or arbitration rulings reached through administrative reconsideration, administrative adjudication, or administrative arbitration for dispute resolution.[2]

The lack of enforceability of administrative mediation agreements is also a reason why few parties choose administrative mediation to resolve medical disputes in practice.[3] Therefore, in the future development and exploration of administrative mediation in medical disputes, attention can be paid to the effectiveness of administrative mediation agreements, so that parties have greater trust in administrative mediation, and health administrative departments are more motivated, truly achieving the goal of resolving medical disputes through a non-litigation mechanism.

The so-called 'comprehensive mediation' work system essentially refers to a structure in which, under the leadership of party committees and governments at various local levels, departments such as political and legal affairs, comprehensive governance, stability maintenance, and letters and visits work together collaboratively, and various sectors of society participate widely, establishing a comprehensive mediation mechanism that includes multiple mediation methods such as people's mediation, administrative mediation, and judicial mediation. In this work system, the government-led comprehensive mediation institution serves as the core and plays an important role. This institution should be composed of professionals with legal knowledge and mediation skills, responsible for coordinating mediation work and liaising with relevant departments and units.[4]

Medical institutions are the primary entities responsible for preventing and handling medical disputes, while health administrative departments are the regulatory bodies that guide and supervise medical institutions in managing and resolving doctor-patient disputes. Medical institutions should further strengthen their management of medical complaints, implement the long-term mechanism for preventing and handling medical disputes which includes 'internal hospital communication and coordination, emergency response linkage, people's mediation of medical disputes, medical liability insurance, and social medical assistance' as its main components, and actively work to resolve conflicts and disputes.

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Ding Suying. (2017). Cognition and Reflection on Mediation of Doctor-Patient Disputes. *Chinese Medical Ethics*, (6).

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International Regulation of Personal Information Protection in the Context of Cross-Border Data Flows

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Abstract

In the era of digital economy, the relationship between personal information protection and cross-border data flows is complementary and mutually constraining. There are two approaches to international regulation of personal information protection in the international community: geographic location-based and organization-based, but both are inadequate. The existing regional trade agreements such as CPTPP, USMCA, and RCEP provide for the protection of personal information by establishing a chapter on electronic commerce, but regional trade agreements can only play a short-term supplementary role, and ultimately the WTO is the multilateral platform for the protection of personal information regulation. GATS Article XIV(c)(ii) is regarded as a relevant provision on personal information protection, but it is not sufficient to meet the challenges faced by personal information protection in the context of cross-border data flows and needs to be improved. In the interim, the WTO should make full use of the necessity test in conjunction with the provisions of the GATS on transparency and recognition agreements. In the long term, a more comprehensive annex on personal information protection should be developed within the GATS.

Keywords: personal information protection, cross-border data flows, GATS Article XIV(c)(ii), regional trade agreements, international regulation

1. Introduction

Personal data has become an indispensable element in the development of the digital economy. In today's digital age, everyday internet users must input personal data to access the vast array of options offered by websites, smartphones, applications, social media, and new technologies. (Itzayana Tlacuilo Fuentes, 2020, p. 90) However, the free cross-border flow of personal data is highly prone to information leaks. During cross-border data transfers, if overseas recipients fail to provide adequate safeguards or misuse personal data, they may infringe upon individual information rights, thereby posing challenges to personal information protection. For instance, Facebook collected and stored sensitive data—including religious beliefs—from users in other countries. However, due to inadequate security measures, user data was leaked and subsequently misused for political election analysis. (China News

Service, 2018) To address the challenges of personal information protection amid the free flow of data, regional trade agreements such as the CPTPP, USMCA, and RCEP now specifically stipulate personal information safeguards. They also permit exceptions based on legitimate public policy objectives to regulate cross-border data flows. Additionally, the General Data Protection Regulation (GDPR) provides robust protections for personal data transfers. However, these frameworks remain confined to specific regions, limiting their global impact. The Cross-Border Privacy Rules (CBPR) developed by the Asia-Pacific Economic Cooperation (APEC) and the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data are merely non-binding international standards. Meanwhile, GATS Article XIV(c)(ii) serves as an international regulatory framework for personal information protection under the WTO. However, this provision has become outdated in the context of the digital economy and urgently requires refinement.

How should we understand the relationship between personal information protection and cross-border data flows? What are the international regulatory models for personal information protection within the global community? How does the WTO regulate personal data protection? How should the WTO reform to better regulate the relationship between cross-border data flows and personal information protection? This paper will explore these questions.

2. The Relationship Between Personal Information Protection and Cross-border Data Flows

Various online activities generally require cross-border data flows to be completed, but such data flows are not always orderly and secure, posing significant challenges to personal information protection. From the perspective of digital trade development, the liberalization of digital trade requires unrestricted data movement, which paradoxically becomes the root cause of personal information leaks. (Dai Long, 2020) Cases like Facebook's unauthorized use of user data, Uber's data breach and subsequent cover-up that compromised millions of customers' and drivers' information, and Amazon employees' data breaches for commercial gain have become all too common. These incidents collectively demonstrate how cross-border data flows now threaten personal data protection. Regarding the relationship between cross-border data flows and personal data protection, scholars argue that there exists an inverse correlation between unrestricted data movement and safeguarding citizens' rights. (NEERAJ RS., 2019) In short, the freer cross-border data flows become, the more vulnerable personal information becomes. However, daily online activities require personal data inputs for access, and many software applications demand personal information to provide services. Without such data, users cannot enjoy free service experiences. Undoubtedly, cross-border data flows have become an indispensable part of digital trade development. Therefore, the relationship between these two aspects is far more complex than simply being inversely proportional.

In fact, this paper argues that the relationship between cross-border data flows and personal information protection is one of mutual reinforcement and constraint. While cross-border data flows carry risks of personal information leaks, legal mechanisms can be employed to regulate and balance these two aspects. For instance, the GDPR also regulates cross-border data flows with the protection of personal data as its core objective. From a corporate perspective, in the long run, strengthening the personal information protection obligations of digital technology enterprises also aligns with their interests. Neglecting privacy safeguards risks eroding user trust, leading to customer attrition and the inability to sustainably access data. (Dai Long, 2020)

Meanwhile, as data becomes a production factor, it can now be traded as an object of exchange, with practices like personal data transactions emerging in real-world applications. For example, a new company called Wibson, founded in 2018, provides consumers with a blockchain-based decentralized marketplace that allows them to monetize their personal data. Wibson transforms an opaque, buyer-dominated ecosystem into a transparent and fair marketplace, enabling consumers to receive compensation for their data based on personal preferences and comfort levels. (Itzayana Tlacuilo Fuentes, 2020, p.111) For users, permitting enterprises to lawfully use personal data within the scope of their consent constitutes the consideration for accessing

services. Should users be barred from providing the requisite personal data for enterprise use, they would be unable to obtain the corresponding services they require, thereby hindering the continuous advancement of the digital economy. Therefore, from the perspective of dialectical materialism, the relationship between cross-border data flows and personal information protection should be viewed dialectically. These two elements are mutually reinforcing, mutually constraining, and interdependent.

3. International Regulatory Approaches to Personal Information Protection

Under the GDPR, 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. (European Union, 2016) In the CPTPP Chapter on Electronic Commerce, personal information means any information, including data, about an identified or identifiable natural person. (CPTPP, 2018) In the USMCA chapter on digital trade, personal information means information, including data, about an identified or identifiable natural person. (USMCA, 2018) Given that academia has not made a clear distinction between personal information and personal data, the terms "personal information" and "personal data" used in this paper refer to the same meaning. Regarding international regulatory models for personal information protection in the context of cross-border data flows, scholars have proposed the most significant framework for evaluating privacy protection mechanisms addressing cross-border data transfers, distinguishing between "geographically-based" and "organizationally-based" approaches. (Kuner Christopher, 2013) The "geographically-based" approach is primarily led by the European Union, while the "organizationally-based" approach is predominantly championed by the United States.

3.1 Geographically-Based Approach

The geographically-based approach regulates data transfers based on the level of data protection in place in the receiving or importing country. (Julian Rotenberg, 2020, pp. 97-98) It is adopted by the European Union and several other jurisdictions. In May 2018, the European Union promulgated the General Data Protection Regulation (GDPR). Under the GDPR, personal data may be transferred from the EU to a third country that ensures an "adequate level of protection." The GDPR sets out three main criteria for assessing whether a third country provides such adequacy: (1) the establishment and enforcement of the rule of law; (2) the existence of an effectively functioning, specialized supervisory authority; and (3) accession to international treaties or multilateral agreements concerning the protection of personal data and the assumption of corresponding obligations under international law. (Yang, X., 2021) Moreover, the adequacy of a receiving country's data protection standards is typically determined by public authorities. Such determinations may take the form of unilateral recognition, whereby one country establishes the adequacy of another and permits data transfers to that destination, or mutual recognition between two or more countries. This mutual recognition may be formalized through free trade agreements, enabling the free flow of data among them. (Julian Rotenberg, 2020, p. 98) In practice, this approach is also known as the adequacy approach, meaning that a country's or jurisdiction's domestic data protection laws will establish the minimum standards for other countries or jurisdictions to become recipients of its data transfers. Thus, governments can employ this method to incentivize others to enact data protection laws with specific content to attract data exports. When the sovereign state establishing baseline protection levels possesses significant trade and political influence, this approach serves as an effective means to export its regulatory standard.

3.2 Organizationally Based Approach

The organizational-based approach, also known as the "accountability" approach, regulates how companies and other organizations handle data transferred across borders. Regardless of where the data is processed, these organizations are "accountable" for processing personal data in accordance with specific privacy principles. The accountability approach does not restrict cross-border data flows but instead imposes responsibilities on all parties involved in data transfers. Under this model, protection is based

on specific legal obligations imposed on data controllers, and these obligations continue to apply after personal data cross national borders. (Kuner Christopher, 2013, p. 64) One of the most relevant examples of the accountability approach is the Cross-Border Privacy Rules (CBPR) system adopted to facilitate the transfer of personal data among Asia-Pacific Economic Cooperation (APEC) economies. Corporate policies and practices must be certified by APEC accountability agents as meeting the requirements of the CBPR, and these agents, together with national privacy enforcement authorities, are responsible for ensuring compliance.(Asia-Pacific Economic Cooperation, 2019) Any APEC economy may unilaterally join the system, and enterprises subject to the laws of that economy will be able to participate in it. Another notable example is the OECD's 2013 revision of its Privacy Guidelines, which adjusts the relationship between individuals and data controllers. Individuals have the right to obtain confirmation from data controllers as to whether data relating to them are held, and to request information on how such data are processed; In cases of refusal, individuals have the right to challenge such refusal and, if successful, to have the data erased, rectified, completed, or amended. (OECD, 2013) Finally, the data controller remains responsible for the personal data under its control, regardless of the data's location.

Simultaneously, in countries or regions lacking adequacy findings, the GDPR stipulates that both Binding Corporate Rules (BCR) and Standard Contractual Clauses (SCC) constitute accountability methods. Both impose data protection obligations on companies operating across different jurisdictions. The adoption and implementation of binding corporate rules permits multinational corporations to transfer data across borders, albeit limited to transfers between corporate subsidiaries in different countries. These instruments typically require prior approval from relevant national data protection authorities, which may involve lengthy procedures. Standard Contractual Clauses are rules used in transactions involving cross-border transfers of personal data to third parties. These clauses are usually drafted or approved by data protection authorities and, once incorporated into a contract, are deemed to provide adequate protection for the transferred data regardless of the destination country or region.

3.3 Critical Assessment

Both the "Geographically-Based" and the "Organizationally Based" approaches have their respective shortcomings. Under the GDPR model adopted by the European Union, developing countries face a dilemma: either they must enact national privacy legislation similar to that of the EU, or their companies must bear the transaction-specific costs associated with the use of BCR and SCC. On the one hand, it is difficult for developing countries to adopt EU-style national privacy regimes, because the EU's conception of personal data as a fundamental human right—reflected in the Charter of Fundamental Rights of the European Union—is a product of Europe's particular historical and cultural context. (Aaditya Mattoo & Joshua P Meltzer, 2018, p. 770) On the other hand, SCC have also been shown to be cumbersome, as they must be designed to address all possible data transfers ex post. (Aaditya Mattoo & Joshua P Meltzer, 2018, p. 777) Compared to the GDPR and similar frameworks, the CBPR adopted by APEC and the Privacy Guidelines adopted by the OECD are considered more lenient. (Andrew D Mitchell & Neha Mishra, 2019, p. 400) In other words, the APEC and OECD frameworks lack binding force. As a result, the APEC framework in particular may struggle to become a global standard, because it offers a voluntary scheme rather than a legally binding set of rules, and because it is oriented more toward facilitating e-commerce than toward ensuring robust personal data protection. (Christian Pauletto, 2021) For example, the United States has removed references to these principles in its submissions to the WTO.

