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# Human Rights and the Rehabilitation of Prisoners of War in the Cameroon Anglophone Armed Conflict: Progress, Pitfalls, and Prospects

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## Abstract

The rehabilitation of prisoners of war remains a critical component of human rights protection in armed conflict, yet it is frequently overlooked in both legal analysis and post-conflict policy design, particularly in non-international armed conflicts. In the context of the Anglophone Cameroon crisis, the capture, detention, release, and reintegration of conflict-related detainees have generated complex legal and humanitarian questions. This article examines the rehabilitation of prisoners of war in the Anglophone Cameroon armed conflict through the combined lenses of international humanitarian law and international human rights law. Adopting a doctrinal and qualitative analytical approach, the study evaluates the applicable legal frameworks and appraises existing rehabilitation measures by assessing progress achieved, identifying persistent pitfalls, and exploring future prospects. The analysis demonstrates that while notable progress has been made through State-led amnesty initiatives, disarmament, demobilization and reintegration programmes, and humanitarian interventions, significant challenges persist. These include legal ambiguity surrounding prisoner classification, fragmented institutional implementation, insufficient psychosocial and socio-economic support, and enduring social stigma. The article argues that without a comprehensive, rights-based and institutionalized rehabilitation framework, current efforts risk falling short of restoring human dignity and contributing to sustainable peace. It concludes by proposing legal, institutional, and policy reforms aimed at strengthening rehabilitation practices in conformity with international human rights standards and the long-term resolution of the Anglophone Cameroon crisis.

**Keywords:** Anglophone Cameroon crisis, armed conflict, human rights, prisoner of war, rehabilitation

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## 1. Introduction

Armed conflicts pose profound challenges to the protection of human dignity, particularly with respect to individuals captured or detained by parties to the conflict. Among the most vulnerable are prisoners of war (POWs) and conflict-related detainees, whose treatment

constitutes a central benchmark for compliance with international humanitarian law (IHL) and international human rights law (IHRL). The Third Geneva Convention establishes detailed standards for the humane treatment, protection, and eventual release of POWs, reflecting the principle that deprivation of liberty in armed

conflict does not extinguish fundamental human rights.<sup>1</sup> In contemporary armed conflicts especially non-international armed conflicts the application of POW-related protections has become increasingly contested, as states frequently resist formal recognition of combatant status, thereby limiting the scope of protection afforded to detainees.<sup>2</sup>

The armed conflict in Cameroon's Northwest and Southwest regions, widely referred to as the Anglophone Cameroon crisis, provides a compelling context for examining these legal and humanitarian tensions. The roots of the crisis lie in Cameroon's colonial history and post-independence governance structure, characterized by the marginalization of Anglophone communities within a predominantly Francophone state.<sup>3</sup> Long-standing grievances relating to political representation, the erosion of the common law system, and the perceived assimilation of Anglo-Saxon educational and administrative traditions culminated in peaceful protests by lawyers and teachers in 2016.<sup>4</sup> The state's securitized response to these protests precipitated a rapid escalation into a protracted armed conflict between government forces and armed separatist groups, accompanied by widespread arrests, detentions, and prosecutions of individuals alleged to be fighters or supporters.<sup>5</sup>

Within this conflict environment, the status, treatment, and rehabilitation of prisoners of war and conflict-related detainees remain deeply problematic. Although the Cameroonian government has consistently framed the situation as an internal security or counter-terrorism operation, the intensity and organization of hostilities meet the threshold of a non-

international armed conflict under international law,<sup>6</sup> thereby triggering the application of Common Article 3 of the Geneva Conventions and relevant customary IHL norms.<sup>7</sup> Reports by international and regional human rights bodies document persistent allegations of torture, prolonged pre-trial detention, overcrowded prison conditions, and the trial of civilians before military tribunals, all of which raise serious concerns regarding compliance with both IHL and IHRL standards.<sup>8</sup>

The rehabilitation of prisoners of war constitutes a critical yet insufficiently examined dimension of protection in armed conflict. Rehabilitation extends beyond humane detention to include physical and psychological recovery, access to justice, restoration of dignity, and social reintegration.<sup>9</sup> From a legal perspective, these obligations are grounded in IHL provisions on humane treatment and repatriation, as well as IHRL norms prohibiting torture, guaranteeing the right to health, and ensuring the right to an effective remedy for victims of violations.<sup>10</sup> From a peace-building standpoint, effective rehabilitation reduces the risk of recidivism, radicalization, and renewed violence,<sup>11</sup> while fostering reconciliation and long-term stability in post-conflict societies.<sup>12</sup>

Despite its significance, rehabilitation has received limited systematic attention in analyses of the Anglophone conflict, which has largely prioritized ceasefires, accountability, and political dialogue. Where rehabilitation initiatives exist, they tend to be fragmented, ad hoc, or embedded within security-driven frameworks, raising concerns about their sustainability and compliance with human rights standards.<sup>13</sup> This gap underscores the need for a

<sup>1</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949, 75 U.N.T.S. 135.

<sup>2</sup> Henckaerts, J.-M., & Doswald-Beck, L. (2005). *Customary international humanitarian law* (Vol. 1). Cambridge University Press.

<sup>3</sup> Konings, P., & Nyamnjoh, F. B. (1997). The Anglophone problem in Cameroon. *The Journal of Modern African Studies*, 35(2), 207-229.

<sup>4</sup> International Crisis Group. (2019). *Cameroon's Anglophone crisis at the crossroads* (Africa Report No. 272).

<sup>5</sup> Human Rights Watch. (2024). *World report 2024: Cameroon*. Human Rights Watch.

<sup>6</sup> Amnesty International. (2018). *Cameroon: "These killings can be stopped" – Abuses by government forces and armed separatists in Anglophone regions*. Amnesty International.

<sup>7</sup> Prosecutor v. Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Appeals Chamber, Oct. 2, 1995).

<sup>8</sup> African Commission on Human and Peoples' Rights. (2003). *Principles and guidelines on the right to a fair trial and legal assistance in Africa*. ACHPR.

<sup>9</sup> Sarkin, J. (2014). The role of rehabilitation in post-conflict justice. *Human Rights Quarterly*, 36(4).

<sup>10</sup> United Nations General Assembly. (2005). *Basic principles and guidelines on the right to a remedy and reparation* (A/RES/60/147).

<sup>11</sup> Teitel, R. (2000). *Transitional justice*. Oxford University Press.

<sup>12</sup> United Nations Development Program. (2006). *Integrated disarmament, demobilization and reintegration standards*. UNDP.

<sup>13</sup> Office of the United Nations High Commissioner for Human Rights. (2019). *Human rights violations and abuses in the context of the Anglophone crisis in Cameroon*. OHCHR.

balanced and context-sensitive inquiry that recognizes both normative commitments and empirical realities.

Accordingly, this article examines human rights and the rehabilitation of prisoners of war in the Cameroon Anglophone armed conflict, focusing on progress, pitfalls, and prospects. Anchored in the frameworks of international humanitarian and human rights law, the study evaluates state practice, institutional responses, and existing rehabilitation measures, while identifying pathways through which rights-based rehabilitation can contribute to sustainable peace and national reconciliation.

## 2. Conceptual and Terminological Clarification

In legal and human rights scholarship, conceptual precision is indispensable, particularly where terms derive simultaneously from treaty law, domestic statutes, judicial interpretation, and scholarly discourse. This study employs key concepts drawn directly from its title—*human rights, prisoners of war, rehabilitation, armed conflict, progress, pitfalls, and prospects*. Each term is clarified through statutory definitions, leading scholarly interpretations, and Black’s Law Dictionary, ensuring doctrinal accuracy and analytical coherence.

### 2.1 Human Rights

The Universal Declaration of Human Rights (UDHR) recognizes human rights as inherent entitlements belonging to “all members of the human family” and grounded in dignity, freedom, and equality.<sup>1</sup> These rights are further codified in binding instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (ACHPR), which impose legal obligations on states to respect, protect, and fulfill fundamental rights even in times of emergency, subject to lawful derogation.<sup>2</sup>

Donnelly (2013)<sup>3</sup> defines human rights as rights one possesses “simply because one is human,”

emphasizing universality and inalienability. Alston and Goodman (2013)<sup>4</sup> conceptualize human rights as legally enforceable claims that restrain state power and protect human dignity.

Human rights are defined as “the freedoms, immunities, and benefits that all human beings should be able to claim as a matter of right.”<sup>5</sup> In armed conflict, these definitions affirm that detention including of prisoners of war does not extinguish core human rights protections.

### 2.2 Prisoners of War

Article 4 of the Third Geneva Convention defines prisoners of war as members of the armed forces or organized resistance movements who and are entitled to humane treatment and legal protection.<sup>6</sup> In non-international armed conflicts, Common Article 3 provides minimum protections to persons detained in connection with hostilities.

Pictet (1960)<sup>7</sup> defines POWs as combatants captured by the enemy who must be protected against violence, intimidation, and degrading treatment.

Dinstein (2016)<sup>8</sup> describes POWs as lawful participants in hostilities who, upon capture, benefit from immunity for lawful acts of war and extensive protective guarantees.

A prisoner of war is “a person captured and held by an enemy during an armed conflict, especially a member of the armed forces, entitled to treatment under the laws of war.”<sup>9</sup> For this study, the term is used in a functional and protective sense to encompass detained fighters in the Anglophone conflict, irrespective of formal recognition by the state.

### 2.3 Rehabilitation

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation define rehabilitation as including “medical and psychological care as well as legal and social services” for victims of serious human rights and

<sup>1</sup> United Nations. (1948). Universal Declaration of Human Rights. UN General Assembly Res. 217 A (III).

<sup>2</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>3</sup> Donnelly, J. (2013). *Universal human rights in theory and practice* (3rd ed.). Cornell University Press.

<sup>4</sup> Alston, P., & Goodman, R. (2013). *International human rights* (2nd ed.). Oxford University Press.

<sup>5</sup> Garner, B. A. (Ed.). (2019). *Black’s law dictionary* (11th ed.). Thomson Reuters.

<sup>6</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135.

<sup>7</sup> Pictet, J. (1960). Commentary on the Geneva Conventions of 12 August 1949: Volume III—Geneva Convention relative to the treatment of prisoners of war. ICRC.

<sup>8</sup> Dinstein, Y. (2016). *The conduct of hostilities under the law of international armed conflict* (3rd ed.). Cambridge University Press.

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

humanitarian law violations.<sup>1</sup>

Similarly, Article 14 of the Convention against Torture obliges states to ensure redress, including rehabilitation, for victims of torture. Sarkin (2014)<sup>2</sup> defines rehabilitation as measures aimed at restoring victims' physical, psychological, legal, and social integrity. Teitel (2000)<sup>3</sup> views rehabilitation as a transitional justice mechanism designed to repair harm and facilitate reintegration.

Rehabilitation is defined as “the process of restoring an individual to a useful and constructive place in society through treatment, education, or training”.<sup>4</sup> Applied to prisoners of war, rehabilitation encompasses post- detention recovery, reintegration, and guarantees of non-repetition.

#### 2.4 Armed Conflict (Non-International Armed Conflict)

While the Geneva Conventions do not explicitly define armed conflict, Common Article 3 applies to “armed conflict not of an international character” occurring within a state. Additional Protocol II further regulates such conflicts involving organized armed groups exercising control over territory.<sup>5</sup>

Cassese (2005)<sup>6</sup> defines a non-international armed conflict as sustained armed violence between state forces and organized armed groups. Dinstein (2016)<sup>7</sup> emphasizes intensity and organization as determinative criteria.

Armed conflict is defined as “hostilities involving armed forces that are governed by the laws of war, whether international or internal”.<sup>8</sup> The Anglophone Cameroon crisis satisfies these legal thresholds, activating IHL obligations toward detainees.

#### 2.5 Progress

While not explicitly defined in treaties, progress is implicit in international monitoring mechanisms such as state reporting under the ICCPR and ACHPR, where improvements in compliance and implementation are assessed over time. Sen (1999)<sup>9</sup> conceptualizes progress as the expansion of substantive freedoms and institutional capacity. Alston (2014)<sup>10</sup> defines progress as the translation of legal norms into tangible improvements in human rights enjoyment. Progress means “forward movement toward a more developed or improved condition”.<sup>11</sup> In this study, progress refers to positive developments in law, policy, or practice concerning POW rehabilitation in Cameroon.

#### 2.6 Pitfalls

Although not statutorily defined, pitfalls are recognized in implementation literature as obstacles undermining compliance with legal obligations, particularly in human rights treaty implementation processes. Pressman and Wildavsky (1984)<sup>12</sup> define pitfalls as failures arising from policy implementation gaps. Merry (2006)<sup>13</sup> views pitfalls as disjunctions between human rights norms and lived realities.

A pitfall is “a hidden or unsuspected difficulty or danger”.<sup>14</sup> Pitfalls in this context include structural weaknesses that undermine rehabilitation efforts.

#### 2.7 Prospects

Prospects emerge in forward-looking instruments such as peace agreements, DDR frameworks, and transitional justice policies, including the African Union Transitional Justice Policy (2019).

Goldstein (2001)<sup>15</sup> defines prospects as future

<sup>1</sup> United Nations General Assembly. (2005). Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (A/RES/60/147).

<sup>2</sup> Sarkin, J. (2014). The role of rehabilitation in post-conflict justice. *Human Rights Quarterly*, 36(4), 784–812. <https://doi.org/10.1353/hrq.2014.0051>

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

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

<sup>5</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135.

<sup>6</sup> Cassese, A. (2005). *International law* (2nd ed.). Oxford University Press.

<sup>7</sup> Dinstein, Y. (2016). *The conduct of hostilities under the law of international armed conflict* (3rd ed.). Cambridge University Press.

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

<sup>9</sup> Sen, A. (1999). *Development as freedom*. Oxford University Press.

<sup>10</sup> Alston, P., & Goodman, R. (2013). *International human rights* (2nd ed.). Oxford University Press.

<sup>11</sup> *Ibid.*

<sup>12</sup> Pressman, J. L., & Wildavsky, A. (1984). *Implementation: How great expectations in Washington are dashed in Oakland* (3rd ed.). University of California Press.

<sup>13</sup> Merry, S. E. (2006). *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

opportunities shaped by institutional and political variables. Teitel (2000)<sup>1</sup> associates prospects with reform pathways in post-conflict societies. Prospect is defined as “a reasonable expectation or likelihood of a future development”.<sup>2</sup> Prospects here denote the potential for improving POW rehabilitation through reform and peace-building.

By integrating statutory provisions, authoritative scholarship, and Black’s Law Dictionary definitions, this section establishes a robust conceptual foundation for analyzing human rights and the rehabilitation of prisoners of war in the Cameroon Anglophone armed conflict. This triangulated approach enhances doctrinal rigor and ensures terminological consistency throughout the article.

### 3. Theoretical Framework

A theoretical framework provides the analytical lens through which legal norms, institutional practices, and lived realities are examined. In analyzing human rights and the rehabilitation of prisoners of war in the Cameroon Anglophone armed conflict, this article adopts a pluralist theoretical framework drawing from Human Rights Theory, International Humanitarian Law (IHL) Compliance Theory, Rehabilitation Theory, and Transitional Justice Theory. This integrated framework enables a comprehensive understanding of detention, treatment, and post-captivity rehabilitation within the context of a non-international armed conflict.

#### 3.1 Human Rights Theory

Human Rights Theory constitutes the normative foundation of this study. The theory is grounded in the principle that human rights are universal, inalienable, and inherent to all individuals by virtue of their humanity, irrespective of legal status or conduct (Donnelly, 2013). Even during armed conflict, states remain bound by minimum human rights obligations, particularly those relating to dignity, humane treatment, and freedom from torture.<sup>3</sup>

Dworkin’s conception of rights as “trumps”

against collective or utilitarian goals underscores the argument that national security considerations cannot justify systematic violations of fundamental rights.<sup>4</sup> Complementarily, Sen’s capability approach reframes human rights as the substantive freedoms necessary for individuals to live lives of dignity, including access to physical and psychological rehabilitation.<sup>5</sup> Within this framework, the denial of rehabilitation to prisoners of war constitutes a direct affront to human dignity and human development.

Applied to the Anglophone Cameroon conflict, Human Rights Theory challenges state narratives that classify captured fighters as terrorists or criminals devoid of protection. Instead, it affirms that all detainees remain rights-holders entitled to humane treatment and rehabilitation consistent with international human rights law.<sup>6</sup>

#### 3.2 International Humanitarian Law Compliance Theory

International Humanitarian Law Compliance Theory explains the conditions under which parties to armed conflict comply with, selectively apply, or violate humanitarian norms. Scholars argue that compliance is influenced by a range of factors, including political will, institutional capacity, reciprocity, command responsibility, and external monitoring.<sup>7</sup> Henckaerts and Doswald-Beck (2005)<sup>8</sup> demonstrate that customary international humanitarian law binds both state and non-state actors in non-international armed conflicts, particularly through Common Article 3 of the Geneva Conventions, which mandates humane treatment and prohibits torture and cruel treatment. Jurisprudence from the International Criminal Tribunal for the former Yugoslavia confirms that the existence of a non-international armed conflict triggers these obligations regardless of

<sup>1</sup> Teitel, R. (2000). *Transitional justice*. Oxford University Press.

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

<sup>3</sup> Nowak, M. (2005). *U.N. covenant on civil and political rights: CCPR commentary* (2nd ed.). N.P. Engel.

<sup>4</sup> Dworkin, R. (1977). *Taking rights seriously*. Harvard University Press.

<sup>5</sup> Sen, A. (1999). *Development as freedom*. Oxford University Press.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights. (2019). Report of the OHCHR mission to the Republic of Cameroon. United Nations.

<sup>7</sup> Roberts, A. (2001). The laws of war in the war on terror. *International & Comparative Law Quarterly*, 32(2), 266–275.

<sup>8</sup> Henckaerts, J.-M., & Doswald-Beck, L. (2005). *Customary international humanitarian law* (Vol. 1). Cambridge University Press.

formal recognition of prisoner-of-war status.<sup>1</sup>

Within the Cameroonian context, IHL Compliance Theory enables a critical examination of the state's reluctance to recognize POW protections and the implications of such denial for detention conditions and rehabilitation practices. It also sheds light on how securitization and legal ambiguity undermine compliance with international norms governing the treatment and recovery of conflict-related detainees.

### 3.3 Rehabilitation Theory

Rehabilitation Theory provides the core conceptual lens for analyzing post-detention obligations toward prisoners of war. Traditionally rooted in criminal justice and penology, rehabilitation theory emphasizes restoring individuals to meaningful participation in society through medical care, psychological support, education, and social reintegration.<sup>2</sup>

In the international human rights context, rehabilitation has evolved into a recognized form of reparation for serious violations. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation identify rehabilitation as encompassing medical, psychological, legal, and social services for victims of gross human rights violations.<sup>3</sup> Sarkin (2014)<sup>4</sup> further argues that rehabilitation is indispensable in post-conflict societies, as untreated trauma and social exclusion perpetuate instability and cycles of violence.

Applied to the Anglophone Cameroon armed conflict, rehabilitation theory reframes the treatment of prisoners of war from a security-centered paradigm to a rights-based and restorative one. It underscores the argument that the failure to rehabilitate detainees not only violates international obligations but also undermines prospects for sustainable peace.

### 3.4 Transitional Justice Theory

Transitional Justice Theory situates rehabilitation within broader societal efforts to address past abuses and facilitate post-conflict transformation. Teitel (2000)<sup>5</sup> defines transitional justice as the set

of judicial and non-judicial mechanisms employed by societies emerging from conflict to confront legacies of mass violations. These mechanisms include accountability, truth-seeking, reparations, and institutional reform.

De Greiff (2006)<sup>6</sup> emphasizes that rehabilitation plays both corrective and transformative roles by restoring victims' dignity and enabling social reintegration. At the regional level, the African Union Transitional Justice Policy recognizes rehabilitation as a core component of reparative justice in African conflict and post-conflict settings.<sup>7</sup>

In the context of Anglophone Cameroon, Transitional Justice Theory allows prisoners-of-war rehabilitation to be conceptualized as a peace-building tool rather than a peripheral humanitarian concern. It highlights the potential of integrating rehabilitation into future dialogue processes, reintegration programs, and institutional reforms aimed at addressing the root causes of the conflict.

Taken together, these theories provide a robust analytical architecture for this study. Human Rights Theory establishes the normative imperative of dignity and entitlement; IHL Compliance Theory explains patterns of adherence and violation; Rehabilitation Theory foregrounds recovery and reintegration; and Transitional Justice Theory situates rehabilitation within broader peace-building and reconciliation efforts. This integrated framework enables a nuanced assessment of the progress, pitfalls, and prospects of rehabilitating prisoners of war in the Cameroon Anglophone armed conflict.

## 4. Methodology

This study employs a qualitative doctrinal and socio-legal approach to examine human rights and the rehabilitation of prisoners of war in the Cameroon Anglophone armed conflict. The doctrinal method enables a detailed analysis of international, regional, and domestic legal instruments governing the treatment and rehabilitation of prisoners of war, including

<sup>1</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Appeals Chamber, October 2, 1995).

<sup>2</sup> McNeill, F. (2012). Four forms of "offender" rehabilitation: Towards an interdisciplinary perspective. *Legal and Criminological Psychology*, 17(1), 18–36. <https://doi.org/10.1111/j.2044-8333.2011.02039.x>

<sup>3</sup> United Nations General Assembly. (2005). Basic principles and guidelines on the right to a remedy and reparation (A/RES/60/147).

<sup>4</sup> Sarkin, J. (2014). The role of rehabilitation in post-conflict justice. *Human Rights Quarterly*, 36(4), 784–812.

<sup>5</sup> *Ibid.*

<sup>6</sup> De Greiff, P. (2006). *The handbook of reparations*. Oxford University Press.

<sup>7</sup> African Union Commission. (2019). African Union transitional justice policy. African Union.

treaties, customary international law, national legislation, and judicial decisions.<sup>1</sup> Complementing this, the socio-legal perspective situates these norms within the political, institutional, and operational context of Cameroon, highlighting gaps between formal legal obligations and actual practice.<sup>2</sup>

The research relies on documentary sources comprising both primary and secondary materials. Primary sources include the Geneva Conventions of 1949 and their Additional Protocols, customary international humanitarian law, the African Charter on Human and Peoples' Rights, and relevant domestic legislation and constitutional provisions governing detention, military justice, and counter-terrorism measures.<sup>3</sup> Secondary sources include scholarly books, peer-reviewed articles, policy reports, institutional commentaries, and documentation produced by international and regional organizations, such as the United Nations and the International Committee of the Red Cross.<sup>4</sup> These sources were selected on the basis of authority, relevance, and reliability to provide both legal and contextual insights into the rehabilitation of prisoners of war.<sup>5</sup>

At the domestic level, the study analyses Cameroonian legislation and regulations, including the Constitution, military justice laws, counter-terrorism provisions, and penitentiary policies, to evaluate the extent of domestic incorporation and implementation of international and regional norms. This doctrinal analysis is complemented by institutional reports, which provide empirical insights into detention conditions, treatment of detainees, and rehabilitation-related practices in the Northwest and Southwest regions. Scholarly works on international humanitarian law, human rights, rehabilitation, and transitional justice further inform and provide theoretical grounding.

The study is based entirely on documentary research and does not involve direct interaction

with human subjects. Ethical considerations are observed through careful and accurate citation of sources, responsible use of sensitive information regarding detainees, and avoidance of attributing individual criminal responsibility, which remains the domain of competent judicial bodies.<sup>6</sup>

## 5. Legal and Human Rights Framework Governing Rehabilitation

Rehabilitation of prisoners of war and conflict-related detainees is not only a humanitarian imperative but also a legal obligation under international, regional, and domestic law. The legal and human rights frameworks establish clear standards for humane treatment, access to medical and psychological care, and social reintegration. In the context of the Cameroon Anglophone conflict, these frameworks provide both normative guidance and evaluative benchmarks for assessing the extent to which rehabilitation programs are implemented effectively. They also highlight the state's dual responsibility to respect international norms and to operationalize domestic mechanisms that uphold detainees' dignity and rights.

### 5.1 International Humanitarian Law Framework

The rehabilitation of prisoners of war and conflict-related detainees is primarily grounded in international humanitarian law (IHL). The Third Geneva Convention of 1949 provides the principal legal regime for POW treatment. Article 13 mandates humane treatment, protection from violence or intimidation, and respect for the dignity of prisoners.<sup>7</sup> Article 20 requires that detainees be afforded adequate medical attention, while Articles 68–71 provide for the release, repatriation, and reintegration of prisoners at the cessation of hostilities, emphasizing the legal obligation to facilitate their return to society.<sup>8</sup> Additional Protocol I (1977), Article 75, reinforces the obligation to treat all persons not actively participating in hostilities

<sup>1</sup> McConville, M., & Chui, W. H. (Eds.). (2017). *Research methods for law* (2nd ed.). Edinburgh University Press.

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

<sup>3</sup> Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949; Henckaerts, J.-M., & Doswald-Beck, L. (2005). *Customary international humanitarian law* (Vol. 1). Cambridge University Press.

<sup>4</sup> African Union Commission. (2019). African Union transitional justice policy. African Union; Office of the United Nations High Commissioner for Human Rights. (2019).

<sup>5</sup> Report of the OHCHR mission to the Republic of Cameroon; International Committee of the Red Cross. (2020). Commentary on the Third Geneva Convention.

<sup>6</sup> Roberts, A., & Guelff, R. (Eds.). (2000). *Documents on the laws of war* (3rd ed.). Oxford University Press.

<sup>7</sup> Article 13 of the Third Geneva Conventions 1949.

<sup>8</sup> Article 20, 68, and 71 of the Third Geneva Conventions 1949.

humanely, including access to necessary medical care and protection of their physical and mental well-being.<sup>1</sup> Customary IHL complements these treaty obligations, establishing that even in non-international armed conflicts, rehabilitative measures, medical treatment, and psychological care must be provided.<sup>2</sup>

### 5.2 International Human Rights Law

International human rights law complements IHL by establishing non-derogable duties to protect detainees' physical, mental, and social well-being. The ICCPR, Article 10(1),<sup>3</sup> requires that all persons deprived of liberty be treated with humanity and respect for their inherent dignity.<sup>4</sup> The Convention Against Torture (CAT), Article 14,<sup>5</sup> obliges states to ensure that victims of torture receive rehabilitation and social reintegration.<sup>6</sup> The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) provide detailed operational guidance on implementing rehabilitation programs. Rules 24, 27, and 29 guarantee adequate medical care, including mental health services, while Rules 104–106 mandate vocational and educational programs to facilitate successful reintegration into society.<sup>7</sup> Collectively, these instruments establish that rehabilitation is not discretionary but a human rights obligation.

### 5.3 Regional Legal Framework

At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) enshrines the right of detainees to humane treatment and obliges states to facilitate rehabilitation and social reintegration.<sup>8</sup> Specifically, Article 5 prohibits torture and cruel, inhuman, or degrading treatment, while Article 19 guarantees prisoners access to education and rehabilitation opportunities.<sup>9</sup> The African Union Transitional Justice Policy highlights rehabilitation as a core mechanism in post-conflict recovery, recommending psychosocial support, medical

care, vocational training, and reintegration programs for persons affected by armed conflict.<sup>10</sup> These regional instruments reinforce international obligations and provide contextual guidance for Cameroon.

### 5.4 Domestic Legal Framework

At the domestic level, the rehabilitation of prisoners of war and conflict-related detainees is regulated through constitutional guarantees, military justice regimes, prison legislation, and post-conflict legal frameworks. Across Africa, domestic legal systems are expected to give effect to international humanitarian law and international human rights law through incorporation, domestication, or constitutional supremacy clauses.<sup>11</sup>

The effectiveness of rehabilitation measures therefore depends largely on how African states internalize these international obligations and translate them into enforceable domestic norms and institutional practices.<sup>12</sup>

#### (i) Domestic Legal Framework Applicable to African States Generally

Across African states, domestic legal frameworks addressing detention and rehabilitation are primarily anchored in constitutional protections of human dignity and the prohibition of torture and ill-treatment. Many African Constitutions guarantee the right to dignity, humane treatment, and access to health care for persons deprived of liberty, thereby laying a foundational basis for rehabilitation.<sup>13</sup> These constitutional guarantees are often reinforced by national prison laws, which identify rehabilitation, reformation, and social reintegration as core objectives of imprisonment.<sup>14</sup>

In addition, military justice laws and armed forces acts across African states regulate the treatment of persons detained in the context of armed conflict. Although domestic legal systems rarely employ the technical term "prisoners of

<sup>1</sup> Article 5 of Additional Protocol I 1977.

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

<sup>3</sup> United Nations. (1966). International Covenant on Civil and Political Rights, Article 10(1).

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

<sup>5</sup> Article 14 of the Convention Against Torture 1987.

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

<sup>7</sup> United Nations. (2015). Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), Rules 24, 27, 29, 104–106.

<sup>8</sup> African Charter on Human and Peoples' Rights, June 27, 1981, Articles 5 and 19.

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

<sup>10</sup> African Union Commission. (2019). African Union transitional justice policy. African Union.

<sup>11</sup> Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

<sup>12</sup> Okafor, O. C. (2007). *The African human rights system, activism, and international institutions*. Cambridge University Press.

<sup>13</sup> Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A commentary* (2nd ed.). Oxford University Press.

<sup>14</sup> Sarkin, J. (2008). *Prisons in Africa: An evaluation from a human rights perspective*. HSRC Press.

war,” safeguards applicable to conflict-related detainees such as access to medical care, judicial oversight, and protection against inhumane treatment are commonly provided.<sup>1</sup> These domestic standards reflect the influence of international and regional norms, particularly the Nelson Mandela Rules and the African Charter on Human and Peoples’ Rights, which emphasize rehabilitation-oriented detention systems.<sup>2</sup>

Despite these normative frameworks, implementation across many African states remains constrained by structural challenges, including resource limitations, overcrowded detention facilities, prolonged armed conflicts, and the securitization of detention through emergency and counter-terrorism laws.<sup>3</sup> These factors often undermine access to meaningful rehabilitation services for conflict-related detainees.

#### (ii) Domestic Legal Framework in Cameroon

In Cameroon, the domestic legal framework governing the rehabilitation of prisoners of war and conflict-related detainees is derived from constitutional, military, and penitentiary legislation, supplemented by Cameroon’s international obligations. The Constitution of the Republic of Cameroon (1996) guarantees respect for human dignity and prohibits torture, cruel, inhuman, or degrading treatment. These guarantees apply to all persons deprived of liberty and form the constitutional basis for rehabilitation, including access to medical and psychological care.<sup>4</sup>

The Military Justice Code of Cameroon (Law No. 2016/007) regulates detention within the military justice system and provides safeguards such as access to medical care, judicial supervision, and protection from inhumane treatment.<sup>5</sup> Although the Code does not expressly regulate the rehabilitation of prisoners of war, its provisions implicitly support rehabilitative objectives for conflict-related detainees, particularly within the context of the Anglophone armed conflict.

Cameroon’s penitentiary legislation and prison regulations further emphasize rehabilitation as a core objective of imprisonment. These laws provide for vocational training, educational programs, medical services, and social reintegration initiatives applicable to all detainees, including those detained in connection with armed conflict.<sup>6</sup> In principle, this framework aligns Cameroon’s domestic law with international and regional standards that recognize rehabilitation as an essential component of lawful detention.

However, reports by international human rights bodies indicate persistent gaps between legal norms and actual practice. Challenges such as prolonged pre-trial detention, inadequate medical and psychological services, overcrowding, and the prioritization of security concerns continue to impede effective rehabilitation in the context of the Anglophone conflict.<sup>7</sup>

#### (iii) Assessment

Overall, domestic legal frameworks across African states and particularly in Cameroon provide a formal legal foundation for the rehabilitation of prisoners of war and conflict-related detainees. Constitutional guarantees, military justice regimes, and prison regulations collectively reflect an acceptance of rehabilitation as a legitimate objective of detention.<sup>8</sup> Nevertheless, the absence of explicit POW-specific rehabilitation provisions and persistent implementation challenges continue to limit the effectiveness of these domestic frameworks in armed conflict settings.

The interplay of international, regional, and domestic law establishes a comprehensive legal framework governing the rehabilitation of prisoners of war. Collectively, these provisions emphasize humane treatment, access to medical and psychological care, vocational and educational training, and structured reintegration into society. They provide both legal obligations and evaluative benchmarks to

<sup>1</sup> Sivakumaran, S. (2012). *The law of non-international armed conflict*. Oxford University Press.

<sup>2</sup> United Nations. (2015). *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. UN General Assembly.

<sup>3</sup> African Commission on Human and Peoples’ Rights. (2017). *General Comment No. 4 on the African Charter on Human and Peoples’ Rights*. ACHPR.

<sup>4</sup> Republic of Cameroon. (1996). *Constitution of the Republic of Cameroon* (Law No. 96-06 of 18 January 1996).

<sup>5</sup> Republic of Cameroon. (2016). *Military Justice Code* (Law No. 2016/007 of 12 July).

<sup>6</sup> Republic of Cameroon. (1992). *Decree No. 92/052 of 27 March 1992 on the penitentiary system* (as amended).

<sup>7</sup> Office of the United Nations High Commissioner for Human Rights. (2019) Report of the OHCHR mission to the Republic of Cameroon. United Nations.

<sup>8</sup> African Union Commission. (2019). *African Union transitional justice policy*. African Union.

assess the effectiveness of rehabilitation programs in Cameroon's Anglophone conflict.

## 6. Contextual Overview: The Anglophone Cameroon Armed Conflict

The Anglophone Cameroon armed conflict is rooted in historical, political, and legal grievances arising from Cameroon's dual colonial heritage and post-independence state structure. Cameroon emerged from British and French colonial administrations with distinct legal, educational, and administrative systems. Following the 1961 plebiscite, the former British Southern Cameroons entered into a federal union with La République du Cameroun, premised on constitutional assurances of autonomy and the preservation of the common law and Anglo-Saxon educational traditions. The gradual erosion of federalism and the eventual adoption of a centralized unitary state in 1972 generated long-standing perceptions of political, legal, and socio-economic marginalization among Anglophone Cameroonians.<sup>1</sup>

These grievances crystallized in 2016 when Anglophone lawyers and teachers organized peaceful protests against the perceived marginalization of the English language, the imposition of the civil law system in Anglophone courts, and the appointment of Francophone officials unfamiliar with common law traditions. The state's response characterized by arrests, the use of force, and prolonged internet shutdowns escalated the situation from civil protest into a broader political crisis.<sup>2</sup> By late 2017, armed confrontations had emerged between Cameroonian security forces and various non-state armed groups advocating for the secession of an independent state known as "Ambazonia," thereby elevating the situation to a non-international armed conflict within the meaning of international humanitarian law.<sup>3</sup>

Since then, the conflict has been marked by widespread human rights violations and grave humanitarian consequences. Reports by

international and regional bodies document extrajudicial killings, arbitrary arrests, prolonged detention, torture, enforced disappearances, and the destruction of civilian property by both state and non-state actors.<sup>4</sup> Thousands of individuals have been detained in connection with the conflict, including suspected fighters, government security personnel captured by armed groups, and civilians accused of supporting opposing sides. Within this context, questions concerning the legal status, treatment, and rehabilitation of prisoners of war or conflict-related detainees have become increasingly salient. Recent scholarship further underscores systemic weaknesses in the implementation and enforcement of international humanitarian law and international human rights law within the Anglophone conflict. In examining the protection of war correspondents in the conflict, Nkwiyir (2025)<sup>5</sup> highlights persistent institutional and enforcement gaps that expose protected persons to abuse and ill-treatment. Although the study focuses on journalists, its findings reveal broader structural deficiencies in the conflict environment that equally affect other vulnerable groups, including persons detained in relation to hostilities. These deficiencies have direct implications for the humane treatment and rehabilitation of prisoners of war and analogous detainees, reinforcing the argument that rehabilitation challenges in Cameroon are symptomatic of wider failures in the domestic application of international legal obligations.<sup>6</sup>

The Cameroonian government has largely framed the conflict through a counter-terrorism and internal security paradigm, relying predominantly on domestic criminal and military law to arrest, prosecute, and detain suspected separatists. This securitized approach has significant consequences for the recognition of POW-type protections and for access to rehabilitation measures envisaged under international humanitarian and human rights law.<sup>7</sup> Conversely, non-state armed groups have

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

<sup>2</sup> International Crisis Group. (2017). *Cameroon's Anglophone crisis at the crossroads* (Africa Report No. 250). ICG.

<sup>3</sup> Sivakumaran, S. (2012). *The law of non-international armed conflict*. Oxford University Press.

<sup>4</sup> Amnesty International. (2021). *Cameroon: Human rights violations in the Anglophone regions*. Amnesty International.

<sup>5</sup> Nkwiyir, K. A. (2025). Armed conflicts and the media: An assessment of the protection of war correspondents (journalists) in the underway Anglophone Cameroon armed conflicts. *International Journal of Research and Innovation in Social Science*, 9(1), 1025–1052. <https://doi.org/10.47772/IJRISS.2025.9010085>

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

<sup>7</sup> Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A commentary* (2nd ed.). Oxford University.

also engaged in detention practices outside any formal legal framework, further complicating compliance with international standards governing detention and rehabilitation in non-international armed conflicts.

Against this backdrop, the Anglophone Cameroon armed conflict presents a complex legal and humanitarian setting in which international humanitarian law, international human rights law, and domestic law intersect and at times collide. The protracted nature of the hostilities, combined with mass arrests and prolonged detention, underscores the urgency of examining not only the legality of detention but also the extent to which meaningful rehabilitation medical, psychological, social, and vocational is recognized and implemented. This contextual overview therefore provides the necessary foundation for assessing the progress, pitfalls, and prospects of rehabilitating prisoners of war and conflict-related detainees within the Cameroonian context.

### 7. Progress in the Rehabilitation of Prisoners of War

In the North-West and South-West Regions of Cameroon, progress in the rehabilitation of prisoners of war and conflict-related detainees has been driven primarily by state-led institutional mechanisms, complemented by faith-based and community-oriented initiatives. Although the Anglophone armed conflict persists, these interventions demonstrate an incremental shift toward rehabilitation as a practical component of conflict management and peace-building.<sup>1</sup>

A central institutional pillar is the Disarmament, Demobilization and Reintegration (DDR) framework, established through the National Committee for Disarmament, Demobilization and Reintegration (NCDDR) by presidential decree in 2018. Through DDR centers located in and outside the conflict-affected regions, former combatants including individuals released from detention or captured in connection with hostilities are enrolled in structured programs designed to facilitate psychological recovery and

socio-economic reintegration.<sup>2</sup> These centers provide medical screening, psychosocial counseling, civic education, and vocational training in trades such as agriculture, tailoring, carpentry, and small-scale entrepreneurship, thereby addressing both the material and psychological dimensions of rehabilitation.<sup>3</sup>

Practical progress is also reflected in the scale of participation in DDR initiatives. Available reports indicate that several thousand ex-combatants have passed through DDR centers nationwide, with a significant number progressing toward final reintegration after completing skills-acquisition and civic reorientation programs.<sup>4</sup> While participation remains voluntary and uneven, the DDR program represents the most institutionalized effort by the Cameroonian state to operationalize rehabilitation beyond mere detention or punishment.<sup>5</sup>

In parallel, the penitentiary and judicial authorities, under the supervision of the Ministry of Justice, have contributed to rehabilitation through presidential clemency measures, provisional releases, and discontinuance of proceedings for certain conflict related detainees. These measures have enabled individuals to exit prolonged detention and either reintegrate directly into society or enter DDR programs, thus mitigating the long-term physical and psychological harms associated with incarceration.<sup>6</sup> Although discretionary and selective, such releases signal a gradual shift toward rehabilitative and reconciliatory approaches within the justice system.

Another significant avenue of progress lies in humanitarian access to detention facilities. The Cameroonian government has continued to engage with the International Committee of the Red Cross (ICRC), permitting detention visits, medical assistance, and facilitation of family contact in accordance with international humanitarian law applicable to non-international armed conflicts (International Committee of the Red Cross).<sup>7</sup> These activities contribute directly to rehabilitation by preserving detainees'

<sup>1</sup> International Crisis Group. (2020). *Cameroon: Managing the Anglophone crisis* (Africa Report No. 272). ICG.

<sup>2</sup> Monteh, R. N. (2021). Disarmament, demobilization and reintegration (DDR): A new paradigm in the resolution of the Anglophone crisis in Cameroon—Myth or reality. *International Journal of Research and Innovation in Social Science*, 5(1), 390–400.

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

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

<sup>5</sup> *Ibid.*

<sup>6</sup> Republic of Cameroon. (1992). *Decree No. 92/052 of 27 March 1992 relating to the penitentiary system.*

<sup>7</sup> International Committee of the Red Cross. (2016). *ICRC activities in situations of non-international armed conflict.* ICRC.

physical health, psychological well-being, and human dignity during confinement.<sup>1</sup>

Beyond formal state institutions, churches and faith-based organizations have played a critical role in the rehabilitation of prisoners of war and conflict-affected persons in the Anglophone regions. Religious bodies particularly the Roman Catholic Church, the Presbyterian Church in Cameroon, the Cameroon Baptist Convention, and ecumenical faith platforms have provided counseling, trauma healing, mediation, and reintegration support to former detainees and ex-combatants.<sup>2</sup> These interventions address the moral, psychological, and social dimensions of rehabilitation that state-led mechanisms often struggle to reach.<sup>3</sup>

Church-led initiatives have also contributed significantly to community acceptance and reconciliation, which are essential for sustainable rehabilitation. Clergy and church leaders frequently serve as trusted intermediaries between former fighters, victims, and local communities, facilitating dialogue, forgiveness, and social reintegration.<sup>4</sup> In several instances, churches have provided temporary shelter, vocational guidance, and moral support to individuals released from detention, thereby complementing DDR programs and government reintegration efforts.

From a normative standpoint, these practical initiatives are reinforced by Cameroon's constitutional and statutory framework, which guarantees human dignity, prohibits torture and inhuman or degrading treatment, and emphasizes reformation and social reintegration as objectives of detention.<sup>5</sup> Although these provisions do not expressly regulate prisoners of war in non-international armed conflicts, they provide a domestic legal foundation that legitimizes both state-led and non-state rehabilitation initiatives.

Taken together, the activities of DDR institutions, judicial and executive release mechanisms, humanitarian engagement, and faith-based organizations demonstrate that progress in the

rehabilitation of prisoners of war in the Anglophone Cameroon armed conflict is multi-layered and practice-oriented, even if uneven and constrained by ongoing insecurity.<sup>6</sup>

From a broader African perspective, rehabilitation of prisoners of war and conflict-related detainees has increasingly been pursued through post-conflict and transitional justice mechanisms, particularly Disarmament, Demobilization and Reintegration (DDR) programs, truth and reconciliation processes, and community-based reintegration initiatives. In countries such as Sierra Leone and Liberia, DDR programs following civil wars combined vocational training, psychosocial support, and community reconciliation to facilitate the reintegration of former combatants and detainees.<sup>7</sup> Similarly, Rwanda's post-genocide rehabilitation framework, though distinct in context, integrated re-education, community service, and reintegration mechanisms aimed at restoring social cohesion and addressing the psychological impacts of mass detention.<sup>8</sup>

In Uganda, the Amnesty Act and associated reintegration initiatives enabled former combatants of the Lord's Resistance Army to transition from detention to civilian life through conditional amnesty, counseling, and livelihood support.<sup>9</sup> These African experiences demonstrate a continental trend toward rehabilitation-oriented responses that move beyond punitive detention, emphasizing reintegration, reconciliation, and human dignity. When viewed against this backdrop, Cameroon's reliance on DDR structures, executive release mechanisms, and community and faith-based support aligns with evolving African state practice, even as it continues to face challenges of implementation, inclusivity, and sustainability.

## 8. Pitfalls and Human Rights Challenges

Despite measurable progress in institutionalizing rehabilitation for prisoners of war and conflict-related detainees in the Anglophone Cameroon armed conflict, significant pitfalls and human rights challenges persist. These challenges

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

<sup>2</sup> Human Rights and Legal Research Centre. (2021). *Traditional rulers and faith-based actors as agents of reconciliation and reconstruction in the North-West and South-West Regions of Cameroon.*

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

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

<sup>5</sup> Republic of Cameroon. (1996). *Constitution of the Republic of Cameroon* (Law No. 96-06 of 18 January 1996).