4. Regulation of Personal Information Protection Under Existing Agreements

In recent years, in the absence of meaningful progress at the multilateral level, bilateral and plurilateral free trade agreements have developed new models to address emerging barriers to digital trade. (Susannah Hodson, 2019, p. 592) The CPTPP, USMCA, and RCEP each contain a dedicated chapter on e-commerce and include separate provisions on personal information protection. Compared with the international standards adopted by the OECD and APEC, these agreements incorporate personal information protection into binding legal rule systems, representing a certain degree

of progress. Within the multilateral trading system, Article XIV(c)(ii) of the General Agreement on GATS, which forms part of the general exceptions, provides for "the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts." (WTO, 1994) This provision offers a legal justification for a member to adopt restrictions on cross-border data flows on the basis of personal privacy protection and thus constitutes the principal legal regulation of personal information protection under the GATS. This paper examines the provisions on personal information protection in the CPTPP, USMCA, and RCEP regional trade agreements, as well as Article XIV(c)(ii) of the GATS.

4.1 Regulation of Personal Information Protection Under Existing Regional Trade Agreements

The innovative feature of the CPTPP, USMCA, and RCEP lies in the fact that they impose obligations on destination countries to prevent fraud and deception and to protect personal information. All three agreements explicitly require their parties to adopt or maintain a legal framework that ensures the protection of users' personal information. At the same time, taking into account differences in levels of information technology development and cultural traditions among the parties, none of these agreements mandates a uniform legal framework; instead, each party is required to take into consideration the principles and guidelines of relevant international bodies. This approach has several advantages: First, it does not prescribe a specific model of privacy regulation. (Joel R. Reidenberg, 2000) The provision also does not prevent members from undertaking institutional innovation beyond the baseline requirements to protect personal information (for example, in light of their particular circumstances), provided that such measures are not arbitrary or discriminatory. (David Hyman & William E. Kovacic, 2019) Third, unlike the USMCA, which specifically references APEC's Cross-Border Privacy Rules (CBPR) and the OECD's Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, the CPTPP and RCEP do not cite relevant international bodies, privacy principles, or guidelines. This approach acknowledges that other evolving privacy principles or guidelines may exist and that other relevant international bodies may also be addressing these issues. (Andrew D Mitchell & Neha Mishra, 2019, p. 410) In addition, all three agreements require their parties to make publicly available information on the protection of personal information provided to e-commerce users, including avenues through which individuals may seek remedies and the specific obligations that enterprises must comply with under the law.

On the other hand, both the CPTPP and USMCA recognize that contracting parties may adopt different legal approaches to protect personal information, and each contracting party should encourage the establishment of mechanisms to promote compatibility among these different systems. Such mechanisms may be implemented autonomously or through mutual agreements and may even be achieved through broader international frameworks. (CPTPP, 2018; USMCA, 2018) By contrast, the RCEP merely emphasizes cooperation among the parties in the protection of personal information and does not provide for autonomous arrangements of this kind. In practice, levels of information technology development vary significantly across countries. If the standards set by international bodies are applied rigidly, countries with lower technological capacity may be unable to meet the corresponding requirements, making it difficult to achieve convergence on personal information protection standards. This reality highlights the greater importance of promoting compatibility among different domestic legal regimes. From this perspective, the "standards and interoperability" model adopted by the CPTPP and the USMCA is of considerable significance for promoting the harmonization and coordination of personal information protection. Moreover, all three regional trade agreements—the CPTPP, USMCA, and RCEP—allow restrictions on cross-border data flows as exceptions for the pursuit of legitimate public policy objectives, including the protection of personal information. The existence of such cooperative obligations reduces the need for source countries to take unilateral action under exception clauses and thereby creates a more secure environment for exporters to obtain personal data. In this regard, the CPTPP, USMCA, and RCEP are likely to serve as paradigms of regulatory cooperation. Nevertheless, although these three regional trade agreements have introduced innovative

frameworks for the regulation of personal information protection and achieved a certain degree of progress, their impact remains limited, and they can only play a short-term supplementary role. The key function of regional trade agreements is ultimately to pave the way for broader multilateral agreements, leading to more enforceable and binding commitments grounded in core WTO principles such as non-discrimination, minimal trade restrictiveness, and transparency.

4.2 Personal Information Protection Under the WTO Framework

Within the GATS, principles governing cross-border data flows—or at least their fundamental trade objectives—can be identified. Some scholars have argued that the movement of capital may be analogized to the flow of data; if so, the GATS effectively recognizes data as an integral component of services themselves. (Itzayana Tlacuilo Fuentes, 2020, p.111) Therefore, in the context of digital trade, the GATS can still provide a legal regulatory framework for cross-border data flows. Consequently, personal information protection based on cross-border data flows should naturally be provided with a legal regulatory framework within the GATS. Article XIV(c)(ii) of the General Agreement on GATS, which forms part of the general exceptions, provides for "the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts." (World Trade Organization, 1994) This provision offers the most appropriate legal basis for a Member to justify restrictions on cross-border data flows adopted for the purpose of protecting personal information.

However, applying pre-internet era GATS rules to data-related issues presents challenges. First, due to the cross-sectoral nature of digital services, it is difficult to determine whether members' commitments on national treatment and market access in their GATS schedules cover cross-border data flows in certain sectors. Second, the proximity of service suppliers and consumers within digital supply chains leads to highly intrusive data restriction measures. This issue cannot be resolved by invoking GATS privacy exceptions to justify such restrictions in the absence of shared international norms on data regulation. For instance, panels lack the capacity to assess the non-trade-related aspects of domestic data regulations, including whether they undermine the open and interoperable architecture of the internet or restrict the realization of human rights. (Andrew D Mitchell & Neha Mishra, 2019, p. 399) Third, although the Services Sectoral Classification List ("W/120") provides guidance for WTO Members when making commitments under the GATS, it is nearly thirty years old and no longer adequately reflects the commercial realities of the digital economy. Many digital products are based on converged business models that increasingly combine telecommunications services with other services, including computer, audiovisual, banking, financial, and advertising services. These services are inherently multifunctional and rely on a variety of service inputs to deliver an integrated digital platform. For example, WeChat and Google combine multiple services, including communications, payments, and cloud computing. However, commitments to service sectors or subsectors in a member's schedule are exclusive; as a result, a particular digital service (such as Google's search engine) cannot simultaneously be classified under computer and related services (more specifically, data processing services), telecommunications services (online information and data processing services), and advertising services. (Andrew D. Mitchell & Neha Mishra, 2018, p. 1086) This means that where cross-border data flows associated with a particular service sector fall outside the scope of a member's commitments under a converged business model, regulatory measures affecting such data flows cannot be justified under the personal privacy exception, thereby limiting the effectiveness of GATS Article XIV(c)(ii) in addressing personal information protection in the digital economy.

In sum, the provisions on personal information protection under the GATS are overly rudimentary and general, and are therefore ill-suited to the realities of the digital trade era. Accordingly, reform of the GATS framework with respect to personal information protection has become both necessary and imperative.

5. Proposals for Improving the WTO Rules on Personal Information Protection

As analyzed above, the current WTO framework on personal information protection is no longer able to respond to the challenges of the digital trade era; however, the WTO is the best forum for developing rules to govern cross-border data flows for two reasons: first, it covers 85 percent

of all countries; and second, WTO rules are transparent and flexibly designed to evolve with changes in technology, markets, and political conditions. (Susan Ariel Aaronson & Patrick Leblond, 2018, p. 251) Therefore, regulation of cross-border data flows must ultimately rely on WTO rules, and personal information protection, which is closely related to cross-border data flows, also needs to be addressed within the WTO framework. Although WTO reform is necessary, such a complex task cannot be accomplished overnight; the author argues that it should be pursued in two stages: a transitional stage and a long-term stage.

5.1 Transitional Stage

During the transition period, first, the "necessity test" should be utilized to prevent abuse of GATS Article XIV(c)(ii). For instance, the United States previously banned transactions with Chinese software applications, including Alipay and WeChat Pay, on grounds of protecting the personal information of American citizens. At the WTO level, the U.S. is highly likely to invoke GATS Article XIV(c)(ii) as a defense. Therefore, the proper application of this provision becomes a key focus. If a member invokes this provision to restrict cross-border data flows, it must demonstrate that the measure is "necessary" to achieve the stated objective. The Appellate Body has determined that it falls closer to the level of "indispensable" than to merely "contributing to" the objective. (Diane A. MacDonald & Christine M. Streatfeild, 2014) This standard requires a strong connection between the measure and the interest protected, which must be established through the "necessity test," which is an overall assessment involving the "weighing and balancing of a series of factors". (WTO, 2005) Although WTO dispute settlement practice does not set out an exhaustive list of factors to be considered, the weighing and balancing process generally involves an assessment of the relative importance of the interests or objectives pursued by the measure, the contribution of the measure to the achievement of the objective, and the measure's restrictive impact on international trade. (WTO, 2005) The final part of the necessity test includes determining whether there are reasonably available, less trade-restrictive alternative measures. (WTO, 2005) This requires a comparison between the measure and possible alternative measures, with the burden of proof resting on the complaining Member proposing the latter. (WTO, 2005) If the alternative measure is merely theoretical—for example, if the member lacks the capacity to accept it, or if it imposes an undue burden on the member, such as excessive costs or significant technical difficulties—it shall not be considered reasonably available. (Susannah Hodson, 2019, p. 594)

Second, if the necessity test is satisfied, the final stage of the analysis is to determine whether the measure complies with the chapeau of Article XIV. The general exception clause in GATS Article XIV stipulates, "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services." (WTO, 1994) This provision constitutes a further safeguard against measures adopted on the basis of personal information protection. In addition, the roles of on transparency and on recognition under the GATS should be brought into play. Article III on transparency and Article VII on recognition help ensure the transparency of newly emerging arrangements between different countries. More importantly, GATS Article VII facilitates greater international coordination among members regarding domestic regulations pertaining to the licensing, certification, or authorization of service providers, while ensuring that any such arrangements are non-discriminatory and permit participation by third countries. (Aaditya Mattoo & Joshua P Meltzer, 2018, p. 788) Moreover, pursuant to paragraph 5 of GATS Article VII, members shall work in cooperation with relevant intergovernmental and nongovernmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions. (WTO, 1994) This provision encourages cooperation between members and international organizations. Given the multi-stakeholder nature of the Internet governance system, and particularly considering that regulatory frameworks for cross-border data flows require more sophisticated approaches than traditional multilateral processes, the WTO should fully leverage the provisions of GATS Articles III and VII to

enhance international coordination among members regarding domestic personal information protection regulations. It should encourage cooperation between members and international organizations and promote the adoption of international standards on personal information protection by more countries.

5.2 Long-Term Stage

In the long term, members must engage in thorough negotiations to add an annex on electronic commerce to the GATS, establishing a binding e-commerce framework for all members. This framework should provide clearer and more specific elaboration on the privacy protection exception stipulated in GATS Article XIV, thereby safeguarding the regulatory autonomy of countries in overseeing the internet. The reason for adding an annex on electronic commerce to the GATS is twofold. On the one hand, GATS was formulated in the pre-Internet era and is unable to respond to the cross-sectoral nature of cross-border data flows. On the other hand, it does not provide for the adoption by members of domestic frameworks for the protection of personal information. Regarding how to develop an annex on electronic commerce within the GATS, this paper argues that provisions on personal information protection from regional trade agreements such as the CPTPP and RCEP should be referenced. The provisions in the e-commerce chapters of regional trade agreements like the CPTPP and RCEP break away from the traditional sectoral classification under GATS, aligning with the international trend of cross-border data flows. Particularly noteworthy is the "standards-plus-compatibility" approach adopted in agreements such as the CPTPP and USMCA for personal information protection. This model encourages countries to pursue mutual cooperation to enhance the compatibility of personal information protection legislation, offering valuable insights for reference.

6. Conclusion

The relationship between cross-border data flows and personal information protection is one of mutual reinforcement and constraint, requiring a dialectical perspective to understand their interplay. The CPTPP, USMCA, and RCEP regional trade agreements regulate personal information protection, but they can only serve as short-term supplements. Ultimately, the WTO—the most comprehensive multilateral platform—must play its role. GATS Article XIV(c)(ii) is no longer adequate for today's era of cross-border data flows and urgently requires improvement. Enhancing GATS can be approached in two phases: a transitional phase and a long-term phase. During the transitional phase, the necessity test should be fully leveraged, alongside the provisions on transparency under Article III and recognition under Article VII of GATS. Long-term efforts should focus on developing an annex on e-commerce within GATS to establish more robust regulations for personal information protection.

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OECD. (2013). OECD privacy guidelines (Article 13).

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WTO. (1994). GATS. (Article VII:5; Article XIV; Article XIV (c) (ii)).