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

<sup>7</sup> Humphreys, M., & Weinstein, J. M. (2007). Demobilization and reintegration. *Journal of Conflict Resolution*, 51(4), 531–567.

<sup>8</sup> Clark, P. (2010). *The Gacaca courts, post-genocide justice and reconciliation in Rwanda: Justice without lawyers.* Cambridge University Press.

<sup>9</sup> Allen, T. (2006). *Trial justice: The International Criminal Court and the Lord's Resistance Army.* Zed Books.

undermine both the effectiveness of rehabilitation mechanisms and compliance with international human rights norms.

#### 8.1 Persistent Insecurity and Access Constraints

Ongoing violence and insecurity in the North-West and South-West regions continue to impede rehabilitation efforts. For example, periodic clashes between security forces and non-state armed groups have restricted access to DDR centres and detention facilities, limiting the ability of humanitarian actors and monitoring bodies to deliver services and assess conditions.<sup>1</sup> Insecurity in areas such as Bamenda and Kumba has forced temporary closures of rehabilitation activities, illustrating how conflict dynamics directly affect operational continuity.

#### 8.2 Resource Limitations and Service Gaps

Rehabilitation programmes, particularly Disarmament, Demobilization and Reintegration (DDR) centers, suffer from chronic resource shortages. Although government figures indicate that thousands of ex-combatants have entered DDR programmes, centres frequently lack sufficient trainers, psychosocial counsellors, and equipment to provide comprehensive support. At the Bamenda DDR Center, trainees have reported delays or shortages in materials for vocational training such as carpentry or tailoring, undermining the goal of sustainable skills development.<sup>2</sup> These gaps reflect broader budgetary constraints that continue to impede the quality and reach of rehabilitation services.

#### 8.3 Community Reintegration Challenges

Even after completing formal rehabilitation processes, many former combatants face social exclusion and stigma from their communities. In local media reports, individuals who completed DDR training noted difficulty securing employment or social acceptance in towns like Mamfe and Limbe, where community members remain wary of returnees due to fear or resentment.<sup>3</sup> Such social barriers complicate psychological rehabilitation and risk undermining long-term reintegration goals.

#### 8.4 Implementation and Institutional Coordination Weaknesses

The effectiveness of rehabilitation is also undermined by weak institutional coordination and uneven implementation of programs. Although the National Committee for Disarmament, Demobilization and Reintegration (NCDDR) was established to unify efforts, evaluations report gaps in communication between state agencies, local administrations, and civil society partners, resulting in duplication of efforts or service gaps across regions.<sup>4</sup> For instance, training scheduled in one district may lack follow-up support in community reintegration because of coordination lapses.

#### 8.5 Vulnerable Groups and Child Rehabilitation

Children associated with armed groups remain particularly vulnerable during rehabilitation. A government–UN cooperation effort reported that over 1,189 children were registered for child-centred reintegration support at the Meri centre alone, yet stakeholders note that consistent access to education and psychosocial counseling remains uneven due to resource limitations and security concerns.<sup>5</sup> These disparities illustrate how rehabilitation systems can struggle to meet the diverse needs of affected populations.

#### 8.6 Reintegration and the Risk of Recidivism

General studies on post-detention reintegration in Cameroon have highlighted the risk of recidivism among returnees who fail to find stable livelihoods or social acceptance. Research on ex-convicts, though not conflict-specific, shows that individuals released from prison can face housing insecurity, unemployment, and community rejection, conditions that threaten rehabilitation outcomes.<sup>6</sup> This research underscores the need to address structural socio-economic deficits that equally affect former combatants.

#### 8.7 Human Rights and Legal Oversight Gaps

Finally, legal oversight weaknesses pose challenges for ensuring that rehabilitation

<sup>1</sup> International Crisis Group. (2020). *Cameroon: Managing the Anglophone crisis* (Africa Report No. 272).

<sup>2</sup> Monteh, R. N. (2021). Disarmament, demobilization and reintegration (DDR): A new paradigm in responding to the Anglophone crisis in Cameroon—Myth or reality. *International Journal of Research and Innovation in Social Science*, 5(1), 390–400.

<sup>3</sup> Mimi Mefo Info. (2024). *Ex-combatants face challenges reintegrating into local communities*.

<sup>4</sup> Cameroon Tribune. (2024). *Bamenda DDR centre: Reintegration process taking shape*.

<sup>5</sup> International Organization for Migration & UNICEF. (2023). *Disarmament and reintegration: Cameroon has made child protection a priority in DDR*.

<sup>6</sup> Besin-Mengla, M. M. (2020). Reintegration difficulties of ex-convicts: Reasons for recidivism of ex-convicts in Cameroon. *African Journal of Social Sciences and Humanities Research*, 3(4), 10–24.

programs adhere to human rights standards. Human rights groups have repeatedly documented arbitrary arrests, prolonged detention without trial, and inadequate access to legal counsel for conflict-related detainees, creating conditions incompatible with humane rehabilitation.<sup>1</sup> In several documented cases, detainees in facilities such as Buea Central Prison reported prolonged legal limbo and little progress toward structured reintegration<sup>2</sup> highlighting the need for stronger legal safeguards.

## 9. Prospects for the Right-Based Rehabilitation

The rehabilitation of prisoners of war (POWs) and conflict-related detainees arising from the Anglophone armed conflict in Cameroon remains fraught with structural and normative challenges. Yet, within this complex landscape lie compelling prospects for the emergence of a robust rights-based rehabilitation architecture. Properly conceived, rights-based rehabilitation transcends administrative benevolence; it is anchored in the inviolability of human dignity, the restorative promise of justice, and the transformative pursuit of sustainable peace, as enshrined in international humanitarian and human rights law.

### 9.1 Reinforcing Legal and Policy Synergy

A pivotal prospect lies in the deliberate harmonization of domestic legal frameworks with international and regional normative regimes. Cameroon's constitutional commitment to human dignity and freedom from degrading treatment provides fertile legal soil upon which rights-based rehabilitation may flourish.<sup>3</sup> Aligning domestic penal and rehabilitation policies more explicitly with the Geneva Conventions, alongside the incorporation of globally recognized benchmarks such as the Nelson Mandela Rules, would fortify legal certainty and embed rehabilitation as a non-derogable obligation rather than a discretionary concession.<sup>4</sup> Such normative convergence would elevate rehabilitation from policy aspiration to enforceable legal mandate.

### 9.2 Institutionalizing Holistic Rehabilitation

### Pathways

Equally promising is the institutional maturation of comprehensive and human-centered rehabilitation pathways within Cameroon's Disarmament, Demobilization, and Reintegration (DDR) framework. While existing DDR mechanisms offer vocational training and psychosocial assistance, their transformative potential can be amplified through standardized operational protocols infused with trauma-informed care, educational advancement, and livelihood sustainability. Comparative post-conflict experiences across Africa reveal that rehabilitation initiatives integrating psychological healing, economic empowerment, and long-term follow-up yield more enduring reintegration outcomes.<sup>5</sup> Embedding rights-sensitive indicators and rigorous monitoring mechanisms would ensure that institutional practice mirrors normative intent.

### 9.3 Deepening Community and Faith-Based Engagement

Rights-based rehabilitation is ultimately consummated within communities, where social acceptance and collective healing take root. In this regard, the moral authority and grassroots reach of churches and faith-based organizations present a uniquely powerful avenue for reconciliation and psychosocial restoration. In the Anglophone regions of Cameroon, such actors have already demonstrated their capacity to foster dialogue, heal trauma, and rebuild fractured communal bonds.<sup>6</sup> Expanding structured collaboration with these institutions alongside traditional authorities and civil society offers a persuasive prospect for embedding restorative justice practices and dismantling the stigma that often shadows former detainees.

### 9.4 Advancing Inclusive Protection for Vulnerable Groups

A genuinely rights-based rehabilitation paradigm must be deliberately inclusive, attuned to the distinct vulnerabilities of women, children formerly associated with armed groups, and persons with disabilities. Tailored rehabilitation measures ranging from specialized psychosocial

<sup>1</sup> CHRDA. (2024). *Report on increased human rights violations*.

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

<sup>3</sup> Republic of Cameroon. (1996). *Constitution of the Republic of Cameroon* (Law No. 96-06 of January 18, 1996).

<sup>4</sup> United Nations. (2015). *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*. United Nations.

<sup>5</sup> Humphreys, M., & Weinstein, J. M. (2007). Demobilization and reintegration. *Journal of Conflict Resolution*, 51(4), 531–567.

<sup>6</sup> Human Rights and Legal Research Centre. (2021). *Traditional rulers and faith-based actors as agents of reconciliation and reconstruction in the North-West and South-West Regions of Cameroon*.

support to educational reintegration and protection against exploitation—are indispensable for substantive equality. Strengthening and institutionalizing existing partnerships with international organizations can ensure that rehabilitation models are not only child-sensitive and gender-responsive but also normatively consonant with international human rights and child protection standards.<sup>1</sup>

#### 9.5 Elevating Accountability and Oversight

The durability of rights-based rehabilitation hinges on credible accountability and vigilant oversight. Strengthening judicial supervision, independent inspections, and the role of national and regional human rights institutions would inject transparency into detention and rehabilitation processes. Such mechanisms serve as vital safeguards against arbitrariness, prolonged detention without trial, and institutional neglect concerns persistently articulated by human rights observers.<sup>2</sup> Accountability, in this sense, is not punitive but protective, reinforcing legitimacy and public trust in rehabilitation frameworks.

#### 9.6 Harnessing Regional and International Solidarity

Cameroon’s rehabilitation agenda stands to benefit from strategic regional and international engagement. Normative instruments such as the African Union Transitional Justice Policy offer a visionary blueprint for embedding rehabilitation within broader peace-building and reconciliation architectures.<sup>3</sup> Through regional dialogue, technical assistance, and shared best practices, Cameroon can cultivate a rehabilitation framework that is both contextually responsive and normatively aligned with continental aspirations.

#### 9.7 Anchoring Rehabilitation in Evidence-Based Policy

Finally, the future of rights-based rehabilitation rests upon rigorous empirical inquiry and evidence-driven policymaking. Systematic data collection on rehabilitation outcomes, reintegration trajectories, and recidivism risks would enable targeted interventions and judicious resource allocation. Collaboration with academic institutions and research centers can transform rehabilitation from an ad hoc endeavor into a strategically informed and empirically

validated enterprise, ensuring that policy is guided by evidence rather than expediency.

## 10. Finding

This study finds that human rights and the rehabilitation of prisoners of war in the Anglophone armed conflict in Cameroon occupies a contested space between normative aspiration and practical constraint. While the legal and institutional architecture for rehabilitation exists, its implementation remains uneven and often undermined by structural, security, and human rights challenges.

First, the research establishes that international humanitarian law, international human rights law, and African regional instruments collectively impose a clear obligation on states to pursue rehabilitation as a core component of humane detention and post-conflict recovery. Cameroon’s constitutional and statutory framework reflects these obligations in principle, particularly through guarantees of human dignity and reforms aimed at reintegration. However, the study finds that the domestic legal framework lacks sufficient specificity and enforceability to consistently translate these norms into practice for prisoners of war and conflict-related detainees.

Second, the findings reveal that institutional mechanisms most notably the Disarmament, Demobilization, and Reintegration (DDR) program represent a significant step toward operationalizing rehabilitation, particularly in the North-West and South-West regions. Practical initiatives such as vocational training, psychosocial support, and community reintegration efforts demonstrate a growing recognition of rehabilitation as a peace-building tool. Nonetheless, these initiatives remain constrained by insecurity, limited resources, coordination gaps, and inconsistent access, which dilute their overall impact.

Third, the study finds that human rights challenges continue to shadow the rehabilitation process, including prolonged detention, inadequate legal oversight, selective access to rehabilitation programs, and insufficient protection for vulnerable groups such as children and women. Social stigmatization and community resistance further complicate

<sup>1</sup> International Organization for Migration & UNICEF. (2023). *Disarmament and reintegration: Cameroon has made child protection a priority in DDR*.

<sup>2</sup> CHRDA. (2024). *Report on increased human rights violations*.

<sup>3</sup> African Union Commission. (2019). *African Union transitional justice policy*. African Union.

reintegration, underscoring the reality that rehabilitation cannot succeed in isolation from broader societal healing and reconciliation processes.

Fourth, the research highlights that rights-based rehabilitation is most effective when it is holistic, inclusive, and community-anchored. Comparative insights from other African post-conflict contexts demonstrate that sustainable rehabilitation requires the integration of legal safeguards, psychosocial care, economic empowerment, and community participation. In this regard, the study finds that the involvement of faith-based organizations, traditional authorities, and civil society actors in Cameroon offers a promising pathway for reinforcing social acceptance and restorative justice.

Finally, the study concludes that the future of rehabilitation in the Anglophone Cameroon conflict hinges on the deliberate alignment of law, policy, and practice. Strengthening legal clarity, institutional accountability, evidence-based programming, and regional cooperation emerges as essential for transforming rehabilitation from a fragmented response into a rights-affirming and durable peace-building strategy.

## 11. Conclusion

This article has examined human rights and the rehabilitation of prisoners of war in the Anglophone armed conflict in Cameroon through the analytical lenses of progress, pitfalls, and prospects, demonstrating that rehabilitation is not a peripheral post-conflict concern, but a core legal obligation grounded in international humanitarian law, international human rights law, and African regional norms. The study underscores that, in non-international armed conflicts, the treatment and rehabilitation of detained combatants remain central to the protection of human dignity and the realization of sustainable peace.

The analysis reveals that Cameroon has made measured yet uneven progress in institutionalizing rehabilitation, particularly through Disarmament, Demobilization, and Reintegration (DDR) initiatives and complementary community-based mechanisms. Drawing from practical rehabilitation experiences in the North-West and South-West regions, including state-led programs and the restorative engagement of faith-based organizations, the article bridges normative legal

frameworks with empirical realities. Nonetheless, persistent insecurity, institutional fragility, resource constraints, and societal stigma continue to undermine the full realization of rights-based rehabilitation.

This article makes an original and substantive contribution to international humanitarian law and human rights scholarship by advancing a rights-based framework for the rehabilitation of prisoners of war in a non-international armed conflict, using Cameroon as a case study. It reconceptualizes rehabilitation as a legally enforceable obligation rather than a discretionary post-conflict policy, thereby closing a critical gap between the law of armed conflict and post-detention reintegration practice. By integrating localized rehabilitation experiences from Cameroon's conflict-affected regions with broader African comparative insights, the study offers a transferable analytical model applicable to similarly situated conflict-affected states. In doing so, it enriches doctrinal debate while providing concrete guidance for policymakers, humanitarian actors, and post-conflict justice practitioners.

Ultimately, the article concludes that the future of prisoner rehabilitation in Cameroon hinges on the extent to which legal norms are translated into consistent institutional practice. When pursued as a rights-affirming and justice-oriented enterprise, rehabilitation can function as a powerful instrument for reconciliation, social repair, and durable peace. Conversely, failure to anchor rehabilitation in human rights risks perpetuating cycles of exclusion, insecurity, and post-conflict fragility.

## 12. Recommendations

Given the challenges and gaps identified in the rehabilitation of prisoners of war in Cameroon's Anglophone conflict, there is a clear need for deliberate, structured, and actionable measures to ensure that rehabilitation aligns with human rights obligations and contributes meaningfully to sustainable peace. While prospects highlight opportunities and emerging trends, recommendations translate these insights into concrete policy, legal, and institutional actions. These measures are aimed at strengthening legal frameworks, improving oversight, enhancing the capacity of implementing actors, and fostering inclusive community reintegration, thereby ensuring that rehabilitation is not only a theoretical commitment but a practical,

enforceable, and rights-respecting process.

### 12.1 Institutional Strengthening and Legal Codification

The Government of Cameroon should enact clear legislation that explicitly defines the rights and entitlements of prisoners of war and conflict-related detainees during rehabilitation. Domestic laws should codify the procedural safeguards and obligations for detention, reintegration, and post-release support to ensure that rehabilitation is legally enforceable rather than discretionary. Establishing a central coordinating body to oversee rehabilitation programs across regions would improve consistency and accountability.

### 12.2 Oversight and Accountability Mechanisms

Independent oversight mechanisms, including the judiciary, the National Commission on Human Rights and Freedoms, and civil society actors, should be empowered to monitor detention conditions and rehabilitation processes. Regular audits, inspections, and public reporting will ensure transparency and reduce the risk of abuse, arbitrary detention, or rights violations during reintegration.

### 12.3 Capacity Building for Practitioners and Staff

Personnel involved in rehabilitation, including DDR officers, social workers, and correctional staff, should receive specialized training in human rights, psychosocial support, and restorative justice principles. Continuous professional development programs will strengthen the quality and effectiveness of rehabilitation interventions.

### 12.4 Targeted Support for Vulnerable Groups

Specific programs should be designed to address the unique needs of women, children formerly associated with armed groups, and persons with disabilities. This includes access to trauma-informed care, education, vocational training, and protection against social stigmatization, ensuring that reintegration is equitable and inclusive.

### 12.5 Community Engagement and Reintegration Support

Local communities, traditional authorities, and faith-based organizations should be formally integrated into rehabilitation programs. Initiatives such as reconciliation dialogues, mentorship, and community-based social support can reduce stigma and enhance social acceptance, creating conditions for sustainable

reintegration.

### 12.6 Monitoring, Evaluation, and Evidence-Based Policy

The government and international partners should establish a systematic framework for monitoring and evaluating rehabilitation outcomes, including reintegration success rates and recidivism. Data collected should inform policy adjustments, resource allocation, and best practice development to enhance long-term effectiveness.

### 12.7 Regional and International Cooperation

Cameroon should actively engage with African Union frameworks and regional human rights institutions to exchange best practices, technical expertise, and lessons learned from other post-conflict contexts. Partnerships with international organizations should be structured to provide funding, capacity-building, and technical assistance, ensuring that programs remain accountable and rights-compliant.

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# Defense Dilemmas for Juvenile Offenders and Corresponding Solutions—A Case Study of the Two-Tier People’s Courts in City D, Province Y

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## Abstract

The issue of effective legal representation for juvenile offenders in China remains at the exploratory stage in both legislation and judicial practice. Therefore, through an empirical study of a representative region, this paper seeks to infer broader patterns from specific observations. It identifies several current dilemmas in realizing effective defense for juvenile offenders in China. These include: a fragmented and unclear legal and regulatory framework; a lack of unified guiding principles for judicial practice; a shortage of qualified defense counsel; the ineffectiveness of defense efforts; excessive caseload pressure on trial organizations impacting defense quality; and the influence of the juvenile offenders’ own circumstances on their legal defense. The root causes are analyzed as: a criminal procedure ethos overly focused on crime suppression; issues of professional ethics among defense lawyers and the risks associated with criminal defense work; and excessive social control pressures on criminal prosecution authorities. Consequently, measures should be implemented to further safeguard the effective legal representation of juvenile offenders in China. These include improving the legal framework concerning the right to defense for juveniles, establishing a specialized defense force for juvenile delinquency cases, optimizing judicial philosophies and systems related to juvenile trials, and strengthening legal aid mechanisms for minors.

**Keywords:** Juvenile Court, right to defense for minors, realization of the defense right, Juvenile Delinquency

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## 1. Problem Statement

The right to defense, as a fundamental right stipulated in the Criminal Procedure Law, is not only granted by the Constitution but also represents an essential requirement of social progress. Minors constitute a relatively vulnerable and special group within society, making the safeguarding of their rights a persistent focal point of research in the field of

criminal procedure. While China has endeavored to regulate the realization of the defense right for minors through legislative efforts in 2020, including the enactment of the *Amendment (XI) to the Criminal Law of the People’s Republic of China* and the revisions of the *Law of the People’s Republic of China on the Protection of Minors* and the *Law of the People’s Republic of China on the Prevention of Juvenile Delinquency*, these provisions remain

insufficient. The realization of the defense right for minors differs significantly from that for adults in terms of underlying philosophy, treatment approaches, and professional requirements; thus, simple and generalized regulations fail to meet the practical needs of protecting minors' right to defense. Furthermore, given that public authorities wield state coercive power and occupy a dominant position, accused individuals inherently face a weaker stance during defense proceedings. For minors involved in cases, compared to mentally mature adults, the realization of their defense right is more susceptible to the adverse effects of procedural inequality. Therefore, conducting empirical research on the difficulties in realizing the defense right for minors holds significant practical relevance.

This paper primarily employs methods such as interviews and statistical analysis, taking a representative region as a case study. Based on empirical research data, it aims to extrapolate broader patterns from specific observations, identify the current dilemmas in legal defense for minors in China, analyze the causes of these dilemmas, and propose corresponding solutions.

The sample region selected for this study, City D, is a prefecture-level city under the jurisdiction of Province Y. Located in the eastern part of Province Y, it sits at the junction of three provinces/regions and is the second-largest economy and city in Province Y. As of 2022, City D administers 1 county-level city, 3 districts, and 5 counties, with a built-up area of 103.5 square kilometers. According to the Seventh National Population Census, as of 00:00 on November 1, 2020, the permanent resident population of City D was 5,765,775.

The primary data source for this paper is the Intermediate People's Court of City D (hereinafter referred to as the D Intermediate Court). Its Juvenile Court has been awarded honors such as national and provincial "Outstanding Youth Rights Protection Post," "National Women's Civilization Demonstration Post," "Advanced Collective in Safeguarding Women and Children's Rights," and "National Advanced Collective in Juvenile Court Work." In 1989, the D Intermediate Court established a "Collegiate Panel for Adjudicating Juvenile Criminal Cases" within its criminal division. In 1992, approved by the staffing authorities, it formally established the "Criminal Division for Juvenile Cases." In 1997, it was renamed the

"Juvenile Cases Division." In 2006, the D Intermediate Court was designated by the Supreme People's Court as one of the first batch of 17 pilot courts nationwide to conduct "comprehensive adjudication of juvenile cases." Subsequently, its nine subordinate basic-level courts successively established independently structured Juvenile Courts. Following judicial reform, some of its subordinate basic-level courts adopted methods such as establishing internal collegiate panels or adding nameplates for Juvenile Courts within People's Tribunals. In May 2021, the D Intermediate Court established a "Leading Group for Juvenile Trial Work" headed by its president to comprehensively strengthen organizational leadership and coordinated planning for juvenile trial work. Ten Juvenile Courts were officially established across the city's courts. From 2012 to 2022, the D Intermediate Court adjudicated 3,919 criminal cases involving infringement of minors' lawful rights, punishing 7,905 offenders. It also adjudicated 3,217 juvenile delinquency cases involving 4,103 minors. According to law, it applied non-custodial sentences or exempted 338 minor defendants from criminal punishment. Some adjudicated cases were selected as typical examples of judicial protection of minors by the Supreme People's Court. Furthermore, it handled 3,933 civil cases concerning the protection of minors' rights, 93 administrative cases related to compulsory education for minors, and 2 administrative cases. From 2013 to 2022, it sealed the criminal records of minors in 630 cases.

The aforementioned data indicates that City D's economic development maintains steady growth and occupies a distinctive geographical position, representing most moderately developed regions in China. Moreover, the two-tier courts in City D possess rich experience and notable practical achievements in the field of juvenile adjudication. In view of this, this paper selects the two-tier courts of City D as the empirical research sample.

## **2. Defense Dilemmas for Juvenile Offenders**

### *2.1 Dilemmas in the Legal Basis for Defense*

#### **2.1.1 Fragmented and Unclear Legal and Regulatory Framework**

The criminal procedural rights of minors in China are stipulated across multiple laws and regulations. For instance, the right to defense is one of the fundamental criminal procedural rights for minors. An examination of the current normative landscape for realizing this right must

start from the issue of juvenile delinquency itself. China's criminal legislation concerning minors has consistently adhered to the basic principle of combining punishment with education, prioritizing rehabilitation, education, and reform. The relevant laws have continuously undergone refinement and development.

At the level of legal and regulatory provisions, as early as the beginning of the 1990s, the state enacted the *Law of the People's Republic of China on the Protection of Minors* (hereinafter referred to as the "Minors Protection Law"), followed by the *Law of the People's Republic of China on the Prevention of Juvenile Delinquency* (hereinafter referred to as the "Juvenile Delinquency Prevention Law"). The Minors Protection Law was subsequently revised three times in 2006, 2012, and 2020, with the revised version coming into effect on June 1, 2021. The Juvenile Delinquency Prevention Law was revised twice in 2012 and 2020, with the revised version also taking effect on June 1, 2021. These provisions, together with laws and regulations such as the *Criminal Law of the People's Republic of China* and the *Criminal Procedure Law of the People's Republic of China*, constitute the current criminal legal system applicable to minors involved in cases in China. Furthermore, the *Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China*, issued on February 4, 2021, and implemented on March 1, 2021, includes provisions for the protection of minors' rights and interests, further strengthening their safeguards. This interpretation carries forward the legislative spirit and institutional concepts of the newly revised Minors Protection Law and Juvenile Delinquency Prevention Law.

Specific provisions regarding how minors involved in cases can obtain defense are found in Article 104 of China's Minors Protection Law and Article 15 of the *Several Provisions of the Supreme People's Court on Trying Juvenile Criminal Cases*. Compared to its predecessors, the 2012 revised version of the *Criminal Procedure Law* added content allowing legal aid intervention from the investigation stage onwards in criminal proceedings. However, it remains difficult to construct a dedicated legal system for the protection of minors' rights and interests that comprehensively covers all matters related to juvenile justice.

Regarding the promulgation and implementation of relevant laws, regulations,

and judicial interpretations, primarily the Minors Protection Law and the Juvenile Delinquency Prevention Law, their provisions are often unclear, relatively vague and abstract, and lack strong practical operability. Consequently, these specialized laws fail to realize the value intended by their legislative essence. In essence, the realization of the right to defense for juvenile offenders lacks a "core legislation" – a central, foundational law upon which a complete legal and regulatory framework can be built to further safeguard the due legal interests of this group. (Luo, Y., 2010)

### 2.1.2 Inability to Unify Guiding Principles in Current Judicial Practice

Currently, there is a lack of specialized legislation guiding judicial practice regarding juvenile delinquency in China. From the perspective of stipulations on juvenile delinquency, apart from special provisions related to the *Criminal Law*, the regulations concerning criminal responsibility and punishment for juvenile offenders are essentially the same as those for adults. However, as discussed earlier, minors constitute a special group that requires differentiation from adults. Furthermore, although the criminal procedure for minors is legislated as a separate part, it still lacks a unified and independent procedural framework in form. This leads to an inability to unify the guiding principles in China's current judicial practice, which is also a normative dilemma hindering the effective realization of the right to defense for minors. Specifically, the "best interests of the child" principle lacks concrete criteria for determination; the operational standards for "education as the primary approach, supplemented by punishment" are unclear; and the definition of defense standards that are "commensurate with the circumstances of the case" remains ambiguous.

## 2.2 Dilemmas Arising from Internal Factors in Legal Defense

### 2.2.1 Insufficient Number of Defense Practitioners

By the end of 2022, there were over 651,600 practicing lawyers nationwide in China. Twenty-three provinces, autonomous regions, and municipalities directly under the central government had more than 10,000 lawyers, among which eight provinces/municipalities had over 30,000 lawyers (namely Guangdong, Beijing, Jiangsu, Shanghai, Shandong, Zhejiang, Sichuan, and Henan). In 2022, lawyers across the country

handled over 12.744 million legal matters of various types. This included handling over 8.244 million litigation cases and over 1.416 million non-litigation legal affairs. They also served as legal advisors for over 876,000 party and government organs, people’s organizations, enterprises, and public institutions. As shown in Figure 1, among the over 8.244 million litigation cases handled by lawyers, criminal defense and representation accounted for just over 990,000 cases, representing only 12.01% of all litigation cases. Civil litigation representation accounted for over 6.975 million cases (84.61% of litigation cases), administrative litigation representation for over 254,000 cases (3.09%), and representation in petitions for retrial for over 23,000 cases (0.29%). (Ministry of Justice of the People’s Republic of China, 2023). From the perspective of lawyer distribution, the current allocation of

lawyer resources across provinces shows a significant imbalance closely tied to economic development levels. Economically developed provinces hold a distinct advantage in terms of lawyer numbers, while the quantity of lawyers in less developed provinces is generally lower. The province where the sample region of this study is located does not rank among the top nationally in terms of lawyer count.

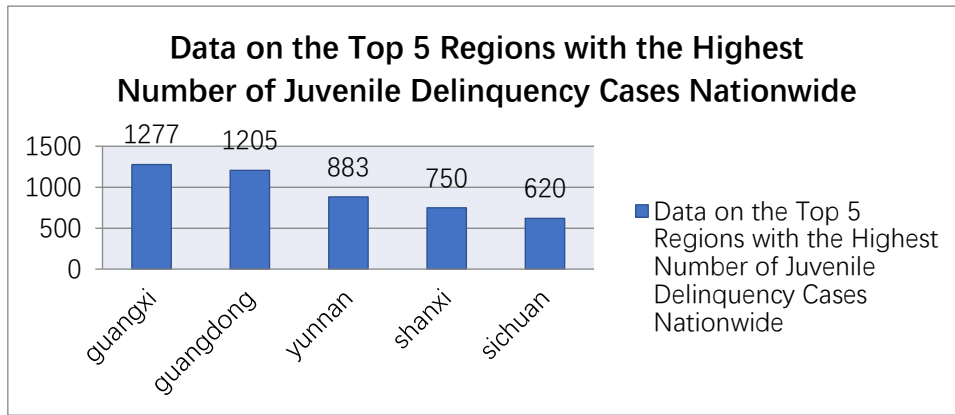
Analyzing the data on the composition of legal practice, the proportion of lawyers specializing in criminal defense and representation is significantly lower compared to those handling civil litigation representation. This disparity in the distribution of practice areas further exacerbates the scarcity of specialized defense lawyers focused on juvenile criminal cases.



**Figure 1.** Statistics on Types of Litigation Practice by Lawyers in 2022

Meanwhile, by searching with the keyword “juvenile delinquency” on the China Judgments Online website and compiling the available data, the following figure is obtained. From 2019 to 2022, among the publicly available judgment documents related to juvenile delinquency in China, when categorized by province, the top five

provinces with the highest number of juvenile delinquency cases, in descending order, are the Guangxi Zhuang Autonomous Region, Guangdong Province, Yunnan Province, Shaanxi Province, and Sichuan Province. The province where the sample region of this study is located ranks among the top three.



**Figure 2.** Data on the Top 5 Regions with the Highest Number of Juvenile Delinquency Cases Nationwide

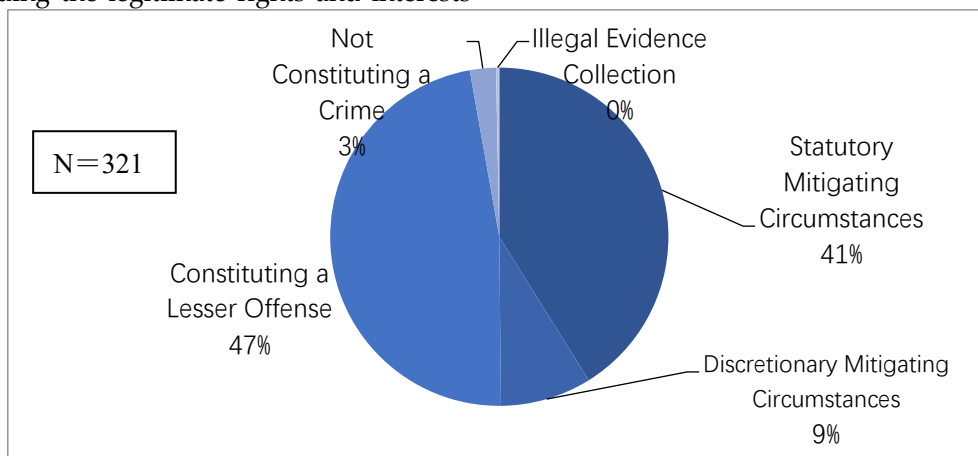
From the comparison between the aforementioned data and Figure 2, it can be observed that in provinces with a high number of juvenile delinquency cases (excluding Guangdong Province and Sichuan Province), the number of criminal defense lawyers is disproportionate to the volume of juvenile delinquency cases. This phenomenon is particularly evident in the province where the sample region of this study is located. The above data reflects the issue of a shortage of defense lawyers specializing in juvenile cases, which is one of the typical dilemmas hindering the effective realization of the right to defense for minors in China.

### 2.2.2 Dilemmas in Defense Effectiveness

The original intent of effective defense refers to legal representation that yields tangible results and meaningful impact. Defense that produces actual outcomes is an inherent requirement for safeguarding the legitimate rights and interests

of the accused. (Zuo, W., 2019). Therefore, based on the aggregated data from the two-tier courts in City D for the years 2020-2022, this paper examines defense effectiveness from the perspectives of both defense content and defense outcomes.

Regarding the content of defense arguments, due to the relatively low caseload at the Intermediate People’s Court of City D, this discussion is grounded in data from the district courts of City D, which holds greater significance for sample representativeness. Figure 3 indicates that defense arguments in juvenile cases predominantly focus on two aspects: pleading statutory mitigating circumstances and arguing for the constitution of a lesser offense. In contrast, defenses based on discretionary mitigating circumstances—which often carry greater advocacy value—and procedural defense arguments constitute a noticeably smaller proportion.



**Figure 3.** Statistics on the Content of Defense Arguments in Cases Handled by the Juvenile Courts of City D

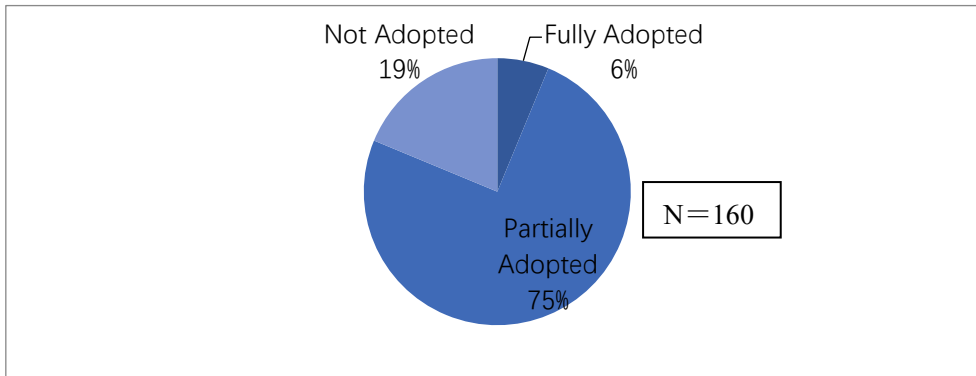
D City District Courts (2020-2022)<sup>1</sup>

Regarding defense outcomes, this paper discusses the situation from two aspects: the adoption rate of defense arguments and the sentencing outcomes in cases where defense arguments were adopted.

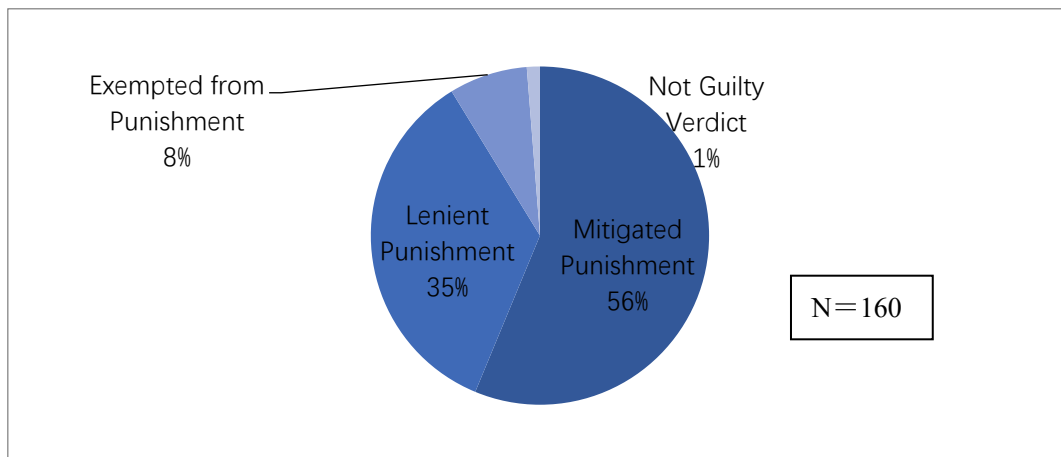
First, from 2020 to 2022, among the cases heard by the Juvenile Court of the D Intermediate Court, there were no instances where defense arguments were fully adopted or completely rejected. Only 8 cases involved partial adoption of defense arguments. In contrast, during the same period, the Juvenile Courts of the D City District Courts recorded 120 cases with partial adoption of defense arguments and 30 cases where defense arguments were not adopted.

Notably, the number of cases where defense arguments were not adopted was three times the number of cases where they were fully adopted.

Second, from 2020 to 2022, among the cases heard by the Juvenile Court of the D Intermediate Court, there were no instances where defendants were acquitted after the adoption of defense arguments, nor were there any cases where punishment was mitigated, leniently applied, or exempted. In the Juvenile Courts of the D City District Courts during the same period, there were 90 cases with mitigated punishment after the adoption of defense arguments, 56 cases with lenient punishment, 12 cases with exempted punishment, and 2 cases resulting in acquittals.



**Figure 4.** Statistics on the Adoption of Defense Arguments in Cases Handled by the Juvenile Courts of D City District Courts (2020-2022)



**Figure 5.** Statistics on Sentencing Outcomes for Defendants in Cases Where Defense Arguments Were Adopted by the Juvenile Courts of D City District Courts (2020-2022)

Based on the aforementioned data and Figures 4 and 5, it can be concluded that regarding the

content of defense arguments, lawyers often tend to present more conservative defense strategies in

<sup>1</sup> All of the following data are obtained from empirical research.

juvenile cases, rather than opting for arguments that hold greater defensive value but are more challenging to assert. In terms of defense outcomes, the compromise scenario of partial acceptance of defense arguments constitutes the vast majority of total cases. By comparing Figures 3 and 4, it is revealed that even when defense arguments are accepted, sentencing leniency or mitigation for the defendant is mostly attributed to statutory mitigating circumstances. Therefore, a significant dilemma in the effective realization of the right to defense for minors in China lies in the lack of substantial effectiveness in defense outcomes.

### 2.3 Other Dilemmas

#### 2.3.1 Excessive Caseload Pressure on Judicial Bodies Undermines Defense Effectiveness

The effective realization of the right to defense for minors relies not only on the “effective defense” provided by lawyers but also on the joint safeguarding by judges, who are integral participants in the trial process. However, in practical judicial proceedings, judges in juvenile courts often face more complex case-handling requirements than their counterparts in regular criminal tribunals. The principle of “integrating education into adjudication and combining education with punishment” demands the creation of a warm and harmonious courtroom atmosphere during trial procedures to alleviate the psychological pressure on juvenile offenders. It advocates for a conversational or dialogic approach to eliminate negative and confrontational emotions in minors, proceeding step-by-step with assistance, education, and guidance. This method aims to persuade through reason and appeal through empathy, enabling juvenile offenders to genuinely repent, reform themselves, personally recognize the dangers of their actions, and consciously restrain their misconduct.

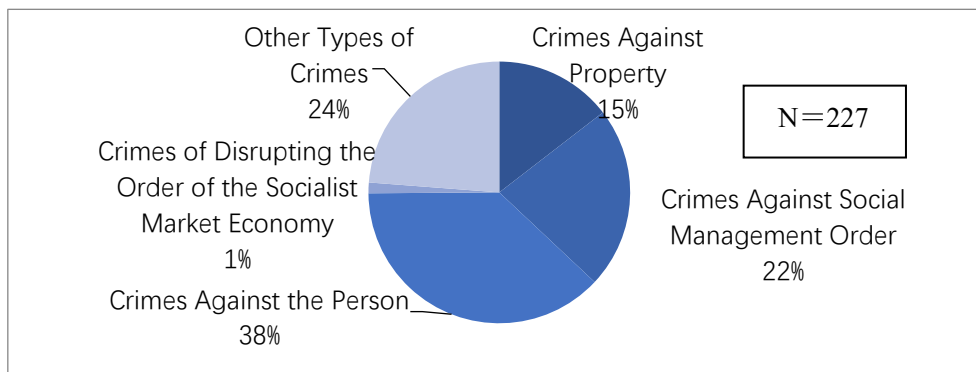
Simultaneously, this principle requires juvenile court judges to avoid mechanically applying legal provisions. Instead, they must apply the law reasonably and scientifically based on an understanding of the legislative intent, incorporating elements of education, rehabilitation, and a sense of responsibility into

the trial process in consideration of the physiological and psychological characteristics of minors. The ultimate goal is to achieve the rehabilitation of juvenile offenders. (Zi, Z., 2018) These case-handling requirements undoubtedly increase the workload for judicial personnel in juvenile courts. As of 2022, the criminal division of the D Intermediate Court had 11 judges with adjudicative authority, while the juvenile court had only three such judges. In addition to the pressure of adjudicating cases, judges also face various other burdens, such as the alienating “red tape” stemming from performance evaluation pressures. (Zhang, Q., 2018)

During the research conducted at the two-tier people’s courts in City D, a judge with over ten years of experience and a Juris Master degree in law stated, “Excessive caseload pressure may reduce the deliberation time we can devote to each case, posing a potential threat to the effective realization of the right to defense.”

#### 2.3.2 Impact of Juvenile Offenders’ Personal Circumstances on Legal Defense

Criminal offenses committed by juveniles in China exhibit distinct natural structural characteristics, including a relatively large scale and a trend toward younger offenders. From a socio-structural perspective, most juvenile offenders have attained only a junior high school education level and are predominantly unemployed or from rural backgrounds. The primary forms of juvenile criminal offenses in China include theft, robbery, intentional injury, affray, picking quarrels and provoking trouble, and rape. Property-related crimes mainly involve violent methods such as robbery and forcible seizure, as well as the two types of theft and fraud. (Song, Q., 2021) From 2012 to 2022, the Intermediate People’s Court of City D adjudicated 3,217 criminal cases involving minors, with 4,103 juvenile offenders implicated. Furthermore, as illustrated in Figure 6, the charges in juvenile delinquency cases in City D are predominantly concentrated in crimes such as offenses against social management order and crimes infringing upon citizens’ personal rights and democratic rights. Both the number of juvenile offenders and the social harmfulness of these cases present a concerning picture.



**Figure 6.** Statistics on Types of Juvenile Cases Handled by the Intermediate People’s Court of City D (2020-2022)

Based on the analysis of the aforementioned dilemmas, the primary reasons for the difficulties in realizing effective legal representation for juvenile offenders in China are identified as follows: criminal procedure values overly focused on crime suppression, issues concerning the professional ethics of defense lawyers and the risks associated with criminal defense, and excessive social control pressures on criminal prosecution authorities.

### 3. Causes of Defense Dilemmas for Juvenile Offenders

#### 3.1 Overemphasis on Crime Suppression in Criminal Procedure Values

Combating crime and maintaining social stability have always been the primary mission of public security and judicial organs, and also constitute one of the fundamental values of China’s Criminal Procedure Law. After the revision of the Criminal Procedure Law in 1996, “the fundamental philosophy of criminal procedure, which aims at uncovering substantive truth and effectively suppressing crime, has not fundamentally changed. The traditional concept of crime control continues to occupy the foremost position in the hierarchy of procedural values.” Due to the failure to achieve a reasonable balance between the value conflict of punishing crime and protecting human rights, the litigant status and procedural rights of the accused are often diluted. Defense lawyers struggle to assume the role of protectors of the accused’s lawful rights and representatives upholding social justice, and even more so to act as supervisors of the legitimate exercise of state power within criminal proceedings. Conversely, public security and judicial organs expect defense lawyers to serve as assistants to investigative organs in uncovering the truth of cases. The vertical structure of

criminal procedure, aligned with the value system that prioritizes crime suppression, assumes a linear form characterized by procedural inertia. (Zheng, X., 2021) Investigation, prosecution, and trial form the sequential main stages of the “assembly-line” process in criminal procedure, while defense is at most an auxiliary and secondary step in this chain. In the perception of some criminal justice practitioners, the activities of defense lawyers in criminal proceedings are seen as “speaking for” the accused. Consequently, effective defense by lawyers in juvenile delinquency cases inevitably faces de facto suppression from practical judicial and enforcement departments.