WTO. (2005). *United States: Measures affecting the cross-border supply of gambling and betting services—Report of the Appellate Body* (WT/DS285/AB/R, paras. 304–307, 309).

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An Assessment of the Role the Land Consultative Board in the Resolution of Land Disputes in Cameroon

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Abstract

Land disputes in Cameroon persist as a major threat to governance and social stability, driven by tensions between statutory law and customary tenure. To address these conflicts, the Land Consultative Board (LCB) was created as an administrative and advisory body for dispute resolution, especially in cases of land registration and competing claims. This study critically evaluates the LCB's legal foundation, functions, and effectiveness through doctrinal analysis of legislation, regulations, case law, and scholarly literature. Findings show that while the LCB is pivotal in promoting procedural legality, mediating claims, and bridging statutory–customary divides, its impact is undermined by its non-binding authority, weak institutional capacity, and poor integration into the broader justice framework. The study argues that strengthening the LCB through legal reforms, clearer recognition of customary claims, enhanced institutional resources, and stakeholder coordination is essential for building efficient, equitable, and sustainable land governance in Cameroon.

Keywords: land disputes, land governance, Cameroon, customary land tenure, land consultative board

1. Introduction

Land constitutes one of the most vital socio-economic resources in Cameroon, serving as the foundation for agriculture, housing, cultural identity, investment, and political authority.[1] Access to and control over land are therefore central to livelihoods and social stability. However, the governance of land in Cameroon has historically been fraught with complexity due to the coexistence of customary land tenure systems and statutory land laws, a duality inherited from pre-colonial traditions and reinforced during the German, British, and French colonial administrations. [2] This pluralistic land tenure system has generated persistent ambiguities regarding land ownership, boundaries, and usage rights, making land disputes one of the most prevalent

[1] Food and Agriculture Organization. (2002). *Land tenure and rural development*. FAO Land Tenure Studies No. 3.

[2] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law*, *57*(1), 1–25.

forms of conflict in the country.[1]

In the post-independence era, rapid population growth, urbanization, infrastructural development, and commercial exploitation of land have intensified competition over land resources.[2] These pressures have led to an increase in disputes between individuals, families, communities, traditional authorities, private investors, and the State. In both rural and urban settings, land conflicts often manifest as boundary disputes, competing claims between customary owners and registered title holders, succession disagreements, and confrontations arising from land expropriation for public purposes.[3] Such disputes frequently escalate into prolonged litigation, social unrest, and in some cases, violent confrontations, thereby undermining social cohesion and sustainable development.[4]

The formal judicial system in Cameroon, while constitutionally mandated to adjudicate land disputes, has proven insufficient in addressing the sheer volume and technical complexity of land- related cases.[5] Court proceedings are often criticized for being costly, time-consuming, procedurally rigid, and inaccessible to rule populations with limited legal awareness or financial means.[6]

Moreover, judges may lack the specialized technical and customary knowledge required to fully appreciate the historical and socio-cultural dimensions of land disputes.[7] This reality has necessitated the establishment of alternative and complementary dispute resolution mechanisms within the land administration framework.

It is within this context that the Land Consultative Board emerges as a critical institutional mechanism in the resolution of land disputes in Cameroon. Established under the national land tenure regime, the Board is designed to provide technical expertise, advisory opinions, and mediation services in land matters.[8] By bringing together administrative authorities, land experts, and representatives familiar with local land realities, the Board seeks to bridge the gap between customary land practices and statutory legal requirements. Its consultative and conciliatory nature positions it as a potentially effective forum for resolving disputes amicably before they escalate into contentious litigation.[9]

Despite its strategic importance, the role and effectiveness of the Land Consultative Board in resolving land disputes remain under- examined in legal scholarship and policy discourse. Questions persist regarding its legal authority, operational efficiency, impartiality, and the extent to which its recommendations influence administrative and judicial decisions.[10] In practice, the Board's interventions are sometimes undermined by limited resources, overlapping institutional mandates, political interference, and the non-binding nature of its opinions.[11] These challenges raise concerns about whether the Board adequately fulfills its mandate as a tool for promoting equitable, timely, and sustainable land dispute resolution.

This study therefore undertakes a critical assessment of the role of the Land Consultative Board in the resolution of land disputes in Cameroon. By examining its legal foundation, institutional functions, practical operations, and challenges, the study seeks to evaluate the extent to which the Board contributes to effective land governance and access to justice. The analysis is particularly significant in a country where land disputes continue to pose serious threats to peace, development, and the rule of law.[12]

2. Conceptual Clarification

2.1 Assessment

[1] Ngwasiri, C. N. (2015). Land tenure and conflict in Cameroon: Exploring the roots of land disputes. *African Journal of Legal Studies, 8*(2), 87–110.

[2] World Bank. (2019). *Cameroon land governance assessment framework (LGAF) report*. World Bank Publications.

[3] Fonjong, L. N., & Fokum, V. Y. (2017). Women's land rights and rural development in Cameroon. *African Geographical Review, 36*(1), 55–69.

[4] United Nations Human Settlements Programme (UN-Habitat). (2018). *Land and conflict prevention*. UN-Habitat.

[5] Constitution of the Republic of Cameroon, 1996.

[6] Tamanjong, E. M. (2014). Access to justice and land litigation in Cameroon. *African Human Rights Law Journal, 14*(2), 421–445.

[7] Sone, P. M. (2018). Customary land tenure and judicial interpretation in Cameroon. *Commonwealth Law Bulletin, 44*(3), 389–407.

[8] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[9] Njoh, A. J. (2006). *Tradition, culture and development in Africa: Historical lessons for modern development planning*. Ashgate Publishing.

[10] Fombad, C. M., & Abeng, A. T. (2019). Institutional weaknesses in land administration in Cameroon. *Journal of African Law, 63*(2), 203–225.

[11] World Bank. (2020). *Improving land administration and dispute resolution in Cameroon*. World Bank Policy Note.

[12] African Union Commission. (2010). *Framework and guidelines on land policy in Africa*. AU, UNECA & AfDB.

Assessment refers to a systematic and critical evaluation of an institution or mechanism with a view to determining its effectiveness, relevance, and impact in achieving defined objectives.[1] In this study, assessment entails a critical examination of how effectively the Land Consultative Board performs its mandate in resolving land disputes, including an appraisal of its practical contributions, limitations, and outcomes.

2.2 Role

The term role denotes the functions, responsibilities, and expected contributions assigned to an institution within a legal and administrative framework. As used in this study, role refers to the specific duties and operational significance of the Land Consultative Board in facilitating, influencing, or contributing to the resolution of land disputes in Cameroon.

2.3 Land Consultative Board

The Land Consultative Board refers to an administrative body established under Cameroon's land tenure system to provide advisory opinions, technical expertise, and mediation in land-related matters.[2] The Board typically comprises representatives of administrative authorities, land services, and traditional institutions, and operates mainly as a consultative mechanism whose recommendations are generally non-binding but influential in land dispute resolution processes.[3]

2.4 Resolution

Resolution denotes the process through which a dispute is settled or brought to a conclusion, either through consensual or authoritative means.[4] In the context of this study, resolution includes mediation, conciliation, administrative decision-making, and judicial determination of land disputes, particularly where the Land Consultative Board plays a facilitative or advisory role.

2.5 Land Disputes

Land disputes refer to conflicts or disagreements between two or more parties concerning rights, interests, boundaries, or control over land.[5] In Cameroon, land disputes commonly arise from competing claims between customary landholders and statutory title holders, boundary uncertainties, inheritance claims, and disputes linked to land registration or state expropriation.[6] These disputes constitute the primary subject matter addressed by the Land Consultative Board.

2.6 Cameroon

Cameroon, for the purpose of this study, refers to the sovereign state whose land tenure regime is characterized by legal pluralism, combining statutory land law with customary land tenure systems.[7] This plural legal context significantly shapes the nature of land disputes and informs the institutional role and functioning of the Land Consultative Board.[8]

3. Theoretical Framework

A theoretical framework provides the analytical lens through which a study is examined. It helps to explain the relationship between institutions, legal norms, and social realities. This study is anchored on the Legal Pluralism Theory, which is particularly suitable for analyzing land disputes and dispute resolution mechanisms in Cameroon.

3.1 Legal Pluralism Theory

Legal pluralism refers to the coexistence of multiple legal systems within a single social or political space.[9] These systems may include statutory law enacted by the state, customary law derived from tradition, religious norms, and administrative practices.[10] Rather than operating in isolation, these systems often overlap, interact, and sometimes conflict in regulating social relations.

In Cameroon, land governance is a classic example of legal pluralism. Statutory land law principally established under the 1974 Land Tenure Ordinances exists alongside customary

[1] Babbie, E. (2016). *The practice of social research* (14th ed.). Cengage Learning.

[2] Katz, D., & Kahn, R. L. (1978). *The social psychology of organizations* (2nd ed.). Wiley.

[3] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[4] Fombad, C. M., & Abeng, A. T. (2019). Institutional weaknesses in land administration in Cameroon. *Journal of African Law, 63*(2), 203–225.

[5] Boulle, L. (2005). *Mediation: Principles, process and practice*. LexisNexis.

[6] Wehrmann, B. (2008). *Land conflicts: A practical guide to dealing with land disputes*. GTZ.

[7] Ngwasiri, C. N. (2015). Land tenure and conflict in Cameroon. *African Journal of Legal Studies, 8*(2), 87–110.

[8] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law, 57*(1), 1–25.

[9] Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law, 18*(24), 1–55.

[10] Merry, S. E. (1988). Legal pluralism. *Law & Society Review, 22*(5), 869–896.

land tenure systems that continue to govern land ownership, inheritance, and use at the community level. [1] While statutory law emphasizes land registration and state control, customary law recognizes communal ownership, ancestral ties, and traditional authority over land.[2] This duality has created significant ambiguities and contradictions, which are a major source of land disputes.

Legal pluralism theory is particularly relevant to this study because it explains why land disputes in Cameroon are often complex and persistent. Many disputes arise where customary land rights are not formally recognized under statutory law, or where administrative decisions conflict with long-standing traditional land practices.[3] Courts and administrative authorities frequently struggle to reconcile these competing norms, leading to prolonged disputes and perceptions of injustice.

Within this plural legal context, the Land Consultative Board operates as an intermediary institution. Its composition often including administrative officials, technical land experts, and traditional authorities reflects an attempt to harmonize statutory and customary legal orders.[4] Through advisory opinions, mediation, and technical assessments, the Board seeks to reconcile competing claims by considering both legal title and customary occupation or use.[5]

The Legal Pluralism Theory therefore provides a useful framework for assessing the role of the Land Consultative Board. It allows the study to evaluate whether the Board effectively bridges the gap between formal state law and customary land norms, and whether its consultative approach enhances legitimacy, fairness, and acceptance of land dispute resolutions. [6] The theory also helps to explain the limitations of the Board, particularly where statutory law ultimately prevails over customary claims or where the Board's recommendations lack binding force.

By applying Legal Pluralism Theory, this study critically examines how the Land Consultative Board navigates competing systems in Cameroon and assesses its effectiveness as a mechanism for resolving land disputes in a legally plural society.

4. Methodology

This study adopts a qualitative research methodology, employing socio-legal methods to critically assess the role of the Land Consultative Board in resolving land disputes in Cameroon.[7] The doctrinal method is employed to examine relevant constitutional provisions, land tenure legislation, subsidiary regulations, and judicial decisions governing land administration and dispute resolution. [8] This approach enables a systematic analysis of the legal framework establishing and regulating the functions of the Land Consultative Board.

The socio-legal approach complements the doctrinal analysis by examining how the Land Consultative Board operates in practice within Cameroon's legally plural land tenure system.[9] This method facilitates an understanding of the interaction between statutory land law and customary land practices, particularly in the resolution of land disputes. It also allows for an evaluation of the practical effectiveness of the Board beyond its formal legal mandate.

Data for the study are obtained primarily from secondary sources, including statutes, case law, scholarly books, peer-reviewed journal articles, policy documents, and reports from relevant national and international institutions on land governance in Cameroon.[10] These materials are sourced through desk-based research.

Data analysis is conducted using qualitative content analysis and thematic analysis. Legal texts and judicial decisions are interpreted using established principles of statutory and judicial interpretation, while scholarly materials are analyzed to identify recurring themes relating to

[1] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[2] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law, 57*(1), 1–25.

[3] Ngwasiri, C. N. (2015). Land tenure and conflict in Cameroon. *African Journal of Legal Studies, 8*(2), 87–110.

[4] Sone, P. M. (2018). Customary land tenure and judicial interpretation in Cameroon. *Commonwealth Law Bulletin, 44*(3), 389–407.

[5] *Ibid.*

[6] Fombad, C. M., & Abeng, A. T. (2019). Institutional weaknesses in land administration in Cameroon. *Journal of African Law, 63*(2), 203–225.

[7] McConville, M., & Chui, W. H. (2007). *Research methods for law*. Edinburgh University Press.