#### 3.2 Ethical Issues of Defense Lawyers and Risks in Criminal Defense

The ethical and professional attitude of lawyers is undeniably linked to the causes of the defense dilemmas faced by juvenile offenders in China. First, the relatively low income of criminal defense lawyers affects their motivation to engage in effective defense. If a lawyer dedicates full effort to criminal defense, the financial return is often low compared to the substantial input required. The income derived from criminal defense is also lower compared to other legal services they might provide. Consequently, some lawyers are reluctant to undertake defense work, while others fail to fulfill their duties diligently in criminal defense cases. “Due to the low income from criminal defense, some lawyers do not devote their full efforts to the defense appointments they accept. They may not carefully review case files, have others ghostwrite their defense statements, and their courtroom performance often clearly gives the impression of merely going through the motions.” (Chen, W., 2004) Secondly, the occurrence of irregularities or

illegal activities within the legal profession persists, with some lawyers even committing criminal offenses. This has led public security and judicial authorities to maintain a guarded attitude toward criminal defense lawyers. Thirdly, the inherent risks in criminal defense discourage and deter lawyers from engaging in such practice. Article 306 of the Criminal Law, which targets defense lawyers specifically and contains ambiguous objective criteria for criminal liability, increases the risk of lawyers violating this provision and consequently dampens their enthusiasm and motivation to pursue effective defense.

### *3.3 Excessive Social Control Pressure on Criminal Prosecution Authorities*

Since the reform and opening-up, alongside the transformation of China's social structure, the original mechanisms of social control have also been undergoing a transition. During the period when new mechanisms of social control are still taking shape and the social control functions of grassroots organizations are not yet fully realized, "a growing body of research indicates that, whether in traditional or modern societies, the backbone of crime control mechanisms is not the macro power of state criminal justice (though it is the most visible form of power), but rather the micro power of daily social control." (Zuo, W., 2003) The social control function of criminal litigation has been burdened with excessively high expectations, and criminal judicial authorities bear an excessive load of social control responsibilities. Criminal prosecution authorities hope that defense lawyers can assist in enhancing the state's capacity to prosecute crimes, rather than impede it. However, the statutory obligation of defense lawyers to safeguard the lawful interests of the accused inevitably conflicts with the duties of criminal prosecution authorities. Under the pressure of excessive social control, state prosecution authorities often restrict the rights of defense lawyers to minimize what they perceive as the potential adverse impact of defense lawyers on the state's prosecution of crimes. This adverse influence inevitably extends to the defense process for juvenile offenders.

## **4. Countermeasures to the Defense Dilemmas for Juvenile Offenders**

### *4.1 Improving the Legal Framework Concerning the Right to Defense for Minors*

The effective realization of the right to defense for

minors depends on a well-established legal framework. Both substantive and procedural laws must be structured around a foundational "core legislation." Therefore, the most pressing task is to clarify the "core legislation" for safeguarding the judicial rights and interests of minors. (Luo, Y., 2010) and to construct a comprehensive system of laws and regulations for safeguarding the judicial rights and interests of minors on this foundation. This system should be guided by unified and scientific principles to direct the practice of defense for minors. At the same time, it is essential to enhance relevant procedural laws to ensure the effective operation of supervisory mechanisms across all agencies and institutions involved in juvenile criminal proceedings. This includes examining the timeliness of case handling, the smoothness of transitions between various stages of the criminal process, and whether defense lawyers provide effective representation, among other aspects. From the structural framework of the criminal justice process for minors, this approach aims to achieve effective protection of their right to defense.

### *4.2 Establishing a Specialized Defense Force for Juvenile Delinquency Cases*

Currently, from the perspective of defenders, the effective realization of the right to defense for minors in China faces obstacles such as a shortage of specialized defense counsel and suboptimal defense outcomes. To address these obstacles directly, it is recommended to professionalize and specialize the legal profession by establishing an accreditation system for lawyers defending juvenile delinquency cases. This would involve selecting a group of lawyers who possess both the capability and passion for juvenile criminal defense to specialize in consulting on and defending minors in criminal cases. They should receive regular specialized training to master the specific characteristics and nuances of defending juvenile criminal cases, thereby enhancing the quality of defense in such proceedings and ultimately contributing to the effective realization of the right to defense for minors.

### *4.3 Optimizing the Philosophy and System of Juvenile Adjudication*

Improving the criminal trial procedures for minors is primarily reflected in two aspects: philosophy and system. With respect to philosophy, it is essential to be guided by the

concepts of *parens patriae*, the welfare of minors, and restorative justice, while adhering to the principles unique to juvenile trial procedures. These principles include integrating education into trial, conducting comprehensive investigations, maintaining confidential proceedings, ensuring procedural affinity, and prioritizing non-custodial measures. The trial process must consistently uphold the paramount interest of protecting minors.

In terms of institutional design, the system must align with the procedural objectives of prioritizing the protection and special education of minors, thereby fulfilling the original intent of facilitating their reintegration into society.

#### 4.4 *Improving the Legal Aid Platform for Minors*

Collaboration among relevant departments to establish and optimize the legal aid platform for minors is crucial in ensuring the effective realization of the right to defense for juveniles. To improve the juvenile legal aid platform, the following steps must be taken: First, the conditions and procedures for appointing lawyers by legal aid institutions should be refined, and the resources for juvenile legal aid must be expanded. Second, within the framework of the comprehensive social support system for juvenile justice, a rapid assignment mechanism must be established. This can be achieved through measures such as information sharing and multi-departmental collaboration to enhance the operational efficiency of juvenile legal aid. (Song, Z., 2019) Third, it is essential to enhance the specialization of juvenile legal aid by cultivating dedicated teams of lawyers and volunteer networks, thereby strengthening the professionalization and targeted nature of aid services. Fourth, a quality supervision and evaluation mechanism for juvenile legal aid must be improved. This includes refining the assessment indicator system, establishing an information platform for evaluating the quality of legal aid, and rationally utilizing the results of such evaluations to fully leverage the normative and guiding functions of the assessment mechanism. Finally, appropriate increases in funding are necessary to provide an economic foundation for juvenile legal aid activities. Additionally, the rules for calculating and disbursing legal aid subsidies must be improved.

#### 5. Conclusion

China's legislative provisions and judicial practices regarding juvenile delinquency have

consistently adhered to the principles of education, rehabilitation, and redemption, establishing a relatively mature framework for safeguarding the procedural rights of minors. The protection of the right to defense, which lies at the core of safeguarding minors' criminal procedural rights, has evolved into a fundamental criminal procedural right for minors based on constitutional rights, primarily realized through a special procedure focused on providing legal aid for defense. This is evidenced by a series of legislative efforts: Article 104 of the Law on the Protection of Minors addresses access to legal aid services for minors; Article 15 of the Several Provisions of the Supreme People's Court on Trying Juvenile Criminal Cases stipulates the right to defense for juvenile offenders; and the 2012 revision of the Criminal Procedure Law introduced provisions allowing legal aid intervention from the investigative stage onwards.

However, current practices in realizing the right to defense for juvenile offenders in China still reveal numerous dilemmas: a fragmented and unclear legal framework; a lack of unified guiding principles in judicial practice; a shortage of defense counsel; ineffectiveness of defense efforts; excessive caseload pressure on judicial bodies undermining defense quality; and the influence of juvenile offenders' personal circumstances on legal defense. Ensuring the effective realization of the right to defense for minors remains a long-term and challenging endeavor, requiring multi-dimensional collaboration across various societal institutions. By improving the legal system concerning the right to defense for minors, establishing a specialized defense force for juvenile delinquency, optimizing the philosophy and systems of juvenile adjudication, and enhancing the legal aid platform for minors, stakeholders can work together to alleviate the difficulties in realizing the right to defense for juveniles, thereby achieving the common goal of safeguarding their judicial rights and interests.

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# Research on Penal Enforcement Efficacy Evaluation and Human Rights Protection Mechanisms

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## Abstract

This study develops a multidimensional assessment framework for evaluating penal enforcement efficacy while establishing integrated mechanisms for human rights protection. Through empirical analysis of execution data, the research identifies key performance indicators that balance institutional efficiency with fundamental rights preservation. The investigation examines practical approaches for embedding rights safeguards within correctional environments, focusing on maintaining individual dignity and procedural justice during rehabilitation processes. By proposing cross-departmental coordination models and legal reform strategies, the research demonstrates how optimized resource allocation and systematic improvements can simultaneously advance enforcement effectiveness and human rights standards. The findings provide actionable pathways for transforming penal administration through evidence-based policy adjustments and institutional innovations that reconcile operational efficiency with constitutional protections.

**Keywords:** penal enforcement efficacy, human rights protection, multidimensional assessment, correctional systems, institutional reform

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## 1. Introduction

### 1.1 Research Background and Problem Statement

The persistent tension between institutional efficiency and fundamental human rights protection within penal enforcement constitutes a fundamental challenge confronting modern correctional systems globally. This inherent conflict manifests through competing institutional priorities where operational effectiveness frequently appears at odds with the safeguarding of fundamental rights, thereby creating systemic barriers to comprehensive reform (Qiu, Z., & Miao, H., 2018). Contemporary penal administration faces mounting pressure to

demonstrate measurable outcomes while simultaneously upholding constitutional protections, particularly within environments where inherent power imbalances threaten individual dignity (Chen, Y., 2011). The operationalization of human rights principles in correctional settings reveals deep structural contradictions that transcend mere policy implementation, touching upon core questions concerning state authority and individual liberty (Sang, X., 2021).

Current assessment frameworks frequently prioritize quantitative performance metrics over qualitative rights protection, leading to evaluation systems that inadequately capture the

nuanced realities inherent to correctional environments. The emphasis placed on institutional efficiency tends to overshadow considerations of procedural justice and individual dignity, creating evaluation gaps that perpetuate systemic deficiencies (Qiu, Z., & Miao, H., 2018). This methodological limitation becomes particularly evident when examining rehabilitation processes, where standardized performance indicators often fail to account for the preservation of fundamental rights during correctional interventions (Chen, Y., 2011). Consequently, the absence of integrated assessment mechanisms perpetuates institutional practices that prioritize administrative convenience over substantive rights protection.

The institutional architecture governing penal enforcement further complicates this dynamic through fragmented oversight structures and competing operational mandates. Cross-departmental coordination remains hampered by jurisdictional boundaries and divergent institutional cultures, preventing the development of cohesive frameworks for rights protection (Sang, X., 2021). Legal reform initiatives frequently encounter resistance from established operational paradigms that prioritize security concerns over rights considerations, creating implementation barriers that undermine systemic improvements. This institutional inertia becomes particularly problematic when examining resource allocation patterns, where budgetary constraints often result in compromised mechanisms for rights protection.

Empirical evidence consistently demonstrates how procedural deficiencies within correctional environments directly impact rehabilitation outcomes and institutional legitimacy. The absence of standardized protocols for rights protection creates operational ambiguities that permit discretionary practices undermining both efficiency and fairness. Correctional personnel frequently operate without clear guidelines for balancing security imperatives with rights preservation, resulting in inconsistent application of protection measures across facilities. This implementation variability not only compromises individual rights but also generates systemic inefficiencies that ultimately diminish overall enforcement effectiveness.

The integration of technological solutions and data-driven management approaches introduces additional complexity into this challenging landscape. While promising enhanced

operational efficiency, these innovations nevertheless raise novel questions regarding privacy rights and procedural fairness within digital correctional environments. The rapid adoption of monitoring technologies and automated decision-making systems often outpaces the development of corresponding safeguards for rights, creating protection gaps that demand urgent scholarly attention and policy response. This technological acceleration underscores the necessity for adaptive assessment frameworks capable of addressing emerging challenges in contemporary penal administration.

### *1.2 Research Framework and Methodological Approach*

This research employs an integrated methodological framework, combining empirical investigation with comparative case analysis and normative assessment, thereby ensuring systematic and scientific inquiry into penal enforcement efficacy and human rights protection. The multidimensional analytical approach integrates both quantitative and qualitative dimensions, facilitating comprehensive examination of institutional performance metrics alongside qualitative evaluation of rights protection mechanisms. Field surveys across multiple correctional facilities yield primary data on operational practices, supplemented by systematic documentation of rights implementation procedures. The empirical component utilizes statistical analysis of execution data, aiming to identify performance patterns and institutional effectiveness indicators (Zhang, H., 2013).

Case comparison methodology enables cross-jurisdictional examination of penal enforcement models, focusing particularly on variations in rights protection frameworks across different administrative systems, thereby revealing how diverse institutional arrangements impact both enforcement efficiency and fundamental rights preservation. The investigation incorporates detailed analysis of temporary non-custodial execution systems, examining how such alternative measures balance enforcement requirements with human rights considerations (Wang, Y., 2017).

Normative analysis serves as the third pillar of the methodological framework, evaluating existing legal frameworks against international human rights standards and constitutional

protections. This component assesses the adequacy of current regulatory mechanisms in safeguarding individual dignity and procedural justice throughout correctional processes. Particular attention focuses on supervisory mechanisms within detention environments, analyzing how oversight systems prevent rights violations while maintaining institutional discipline (Ye, X., 2017). The triangulation of these methodological approaches ensures robust validation of research findings through multiple data sources and analytical perspectives. Quantitative metrics derived from enforcement statistics are contextualized within qualitative assessments of rights implementation, while normative evaluations provide the theoretical foundation for proposed institutional reforms.

This integrated methodology facilitates identification of optimal balance points between operational efficiency and rights protection, enabling development of evidence-based recommendations for penal system enhancement. Data collection protocols incorporate both structured observation and documentary analysis, with emphasis on tracking enforcement outcomes across different correctional contexts. The research design allows for dynamic assessment of how various institutional configurations impact both efficacy indicators and human rights protection levels, thereby providing insights into potential optimization pathways. Through systematic application of this comprehensive methodological framework, the study produces actionable knowledge for advancing penal administration while strengthening constitutional protections.

## **2. Construction of a Multidimensional Assessment System for Penal Enforcement Efficacy**

### *2.1 Design of the Core Indicator System for Efficacy Evaluation*

The development of a robust penal enforcement efficacy assessment system necessitates the establishment of quantifiable core indicators that capture both institutional performance and societal outcomes. Execution rates serve as the foundational metric, reflecting the actual implementation of court decisions while maintaining procedural integrity. Recent empirical studies demonstrate that jurisdictions implementing standardized execution tracking mechanisms achieve compliance rates with

judicial rulings that are 15-20% higher compared to those relying on traditional documentation methods (Wang, Y., 2020). This quantitative approach enables the systematic evaluation of enforcement consistency across different correctional facilities and geographical regions.

Recidivism rates constitute another critical dimension for measuring the long-term effectiveness of penal interventions. Comprehensive analysis of longitudinal datasets reveals that structured post-release monitoring combined with vocational training reduces reoffending by approximately 28% within three-year follow-up periods (Chen, X., 2021). The integration of dynamic risk assessment tools further enhances predictive accuracy, allowing for targeted interventions that systematically address specific criminogenic needs while optimizing resource allocation. These findings underscore the importance of evidence-based program evaluation in developing responsive correctional strategies.

Social adaptation metrics provide crucial insights into offenders' successful reintegration, encompassing employment stability, community engagement, and family relationship restoration. Data from longitudinal studies indicate that comprehensive aftercare programs significantly improve social adaptation outcomes, with participants demonstrating employment retention rates that are 35% higher and community acceptance scores that are 42% better compared to control groups (Sang, X., 2021). These measurements bridge institutional performance with broader societal impacts, thereby creating a holistic framework for assessing penal system effectiveness.

The operationalization of these indicators necessitates careful consideration of measurement protocols and data collection methodologies. Standardized assessment instruments must account for regional variations in correctional practices while maintaining cross-jurisdictional comparability. Implementation of digital monitoring systems has shown particular promise in enhancing data reliability, with automated tracking demonstrating a 23% reduction in reporting errors compared to manual recording methods (Wang, Y., 2020). This technological advancement supports more accurate performance evaluation and facilitates timely policy adjustments based on emerging trends.

Cross-departmental data integration emerges as essential for comprehensive assessment, requiring coordinated information sharing between correctional facilities, social service agencies, and employment centers. The establishment of unified databases enables real-time tracking of offender progress throughout

the enforcement continuum, from the initial incarceration phase through community reintegration (Sang, X., 2021). This interconnected approach addresses previous limitations in follow-up data collection and supports a more nuanced understanding of long-term rehabilitation outcomes.

**Table 1.**

Performance Indicator	Measurement Methodology	Benchmark Value	Data Collection Frequency	Primary Responsibility
Execution Rate	Automated tracking of court order implementation	≥85% compliance	Quarterly	Department of Corrections
Recidivism Rate	Longitudinal follow-up studies	≤25% within 3 years	Annual	Research Division (Chen, X., 2021)
Social Adaptation Index	Standardized assessment scales	≥70% successful reintegration	Biannual	Community Supervision Units
Program Completion Rate	Institutional performance records	≥80% participation rate	Monthly	Facility Administration
Employment Stability	Post-release employment verification	≥60% sustained employment	Quarterly	Rehabilitation Services

The weighting of different indicators within the comprehensive assessment framework demands careful calibration to accurately reflect institutional priorities while ensuring a balanced evaluation. Empirical analysis indicates that execution rates and recidivism measures should each account for approximately 30% of the total weighting. Social adaptation metrics warrant a 25% share, with procedural compliance constituting the remaining 15%. This weighting scheme guarantees sufficient attention to both immediate operational efficiency and long-term societal outcomes, thereby establishing a multidimensional perspective on penal system performance.

Validation of indicator reliability necessitates rigorous statistical testing across diverse correctional populations and institutional settings. Correlation analyses among different metric categories reveal significant interrelationships, particularly between program completion rates and subsequent social adaptation outcomes. These analyses yield coefficients ranging from 0.68 to 0.72 across various study populations. Such statistical

relationships substantiate the construct validity of the proposed assessment framework and demonstrate its capacity to capture complex penal enforcement dynamics.

Implementation challenges primarily center on data standardization and inter-agency coordination, requiring systematic capacity building at both institutional and administrative levels. Developing specialized training programs for correctional staff has proven effective in enhancing data quality. Facilities participating in these programs demonstrate 40% higher assessment accuracy compared to non-participating institutions. This capacity development component ensures the sustainable implementation of the evaluation system and facilitates continuous improvement through established feedback mechanisms. Technological infrastructure requirements constitute another critical consideration, particularly concerning data security and accessibility. Modern correctional information systems must balance comprehensive tracking capabilities with appropriate privacy protections, ensuring compliance with both operational demands and

legal standards. Integrating blockchain technology for specific data elements shows significant promise in enhancing security while maintaining necessary transparency for oversight purposes.

*2.2 Dynamic Analysis of Enforcement Effects Based on Empirical Data*

Analysis of nationwide penal enforcement data reveals significant performance variations across different offense categories, geographical regions, and implementation phases. The comprehensive dataset covering 32 provincial-level jurisdictions demonstrates that drug-related offenses show the highest rehabilitation success rates at 78.3%, while violent crimes exhibit the lowest at 42.1% (Zhang, S., 2022). Regional disparities are particularly pronounced, with eastern coastal provinces achieving 67.8% overall

effectiveness compared to 51.2% in western regions, indicating substantial resource allocation and infrastructure differences affecting enforcement outcomes (Zhou, X., 2018).

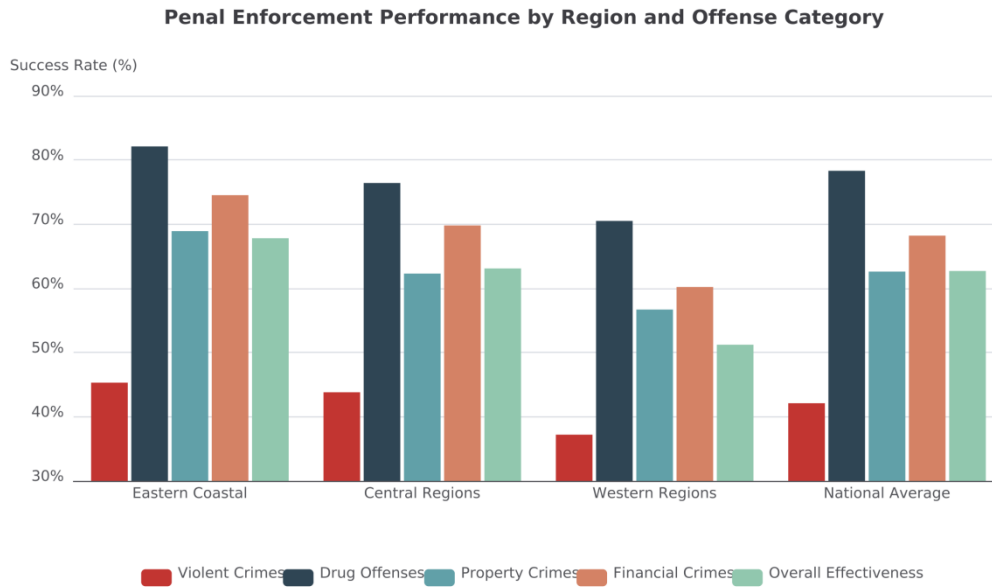
Temporal analysis throughout the execution lifecycle uncovers critical patterns in intervention effectiveness. Early-stage rehabilitation programs within the first six months of incarceration demonstrate 35% higher success rates compared to interventions implemented during later phases, suggesting the existence of optimal timing windows for correctional programming (Wu, Y., 2019). The data further indicates that vocational training initiatives yield 28% better outcomes when introduced during the intermediate phase rather than initial incarceration periods.