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

[9] Banakar, R., & Travers, M. (2013). *Law and social theory*. Hart Publishing.

[10] World Bank. (2019). *Cameroon land governance assessment framework (LGAF) report*.

the functions, effectiveness, and challenges of the Land Consultative Board.[1]

The scope of the methodology is limited to the institutional role of the Land Consultative Board in land dispute resolution within Cameroon. Although the study acknowledges broader land governance mechanisms, it does not engage in comparative analysis with other jurisdictions. The study is also constrained by limited access to empirical data and official statistics on land disputes; however, reliance on authoritative legal and scholarly sources ensures the credibility and reliability of the analysis.[2]

5. Legal Framework of the Land Consultative Board in Cameroon

The legal framework governing the Land Consultative Board (LCB) in Cameroon is anchored in statutory law, government decrees, and judicial interpretation. Together, these instruments define the Board's mandate, jurisdiction, and procedures, forming the foundation for its role in resolving disputes across statutory and customary land tenure systems.

5.1 Statutory Basis

The LCB was created under Ordinance No. 74-1 of 6 July 1974, which established Cameroon's land tenure regime, categorizing land, prescribing acquisition and registration procedures, and setting mechanisms for dispute resolution.[3]

Its functions were elaborated in Decree No. 76-165 of 27 April 1976, which regulates land certificate issuance, objections to registration, and consultative procedures. The decree empowers the Board to examine applications, mediate disputes, and provide technical assessments to administrative authorities prior to final decisions.[4]

Further refinement came with Law No. 19 of 26 November 1983, which clarified the Board's consultative role in registration disputes and competing claims, underscoring its involvement as a prerequisite to judicial intervention.[5]

5.1.1 Jurisdiction of the Board

Under this statutory framework, the LCB exercises advisory and mediatory jurisdiction over:

- Objections to land registration;
- Conflicts involving unregistered land or customary claims vis-à-vis statutory titles;
- Situations requiring technical or customary input before land allocation.

Although its recommendations are non-binding, administrative authorities and courts frequently rely on its findings, particularly in cases involving overlapping claims or contested customary rights.[6] While the Board provides recommendations, its decisions are not legally binding. However, administrative authorities and courts frequently rely on its technical findings, particularly in cases involving overlapping claims or unclear customary rights.[7]

5.1.2 Judicial Interpretation

Cameroonian jurisprudence has reinforced the Board's significance. In *Sendze Veronica v. The State of Cameroon (2018),* the Supreme Court emphasized its consultative role, noting that disputes within its mandate should be referred for assessment before judicial determination.[8]

Similarly, in *Noumsi Jean Bosco v. The State of Cameroon (2004) and Yongo Marc v. The State of Cameroon and Delangue Koloko Michel (2005*), the Court annulled land certificates issued without compliance with statutory procedures, underscoring the necessity of LCB involvement to safeguard procedural legality and prevent administrative errors.[9]

5.2 Harmonization of Customary and Statutory Law

[1] Braun, V., & Clarke, V. (2006). Using thematic analysis in qualitative research. *Qualitative Research in Psychology, 3*(2), 77–101.

[2] Babbie, E. (2016). *The practice of social research* (14th ed.). Cengage Learning.

[3] Republic of Cameroon. (1974, July 6). *Ordinance No. 74-1 to establish rules governing land tenure*.

[4] Republic of Cameroon. (1976, April 27). *Decree No. 76-165 laying down conditions for obtaining land certificates*.

[5] Republic of Cameroon. (1983, November 26). *Law No. 19 amending Ordinance No. 74-1 of 1974*. Republic of Cameroon. (1983, November 26). *Law No. 19 amending Ordinance No. 74-1 of 1974*.

[6] Fombad, C. M., & Abeng, A. T. (2019). Institutional weaknesses in land administration in Cameroon. *Journal of African Law, 63*(2), 203–225.

[7] Mongbat, A. (2021). Retour sur une problématique classique: la qualification du titre foncier comme acte administratif faisant grief dans la jurisprudence de la Chambre administrative de la Cour suprême du Cameroun. *Les Annales de droit, 15*, 71–100.

[8] *Sendze Veronica v. The State of Cameroon*, Supreme Court (Administrative Bench, 2018).

[9] *Noumsi Jean Bosco v. The State of Cameroon (MINDCAF, 2004); Yongo Marc v. The State of Cameroon and Delangue Koloko Michel (2005)*, Supreme Court (Administrative Bench).

Cameroon's dual tenure system—statutory and customary—renders the LCB a crucial institutional bridge. By considering ancestral occupation, traditional boundaries, and local practices, the Board mitigates tensions between parallel systems. This harmonization is particularly vital in rural areas where customary tenure predominates and formal registration remains limited.[1]

5.3 International and Regional Consideration

Although primarily domestic, the Board's operations are also indirectly influenced by regional and international standards on land governance and dispute resolution. Decisions by the African Commission on Human and Peoples' Rights, such as in *Bakweri Land Claims Committee v. Cameroon (2004)*, emphasize the necessity of exhausting domestic remedies, which includes administrative avenues like the Board, before seeking international adjudication.[2]

6. An Overview of the Land Consultative Board

The Land Consultative Board is an administrative institution established within Cameroon's land tenure system to assist in the management and resolution of land-related matters, particularly disputes arising from competing claims to land. Its creation is rooted in the post-independence land reforms aimed at asserting state control over land while accommodating existing customary land practices. The Board operates as a consultative and technical body within the broader framework of land administration in Cameroon.

The legal foundation of the Land Consultative Board is traceable to the 1974 Land Tenure Ordinances, which reorganized land ownership and administration in Cameroon by classifying land into private land, public land, and national land.[3] These ordinances sought to harmonize statutory land regulation with customary landholding systems. In implementing these reforms, the legislature recognized the need for a specialized body capable of providing expert advice and mediation in land disputes, particularly those involving national land and contested claims between customary occupants and statutory claimants.

Institutionally, the Land Consultative Board is usually constituted at the divisional or local administrative level and comprises representatives of the administration, land services, and traditional authorities.[4] Its composition reflects an attempt to integrate technical expertise with local knowledge of land history, customary boundaries, and traditional land use. This plural composition positions the Board as an intermediary between formal state institutions and local communities.

The primary function of the Land Consultative Board is consultative. It provides advisory opinions on land disputes referred to it by administrative authorities or arising during land registration, boundary demarcation, or allocation of national land.[5] In the course of its work, the Board may conduct field visits, examine documentary evidence, hear parties to a dispute, and assess competing claims based on both statutory provisions and customary practices. Although its recommendations are generally non-binding, they often carry significant persuasive authority in administrative decision-making and, in some instances, judicial proceedings.

Beyond dispute resolution, the Land Consultative Board plays an important preventive role in land governance. By clarifying land boundaries, advising on land allocation, and mediating disputes at an early stage, the Board contributes to reducing the escalation of land conflicts into protracted litigation or violent confrontation.[6] This preventive function is particularly relevant in rural areas where access to formal courts is limited and land disputes are closely tied to social identity and community relations.

Despite its strategic importance, the effectiveness of the Land Consultative Board is influenced by several factors, including resource availability, administrative efficiency, and the legal status of its recommendations. Nevertheless, it remains a central institution in Cameroon's land dispute resolution architecture,

[1] Sone, P. M. (2018). Customary land tenure and judicial interpretation in Cameroon. *Commonwealth Law Bulletin, 44*(3), 389–407.

[2] *Bakweri Land Claims Committee v. Cameroon*, Communication 260/02, African Commission on Human and Peoples' Rights (2004).

[3] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[4] Republic of Cameroon. (1976). *Decree No. 76-165 of 27 April 1976 laying down conditions for obtaining land certificates*.

[5] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law, 57*(1), 1–25.

[6] Wehrmann, B. (2008). *Land conflicts: A practical guide to dealing with land disputes*. GTZ.

embodying the state's effort to manage land conflicts through dialogue, technical assessment, and institutional coordination within a legally plural context.[1]

7. The Role of the Land Consultative Board in the Resolution of Land Disputes in Cameroon

The Land Consultative Board plays a central role in the resolution of land disputes in Cameroon by functioning as a consultative, mediatory, and technical institution within the land administration system. Its role is particularly significant in a legal environment characterized by the coexistence of statutory land law and customary land tenure systems established under the 1974 land reforms. [2] Through its operations, the Board contributes to the peaceful, equitable, and informed resolution of land-related conflicts.

7.1 Advisory Role in Land Dispute Resolution

One of the Board's primary roles is to provide advisory opinions to administrative authorities on land dispute matters, especially those involving objections to land registration and rights to unregistered land.[3] Under Ordinance No. 74-1 of 6 July 1974, as supplemented by subsequent statutory interpretation, the Consultative Board is tasked with addressing disputes before they proceed to formal litigation.[4] This statutory advisory role helps reduce the burden on courts by addressing disputes administratively and technically at an early stage.

7.2 Mediation and Conciliation Between Disputing Parties

The Consultative Board acts as a conciliation and mediation forum where disputing parties can negotiate solutions without resorting to complex litigation. This function aligns with statutory expectations that land disputes particularly those over unregistered land should first be brought before the Board.[5] In practice, this often results in more culturally acceptable and socially sustainable outcomes than formal court orders.

7.3 Technical Assessment and Fact-Finding

Another important role is the provision of technical assessments through field visits, boundary verifications, and evidence evaluation. These assessments inform both administrative decision-makers and courts about factual and customary dimensions of land disputes. For example, in statutory interpretation by Cameroonian courts, where questions arise about jurisdiction, courts have emphasized that disputes falling within the Board's mandate such as objections to registration or unregistered land claims should be addressed by the Board before courts can properly exercise jurisdiction.[6] This underscores the Board's technical gatekeeping role.

7.4 Harmonization of Customary and Statutory Land Claims

Cameroon's land system exhibits legal pluralism, combining statutory land law with customary practices. The Board plays a harmonizing role by considering customary land rights alongside statutory requirements.[7] Through the participation of traditional authorities and reliance on local land history, the Board helps reconcile conflicts between customary landholders and statutory title holders. This role enhances the legitimacy and acceptance of dispute resolution outcomes at the community level.

7.5 Preventive Role in Land Conflict Management

By handling disputes early in the dispute resolution process, the Board helps prevent escalation into protracted court battles that are costly, delayed, and potentially disruptive to community cohesion. In *Bakweri Land Claims Committee v. Cameroon* (Communication 260/02), although the African Commission on Human and Peoples' Rights did not directly address the Board, the decision highlighted the need to exhaust domestic remedies, including locally

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[1] Fombad, C. M., & Abeng, A. T. (2019). Institutional weaknesses in land administration in Cameroon. *Journal of African Law, 63*(2), 203–225.

[2] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[3] African Journal of Law, Political Research and Administration. (2024). *Land Consultative Boards and statutory functions in Cameroon* (Vol. 7, Issue 1).

[4] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*; Republic of Cameroon. (1976). *Decree No. 76-165 of 27 April 1976 laying down conditions for obtaining land certificates*.

[5] African Journal of Law, Political Research and Administration. (2024). *Land Consultative Boards and statutory functions in Cameroon* (Vol. 7, Issue 1).

[6] *Final Judgment, Santa Rural Council*, Supreme Court (Cameroon).

[7] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law, 57*(1), 1–25.

available legal mechanisms and administrative authorities, before pursuing international avenues a principle consistent with the Consultative Board's preventive function.[1]

7.6 Support to Administrative and Judicial Decision-Making

Though its opinions are not strictly binding, courts in Cameroon often look to the Board's technical assessments when determining disputes involving land classification, registration objections, or competing claims. Appeal courts have frequently referenced the Board's jurisdictional lead in land certification disputes, implicitly acknowledging that the Board's findings should inform judicial decision-making. [2] Through this indirect influence, the Board shapes both administrative and judicial outcomes in land dispute resolution.

8. Challenges

Despite its importance, the Land Consultative Board faces several legal, institutional, and operational challenges that undermine its effectiveness in resolving land disputes. These challenges affect its authority, jurisdictional clarity, institutional capacity, and coherence within Cameroon's land governance framework.

8.1 Non-Binding Nature of the Board's Recommendations

A fundamental challenge confronting the Land Consultative Board is the non-binding character of its recommendations. Although the statutory land regime empowers the Board to examine disputes relating to unregistered land and objections to land registration, its conclusions are merely advisory. They acquire legal force only when adopted by administrative authorities or upheld by courts. This limitation weakens the Board's authority, particularly where disputing parties are unwilling to comply voluntarily.[3]

8.2 Overlapping Jurisdiction and Institutional Ambiguity

There is persistent jurisdictional overlap between the mandate of the Land Consultative Board and the formal judiciary. While the statutory framework envisages that disputes over unregistered land and objections to registration should first be examined by the Board, courts have at times entertained such disputes directly. In *Sendze Veronica v. The State of Cameroon*, the Supreme Court acknowledged the administrative nature of land disputes linked to land registration but highlighted procedural inconsistencies in how such disputes reach the courts.[4] This ambiguity has encouraged forum shopping and inconsistent outcomes.

8.3 Limited Financial and Logistical Resources

The Board's operations are severely constrained by inadequate funding and logistical support. Effective resolution of land disputes requires field inspections, boundary demarcations, and technical investigations, all of which depend on sufficient resources. In many administrative units, the Board lacks transport, technical equipment, and administrative support, resulting in delays and incomplete investigations that undermine confidence in its processes.[5]

8.4 Inadequate Technical Expertise and Capacity Building

Land disputes often involve complex legal, cadastral, and customary issues. However, members of the Land Consultative Board frequently lack specialized training in land law, surveying techniques, and alternative dispute resolution mechanisms. The absence of continuous capacity-building programs reduces the Board's effectiveness, particularly in technically complex disputes involving overlapping claims and unclear boundaries.[6]

8.5 Political and Administrative Interference

Situated within the administrative hierarchy, the Land Consultative Board remains exposed to political and elite influence that compromises impartiality and weakens credibility. Local actors and powerful claimants often exert pressure on its members, distorting outcomes and undermining trust in land governance. Scholarly analysis highlights that such systemic interference erodes confidence in administrative

[1] *Bakweri Land Claims Committee v. Cameroon*, Communication 260/02, African Commission on Human and Peoples' Rights (7 December 2004).

[2] *Final Judgment, Santa Rural Council*, Supreme Court (Cameroon).

[3] Republic of Cameroon. (1974). *Ordinance No. 74-1 of 6 July 1974 to establish rules governing land tenure*.

[4] *Sendze Veronica v. The State of Cameroon*, Supreme Court (Administrative Bench).

[5] World Bank. (2019). *Cameroon land governance assessment framework (LGAF) report*. World Bank Group.

[6] Ngwasiri, C. N. (2015). Land tenure and conflict in Cameroon: Exploring the roots of land disputes. *African Journal of Legal Studies, 8*(2), 87–110.

institutions, making institutional safeguards and legal reforms essential to insulate the Board from undue influence, strengthen its independence, and restore public trust in Cameroon's land dispute resolution framework.[1]

8.6 Weak Enforcement and Follow-Up Mechanisms

Even where the Board successfully facilitates amicable settlements, the absence of formal enforcement and monitoring mechanisms poses a serious challenge. Agreements reached through conciliation are often not legally formalized or followed up, allowing parties to renege on commitments. This weakness contributes to recurrent land disputes and eventual resort to litigation.[2]

8.7 Tension Between Customary Practices and Statutory Law

Although the Board is designed to harmonize customary and statutory land claims, tensions persist between these systems. Customary land rights are often undocumented and conflict with statutory requirements for land registration. Judicial decisions on overlapping land certificates demonstrate that courts tend to prioritize statutory compliance over customary claims, complicating the Board's role in balancing these competing legal frameworks.[3]

8.8 Judicial Scrutiny of Administrative Land Decisions

Cameroonian case law illustrates the judiciary's rigorous scrutiny of administrative land decisions. In *Noumsi Jean Bosco v. The State of Cameroon (MINDCAF)* and *Yongo Marc v. The State of Cameroon and Delangue Koloko Michel*, the Supreme Court annulled land certificates obtained through procedural irregularities, emphasizing strict compliance with statutory land registration procedures.[4] While these cases reinforce legal accountability, they also highlight the limited influence of the Board where administrative decisions are challenged before courts without effective integration of its recommendations.

8.9 Limited Public Awareness and Accessibility

Many landholders, particularly in rural areas, remain unaware of the existence, mandate, or procedures of the Land Consultative Board. As a result, disputes are often taken directly to courts or informal mechanisms, bypassing the Board. This undermines its role as a primary forum for administrative land dispute resolution, as envisaged under the statutory land framework.[5]

9. Findings

The study establishes the Land Consultative Board (LCB) as a central actor in Cameroon's administrative resolution of land disputes, particularly in matters of registration, objections to certificates, and competing claims over unregistered land. Mandated to provide technical and consultative opinions, the Board promotes procedural legality and fairness, yet its advisory status and lack of binding authority severely limit its effectiveness. Judicial practice underscores that strict compliance with LCB procedures is indispensable, as land titles issued without due observance are routinely annulled, reinforcing the Board's pivotal role in safeguarding legality.

The findings further reveal the LCB's unique position as an institutional bridge between statutory law and customary tenure, often considering ancestral occupation and traditional boundaries in rural disputes. However, the absence of clear statutory guidelines on customary claims has led to inconsistent application, weakening its harmonizing capacity. Despite judicial recognition of its relevance, the Board suffers from structural deficits—limited autonomy, inadequate resources, and insufficient technical capacity—that undermine its credibility as an alternative to litigation.

Ultimately, the LCB functions more as a preventive mechanism than a definitive arbiter, contributing to early conflict management but unable to forestall escalation to courts. Its constrained authority highlights the urgent need for legal reforms, institutional strengthening, and clearer integration of customary claims to secure impartial, efficient, and sustainable land governance in Cameroon.

10. Conclusion

[1] Fombad, C. M. (2013). Cameroon's land law reforms and the challenge of customary land tenure. *Journal of African Law, 57*(1), 1–25.

[2] Wehrmann, B. (2008). *Land conflicts: A practical guide to dealing with land disputes*. Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).

[3] Sone, P. M. (2018). Customary land tenure and judicial interpretation in Cameroon. *Commonwealth Law Bulletin, 44*(3), 389–407.

[4] *Noumsi Jean Bosco v. The State of Cameroon (MINDCAF)*; *Yongo Marc v. The State of Cameroon and Delangue Koloko.*

[5] Tamanjong, E. M. (2014). Access to justice and land litigation in Cameroon. *African Human Rights Law Journal, 14*(2), 421–445.

This study demonstrates that the Land Consultative Board (LCB) occupies a strategically important position in Cameroon's land dispute resolution framework, particularly in matters of registration, objections to certificates, and conflicts between statutory and customary claims. Through its consultative and technical functions, the Board contributes to procedural legality, administrative fairness, and early conflict management. However, its effectiveness is significantly constrained by its advisory status, lack of binding authority, and limited institutional capacity, which often allow disputes to escalate into litigation.

The analysis further highlights the LCB's role as an institutional bridge between statutory law and customary tenure, mitigating tensions inherent in Cameroon's pluralistic land system. Yet, the absence of clear statutory guidance on customary claims and inconsistent integration of traditional norms weaken its harmonizing function.

By clarifying the Board's mandate and exposing its operational limitations, this study contributes to the underexplored discourse on administrative land dispute resolution in Cameroon. It concludes that while the LCB remains indispensable, strengthening its institutional capacity, clarifying its legal mandate, and enhancing the authority of its recommendations are critical reforms for achieving efficient, equitable, and sustainable land governance.

11. Recommendations

Building on the findings, this study advances targeted reforms to strengthen the effectiveness of the Land Consultative Board (LCB) in Cameroon's land dispute resolution framework. These measures address structural and operational deficits, enhance institutional credibility, and promote equitable and sustainable land governance.

11.1 Strengthen the Legal Mandate

Legislative reform should accord greater legal weight to the Board's recommendations. Requiring administrative authorities to provide written justification when departing from its opinions would reinforce transparency, procedural fairness, and accountability in land administration.

11.2 Establish Clear Guidelines on Customary Claims

Statutory or regulatory instruments must define criteria for evaluating customary occupation, ancestral land use, and traditional boundaries. Such clarity would ensure consistency, reduce arbitrariness, and consolidate the Board's role as a bridge between statutory and customary tenure systems.

11.3 Enhance Institutional Capacity and Expertise

Improved financial resources, modern technical tools, and recruitment of qualified personnel in land law, surveying, and dispute resolution are essential. Regular training and capacity-building initiatives would elevate the quality and credibility of the Board's assessments.

11.4 Foster Institutional Coordination

Formal mechanisms for collaboration between the LCB, administrative authorities, traditional institutions, and the judiciary should be established. Effective coordination would minimize duplication, harmonize decisions, and ensure the Board's input is integrated across all stages of dispute resolution.

11.5 Expand Public Awareness and Accessibility

Targeted sensitization campaigns, particularly in rural communities, and simplified access procedures would encourage early engagement with the Board. Greater visibility and accessibility would reduce reliance on litigation and advance peaceful, efficient, and sustainable land governance.

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Institutional Dilemmas, Friction Mechanisms, and Rule-of-Law–Oriented Optimization Pathways for Local Financial Regulation in the FinTech Era

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Abstract

FinTech is reshaping financial supply through data, algorithms, and platform-based operations, while accelerating the cross-domain transmission of risks. Local financial regulation consequently faces a compounded predicament characterized by regulatory lag, misalignment between authority and responsibility, and insufficient capacity for technology-enabled governance. Situated in an institutional setting in which "financial management is primarily a central government responsibility" coexists with territorially based obligations for local risk resolution, this article integrates doctrinal normative analysis, legal-dogmatic interpretation, and institutional analysis. Building on a systematic review of FinTech's impacts on "7+4" categories of local financial organizations, the article identifies three interlocking friction mechanisms underlying the ineffectiveness of local financial regulation: (i) an inadequate supply of legal and regulatory norms that opens windows for regulatory arbitrage; (ii) ambiguous central-local boundaries of authority and responsibility that generate incentive distortions and coordination failures; and (iii) delayed governance of data-related risks that exacerbates information asymmetries and induces risk spillovers. Based on a cost-benefit assessment of institutional arrangements, the article proposes an optimization pathway centered on: reconstructing a function-oriented regulatory rule system; proceduralizing central-local coordination and accountability chains; formalizing RegTech under the rule of law; and advancing coordinated data governance. These reforms aim to achieve a dynamic equilibrium between "promoting innovation" and "preventing risks," thereby advancing the modernization of local financial regulation.

Keywords: financial technology, local financial regulation, dilemmas, hindering mechanisms

1. Introduction

In Fintech in the context of accelerating the reshaping of financial business boundaries and risk generation mechanisms. The problem of institutional adaptability of local financial supervision has become increasingly prominent. While Fintech innovates financial service models and improves transaction efficiency, it also poses structural challenges to the existing regulatory system: The continuous innovation of the

financial industry has made local financial regulatory authorities more arduous in identifying, warning and handling risks of "7+4" institutions empowered by fintech, and may amplify the triggering probability of systemic risks. The 2025 Central Economic Work Conference emphasized "insisting on keeping the bottom line and actively and steadily resolving risks in key areas." The National Financial System Work Conference proposed the policy context of "preventing risks, strengthening supervision, and promoting high-quality development". Local regulatory practices are forced to make frequent trade-offs between "promoting development" and "keeping the bottom line". Therefore, it is urgent to respond to this tension from the perspective of rule of law and institutional design, and turn to the evaluation of existing research.

Existing research mainly follows two clues: "local regulatory failure" and "financial technology risk evolution". As far as local financial supervision is concerned, local financial risks lie between macro risks and micro risks, departments are prone to governance difficulties such as insufficient regulatory capabilities, regulatory credit overdrafts and overlapping functions (Wang, C., 2017); Under the impact of disruptive innovation in financial technology, the problem of incentive distortion caused by unclear boundaries of local regulatory powers and responsibilities is more prominent (Chen, B., 2020; Feng, H., 2021; Li, Y., & Ke, D., 2018), and concentrated on the difficulty of balancing regulatory and economic development goals (Zhang, X., 2023; Yin, Y., & Peng, X., 2020; Li, Y., & Cheng, B., 2018), the legal protection system is relatively weak (Zhang, Y., 2019; Tan, S., 2019), some scholars further advocate the use of administrative accountability mechanisms to strengthen the effectiveness and legal legitimacy of local supervision (Zhang, J., & Zhai, H., 2024). As far as Fintech risks themselves are concerned, relevant studies point out that it is accompanied by potential systemic legal risks (Chen, H., & Guo, L., 2020; Sun, Q., 2023); Because financial technology has a "dual nature" (Feenberg, A., Han, L., & Cao, G. (Trans.)., 2005), on the one hand, it promotes the popularization and optimization of financial services (Qiu, H., Huang, Y., & Ji, Y., 2018; Lin, C., 2022; Qian, H., Tao, Y., Cao, S., et al., 2020; Li, N., 2018) and improves market efficiency and competitiveness (Zhang, X., & Ji, J., 2023), on the other hand, the cross-border nature, mixed industry nature and strong technical nature have strengthened the necessity of technical supervision. If there is a mismatch between tools and capabilities, it may induce systemic financial risks and intensify local regulatory pressure (Yang, D., 2018; Li, M., 2019; Jin, W., 2019); at the same time, being driven by massive data also comes with high data risks (Yuan, K., & Cheng, Y., 2023; Liu, N., & Lyu, H., 2022). This leads to policy recommendations such as expanding the scope of pilot projects, using supervision to guide innovation, and strengthening corporate governance (Han, Y., 2022). The above results provide an important reference for understanding the problem, but also suggest that the local dimension still lacks an explanatory framework that integrates "rules, rights, responsibilities, and capabilities".