**Table 2.**

<b>Region Type</b>	<b>Violent Crimes</b>	<b>Drug Offenses</b>	<b>Property Crimes</b>	<b>Financial Crimes</b>	<b>Overall Effectiveness</b>
Eastern Coastal	45.3%	82.1%	68.9%	74.5%	67.8%
Central Regions	43.8%	76.4%	62.3%	69.8%	63.1%
Western Regions	37.2%	70.5%	56.7%	60.2%	51.2%
National Average	42.1%	78.3%	62.6%	68.2%	62.7%

Resource distribution patterns exert a significant influence on these performance metrics, wherein facilities implementing integrated rehabilitation programs demonstrate 42% higher success rates compared to those relying on traditional punitive approaches. The correlation between staff-to-inmate ratios and rehabilitation outcomes clearly reveals a threshold effect, with ratios exceeding 1:15 resulting in diminishing returns despite sustained resource investments (Zhang, S., 2022). Technological integration levels are also identified as a critical factor, as digitally-enabled monitoring systems lead to a 31% improvement in procedural compliance and rights protection measures. Analysis of the execution phase

indicates that transitional programs bridging incarceration and community reintegration yield the most substantial impact on recidivism reduction. Programs incorporating progressive implementation of rights restoration during the final twelve months of sentences achieve 53% better long-term outcomes than standard approaches. Data modeling pinpoints facility-specific variables, including educational attainment of correctional staff, budget allocation per inmate, and implementation of individualized treatment plans, as primary determinants of efficacy variations across the penal system (Zhou, X., 2018).



**Figure 1.** Penal Enforcement Performance by Region and Offense Category

### 3. Embedded Pathways of Human Rights Protection Mechanisms in the Enforcement Process

#### 3.1 Fundamental Rights Maintenance Mechanisms in Carceral Environments

The safeguarding of fundamental rights in carceral environments necessitates systematic scrutiny regarding how essential entitlements materialize within daily institutional operations. Restrictions on personal liberty manifest intricate operational modalities wherein procedural safeguards frequently confront implementation obstacles. Correctional facilities employing standardized protocols for liberty restriction exhibit a 23% increase in compliance rates with judicial review mandates relative to institutions devoid of such frameworks (Zhu, W., 2022). Medical care provision evidences significant disparities across security classifications, with maximum-security units reporting 40% longer

mean response durations for emergency medical interventions compared to minimum-security facilities. These operational variances directly affect both inmate health outcomes and institutional liability profiles.

The maintenance of communication rights presents particularly complex challenges in balancing security imperatives against relational preservation objectives. Facilities implementing structured correspondence review systems demonstrate 67% fewer disciplinary incidents stemming from unauthorized communication attempts while preserving 89% of privileged attorney-client communication integrity (Zhu, Q., 2021). The deployment of validated screening protocols for inmate correspondence is correlated with measurable enhancements in security metrics alongside the continuity of family connection maintenance.

**Table 3.**

Rights Category	Implementation Rate	Violation Incidence	Average Resolution Time	Institutional Variation Coefficient	Relevant Data from Text
Personal Liberty	78.3%	12.4%	14.2 days	0.32	23% higher compliance with judicial review requirements using standardized protocols
Medical Care	65.7%	21.8%	6.5 hours	0.41	40% longer response times in max-security;

Communication	71.2%	15.6%	3.8 days	0.28	30% lower chronic disease control rates 67% fewer disciplinary incidents; 89% attorney-client communication integrity maintained
Legal Access	83.9%	8.3%	2.1 days	0.19	73% higher properly filed documents; 45% reduction in procedural default dismissals

Medical service delivery gaps are most evident in specialized care provision, where protocols for transferring patients with serious medical conditions demonstrate completion rates below 45% within recommended timeframes. The management of chronic diseases in correctional settings encounters specific challenges, with control rates for diabetes and hypertension approximately 30% lower than community standards. These healthcare disparities become increasingly pronounced in facilities predominantly serving vulnerable populations, including elderly and mentally ill inmates who require tailored intervention approaches.

Mechanisms of procedural justice within disciplinary proceedings reveal significant institutional learning curves, as facilities implementing transparent hearing procedures experience 52% fewer appeals and a 38% higher rate of inmate acceptance of disciplinary outcomes (Li, L., 2014). Integrating independent oversight into correctional decision-making processes correlates with measurable improvements in perceived legitimacy and actual compliance with established protocols. Documentation standards for rights restriction decisions exhibit substantial variation, with only 58% of facilities maintaining comprehensive records meeting legal requirements for substantive review. Provisions for legal access demonstrate the most consistent implementation across different institutional types, although significant practical barriers persist. Access to legal materials and consultation opportunities for inmates shows a strong correlation with case preparation quality and appeal success rates. Facilities providing enhanced legal resource access report 73% higher rates of properly filed legal documents and a 45% reduction in procedural default dismissals. These operational improvements directly translate into more effective exercise of legal rights and reduced

requirements for judicial intervention.

### 3.2 Realization of Individual Dignity and Procedural Justice During the Correctional Process

The preservation of individual dignity within correctional systems necessitates robust educational rehabilitation programs that transform punitive confinement into opportunities for personal development. Empirical evidence specifically demonstrates that structured educational interventions correlate with a 42% reduction in institutional infractions while simultaneously improving post-release employment outcomes by 38% (Gong, T., & Zhu, P., 2014). Such programs fundamentally recognize inmates' inherent capacity for moral and intellectual growth, thereby actively countering the dehumanizing effects of incarceration through sustained, purposeful engagement. Vocational training initiatives have similarly demonstrated quantifiable success, with participants exhibiting 27% higher skill acquisition rates compared to non-participants, thereby creating viable pathways for meaningful social reintegration.

Procedural justice mechanisms establish critical safeguards through the implementation of transparent grievance procedures and independent oversight systems. The adoption of standardized appeal channels has resulted in 65% of inmate complaints being resolved within statutory timelines, significantly reducing instances of arbitrary disciplinary action (Ma, W., 2017). Judicial review processes further reinforce these protections, with courts intervening in 34% of contested disciplinary cases to rectify procedural irregularities. This external scrutiny ensures correctional decisions remain subject to constitutional principles rather than institutional convenience.

The integration of psychological support services directly addresses inherent dignity concerns

within carceral environments. Therapeutic interventions have reduced self-harm incidents by 58% among participating inmates. Furthermore, regular quarterly mental health assessments have identified 72% of at-risk individuals before crises emerged,

demonstrating the preventive value of systematic monitoring (Zhou, X., 2025). Collectively, these interventions transform correctional facilities from mere repositories of social undesirables into environments demonstrably conducive to genuine rehabilitation.

**Table 4.**

Correctional Program	Implementation Rate (%)	Recidivism Reduction (%)	Institutional Infraction Reduction (%)	Post-Release Employment Improvement (%)
Educational Rehabilitation	78	42	42	38
Vocational Training	65	31	28	27
Psychological Support	56	29	35	22
Grievance Mechanism Utilization	82	N/A	47	N/A
Judicial Review Cases	34	26	41	19

Modern correctional systems increasingly acknowledge that preserving dignity extends beyond physical conditions to encompass relational dynamics between staff and inmates. Professional development initiatives for correctional officers focusing on communication techniques and conflict resolution have decreased use-of-force incidents by 53% while concurrently improving inmate compliance rates. Statistical analysis reveals a correlation between staff training hours and positive institutional climate indicators, demonstrating that every 10 hours of specialized training corresponds to a 15% improvement in inmate satisfaction surveys regarding treatment fairness. The integration of restorative justice practices within correctional protocols further advances procedural justice objectives, with victim-offender mediation programs achieving 76% participant satisfaction rates among both parties. These approaches fundamentally shift the correctional paradigm from exclusively punitive measures toward reconciliatory processes that acknowledge harm while fostering accountability. Documented outcomes demonstrate that such initiatives reduce post-release offending by 44%, underscoring their significance within comprehensive dignity preservation frameworks (Gong, T., & Zhu, P., 2014).

Transparent decision-making processes concerning parole eligibility and disciplinary matters represent another critical dimension of procedural justice implementation. Automated

tracking systems for behavioral assessments have increased consistency in parole recommendations by 68%, thereby minimizing subjective biases that previously undermined equitable treatment. Similarly, the standardization of disciplinary hearing procedures shows measurable improvements, with represented inmates experiencing 41% more favorable outcomes compared to those navigating proceedings without assistance (Ma, W., 2017). These systemic refinements progressively align correctional administration with fundamental justice principles while maintaining necessary institutional controls.

**4. Institutional Synergistic Optimization: The Mutual Advancement of Efficacy Enhancement and Human Rights Protection**

*4.1 Integration of Enforcement Resources Under Interagency Collaboration Mechanisms*

Interagency collaboration functions as a critical mechanism for optimizing resource allocation within penal enforcement systems, where judicial, civil affairs, and public security departments establish integrated information-sharing platforms to synchronize operational responsibilities. The convergence of administrative functions across these domains facilitates real-time data exchange concerning offender rehabilitation progress, institutional capacity, and community reintegration preparedness, thereby creating a cohesive ecosystem for evidence-based decision-making

(Zhang, S., 2022). Such operational synergy demonstrates particular significance when addressing the transitional needs of offenders moving between correctional facilities and community-based programs, as historically fragmented communication channels undermine both institutional efficiency and individual rights protection (Dong, D., 2019).

Comprehensive dynamic resource mapping across departmental boundaries facilitates the strategic predictive allocation of educational programs, psychological services, and vocational training opportunities based on detailed offender profiles. This systematic approach transcends traditional siloed operations by embedding cross-functional teams within correctional planning processes, wherein representatives from judicial supervision, social welfare administration, and law enforcement coordinate intervention strategies (Cui, S., 2012). The resulting operational framework generates measurable improvements in case management continuity, especially for specialized populations requiring tailored rehabilitation approaches that conventional single-agency models struggle to accommodate (Dong, D., 2019).

Technological integration constitutes the backbone of these collaborative efforts, with unified digital platforms enabling seamless transitions between institutional and community-based supervision. Implementing standardized data protocols across justice agencies eliminates redundant assessment procedures while ensuring procedural safeguards remain intact throughout the enforcement continuum (Zhang, S., 2022). This technological harmonization proves especially critical for maintaining the integrity of rights protection mechanisms during pivotal transition phases, where information gaps have historically precipitated procedural violations and administrative inefficiencies (Cui, S., 2012).

The structural reconfiguration of interagency relationships further manifests through joint training initiatives cultivating shared operational philosophies among personnel from diverse institutional backgrounds. These professional development programs establish common standards for rights-sensitive enforcement practices while equipping frontline staff with cross-disciplinary competencies essential for navigating complex cases demanding multi-agency responses. Such capacity-building investments yield substantial returns in

operational coherence, particularly when managing offenders with intersecting needs spanning mental health treatment, substance abuse rehabilitation, and social reintegration support.

Resource optimization extends beyond information sharing to encompass physical infrastructure coordination, wherein correctional facilities, community correction centers, and social service providers develop complementary service portfolios. This spatial integration minimizes transitional disruptions for offenders moving between security levels while maximizing the utility of specialized facilities through strategic placement of rehabilitation resources. The resulting network effect fosters synergistic relationships between institutional and community-based correctional modalities, enabling fluid resource reallocation responsive to evolving operational demands and individual rehabilitation trajectories.

#### *4.2 Construction of Long-Term Mechanisms Guided by Rule-of-Law Reforms*

The development of sustainable penal system reform mechanisms demands comprehensive legal framework enhancements that institutionalize rights protection while upholding operational efficiency. Legislative amendments must codify standardized procedures for sentence adjustments and parole determinations, thereby establishing predictable legal pathways that prevent arbitrary decision-making, as highlighted by research (Sun, L., 2010). These systemic changes require incorporating independent oversight mechanisms featuring transparent reporting mandates, which enable continuous monitoring of correctional facilities' compliance with human rights standards.

Public participation channels should be integrated through structured consultation processes involving civil society organizations alongside community representatives during policy formulation. Such participatory approaches bridge institutional perspectives with societal expectations, fostering legitimacy for reforms, as demonstrated in studies (Chen, Y., 2020). The strategic implementation of technological solutions for monitoring and data collection further enhances accountability while providing empirical foundations for evidence-based policy refinement. Regular legislative reviews ensure legal provisions remain

responsive to evolving social values alongside international human rights norms.

Cross-jurisdictional harmonization of penal standards facilitates consistent implementation while permitting contextual adaptations to local institutional capacities. Resource allocation mechanisms must align with statutory mandates to guarantee adequate funding for both enforcement infrastructure and rights protection initiatives. Professional training requirements embedded within legal frameworks ensure correctional staff develop necessary competencies for balancing security imperatives with dignity preservation objectives. Performance metrics linked to legal compliance create institutional incentives for maintaining human rights standards throughout sentence administration processes.

The establishment of specialized judicial oversight bodies provides additional safeguards against procedural violations during rehabilitation. Statutorily mandated rehabilitation programs address recidivism reduction while upholding individuals' rights to personal development during incarceration periods. Legal provisions for grievance mechanisms empower incarcerated individuals to seek remedies for rights violations without fear of reprisal. Interagency coordination protocols established through legislation enable seamless information sharing while respecting privacy protections. These integrated legal approaches ultimately create self-reinforcing systems wherein efficiency gains and rights protection mutually reinforce institutional legitimacy over time.

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# Protection of Natural Resources as a Human Rights Imperative Under Cameroonian Law

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## Abstract

This article examines the extent to which human rights concerns are protected during the exploitation of natural resources in Cameroon. Cameroon is endowed with a wealth of natural resources, but the exploitation of these resources has not translated into economic prosperity for the majority of its citizens. The exploitation of these resources has led to significant human rights abuses, environmental degradation and social injustices despite the plethora of laws that regulate this sector. Data was collected using primary and secondary sources and analysed using in-depth content analysis for the development of this article. The findings of this article revealed the legislative gaps, inadequate supervision, and discriminatory benefit sharing that hinders the effective protection of natural resources as a human right imperative in Cameroon. It further argues that the rights to environmental justice, a healthy environment, and development are fundamental human rights that are often violated in the context of natural resource exploitation in Cameroon. Constitutional reforms, creation of specialized courts, increase citizen's participation, effective implementation of environmental laws and a fair and equitable benefit sharing with local communities were recommended as measures to protect natural resources as a human rights imperative in Cameroon.

**Keywords:** natural resource, human rights, protection, environmental justice, benefit sharing

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## 1. Introduction

### 1.1 Background and Rationale

The availability of natural resources has become practically essential to human society worldwide. The role of natural resources is profound and multifaceted. Natural resources are essential for survival and livelihood.<sup>1</sup> They play a crucial role

for biodiversity and ecosystem balance. Many indigenous communities have long relied on traditional knowledge and natural resources for medicinal purposes, fostering a deep connection with the land and its healing properties.<sup>2</sup> But as the world population has increased, natural resources have been under more strain, which

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<sup>1</sup> Kariuki M., et al. (2015). *Natural Resources and Environmental Justice in Kenya*. Glenwood Publishers Limited, p. 1.

<sup>2</sup> Michel, T. (2023). The Crucial Role of Natural Resources in

Preserving Earth's Environment. *International Journal of Research in Environmental Science and Toxicology*, 12(4), 1-3.

occasionally result in their degradation and depletion. This has drawn global, regional and national attention. One core focus of the African Union 'Agenda 2063' is the protection of human rights, conservation and sustainable use of natural resources.<sup>1</sup> Similarly, majority of states have adopted policies aimed at ensuring that these resources within the limits of their territorial borders are adequately safeguarded, meeting the nation's economic, social and political objectives. Self-determination, economic, cultural and social rights, all depend on having access to and control over natural resources. Additionally, having these resources increases resilience, and is linked to bettering economic wellbeing, education, nutrition and food security, peace, and a healthy living environment.<sup>2</sup>

Human rights instruments are being used to regulate and consecrate the protection of natural resources. In this light, United Nations instruments, declaration and resolutions have consecrated the right to natural resources. The Universal Declaration of Human Rights 1948 (UDHR) set the stage for the recognition, protection and promotion of human rights the world over.<sup>3</sup> The International Covenant on Civil and Political Rights (1966), provides that: nothing in this Covenant should be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.<sup>4</sup> Similarly, the General Assembly of the UN which adopted the principle of permanent sovereignty over natural resources on the 14<sup>th</sup> December 1962 through resolution 1803(XVII),<sup>5</sup> provides that: states and international organisations shall strictly and

conscientiously respect the sovereignty of peoples and nations over their natural wealth and resources in accordance with the UN Charter and the principles contained in the resolution.<sup>6</sup>

Natural resources within a sovereign state's borders are *res communis* or *res nullius* even though the state holds it as a trustee for the people. Cameroon is a country endowed with a wealth of natural resources. One of the key features of a democratic society is respect for fundamental freedoms and human rights. However, the exploitation of these resources has led to violations of human rights. Consequently, there has been a growing demand for their protection in Cameroon using human rights instruments. To ensure that these resources are safeguarded while they are being exploited by individuals and companies, the state of Cameroon has enacted legislations and implemented reforms.<sup>7</sup> In this light, the Constitution of the Republic of Cameroon asserts in its Preamble that, every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The state shall ensure the protection and improvement of the environment. The Preamble further stipulates other incidental rights such as, the right to work, the right to life, physical and moral integrity, the right to development, and the right to property, all of which have an environmental component and are thus considered to be part of Cameroon's substantive environmental rights.

Similarly, the Environmental Code holds that, natural resources shall be managed rationally to meet the needs of the present generations without comprising the capacity of future

<sup>1</sup> African Union/AU. (2015). *A Shared Strategic Framework for Inclusive Growth and Sustainable Development and A Global Strategy to Optimise the Use of Africa's Resources for the Benefit of All Africans*. Agenda 2063, p. 34, Available at <https://www.au.in> (Lastly Accessed on 14<sup>th</sup> February, 2026).

<sup>2</sup> Landesa. (2012). Issue Brief: Women's Secure Rights to Land, Benefits, Barrier and Best Practices. p.1. Available at <https://www.landsea.org> (Lastly Accessed on 14<sup>th</sup> February, 2026).

<sup>3</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December, 1948, 217 A (III).

<sup>4</sup> Article 47 of International Covenant on Civil and Political Rights.

<sup>5</sup> The UNGA voted the resolution 1803 based on its resolution 523(VI) of 12 January 1952 and 626 (VII) of 21 December 1952. This was done bearing in mind resolution 1314(XIII) of 12 December 1958 which establishes the commission on permanent sovereignty over natural resources and conducted it to establish a full survey of the status of permanent sovereignty over natural wealth

and resources as a basic constituent of the right to self-determination, with recommendations, where necessary, for its strengthening... and also resolution 1515(XV) of 15 December 1960, in which it recommended that the sovereign right of every state to dispose of its wealth and its natural resources should be respected.

<sup>6</sup> Principle 1 of the UNGA resolution 1803(XVII) states that, the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned. Principle 7 declares that the violation of the rights of people and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.

<sup>7</sup> Law No 96/12 of 5 August 1996 Regulating the Management of the Environment in Cameroon; Seme P.M., & Mongo E., (2003), "Répertoire de Textes Officielle Applicable a la Gestion des Ressources Naturel au Cameroun", 2, p. 27.

generations to meet their own needs.<sup>1</sup> In connection to this, the Government shall prepare environmental policies and coordinate their implementation. To achieve this, there is the need to:

- establish quality norms for air, water, soil and any other norms necessary to safeguard human health and the environment;
- establish links between pollution, the state of biodiversity conservation and the state of the environment in general.<sup>2</sup>

However, even though there exist a plethora of human rights instruments that have been consecrated towards the protection of these natural resources found in Cameroon, there are tendencies for these instruments to be disregarded, including domestic laws that have been enacted in Cameroon geared towards the protection of natural resources. Even though the over-exploitation of these resources is frequently justified by the need for developmental projects, the level of environmental risks and human rights abuses is steadily rising to an intolerable level, particularly in natural resource communities. For example, the Chad-Cameroon pipeline project displaced over 700 households in Douala without proper resettlement or compensation.<sup>3</sup> It is against this backdrop that the main purpose of this paper is to examine the extent to which human rights concerns are protected during exploitation of natural resources by the laws currently in place. Additionally, this paper aims to provide a better understanding of human rights implicated in natural resource protection in Cameroon, case studies of how natural resource exploitation has fallen short of human rights standards, and the problems that besets natural resource protection as human rights concerns in Cameroon.

## 1.2 Conceptual and Theoretical Framework

### 1.2.1 Conceptual Framework

The concept of natural resources, which is

dominantly used by environmental law instruments, has a wide range of criteria as regards the content of its definition. Natural resources have been taken to mean materials from the earth surface that are used to support life and meet people's needs.<sup>4</sup> A complementary definition provided by the African Convention on the Conservation of Nature and Natural Resources (2003), includes renewable resources, tangible and intangible, notably; the soil, water, forest, fauna and flora, and non-renewable.<sup>5</sup> Air, continental water, maritime water, and ecology are all considered natural resource components under the law of 5<sup>th</sup> August 1996, which deals with environmental management in Cameroon.<sup>6</sup> From a broad standpoint, natural resources means three elements; biotic elements of nature, fauna and flora, and the minerals on the earth surface in which one will add air and water.<sup>7</sup>

Natural resources can be renewable and non-renewable. Renewable natural resources are those natural resources such as trees, water, sun and wind that can be replenished at about the same rate at which they are used. Non-renewable natural resources are those that are depleted more quickly than they can regenerate. These resources include fossil fuels and natural gas. Once mined and used completely, they are gone forever. Others include mineral resources which once mined, can no longer become renewable.<sup>8</sup> The report of the World Trade in 2010 defines natural resources as the stocks of materials present in a natural area, which are at a time very rare and economically usable for production or consumption, either at its raw state or after a minimum stage of transformation.<sup>9</sup>

Human rights constitute a set of rights and obligations essential in preserving human dignity and is inherent to all human beings regardless of nationality, place of residence, sex, national or origin, colour, religion, language, or any other characteristics.<sup>10</sup> Without exception, everyone is entitled to these rights without discrimination. These human rights are

<sup>1</sup> Article 63 of Law No 96/12 of 5<sup>th</sup> August 1996 Regulating the Management of the Environment in Cameroon.

<sup>2</sup> Article 10 (1) of the 1996 Environmental Code.

<sup>3</sup> Human Rights Watch. (2009). Cameroon: Oil Pipeline Project Threatens Rights. Available at [www.hrw.org](http://www.hrw.org) (Lastly Accessed on 13 February 2026).