Accordingly, this paper will mainly focus on the following three research topics: First, there is a structural lag between the supply of legal regulations for local financial supervision and the evolution of financial technology formats, making it difficult for the rule system to cover the functional deformation of "7+4" entities; Second, under the dual requirements of "financial management is mainly the power of the central government" and "strengthening local risk disposal responsibilities", the boundaries of central and local power and responsibilities are still unclear, and the overlapping of power and responsibilities and the poor accountability chain jointly increase the operating costs of the system; Third, data-driven business logic makes it more difficult for regulatory agencies to implement data governance and regulatory technology applications, causing risk identification and disposal to exhibit a "lag-spillover" transmission characteristic. Based on this, this article takes "realistic dilemma – blocking mechanism – optimization path" as the main line, and comprehensively uses normative analysis, legal doctrine interpretation and institutional analysis methods to provide academic support for the construction of a unified and predictable local regulatory framework for financial technology.

2. The Dual Effects of Financial Technology on Local Financial Supervision and Its Institutional Implications

Fintech is the practice and application of

technological means and innovative models in the field of financial services. It uses emerging technologies to reshape traditional financial business models, thereby effectively improving the efficiency of financial services and broadening the coverage of financial services. While helping the financial industry achieve service innovation, it also has a profound impact on the current local financial regulatory system.

2.1 Concept Definition and Analytical Premises: Transformation from Technology Application to Institutional Structure

First of all, from a conceptual level, financial technology is not only the external embedding of technical tools, but also an institutional force that uses data, algorithms and platforms as core elements to promote the reorganization of financial transaction structures, risk patterns and governance methods; Accordingly, local financial supervision is not just "administrative management of local financial organizations", but a public governance chain formed around risk identification-early warning-disposal-accountability. Based on the above definition, this article proposes three analytical premises: First, the impact of financial technology on supervision is "dual". It may improve supervisory performance through information increment and tool upgrading, or it may amplify risk spillovers through cross-border operations and technological black boxes; Second, the effectiveness of local supervision depends on the dynamic matching between the supply of rules, allocation of rights and responsibilities, and capacity resources, rather than "making up for shortcomings" in a single link; Third, in the data-driven financial ecosystem, Reg Tech should be understood as an institutional change in the way regulatory power is realized, rather than a simple tool choice by regulators to "use technology". Based on this, the following will analyze the impact mechanism from two dimensions: promotion and impact.

2.2 The Role of Financial Technology in Promoting Local Financial Supervision

(1) Improve financial transparency. From the perspective of information structure, financial technology companies master a large amount of user information and transaction data through technical means, forming significant data advantages; Therefore, local regulatory authorities can use the capabilities of massive data mining, intelligent data analysis, and intelligent regulatory decision-making to gain a deeper insight into the operating status of the financial market and grasp market dynamics in a timely manner. Furthermore, when regulatory authorities can transform dispersed data into comparable, verifiable, and traceable risk signals, information asymmetry risks will be significantly reduced, and financial market transparency and regulatory pertinence will be enhanced. It can be seen that financial technology has provided an increase in efficiency for local supervision at the level of "data availability", but whether this increase can be transformed into substantive supervisory performance still depends on the regulatory authorities' institutionalized acquisition and legalized use arrangements for data.

(2) Promote regulatory technological innovation. From the perspective of governance tools, the rapid development of financial technology has given rise to the rise of regulatory technology and promoted the transformation of the local regulatory process from the traditional model of "manual experience-sampling inspection" to the technical chain of "automated collection-real-time identification-continuous evaluation-closed-loop reporting". Specifically, automated data collection, risk identification, risk assessment and regulatory reporting and other processes can significantly reduce manual operations and information delays, and reduce regulatory deviations caused by human errors, thereby improving overall regulatory efficiency. It needs to be emphasized that the introduction of regulatory technology does not automatically equate to an increase in regulatory intensity. Its more critical institutional implications are: The way in which supervisory power is exercised has undergone a shift from "programmed to codified", so it must simultaneously respond to legal constraints such as the legality of data sources, algorithm interpretability, and procedural legitimacy. Based on this understanding, the promoting role of financial technology will eventually be transformed into a normative proposition: Local regulatory capacity building should be promoted simultaneously with legalized procedural constraints to avoid new compliance risks brought about by "technology replacing rules."

2.3 The Impact of Financial Technology on Local Financial Supervision

(1) Fintech empowers the financial industry,

making supervision more difficult and inducing regulatory arbitrage. From the perspective of regulatory boundaries, the rapid development of financial technology has given rise to new financial formats, especially after large technology companies enter the financial industry. Their massive data advantages and platform ecology make it difficult for the traditional financial supervision model to respond in a timely and effective manner, thereby greatly increasing the difficulty of supervision. More importantly, based on the cross-regional and decentralized characteristics of financial technology, the boundaries of financial activities tend to be blurred; the provision of financial services in 4 regions and even across borders has become the norm. Under the circumstances where the existing regulatory legal system is limited and lagging, some financial technology companies develop cross-border financial services in order to avoid regulatory constraints, inducing "regulatory arbitrage" behavior and endangering financial stability and security (Hou, D., 2025). It can be seen that, while financial technology expands financial availability, it also objectively increases the external intensity of local regulation: risks are no longer limited to territorial boundaries, but are rapidly spilling over through online and platform-based processes.

(2) Financial technology intensifies risk expansion. From the perspective of risk externalities, the financial industry has always received great attention from regulatory agencies because of its significant negative externalities. Traditional supervision usually focuses on "systemically important institutions" and allocates regulatory resources and rule intensity accordingly. However, financial technology innovation breaks through the traditional business model and relies on the rapid transmission characteristics of the Internet, resulting in a significant increase in business concealment and risk. Local supervision is more likely to encounter the dilemma of "lag in discovery – rising disposal costs" in risk identification and disposal. In particular, small loans, loan assistance businesses and licensed financial technology companies launched by Internet financial companies may induce cross-border business operations due to the existence of a regulatory vacuum, thereby exacerbating financial risks (Shi, G., 2023). Therefore, financial technology does not simply expand the scale of risks, but changes the path of risk expansion: risks are more likely to be superimposed in a "cross-subject, cross-business, and cross-region" manner and accelerate contagion through the technology chain.

To sum up, financial technology has a dual effect of "incremental efficiency" and "incremental risk" on local financial supervision: On the one hand, it improves transparency and reduces some regulatory costs through data aggregation and regulatory technology innovation; on the other hand, it increases regulatory externalities and governance complexity through cross-domain operations, regulatory arbitrage and negative externality expansion.

3. Triple Failures of Local Financial Supervision Under the Background of Financial Technology

Driven by the empowerment of financial technology, financial risks are showing a clear trend of transferring from the central to local governments, from traditional financial fields to non-traditional financial fields, and from offline financial transactions to online. As a result, local financial supervision has encountered systemic pressure from the three-dimensional mismatch of "rules-powers and responsibilities-capabilities". Based on the theory of institutional regulatory lag and functional supervision, this paper presents the practical difficulties of local supervision from the aspects of legal system, central and local powers and responsibilities, and data governance.

3.1 The Legal System for Local Financial Supervision Is Imperfect

First of all, from the perspective of the relationship between "regulating supply and market evolution", the imperfection of the legal system constitutes a key bottleneck for local supervision to respond to the development of financial technology: When new business and risk forms are rapidly generated and the supply of rules lags behind, regulators can only rely on low-level documents or temporary measures to fill the gap, thereby weakening the predictability and legitimacy of supervision and amplifying the uncertainty cost of compliance for market entities. This phenomenon is not only a technical problem caused by the "legislative gap", but also a structural failure that makes it difficult for the rule system to achieve "penetration –

adaptation – enforceability". Secondly, from the perspective of the relationship between "five sectors", the current system still has obvious insufficient rule coverage in the local financial field: Although in 2022, the People's Bank of China, together with relevant departments, studied and drafted the Regulations on "Local Financial Supervision and Administration (Draft for Comment)". However, the document is still in the draft stage and has a limited level, which is not enough to form a nationally unified and directly applicable upper-level norm; At the same time, there are still deficiencies in the regulatory provisions for social crowdfunding institutions, investment companies, farmers' professional cooperatives that carry out credit mutual aid, and other entities, resulting in the continued existence of a regulatory vacuum with nothing to follow. Furthermore, under the background that national regulations have not yet been promulgated, some local regulatory rules are mostly departmental regulations or normative documents, and the legal level is low, and the legal system of local financial supervision is incomplete (Zhang, W., Feng, G., & Zhou, G., 2025); In small loan companies and other fields, the supervision practice is highly dependent on local policy documents, lacking the support of superior law, which affects the intensity and effect of supervision, and the timeliness and scope of supervision laws are limited (Cheng, X., 2024). Cross-border, cross-sector, and concealed transaction models are more likely to form regulatory blind spots and induce regulatory arbitrage. Take the peer-to-peer online lending platform "E-Zubao" as an example, this case involved 31 provinces, autonomous regions and municipalities, more than 1.15 million investors, and an amount of 76.2 billion yuan involved. It exposed the tension between "regional operations of financial institutions" and "systemic risks" and posed a prominent challenge to the horizontal and vertical allocation of national financial regulatory powers. In short, the lag and fragmentation of the rule system make it difficult for local supervision to form stable institutional expectations. This dilemma will naturally lead to further issues about the boundaries of powers and responsibilities and coordination mechanisms.

3.2 In the Field of Financial Technology Risk Supervision, There Is an Imbalance of Regulatory Powers and Responsibilities Between the Central and Local Governments

First of all, from the perspective of the principal-agent framework of vertical power allocation, the imbalance of central and local power and responsibilities is essentially the manifestation of the tension between "increased risk externalities" and "solidified territorial governance responsibilities": The institutional reform in 2023 will promote the continuous evolution of the central financial regulatory system, while the rights and responsibilities of local-level financial regulatory entities are still relatively vague. When central rules are unified and local risk handling responsibilities are simultaneously strengthened, without operable power division standards and a clear accountability chain, local supervision may fall into a governance dilemma of "more passive disposal and less active governance". Secondly, from the perspective of local internal governance structure, the "one agency, multiple brands" shared office model is conducive to resource coordination to a certain extent, but it may also lead to overlapping responsibilities and increased coordination costs. The financial office of the local party committee, the financial working committee and the local financial management bureau have formed a closed loop of 'decision-making-coordination-execution' under the framework of 'party management of finance', but in practice there are still problems of conflicts of rights and responsibilities and imperfect coordination mechanisms. At the same time, local regulatory agencies, as extensions of the original local government departments, will have insufficient independence to affect regulatory effectiveness when regional financial development conflicts with regulatory objectives. It can be seen that 'organizational integration' at the local level does not necessarily equate to 'clear responsibilities'. On the contrary, it may amplify institutional friction when the interface between rights and responsibilities is unclear. Thirdly, from the perspective of central-regional boundaries and cross-domain operations, the central government emphasized that 'under the premise of insisting that financial management is mainly the power of the central government, in accordance with the unified rules of the central government, strengthen territorial risk disposal responsibilities', and formed a hierarchical structure of 'general bureau-provincial bureau-branch' after the

reform. However, as Fintech leverages big data and cloud computing to expand operations across regions, local risks may escalate into systemic hazards. The mismatch between local regulatory oversight and nationwide operations exacerbates accountability gaps, while decentralized governance structures may lead to arbitrary risk management responsibilities. Therefore, the imbalance of power and responsibilities between the central and local governments is not simply a quantitative issue of "too much authority or too little", but requires an institutionalized match between the strength of risk externalities and the accountability of the disposal chain.

3.3 Data Risk Management Problems Faced by Local Financial Regulatory Agencies in the Context of Financial Technology

First of all, from the perspective of information structure and governance capabilities, financial technology expands the breadth and depth of financial services, and uses data processing and application to become an important driving force for industry growth. However, it also introduces more complex data risks: In the data-intensive financial industry, the uncertainty, replicability and high liquidity of data make risks more concealed and complex, thus raising the threshold for regulatory identification. In the sense of legal power structure, this dilemma can be understood as a structural imbalance between "data control of the platform" and "information availability of regulators", the consequences of which are often manifested in the lag in regulatory judgment and the increase in disposal costs. Secondly, from the perspective of the adaptability of regulatory tools, the real risks of data collection, utilization and sharing have triggered regulatory demands for data governance in financial institutions, but it is difficult for traditional data management frameworks to adapt to the "disruptive" innovation characteristics of financial technology; The combination of lagging regulatory thinking and insufficient governance means makes it more difficult to identify, prevent and control data risks. It is particularly worth emphasizing that the current regulatory response to Fintech risks still mainly relies on traditional means such as capital requirements, business scope/quota restrictions, and risk warnings. However, the institutional supply of data risk prevention and control is obviously insufficient, especially the lack of specialized mechanisms and strategies for Fintech data governance (Liu, N., & Lyu, H., 2022). As a result, it is difficult for regulatory authorities to form effective synergy, and when data acquisition methods are limited, risk monitoring capabilities are further restricted by hidden information asymmetry and sensitive information asymmetry, thereby weakening the pertinence and effectiveness of regulatory decision-making.