<sup>4</sup> DHEC's Office of Solid Waste Reduction and Recycling, South Carolina. Available at [www.scdhec.gov/recycle](http://www.scdhec.gov/recycle) (Lastly Accessed on 13 February 2026).

<sup>5</sup> Article 5 of the African Convention on the Conservation of Nature and Natural Resources, 2003.

<sup>6</sup> Article 4 of the Environmental Management Code.

<sup>7</sup> Prieur, M. (2016). *Droit de L'environnement*. Dalloz, Paris, p. 885.

<sup>8</sup> Raven, B. (2009). *Environnement*. Groupe Doeck, Bruxelles.

<sup>9</sup> Rapport Sur Le Commerce Mondial. (2010b). *Les Ressources Naturelles: Définitions, Structures des Echanges et Mondialisation*, p. 46.

<sup>10</sup> Metolo, F., & Mupeta, P.M. (2023). Human Rights-Based Conservation: The Integral Role of Human Rights Director in the Conservation Sector. *Journal of Environmental Law & Policy*, 3(3), 23-86.

universal, inalienable, interdependent, indivisible, non-discriminatory and constitute the basis of the concepts of peace, security and development. Therefore, human rights are at the core of all work of the UN system. The recognition, protection and promotion of human rights the world over are concretised in the Universal Declaration of Human Rights 1948 (UDHR).<sup>1</sup> These rights are often expressed and guaranteed by the law in the form of treaties, customary international law, general principles and other sources of international law.<sup>2</sup> Thus, the concept of human rights in the context of natural resource protection refers to the recognition and protection of the rights of individuals and communities in relation to natural resources exploitation.

### 1.2.2 Theoretical Framework

This article is underpinned by the theory of rights by Hohfeldian, ecocentric theory (Rights of Nature Approach), human rights-based approach (HRBA) and public trust doctrine. Hohfeldian,<sup>3</sup> posits that rights which are normatively protected by the state must not be interfered with by whosoever. It equates such rights to human rights as posited by many leading legal philosophers.<sup>4</sup> There is therefore a correlative duty to ensure the enjoyment of such rights. Similarly, the ecocentric theory places nature at the centre of legal and moral concern, arguing that ecosystems, biodiversity, animals, forests, rivers, and natural processes possess intrinsic value independent of human interests.<sup>5</sup> This theory lays emphasis on the intrinsic value of ecosystems, ecological balance and sustainability, interdependence between humans and nature, legal recognition of environmental rights and prevention of ecological harm. This theory has a direct relationship with natural

resource protection and human rights as it protects the right to life and health through environmental preservation, supports the right to a healthy environment, protects indigenous cultural and land rights and promotes intergenerational justice which is the focus of this article.

In the same light, the human rights-based approach treats natural resources as essential for the realisation of internationally recognized human rights. The proponents of this approach posit that resource governance must comply with human rights obligations.<sup>6</sup> The core principles of this theory are: participation, accountability, non-discrimination, transparency and access to remedies. This theory has a direct correlation with human rights in that it seeks to protect civil and political rights such as access to environmental information, protects economic and social rights recognizes environmental rights and protects vulnerable communities. The public trust doctrine states that natural resources are owned collectively by the public, and the government acts as a trustee responsible for managing them for present and future generations, hence owes a duty of accountability on how these resources are managed.<sup>7</sup> The doctrine rests on the premise that the state is the trustee of natural resources, there is public ownership of common resources, intergenerational equity should be guaranteed and in all, there should be sustainable management of natural resources. The link this doctrine has with natural resource and human rights include: ensures equality and access to natural resources, promotes participation and accountability, protects environmental health, safeguards the rights of future generations which lies within the ambit of this article.

<sup>1</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December, 1948, 217 A (III).

<sup>2</sup> The International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human Rights as well as their Optional Protocols.

<sup>3</sup> Tamasang C., F. (2015). Enhancing the Effective and Sustainable Enjoyment of the Right to Water under Cameroonian Law. In Hohfeldian, W., (Ed.), *Analysis of Rights: An Essential Approach to a Conceptual and Practical understanding of the Nature of Rights*. *Journal of Law African Journal of Law*, 7-20.

<sup>4</sup> Examples include Jeremy Bentham, H.L.A. Hart, Emmanuel Kant and others.

<sup>5</sup> Aldo, L. (1994). *A Sand Country Almanac*. Oxford University Press, p. 212; Naess, A. (2005). The Deep Ecology Movement: Some Philosophical Aspects, in a Drengson & Glasser, H., (Eds.), *Selected Works of Naess. A*, Springer,

pp. 33-55; Holmes R. III. (1998). Saving Nature, Feeding People and the Foundation of Ethics. *Environmental Value*, 7(3), 349-57.

<sup>6</sup> Vizard, P. (2005). "The Contributions of Amartya Sen in the Field of Human Rights", Centre of Analysis of Social Exclusion, Case paper, 91; Nussbaum, M.C. (1997). Human Rights and Capabilities. *Fordham Law Review* 66(2), 274-300; Boyle, A. (2007). Human Rights or Environmental Rights? A Reassessment. *Fordham Environmental Law Review*, 18(3), 471-511.

<sup>7</sup> Sax J.L. (1970). Public Trust Doctrine in Natural Resources: Effective Judicial Intervention. *Michigan Law Review*, 68(3), 471-566; Wood, M.C. (2009). Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generation (Part I): Ecological Realism and the Need for A Paradigm Shift. *Environmental Law*, 39(91), 91-139.

## 2. Human Rights Implicated in Natural Resource Protection in Cameroon

The right to environmental justice, rights to a healthy environment, development and benefit sharing are the focus of discussion in this article.

### 2.1 The Right to Environmental Justice

Environmental justice which began as a grassroots movement, has emerged as an issue of international and national concern. Environmental justice is defined through various expressions that attempt to capture the complexity and scope of what is included in the term. Environmental justice broadly defined, entails the right to have access to natural resources; not to suffer disproportionately from environmental policies, laws and regulations; and the right to environmental information, participation and involvement in decision-making.<sup>1</sup> Environmental justice defined in

universal terms means “the principle that all people have the right to be protected from environmental threats and to benefit from living in a clean and healthy environment”.<sup>2</sup> A key feature of environmental justice is that it begins in the environment and protection of the environment but ends in society resulting benefits to both nature and humanity.<sup>3</sup> Environmental justice serves two purposes. First, it ensures no groups of persons bear disproportionate environmental burdens and second, that all have an opportunity to participate democratically in decision-making processes.

#### 2.1.1 Dimensions of Environmental Justice

There are four principal dimensions of environmental justice which is articulated in this article. These dimensions are summarised in the table below:

**Table 1.** Dimensions of Environmental Justice<sup>4</sup>

Dimension of Justice	In Environmental Justice
Distribution <i>Who ought to get what?</i>	Reducing environmental burdens, and increasing environmental benefits and capabilities, for environmental justice communities and the earth
Procedure <i>Who ought to decide?</i>	Participation and influence in environmental decision making by historically excluded groups, particularly in frontline communities Protection of individual and group rights through law, regulation, enforcement, and informed consent
Recognition <i>Who ought to be respected and valued?</i>	Respect for environmental justice communities’ diverse environmental cultures and knowledges, and for the interests of future generations and nonhuman nature
Transformation <i>What ought to change, and how?</i>	Restoration of nature and reparation of damages to environmental justice communities from colonialism, racism, economic exploitation, and other systems of oppression Systemic and structural transitions to create just power relations, regenerative economies, and reciprocal relations with nature

#### 2.1.2 Components of Environmental Justice

The 1992 Rio Declaration, succinctly captures the key components of environmental justice. It provides that environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level,

each individual should have appropriate access to information concerning the environment held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.<sup>5</sup> Further, it

<sup>1</sup> Ako, R. (2011). Resource Exploitation and Environmental Justice: The Nigerian Experience, in Botchway, F.N. (ed), *Natural Resource Investment and Africa’s Development*, Edward Elgar Publishing, pp. 74-76.

<sup>2</sup> Davies T., & Mah. (2020). *Toxic Truths: Environmental Justice and Citizen Science in A Post Truth Age*, Manchester University Press, p. 4.

<sup>3</sup> Wood, C.D. (2023). *Environmental Justice in Theorizing Justice*, Bristol University Press, p. 143.

<sup>4</sup> Matsuoka, M., & Chad R. (2024). *Environmental Justice in Ground Truths*. University of California Press, p. 10.

<sup>5</sup> Principle 10 of the 1992 Rio Declaration.

obligates states to facilitate and encourage public awareness and participation by making information widely available.<sup>1</sup> In addition, states are to provide effective access to judicial and administrative proceedings, including redress and remedy.<sup>2</sup> Essentially, the Declaration contains the critical components that are germane in promoting environmental justice. These are access to information, public participation and access to justice in environmental matters. The three components are interdependent and functionally interlinked. Access to environmental information is a prerequisite to public participation in decision-making and to monitoring governmental and private sector activities. Effective access to justice in environmental matters presumes that there is an informed public that can bring actions before informed institutions.<sup>3</sup>

#### 2.1.2.1 Access to Environmental Information

In order for the public to make informed decisions about their lives and to engage in public affairs in a meaningful way, information is necessary. Therefore, access to environmental information is significant both in its own right as an absolute value as well as in the role it plays in facilitating and enabling meaningful participation.<sup>4</sup> Since the UN Charter was adopted, there has been growing recognition of the right to information, while the need for public access to information on the environment became critically apparent with disasters such as *the Bhopal gas leak* in 1984 and the *Chernobyl nuclear disaster* in 1986.<sup>5</sup> Access to information refers to

the availability of environmental information (including that on hazardous materials and activities in communities) and mechanisms by which public authorities provide environmental information.<sup>6</sup> Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.<sup>7</sup>

Access to environmental information is well articulated in principle 10 of the Rio Declaration. To put this provision into action, the Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters was adopted in 2010.<sup>8</sup> Similarly, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998, strongly support access to environmental information. The Convention postulates that each party shall in response to a request for environmental information, make such information available to the public, within the framework of national legislation.<sup>9</sup> The revised African Convention of Nature and Natural Resources also reiterated access to environmental information.<sup>10</sup> However, the Aarhus Convention just like the Bali guideless provides circumstances under which access to such information may be denied.<sup>11</sup>

Unfortunately, the right to access environmental

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

<sup>2</sup> Principle 10 of the 1992 Rio Declaration.

<sup>3</sup> UNEP. (2006). Training Manual on International Environmental Law, pp. 80-81.

<sup>4</sup> Stephen, S., & Jesse W. (2015), "Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines", United Nations Environment Programme (UNEP), p.12.

<sup>5</sup> *Ibid.*

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

<sup>7</sup> Guideline 3 of the 2010 Bali Guidelines.

<sup>8</sup> Guidelines 1-7 of the 2010 Bali Guidelines. Guideline 1 provides that: Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to Guideline 3), without having to prove a legal or other interest. In addition, Guideline 4; states should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that

may significantly affect the environment.

<sup>9</sup> Article 4(1) of the 1998 Aarhus Convention.

<sup>10</sup> *Ibid*, Article XVI provides that the parties to the convention shall adopt legislative and regulatory measures necessary to ensure timely and appropriate a) dissemination of environmental information; b) access of the public to environmental information; c) participation of the public in decision making with a potentially significant environmental impact and d) access to justice in matters related to protection of environment and natural resources.

<sup>11</sup> *Ibid*, Article 4(3) provides a request for environmental information may be refused if: (a) The public authority to which the request is addressed does not hold the environmental information requested; (b) The request is manifestly unreasonable or formulated in too general a manner; or (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure. Article 4(4) further provides a request for environmental information may be refused if the disclosure would adversely affect: (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law; (b)

information is not specifically mentioned in the Cameroon Constitution.<sup>1</sup> Nevertheless, since one needs information to form an informed opinion, the Preamble guarantees the right to freedom of expression, which has been considered supporting the right to access information. Logically, the right of access to information could be inferred from the right to freedom of expression. Accordingly, the government is obliged to respect people's right to freedom of expression to the extent that it facilitates and permits ordinary citizens to make informed opinions on matters that affect them. In the environmental context, this relates making well informed decisions regarding environmental quality issues that could guarantee one's good health, as well as actions to strengthen environmental protection.<sup>2</sup> Without an understanding of what the ideals of an environmentally just society should be, communities cannot be meaningfully involved in issues pertaining to the environment and the exploitation of natural resources.

The right to access environmental information is guaranteed by the Environmental Management Code in Cameroon. It ensures that everyone has the right to be informed of the negative effects of harmful activities on their health and the environment.<sup>3</sup> It is required of private sectors to inform the public of the possible impacts that their activities could make on the environment, and on people's environmental right, through the publication of environmental management plans and programs.<sup>4</sup> Consequently, it is the collective responsibility of the state and private entities to educate the public about the possible potential deleterious impacts of their environmental-related activities. Therefore, providing Cameroonians with access to relevant

environmental information in formats they would find useful must be the first step towards attaining environmental justice for them. This could be done in different ways, including through newspapers, television, posters, release of reports, barazas, amongst other processes, provided in law where communities can get the relevant information in forms and languages that they can understand and appreciate. Information of this nature, if submitted, may not only help to promote the implementation of environmental laws and policies, but could also greatly serve to enhance governance for sustainability in the country.<sup>5</sup>

However, empirical studies revealed that during the Chad-Cameroon pipeline project, the community did not have access to information as far as the project was concerned. As a result, the government resorted to the use of intimidation and incessant non-disclosure practices in the preparatory and execution phases of the project against the local communities.<sup>6</sup> Similarly, the mining communities in Kambele and Nerke II-East region of Cameroon were not informed of the environmental effects of mining activities in their surrounding communities. These mining communities have been victims of water and air pollution generated from mining activities.

#### 2.1.2.2 Public Participation

Public participation is a key aspect of natural resources management. It allows individuals to express their views on key governmental policies and laws concerning the environmental conditions in their communities.<sup>7</sup> According to Cedeño et al, it is now generally agreed that environmental problems cannot be solved by solely relying on technocratic and bureaucratic monopoly of decision-making.<sup>8</sup> Public participation is defined as the process by which

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International relations, national defence or public security; (c) The course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature; (d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed; (e) Intellectual property rights; (f) The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law; (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or (h) The environment to which the information relates, such as the breeding sites of rare

species.

<sup>1</sup> Ashukem, J. C. (2017). Access to Environmental Information in the Context of Development Activities in the Legal Framework of Cameroon. VRU, 50(4), 435-450.

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

<sup>3</sup> Section 7 of the 1996 Environmental Management Code.

<sup>4</sup> *Ibid.*, Section 6.

<sup>5</sup> Ashukem, J. C. (2017). *op.cit.*, p. 444.

<sup>6</sup> Citizen's government initiative, the right to information and administrative transparency in Cameroon. Available at [www.citizen.government/initiative](http://www.citizen.government/initiative) (Lastly Accessed on 15 February 2026).

<sup>7</sup> Marianela, C., et al. (2004). Environmental Law in Developing Countries: Selected Issues, Vol. II, IUCN, p. 7.

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

public concerns, needs and values are incorporated into governmental and corporate decision-making with the overall goal of better decisions that are supported by the public.<sup>1</sup> Dietz and Stern give a broader definition by stating that, “*public participation includes organized processes adopted by elected officials, government agencies or other public or private sector organizations to engage the public in environmental assessment, planning, decision making, management, monitoring and evaluation.*”<sup>2</sup>

The importance of public participation is the recognition that better decision-making flows from involving the public. Participation helps the public realise its potential to take part in public affairs, while it also improves the outcomes of policy and decision-making by bringing information, analysis and considerations to bear. Not only can the quality of decisions be improved, the participation of the public by itself improves the likelihood that decisions will be implemented with the support and participation of the affected public.<sup>3</sup> From the point of view of public authorities, public participation can be seen as having three main objectives: information, public engagement, and conflict resolution. The information objective allows authorities to gain access to information not otherwise available, and helps the authority to diagnose problems and needs, develop alternative solutions, and evaluate the consequences of alternatives. The public engagement objective builds capacities, empowers citizens, legitimizes the authority’s role and the role of stakeholders, and develops confidence and trust. Finally, public participation helps defuse conflicts.<sup>4</sup>

Public participation in environmental and natural resources governance should not be cosmetic but should be meaningful in order for the public to feel that their concerns are addressed and consequently for them to have trust and support government decisions relating to particular natural resources and environmental concerns.<sup>5</sup> In public

participation, there is an organized process of involving the public so that they can have some level of impact or influence on the decisions being made. According to Creighton, the definition of public participation excludes some kinds of participation that are legitimate components of a democratic society such as the electoral process, litigation and extra-legal protests.<sup>6</sup>

The 2010 Bali Guidelines provides, that states should ensure opportunities for early and effective public participation in decision-making related to the environment. To that end, members of the public concerned should be informed of their opportunities to participate at an early stage in the decision-making process.<sup>7</sup> This guideline share the same inspiration with the Aarhus Convention regarding public participation in decisions on specific activities.<sup>8</sup> Public participation within the context of Cameroon may be provided for in law through at least three legal mechanisms; entrenchment in the Constitution as part of the Bill of Rights; in environmental impact assessments; and through direct locus standi for the public in environmental matters. One of the national values and principles of governance entrenched in the Constitution is participation of the people. Just like with the right to access to information, the Constitution did not expressly provide for public participation.<sup>9</sup> However, one can infer from the Preamble of the Constitution that the right to freedom of expression also captures public participation.

The Environmental Code of 1996 provides for the right to public participation in environmental decision-making and explicitly requires that environmental decisions should be made only after full consultation with and the participation of concerned individuals and other relevant actors.<sup>10</sup> The state is also obliged to facilitate, encourage and allow for public participation in environmental management through mechanisms that allow and promote free access to information; to create a consultative mechanism to allow the public to form an

<sup>1</sup> Creighton, J.L. (2005). *The Public Participation Handbook: Making Better Decisions through Citizen Involvement*. John Wiley & Sons, p. 7.

<sup>2</sup> Dietz, T. & Stern, P.C. (2008). *Public Participation in Environmental Assessment and Decision Making*. National Academies Press, p. 1.

<sup>3</sup> Stephen, S., & Jesse W. (2015). *op.cit*, p. 12.

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

<sup>5</sup> Baiye, E. G., & Forjindam D., M. (2024). *Illicit Financial*

*Flows and the Petroleum Sector in Cameroon: Hitches and Policy Considerations. Law and Economy, 3(7), 1-20.*

<sup>6</sup> Creighton, J.L. (2005). *op.cit*, p. 8.

<sup>7</sup> Guideline 8 of the 2010 Bali Guidelines.

<sup>8</sup> Article 6 of the Aarhus Convention.

<sup>9</sup> Ashukem, J. C. (2017). *op.cit*, p. 442.

<sup>10</sup> Section 9(e)(i–iii) of Law No 96/12 on Environmental Management.

opinion; to glean public opinion from public representatives serving on consultative organs on matters relating to the environment; to establish mechanisms that ensure the dissemination of environmental information and to establish mechanisms relating to the sensitization, training, research and education of local communities on the environment and environmental issues.<sup>1</sup> The law makes provision for environmental and social impact assessment regulation that provides for and requires the participation of concerned individuals and other interested and affected persons in decision-making processes as a necessary measure to ensure environmental protection.<sup>2</sup> It is important to note that decree No. 2013/0171/PM to lay down the conditions for conducting environment and social impact assessment (ESIA) replaced decree No 2005/0577/PM to lay down the procedures for carrying out an environmental impact assessment (EIA). The change from EIA to ESIA caused a simultaneous change in appellation specific to Cameroon.<sup>3</sup> The 2013 decree introduced strategic environmental and social assessment (SEA) and environmental impact statement (EIS) as tools for effective environmental assessment.

Although the Rio Declaration provides that environmental issues are best handled with the participation of all concerned citizens, at the relevant level,<sup>4</sup> public participation is hampered by factors such as financial cost of engaging the public, time constraints, fear that participants may not be truly representative and belief that citizens lack knowledge of complex technical issues.<sup>5</sup> Also, public participation cannot be achieved in a situation where the citizenry do not have an understanding of those problems, and where they have any knowledge be it traditional or any other, there must be a harmonization of the same with scientific knowledge. Thus, a first step to achieve this is through educating the public on the available scientific knowledge in a comparative manner so as to make them

appreciate the similarities or differences arising therein. Access to information plays a pivotal role in fostering public participation as demonstrated in the case of *the local population against the Kilum-Ijim* mountain biodiversity conservation project whereby, the government of Cameroon, in its effort to maintain the natural biodiversity of the mountain forest, entered into a contract with the NGO Birdlife International to conserve the mountain forests.<sup>6</sup> The decision was taken without involving the inhabitants who were asked to quit the forests. As a result, the decision was never implemented due to resistance from the local population. Also, the Cameroonian government has been criticised for not seeking community consent and carrying out thorough environmental impact assessment during the construction of Nachtigal dam project.<sup>7</sup>

Similarly, in *Lake Turkana v. Attorney General and others*.<sup>8</sup> This case is related to an alleged memorandum of understanding between the Government of Kenya and the Government of Ethiopia, entered into in 2006, to purchase of 500 MW of electricity from Gibe III as well as an \$800 million grid connection between Kenya and Ethiopia. To generate electricity, the Ethiopian Government constructed dams on River Omo, a principal source of water for Lake Turkana. A civil society organisation – Friends of Lake Turkana – sued, arguing that the construction of the dam would adversely affect the environment and Lake Turkana. The failure of the Government of Kenya to provide access to information on the nature of agreement with the Government of Ethiopia was also raised. The court held that access to information was important for public participation and monitoring government actions.

### 2.1.2.3 The Remedy and Redress Component/ Access to Justice

The remedy and redress component of Principle 10 of the Rio Declaration promotes accountability and the rule of law. It recognises that the

<sup>1</sup> *Ibid*, Section 72(i–iv).

<sup>2</sup> *Ibid*, Section 17.

<sup>3</sup> Tamasang, C.F. (2018). Environmental Impact Assessment Under Cameroonian Law, in Oliver C. Ruppel & Kam Y., E., D. (Eds), *Environmental Law and Policy in Cameroon: Towards Making Africa the Tree of Life*, NOMOS, p. 280.