To sum up, the three dilemmas faced by local financial supervision are not isolated from each other: the lagging supply of rules provides institutional soil for the imbalance of rights and responsibilities, which in turn aggravates the insufficient investment in data governance and regulatory technology, while the problem of data risk governance in turn amplifies regulatory arbitrage and risk spillovers.

4. The System Generation Logic and Transmission Chain of Insufficient Local Financial Supervision Effectiveness

In the aforementioned triple dilemma of "insufficient supply of rules – imbalance of central and local powers and responsibilities – lagging data governance", the insufficient effectiveness of local financial supervision is not an isolated implementation deviation, but a "blocking structure" jointly shaped by the mutual reinforcement of the time lag in institutional supply, vertical power allocation and technical governance capabilities. The key feature of this structure is that financial technology extrapolates risk generation from "inside the institution" to the "platform ecosystem" and accelerates risk transmission through cross-domain operations and data-driven, making local supervision face adaptability pressure at the three levels of rules, incentives and capabilities at the same time ("7+4" risk disposal pressure and cross-domain risk spillover coexist).

4.1 Regulatory Gap Mechanism: How the Time Lag in Rule Supply Amplifies Regulatory Arbitrage and Risk Spillovers

First of all, from the perspective of institutional supply lag, local financial supervision has experienced structural breaks under the impact of financial technology, such as "insufficient rule coverage – reliance on low-level documents for execution – unstable regulatory expectations": When national and unified local financial regulatory rules have not yet been formed, and

local-level rules are mostly supplemented by normative documents, once the business functions of the regulatory objects are transformed, it is easy to create a compliance gray area between "existing classifications and new functions", thereby forming a regulatory arbitrage window. In practice, this rupture is manifested in the following: lack of regulatory provisions for some financial organizations, insufficient support from higher-level laws, and the coexistence of fragmented rules, making it difficult for local supervision to form predictable compliance boundaries and establish stable legal application paths in cross-domain scenarios.

Secondly, from the perspective of the institutional conditions for risk spillover, the gap in rules will be transmitted through "cross-domain supervision objects-difficulty in tracing responsibility-externalization of disposal costs": Fintech has driven financial activities to become more concealed, decentralized, and cross-border/cross-domain, creating potential gaps in the local supervision chain of "discovery-qualification-imputation." Therefore, the real harm of the regulatory gap is that it transforms cross-domain operations caused by financial technology into governance problems where "rules are difficult to penetrate" and further increases the risk of incentive distortion in the vertical allocation of rights and responsibilities.

4.2 Incentive Distortion Mechanism: How Unclear Boundaries of Central and Local Powers and Responsibilities Can Induce Coordination Failures and Selective Regulation

First of all, from the perspective of vertical decentralization and the principal-agent relationship, the juxtaposition of "central unified rules" and "local risk disposal responsibilities", if there is no operable power division standard and clear accountability chain, will cause local supervision to bear high-intensity disposal pressure under the condition of limited power resources, forming a structural mismatch of "responsibility rigidity-authority flexibility". After the reform, the regulatory system at the central level continues to evolve, while the positioning of the rights and responsibilities of financial regulatory entities at the local level remains unclear, which is a realistic manifestation of this mismatch. In this case, the rational strategy of local supervision may shift from "pre-emptive governance" to "post-event disposal" and focus limited supervision resources on links that can be quickly accountable.

Secondly, from the perspective of the local internal governance structure, although the co-location of "one agency, multiple brands" strengthens coordination, it may also increase coordination costs and weaken regulatory independence when the responsibilities are unclear: While the financial office of the local party committee, the financial working committee and the local financial bureau have formed a closed loop of "decision-making-coordination-execution",
there are still problems of conflicts of powers and responsibilities and imperfect coordination mechanisms. Moreover, local regulatory agencies, as extensions of the original local government departments, face conflicts between regional financial development and regulatory objectives, and their lack of independence affects regulatory effectiveness.

Therefore, the incentive distortion mechanism is not only reflected in the abstract division of labor disputes about "who controls what at the central and local levels", but will be embodied in the observable consequences of "coordination failure-regulatory competition-selective regulation" under the constraints of local organizational structures and development goals, and further aggravate the lack of investment in data governance and the lagging application of regulatory technology.

4.3 Capability Constraints Mechanism: How Do Data and Algorithmic Structures Perpetuate Information Asymmetry, Thereby Leading to Delays in Risk Identification

First of all, from the perspective of information structure, financial technology embeds data processing and application into the financial supply chain, which enlarges the dependence of supervision on data availability and interpretability, but at the same time introduces more complex data risks; The development of financial technology expands the breadth and depth of financial services, and while data processing capabilities become a key force for growth, it also brings complex and changing data risk challenges. The data-intensive characteristics of the financial industry combined with the technical attributes of financial technology make data risks more uncertain and unique, thus significantly raising the regulatory identification threshold. In this

context, the capacity shortcomings of local supervision are no longer "short of manpower" in the traditional sense, but transformed into structural constraints of "unavailable data, unauditable algorithms, and unpredictable risks."

Secondly, from the perspective of tool adaptability and governance methods, traditional data management frameworks are difficult to meet regulatory needs in the "disruptive innovation" scenario. Lagging regulatory ideas and insufficient governance methods will further amplify information asymmetry: The risks of data collection, utilization and sharing have increased the regulatory requirements for data governance. However, the traditional data management framework of regulatory agencies is difficult to adapt to reality, and potential data risks are more hidden and complex than traditional financial risks. At the same time, the current response to fintech risks still mainly relies on traditional means such as capital, business scope/quota limits, and risk warnings. The lack of specialized mechanisms and strategies for fintech data governance will make it difficult to form a regulatory synergy and limit risk monitoring capabilities. In practice, it is manifested in the coexistence of hidden information asymmetry and sensitive information asymmetry.

Therefore, the conclusion of the capacity constraint mechanism is: without institutionalized data acquisition, sharing and technical review paths, local supervision will be difficult to achieve proactive governance even if it is "responsible". This will mutually reinforce the aforementioned incentive distortion mechanism, and eventually evolve into an accelerator of risk spillover under cross-domain operating conditions, which leads to the cross-domain transmission mechanism in the next section.

4.4 Cross-Domain Transmission Mechanism: How Online Operations Push Local Risks to Regional and Systemic Risks

First of all, from the perspective of risk externalities and transmission speed, the cross-regional, decentralized and platform-based operations of financial technology make it easier for local risks to spread outward through the rapid transmission characteristics of the Internet: when the boundaries of financial activities are reshaped by technology and business reach breaks through administrative divisions, territorial supervision will naturally face the mismatch of "registration place supervision – national operation". The imbalance of local supervision powers and responsibilities will therefore become more prominent, and may make the division of risk disposal responsibilities uninstitutionalized and arbitrary.

Secondly, from the perspective of mechanism superposition, the essence of the cross-domain transmission mechanism is "the compound amplification of institutional ruptures": First, regulatory gaps make cross-domain businesses more likely to fall into regulatory blind spots and induce arbitrage; Second, the mismatch of rights and responsibilities makes local governments more inclined to deal with the situation after the fact rather than in advance, and cross-domain collaboration lacks a stable organizational carrier; Third, data governance lags and algorithm black boxes cause risk identification to lag behind, causing disposal costs to rise sharply after risks spread. Taking the "E-Zubao" case as a typical example of the tension between "regional operation and systemic risk," the mechanism of cross-domain risk transmission demonstrates that when risks spread through the platform's network structure, regulatory oversight at a single geographical level is insufficient to establish effective governance system. Instead, a structured, vertical coordination approach, combined with a data governance system, is necessary to ensure that risks can be identified, held accountable for, and effectively managed.

To sum up, the insufficient effectiveness of local financial supervision can be explained by the closed loop of four types of mechanisms: Gap in regulations provides room for arbitrage, distorts incentives and weakens coordination and front-end governance. Capacity constraints solidify information asymmetry and cause recognition lag. Cross-domain conduction amplifies the above-mentioned faults and promotes risk spillover. The closed loop of this mechanism shows that the rule system is functional and enforceable, the division of powers and responsibilities between central and local governments is standardized and accountable, and data governance and regulatory technology are legalized and coordinated to achieve a dynamic balance

between "promoting innovation" and "preventing risks" (from mechanism hedging to standardized solutions).

5. Legal Construction of Modern Local Financial Supervision and Governance System

5.1 Improvement of the Legal System: Reshaping of Rules from "Institutional Legislation" to "Functional Legislation"

First of all, to hedge against the expansion of regulatory externalities brought about by financial technology's "cross-format – cross-region – cross-subject", the supply of rules should shift from "institutional legislation" centered on institutional licenses to "functional legislation" centered on financial functions and risk forms, that is, setting consistent bottom-line obligations and responsibility structures around functional units such as payment and settlement, financing matching and loan assistance, asset management and wealth management, information intermediaries and credit reporting, digital risk control and model services, and through "cross-cutting" "Transparent identification + same regulation for similar businesses" achieves comparability and enforceability of regulatory standards. Furthermore, at the national level, the fundamental problem of "fragmented local regulatory basis and insufficient effectiveness of rules" should be solved by upgrading the legislative level: On the one hand, in the dual governance scenario of finance and data, regulatory rules must meet clear and enforceable normative requirements. Article 7, paragraph 2, of the "Legislation Law" (2023 amendment) clarifies that "legal norms should be clear, specific, targeted and enforceable", which provides a normative basis for modularizing, standardizing and embedding regulatory requirements into verifiable procedures. On the other hand, for major matters involving the basic financial system, Article 11 (9) of the Legislation Law (2023 Amendment) includes the "basic financial system" into the scope of matters that can only be enacted by laws. Therefore, the national level should pass special legislation or systematic amendments to the law to clarify the basic concepts, supervision objects, risk classification, disposal chain and boundaries of powers and responsibilities of local financial supervision, so that local supervision can move from "policy authorized type" to "legal authorized type". In short, the core benefit of functional legislation is to reduce cross-border regulatory frictions and improve predictability through unified rules.

Secondly, local standardized supply should achieve refined management within the boundaries of legal authorization to avoid the coexistence of risks of "overstepping authority to set obligations" and "duplication of superior laws". Article 82 of the "Legislation Law" (amended in 2023) stipulates that the scope of matters of local regulations mainly includes: matters that need to be specifically stipulated in conjunction with the actual situation of the administrative region in order to implement higher-level laws, and matters that are local affairs and require the formulation of local regulations. At the same time, it clarifies that "local regulations shall be formulated and content that has been clearly stipulated by higher-level laws will generally not be repeatedly stipulated." Accordingly, institutional innovation at the local level should follow a "procedural – technical – collaborative" approach: At the procedural level, local regulations or government regulations solidify regulatory procedures (such as administrative inspection standards, risk warning trigger conditions, disposal initiation thresholds, information submission processes, and administrative discretionary benchmarks), replacing caliber drift with procedural rigidity; At the technical level, the regulatory requirements are translated into a "verifiable list" (disclosure, traces, audits, isolation, risk control thresholds) rather than general obligations; At the collaborative level, relying on the provisions of Article 83 of the Legislation Law (2023 Amendment) on the regional collaborative legislative mechanism, we will promote the formation of collaborative rules in areas with intensive cross-regional financial activities and alleviate the institutional fragmentation caused by the natural cross-domain nature of financial technology business. Finally, in order to prevent compliance costs from soaring due to local regulations being "independent", filing review and consistency control should be strengthened: In accordance with the filing system of Article 109 of the Legislation Law (2023 amendment) and the review and linkage mechanism of Articles 110 to 115, local financial technology-related normative documents are promoted to be included in the closed loop of "release-filing-active review/special review-corrective feedback" to

achieve legal unification and policy coordination at a lower institutional cost; this closed loop will also provide an operational institutional fulcrum for central and local coordination and accountability.

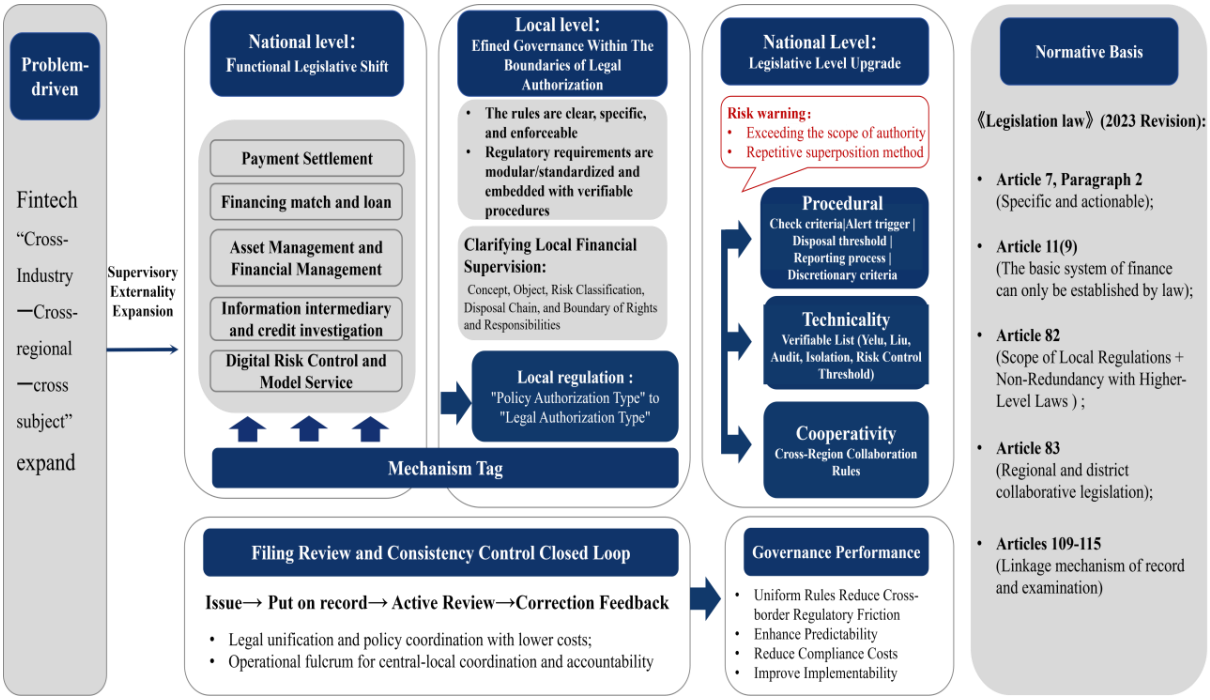

Figure 1. Legislative regulatory mechanism diagram of financial technology functions

5.2 Central and Local Coordination and Accountability: Division of Powers Based on the Standard of "Strength of Externalities-Risk Management Chain"

The key to the relationship between the central and local governments is not to simply "receive or delegate powers", but to allocate powers based on the strength of financial risk externalities, and to make the risk disposal chain procedural, inventory-based, and accountable, thereby reducing the governance costs of collaborative friction and shirk of responsibility. In terms of the externality dimension, matters that have a high probability of spreading across regions, markets, and institutions and that may trigger systemic risks should be led by the central authority: including unified regulatory rule formulation, cross-regional risk monitoring indicator system, major risk disposal plan and cross-domain law enforcement cooperation framework; For those risks that are primarily confined to a particular jurisdiction, can be managed using local resources, and have a low degree of potential impact on other areas, the local authorities can assume responsibility for handling them. This includes routine inspections by local financial institutions, the identification of local financial risks, consumer protection and dispute resolution, as well as the collection of regulatory information and the transmission of relevant clues. In summary, this division reduces duplication of supervision and regulatory vacuum through the matching of "externalities and powers", but its effective operation must fall into the programmed arrangement of the "disposal chain".

At the same time, the risk disposal chain should be divided into central and local divisions and interfaces should be solidified according to the four links of "discovery-early warning-disposal-accountability" to avoid the blocking mechanism of "information fragmentation-sluggish action-weakening of accountability": In the discovery and early warning process, local supervision takes advantage of being close to the market to undertake high-frequency monitoring and clue verification, but it must integrate core indicators into a unified standard and achieve comparable data reporting; In the disposal process, for cross-regional platform risks or risk events involving national capital chains, the central government should take the lead in organizing cross-regional disposal and coordinating regulatory resources, while local governments are responsible for local administrative

assistance, on-site disposal and social stability risk prevention and control; In the accountability link, "whether the report is submitted in a timely manner, whether the disposal is initiated in accordance with the procedures, whether the obligation to assist is fulfilled, and whether there is selective law enforcement" should be transformed into quantifiable accountability elements, forming a closed loop of "responsibility list + procedural traces + auditable evidence". As a result, central and local leadership and territorial responsibilities no longer remain in the declaration of principles, but can institutionally suppress moral risks and regulatory games through listing and leaving traces; On this basis, only the legalization of data governance and regulatory technology can achieve a stable institutional interface.

5.3 Legalization of Data Governance and Regulatory Technology: Collaborative Regulation from Data Security to Platform Governance

In the financial technology ecosystem, "data availability" is not only a prerequisite for regulatory capabilities, but also a concentrated source of legal risks. Therefore, data governance should be used as a hub to achieve synergy between security, compliance and governance performance. Article 21 of the "Data Security Law" (2021) establishes a data classification and hierarchical protection system and requires the implementation of key protection for important data directories; Article 22 establishes risk assessment, reporting, information sharing, monitoring and early warning mechanisms; Article 30 requires important data processors to conduct regular risk assessments and submit assessment reports. Based on these institutional frameworks, local financial supervision should build a combined regulation of "financial supervision data classification + mandatory reporting/disclosure + cross-domain collaboration": First, clarify the classification and grading of data required for supervision and the minimum necessary principles, and legalize "necessary data sets" to reduce disputes over excessive collection and improve data availability; Second, set up hierarchical mandatory reporting obligations for platform-based financial technology entities (immediate reporting of major risk events, regular reporting of key indicators, special reporting on model changes and outsourcing services), and connect reporting obligations with administrative responsibilities, licensing management, and credit constraints; Third, establish a cross-domain data collaboration mechanism to achieve "shareability without abuse" through unified interface standards and audit traces, and reduce transaction costs for cross-regional regulatory collaboration. In short, the above-mentioned institutional arrangements improve the data basis of supervision through "cataloging-interface-leveling".

The next step is to bring RegTech within the framework of the rule of law, in order to ensure that technological governance does not overstep its limits. Going a step further, regulatory technology should not be understood as "technology replacing regulation" but should be positioned as the digital translation of the way regulatory power is exercised: that is, transforming rules into executable, auditable, and accountable procedures and codes, thereby improving the real-time nature and consistency of regulation. To prevent the erosion of program legitimacy by the 'algorithmic black box', the legalization of RegTech should at least meet three requirements: First, the legal foundation of rule digitization should be clear, that is, with legal authority, legal procedures and verifiable standards as the boundaries, regulatory requirements should be translated into "machine-executable" compliance rules (such as thresholds, fields, logs, alarms, disposal processes), and their sources should be traceable, versions can be managed, and changes can be announced; Second, explainability and appealability must be embedded simultaneously, especially when it comes to automated decision-making and risk handling triggers, which should be connected with the personal information protection system. Articles 55 and 56 of the "Personal Information Protection Law" (2021) establish personal information protection impact assessment and record retention obligations, which provide a compliance framework of "pre-event assessment-during the event-post-event audit" for platform risk control models, automated audits, and data processing activities. Third, the technical system should form an evidence chain of "supervision traces" so that law enforcement decisions can be reviewed and accountability can be proven, thereby transforming the "insufficiency of supervisory capabilities" revealed in Chapter 4 into an increment of governance that can be institutionalized to make

up for it. Therefore, the key benefits of RegTech lie in reducing information asymmetry and regulatory friction; however, its associated costs include the investment required for institutional design and technological transformation. These aspects must be assessed in a phased manner and implemented gradually throughout the implementation process. The core value of RegTech lies in reducing information asymmetry and regulatory friction, while its costs stem from institutional design and technological transformation investments. A layered evaluation and phased implementation approach must be adopted throughout the rollout process.

5.4 Implementation Path and Cost-Benefit Assessment: Layered Advancement in the Short, Medium and Long Term

The above-mentioned system construction should adopt a layered promotion strategy of "fixing procedures in the short term, strong coordination in the medium term, and establishing systems in the long term" to achieve a sustainable balance between compliance costs, regulatory resource constraints, innovation incentives and risk reduction. In the short term (about one year), priority should be given to making these measures practical and feasible. This includes completing the process of clearing up and cataloging local financial regulatory norms, establishing cross-departmental mechanisms for risk consultation and the transfer of relevant information. Mandatory reporting and record-keeping requirements should be implemented first in high-risk areas such as loan facilitation services, platform-based matchmaking activities, local trading venues, and crowd-financing schemes. At the same time, RegTech pilots should be conducted to develop replicable templates for implementing these measures. The benefits of such an approach are a rapid reduction in delays in handling-related issues and variations in the application of these regulations; the main costs associated with this approach are the initial investment required for system restructuring and the upgrading of information technology systems. The mid-term (2-3 years) should focus on "coordination": promote the coordinated implementation of the national-level rule system, form a standard interface and data directory for cross-regional regulatory collaboration, improve the correction mechanism for filing reviews and special reviews, and establish a list of central and local powers and accountability requirements based on externalities; the benefits are to reduce cross-domain collaboration friction and compress the space for regulatory arbitrage, and the costs are mainly reflected in institutional coordination and reallocation of regulatory resources. The long-term (3-5 years) should be "sustainable" as the goal: Promote the maturation of a functional legislative framework that encompasses rule formulation, allocation of powers and responsibilities, as well as mechanisms for data governance and management. Upgrade RegTech from a pilot tool to a routine, programmatic regulatory infrastructure. The benefits of this approach include enhanced regulatory resilience and greater predictability of rules; however, the associated costs include ongoing investment in technological innovation, talent development, and the enhancement of governance capabilities.

In summary, the core of layered advancement is to gradually offset the increase in institutional investment and compliance costs through quantifiable risk reduction and collaborative efficiency improvement, thereby avoiding unnecessary squeeze on innovation caused by "one-size-fits-all" governance.

6. Conclusion

Fintech uses data, algorithms and platform ecology to reshape the financial supply structure. While improving the efficiency and coverage of financial services, it also changes the basic logic of risk generation and transmission. This article focuses on the practical dilemmas faced by local financial supervision under the background of financial technology, and sequentially completes the closed-loop demonstration of "problem presentation – mechanism explanation – normative response". Research shows that the main dilemma of local financial supervision is embodied in a triple mismatch: First, at the level of rule supply, there are low standards, fragmented institutional systems, and insufficient adaptability, which makes it easier for compliance gray areas and regulatory arbitrage to occur when the functions of regulatory objects are deformed; Secondly, at the level of power and responsibility allocation, there is an unclear interface between central and local boundaries and local internal responsibilities, which adds to the pressure of territorial risk management and easily induces coordination failure and selective supervision; Third, the capability and resource level is faced

with lagging data risk governance, insufficient supply of regulatory technology, and the solidification of information asymmetry caused by algorithm black boxes, which makes risk identification lag behind and drives up disposal costs. The three reinforce each other and are compounded and amplified under cross-domain operating conditions, thereby promoting the transition of local risks to regional and even systemic risks.

At the mechanism level, this article further reveals the system generation logic of insufficient local financial regulatory effectiveness: regulatory gaps provide arbitrage space, incentive distortions weaken front-end governance and collaborative efficiency, capacity constraints solidify information fractures and cause identification lags, and online, platform and cross-regional operations constitute accelerated channels for risk spillovers. Based on the above explanation of the mechanism, this article proposes an optimization path focusing on the construction of the rule of law: improving the predictability of the system through rule reshaping and hierarchical coordination from "institutional legislation" to "functional legislation"; Use the "strength of externalities – risk management chain" as the criterion to promote the listing, proceduralization and accountability of central and local powers, and reduce collaborative friction and shirk of responsibility; - 14 Enforcement, achieving compatibility between procedural legitimacy and technical governance performance. The institutional implication of the above plan is that the modernization of local financial supervision must simultaneously advance the rule of law and technology. Only by integrating rules, rights, responsibilities, and capabilities into a unified institutional framework and forming an auditable closed loop of procedures can a dynamic balance be achieved between "promoting innovation" and "preventing risks."

It should be noted that, limited by research materials and length, this article still has room to further deepen the discussion on the differences in risk externality intensity, data governance structure and compliance cost burden of different types of financial technology entities. At the same time, the institutionalized path of regulatory technology from pilot tools to infrastructure still needs to be combined with more local practices to test its replicability and boundary conditions in the future. Follow-up research can further refine the functional classification standards and disposal interfaces of different business formats without deviating from the existing institutional framework, and expand the evidence chain in the empirical evaluation of cross-regional collaboration and data sharing mechanisms to continue to improve the resilience and adaptability of the local financial regulatory system.

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