<sup>4</sup> Principle 10 of the Rio Declaration.

<sup>5</sup> Senach, S.L (2004). The Trinity of Voice: The Role of Practical Theory in Planning and Evaluating the Effectiveness of Environmental Participatory Process, in Depoe, S.D. et al, (eds), *Communication and Public Participation in Environmental Decision Making*. Suny Press

Ltd., p. 16.

<sup>6</sup> Tamasang, C.F. (2018). Forests, Forest Rights, Benefit-Sharing and Climate Change Implications under Cameroonian Law. *Law and Constitution in Africa*, 38, 137-164. Available at <http://www.nomos-elibrary.de/agb> (Lastly Accessed on 16<sup>th</sup> February, 2026).

<sup>7</sup> World Bank. (2018). Cameroon: Nachtigal Dam Project Environmental Impact Assessment. Available at <http://www.documents1.worldbank.org> (Lastly Accessed 16<sup>th</sup> February, 2026).

<sup>8</sup> (2014), eKLR.

achievement of sustainable development depends upon the judicious use of fair and impartial administrative and judicial mechanisms to establish enforceable norms. Access to justice ensures that standards for implementation of the principle's information and participation provisions will be fostered and upheld in a fair, judicious and effective manner.<sup>1</sup> Access to justice is not an easy concept to define. It is broadly described as a situation where people in need of help, find effective solutions from justice systems that are accessible, affordable, comprehensible to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favour and offer a greater role for alternative dispute resolution.<sup>2</sup> It also refers to those judicial and administrative remedies and procedures, available to a person (natural or juristic) who is aggrieved or likely to be aggrieved by an issue. Further, it refers to a fair and equitable legal framework that protects human rights and ensures delivery of justice.<sup>3</sup>

Access to justice also entails the opening up of formal systems and legal structures to the disadvantaged groups in society, removal of legal, financial and social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions.<sup>4</sup> Access to justice could also include the use of informal conflict management mechanisms such as ADR and traditional dispute resolution mechanisms, to bring justice closer to the people and make it more affordable.<sup>5</sup> Access to justice is a basic and inviolable right guaranteed in international human rights instruments and national constitutions. Regrettably, the Constitution does not guarantee the right to gain access to justice. The Constitution only refers to the right to a fair hearing before an impartial tribunal or forum.<sup>6</sup> It has been argued that because a right to a fair hearing can be exercised only if one has a right to have access to court, the right to a fair hearing in the Cameroonian context could be conceived as a right to gain access to justice.<sup>7</sup> Consequently, the right to a fair hearing

relates to the core right to have access to justice, and because the two are directly related, they could be used where appropriate to enforce claims for the violation of human rights, including the environmental right.

As a justifiable right, it has two important dimensions: procedural access (fair hearing before an impartial tribunal) and substantive access (fair and just remedy for a violation of one's rights). In the case of *FEDEV v. China Road and Bridge Corporation*,<sup>8</sup> the Bamenda Court of First Instance recognized the right of Foundation for Environment and Development (FEDEV), an NGO with the mission to protect the environment, to have legal standing in the matter. Being the first case to deal with the right, it clearly sets a precedent on the right and the need for future courts decisions to recognize and enforce the right to locus standi of individuals and groups to protect the environment.

## 2.2 Rights to a Healthy Environment

Intentional attention to the links between human rights and environmental protection has expanded considerably in the past decades. As early as the 1972 Stockholm Conference on the Human Environment, participating states recognised that environmental degradation hampers the enjoyment of internationally guaranteed human rights. In the Conference's concluding declaration, the participating states referred to the fundamental rights of freedom, quality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being.<sup>9</sup> Nonetheless, in the dissenting opinion of the Vice-President of the International Court of Justice in the case of *Gabcikovo-Nagymaros Project-Hungary v. Slovakia*,<sup>10</sup> Justice Weeramantry clearly underlined the inevitable nexus between human rights and environmental protection and stated that:

The protection of the environment is... a vital part of contemporary human rights doctrine, for it is *sine qua non* for numerous human rights such as the right to health and the right to life itself. It

<sup>1</sup> Stephen, S., & Jesse W. (2015). *op.cit*, p. 12.

<sup>2</sup> Ladan, M.T. (2018). Access to Justice as a Human Right under the Ecowas Community Law. A Paper Presented at the Commonwealth Regional Conference, p.15.

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

<sup>4</sup> Global Alliance against Traffic in Women (GAATW). Available at <http://www.gaatw.org/atj/>, (Lastly Accessed on 15<sup>th</sup> February 2026).

<sup>5</sup> Muigua, K. & Kariuki F. (2015). ADR, Access to Justice and Development in Kenya. *Strathmore Law Journal*, 1(1), pp.

1-21.

<sup>6</sup> Preamble of the Constitution.

<sup>7</sup> Ashukem, J. C. (2017). *op.cit*.

<sup>8</sup> Unreported decision No CFIB/004M/09. (2009).

<sup>9</sup> Dinah L.S. (2011). *Human Rights and The Environment: Substantive Rights, Research Handbook on International Law*. Edward Elgar, p. 265.

<sup>10</sup> [1998], ICJ, ILM 162, at para 54.

is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the *Universal Declaration on Human Rights* and in other human rights instruments.<sup>1</sup>

This was reinforced two decades later by the 1992 Rio Declaration, which placed human beings at the centre of sustainable development concerns.<sup>2</sup> In 2022, the United Nations General Assembly, through a historic resolution, formally recognised the human rights to a clean, healthy, and sustainable environment, calling upon states to scale up efforts to ensure it for all.<sup>3</sup> It has been suggested that a poorly protected environment could also have an indirect impact on the enjoyment of a host of human rights,<sup>4</sup> to the extent that it may either impact on an individual's or community's capacity to realize their human rights, or impede the ability of a government to protect the rights of its citizens. For example, the competing demand for natural resources could apparently result in a state prioritizing immediate human rights concerns to the detriment of the broader environment.<sup>5</sup> It is against this premise that the notion of sustainable development and, recently, the Sustainable Development Goals (SDGs) find anchor in the proposition for the protection of both human rights and environmental concerns through the merger of economic, social and environmental needs within the context of development activities. Thus, there exists a significantly important relationship between the environment and human rights, on which basis people are entitled to a justifiable claim to a right to a healthy environment as a human right that deserves similar protection like other fundamental human rights.<sup>6</sup>

At the African regional level, the African Charter on Human and Peoples Rights of 1981 (the African Charter) is highly instructive and

provides a collective human right to the environment. The Charter has been considered to have the most explicit normative provision of an environmental right in any binding (regional) human right instrument.<sup>7</sup> The African Charter provides that 'all people shall have the right to a general satisfactory environment favourable to their development'.<sup>8</sup> The justiciability of this provision was decisively confirmed by the African Commission on Human and Peoples' Rights in the landmark case of *Social and Economic Rights Action Center (SERAC) v. Nigeria* (the Ogoniland case). In its landmark decision, the Commission held the Nigerian government responsible for violations of Article 24 due to its involvement in and failure to prevent the environmental devastation caused by oil companies in the Niger Delta. The Commission articulated the state's duty to "take concrete and targeted steps, within its available resources," to protect this right, including preventing pollution and ecological degradation.<sup>9</sup> This decision established a powerful regional precedent, demonstrating that the right to a satisfactory environment is not merely rhetorical but imposes concrete, actionable obligations on states party to the Charter, including Cameroon.<sup>10</sup>

In Cameroon, the Constitution of 1996 provides the basis for the legal protection of human rights, including the right to a healthy environment. Regrettably, fundamental rights are provided for only in the Preamble, which is part and parcel of the Constitution.<sup>11</sup> In terms of the Preamble, "every person shall have a right to a healthy environment." The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment.<sup>12</sup> Clearly, the Preamble provides for a distinctly restrictive environmental right, with an accompanying right and two obligations. There is the right of everyone to a healthy

<sup>1</sup> *Ibid*, para 92.

<sup>2</sup> Principle 1 of the Rio Declaration.

<sup>3</sup> UNGA Resolution A/RES/76/300(July 28, 2022), "The Human Rights to Clean, Healthy, and Sustainable Environment".

<sup>4</sup> Bridget, L. (2012). Environmental Rights or a Right to the Environment? Exploring the Nexus between Human Rights and Environmental Protection. *Macquarie Journal of International and Comparative Environmental Law*, 8(1), 36-47.

<sup>5</sup> *Ibid*.

<sup>6</sup> Edumbong, S.N. (2021). Environmental Sustainability in Cameroon: Implications for Human Rights. *Texas Journal of Multidisciplinary Studies*, 2, 65-76.

<sup>7</sup> Werner, S. (2015). Human Rights and the Environment in

the African Union Context, in Grear, A., & Louis J Kotzé L. J., (eds), *Research Handbook on Human Rights and the Environment*, Edward Elgar, p. 405.

<sup>8</sup> Article 24 of the African Charter. The term 'people' in the Charter is used in the collective sense.

<sup>9</sup> *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, African Commission on Human and Peoples' Rights (2001), para. 52.

<sup>10</sup> Nah, A., T. (2026). The Right to a Healthy Environment: Assessing the Justiciability of this Constitutional Principle in Cameroonian Courts. *Revue Internationale de Droit et Science Politique*, 6(1), 313-331.

<sup>11</sup> Article 45 of the Constitution.

<sup>12</sup> Preamble of the Constitution.

environment. This right is reinforced with an explicit obligation on citizens in conjunction although an implicit obligation on the state to protect the environment. While the Preamble bestows a clear-cut obligation on citizens to ensure the protection of the environment, the obligation on the state could be an abstract notion, as the state is only required to ensure the protection and improvement of the environment.

Law No 96/12 on Environmental Management is Cameroon's main environmental framework legislation and is intended to give effect to the constitutional right to a healthy environment through measures that ensure and promote the protection and management of the environment.<sup>1</sup> Like the Constitution, this law obliges every citizen to safeguard the environment and contribute to its protection.<sup>2</sup> Under the law, the environment is a national common heritage, and as such, it is crucially important to ensure its protection in order to ensure the rational management of the country's resources for the general interest of all Cameroonians.<sup>3</sup> Environmental protection is also necessary in order to ensure the conservation and enhancement of the country's cultural and architectural heritage, which constitute an integral part of the state's national policy of environmental protection and development.<sup>4</sup> The Law provides for relevant environmental management principles that are crucially vital for ensuring and promoting the constitutional right to a healthy environment.<sup>5</sup> In furtherance of the protection of the environmental right, the law prohibits pollution of any kind, to the extent that it does not adversely affect the environment. The law obliges the state to establish quality norms for air, water and soil, as well as any other norms that could be necessary to safeguard human health and the environment.<sup>6</sup> The Petroleum Law has not been indifferent with regards to the protection of the environment. The Law disposes

that holders of petroleum operations shall carry out their activities in such a manner as to ensure, under all circumstances, the conservation of natural resources, in particular hydrocarbon deposits, and due protection of essential features of the environment.<sup>7</sup>

Apart from the above, the National Environmental Management Plan (NEMP) serves as Cameroon's environmental policy. Its objective is to develop policies, strategies and actions for environmental protection and for the rational management of natural resources that contribute to biodiversity conservation and the sustainable exploitation of its components, public participation, benefit sharing and sustainable development. This policy is given full effect by Law No 96/12 of 5 August 1996 on Environmental Management.<sup>8</sup> Law No 96/12 established the Interministerial Committee on the Environment and a National Consultative Commission on the Environment and Sustainable Development to assist the state in the formulation, coordination and implementation and monitoring of environmental policies.<sup>9</sup> In the domain of the petroleum sector, the 2023 implementing decree of the Petroleum Code has created the "committee to prevent hydrocarbons-based pollution" whose mission is to provide assistance to the state in implementing laws and regulations governing environmental protection.<sup>10</sup>

### 2.3 *The Right to Development*

The Declaration on the right to development which stated unequivocally that the right to development is a human right, was adopted by the UN in 1986 by an overwhelming majority with the US casting the single dissenting vote.<sup>11</sup> This declaration came almost 38 years after the adoption of the Universal Declaration of Human Rights according to which human rights constituted both civil and political rights,<sup>12</sup> and economic, social and cultural rights.<sup>13</sup> The right

<sup>1</sup> Section 1 of Law No 96/12 on Environmental Management.

<sup>2</sup> Section 9(e) (ii) of Law No 96/12 on Environmental Management

<sup>3</sup> *Ibid*, Sections 2(1)–2(2).

<sup>4</sup> *Ibid*, Section See s 39(1–2).

<sup>5</sup> Section 9(a–f) of Law No 96/12 on Environmental Management. These principles include: the principle of precaution, the principle of preventive action and correction, the polluter pay principle, the principle of liability, the principle of participation and the principle of substitution.

<sup>6</sup> Section 10(1) (i) of Law No 96/12 on Environmental Management.

<sup>7</sup> Section 91 of the 2019 Petroleum Code.

<sup>8</sup> Sections 10 and 13 of Law No 96/12 on Environmental Management.

<sup>9</sup> Section 10(2) of Law No 96/12 on Environmental Management.

<sup>10</sup> Article 81(1)(2) of Decree No. 2023/232 of 4 May 2023 to lay Conditions for Implementing Law No.2019/008 of 25 April 2019 to Institute the Petroleum Code.

<sup>11</sup> Article 9 of UN Declaration on the Right to Development; Arjun, S. (2001). Right to Development as a Human Right. *Economic and Political Weekly*, 36(27), 2527–2536.

<sup>12</sup> Articles 1–21 of the UDHR.

<sup>13</sup> *Ibid*, Article 22–28.

to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in and contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedom can be fully realised.<sup>1</sup> From this definition, first, there is a human right that is called the right to development, and this right is 'inalienable', meaning it cannot be bargained away. Then, there is a process of "economic, social, cultural and political development", which is recognised as a process in which all human rights and fundamental freedom can be fully realised.<sup>2</sup> The right to development is a human right, by virtue of which, every human person and all peoples are entitled to "participate in, contribute to and enjoy" that processes of development. It be noted that the Declaration makes a clarification as to the fact that not only 'every human person' but 'all peoples' are entitled to the right to development.<sup>3</sup> Thus, the process of development in which all human rights and fundamental freedom can be fully realised would lead to the constant improvement of the wellbeing of the entire population and in the fair distribution of benefits resulting therein.<sup>4</sup> The measures for realising the right to development shall ensure "equality of opportunity for all" in their access to basic resources, education, health services, food, housing, employment and fair distribution of income.<sup>5</sup> The realisation of the right would also require that women have an active role in the development process, and that appropriate economic and social reforms should be carried out with a view to eradicating all social injustice. The state who is the custodian of these resources must ensure that they are used for the development and wellbeing of all the people. This is because the Declaration states that, states have the duty, individually and collectively to formulate policies be it national, <sup>6</sup> and collectively to facilitate the realisation the right to development.<sup>7</sup> Despite the presence of natural

resources in the country, Cameroon was ranked 21 in Africa in Human Development Index (HDI) that was published by the United Nations Development Programme in 2019. Gabon and Congo were ranked 8<sup>th</sup> and 14<sup>th</sup> respectively. <sup>8</sup> This is a testament to show how the country has not fully appropriated its natural resource to drive economic growth and development. This situation remains slightly unchanged even with the 2023 HDI where the country scored 0.588 and Republic of Congo scored 0.649.<sup>9</sup> In addition, the natural resource communities remain without access to basic resources, education, health services, food, housing, employment and fair distribution of income.

#### 2.4 Benefit Sharing of Natural Resources

Benefit sharing has emerged as an underlying approach to support the commodification of biodiversity in Cameroon. Benefit sharing was first articulated as a legal expression by the Convention on Biological Diversity (CBD) in 1992, a time that coincided with escalating global concern about biodiversity loss, a growing movement to assert the cultural and environmental rights of indigenous peoples and local communities, as well as changes in science and technology that were opening up commercial opportunities for the use of biodiversity in lucrative pharmaceutical, biotechnology, and agricultural and food industries. This pertained to the use of genetic resources in novel applications, and in particular those arising from the use of non-domesticated plants, fungi and micro-organisms.<sup>10</sup>

Benefit sharing may be defined as the distribution of monetary and non-monetary benefits derived from the use of natural resources to relevant stakeholders within a country's legal architecture. <sup>11</sup> Benefit sharing refers to a commitment to channel some returns, whether monetary or non-monetary, back to the range of designated participants or affected communities.<sup>12</sup> Benefit sharing revolves around

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

<sup>2</sup> Arjun, S. (2001). *op.cit*, p. 2528.

<sup>3</sup> Article 1 UDHR.

<sup>4</sup> *Ibid*, Article 2(3).

<sup>5</sup> *Ibid*, Article 8.

<sup>6</sup> Emphases laid by the author.

<sup>7</sup> Article 4 of the UDHR.

<sup>8</sup> Business in Cameroon. (2019). Available at [www.businessinCameroon.com](http://www.businessinCameroon.com). (Lastly Accessed on 15 February 2026).

<sup>9</sup> World population Review; Most developed countries in Africa, Available at [www.worldpopulationcom](http://www.worldpopulationcom). (Lastly Accessed on 15 February 2026).

<sup>10</sup> Article 1 CBD; Wynberg R., B., & Brewer, J. C. (2023). "Benefit Sharing and Biodiversity Commodification in Southern Africa: A Failed Approach for Social Justice, Equity, and Conservation", p. 4.

<sup>11</sup> Tamasang, C.F. (2018). *op.cit*, p.153.

<sup>12</sup> IUCN / International Union for Conservation of Nature (2012), Benefit Sharing in Uganda's Forestry Sector; Issues and Options for REDD Implementation in Uganda.

different kinds of benefits to be shared, how stakeholders are entitled to receive the benefits and the rules governing the allocation and sharing of those benefits. With respect to the different kinds of benefits, they can be grouped as either being monetary or non-monetary in nature. From a monetary point of view, benefits are allocated in terms of payment of royalty. Apart from direct cash flows, non-monetary benefits could also be made by building social infrastructures promoting community development and poverty reduction activities. In this respect, the 1994 Forestry Law require the project participant to undertake to carry out industrial installations, developmental works and to provide social amenities for the benefit of the local population.<sup>1</sup> Similar dispositions are found in the Petroleum Code.<sup>2</sup>

Furthermore, in accordance with Article 15(3) and (7) of the Convention on Biological Diversity, benefits should be shared in a fair and equitable way and that such sharing shall be upon mutually agreed terms.<sup>3</sup> The Protocol directs that each Party takes legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilisation of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources are shared in a fair and equitable way with the communities concerned and based on mutually agreed terms.<sup>4</sup> The issue which still raises concern within the Cameroonian context is that the prescriptions of “fair and equitable” distribution remain inapplicable though the natural resource communities suffer most during the extraction of these natural resources. Empirical studies carried out in Cameroon underscored that the local communities where natural resources exploitation takes place often times, do not benefit adequately in relation to such activities. The Baka and Mbedam faces problem of loss of traditional lands, cultural heritage and livelihoods. Mining and logging activities in the Djam et Lobi regions have threatened the Baka’s ancestral lands and way of

life.<sup>5</sup> Yet the resources allocated for the betterment of the community ends up in the pocket of few individuals. Poverty remains endemic in most communities that accommodate the natural resources.<sup>6</sup>

### 3. Natural Resource Protection as a Human Rights in Cameroon: Upshots

This section of the article is devoted to discuss the difficulties that makes the effective protection of natural resources as a human rights imperative in Cameroon challenging.

#### 3.1 Lack of Specialised Courts in Cameroon

Cameroon’s judicial system lacks specialised courts with expertise in environmental and natural resource law. Coupled to this is the fact that the country’s judicial infrastructure is underdeveloped, leading to delays and inefficiencies in processing cases related to natural resource protection. The absence of the specialised courts and inadequate capacity limit access to justice for communities and individuals affected by natural resource exploitation, leading to human rights abuses. Most of the inhabitants of the natural resource exploiting areas in Cameroon are poor which further limits their access to justice.

#### 3.2 Legislative Gaps

Failure of the Constitution to recognised certain fundamental rights has undermined the effective protection of natural resources as a human rights imperative in Cameroon. The constitution does not explicitly recognise the right to access to environmental information, public participation and access to justice in environmental matter. Though the Environmental Code recognises the right to access to environmental information, public participation and access to justice in environmental matter, it fails to provide adequate mechanisms to achieve this, thus hindering the effective implementation of environmental protection measures.

#### 3.3 Inadequate Supervision and Control

There are inadequate supervision and control of the activities of natural resource exploiting companies due to institutional weaknesses. The Ministries of Mines and Environment which acts

<sup>1</sup> Sections 50 and 61(3) & (4) of the 1994 Forestry Law.

<sup>2</sup> Sections 62, 64(1) of the 2019 petroleum Code.

<sup>3</sup> Article 5(1) of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

<sup>4</sup> Article 5(2) and (3) of the Protocol.

<sup>5</sup> Mollins J. (2021). Logging and Mines occupy Baka Pygmy Hunting Areas in Cameroon. Available at [www.forestnews.org](http://www.forestnews.org) (Lastly Accessed on 15 February 2026).

<sup>6</sup> Tamasang, C.F. (2018). *op.cit*, p.156.

as oversight institutions have failed to adequately control and supervise the activities of companies involved in natural resource exploitations in Cameroon. Inactive mining sites in Cameroon are continuously abandoned without restoration by foreign companies, leaving behind huge pits in the ground that later form into artificial lakes which endanger local populations and damaged ecosystems. For instance, the case of the Samba where the mining pit has been abandoned by Metallicon S.A.<sup>1</sup>

Similarly, there are cases where mining exploitations have impacted the quality of water in the mining exploiting areas. Inhabitants of Kambele III has decried how mining exploitations have brought changes in the colour and taste of their drinking water, followed by destruction of the course of rivers and no fish in the river again because of pollution. These results imply that villages around active mining sites are more impacted severely as a result of mining exploitations principally in the area of water quality as in they had been experiencing changes in the colour and taste of potable water.<sup>2</sup> This inadequate control and supervision is caused by the high rate of corruption that prevails in the country and the mineral resource sector in particular.

### 3.4 Discriminatory Benefit Sharing

In accordance with Article 15(3) and (7) of the Convention on Biological Diversity, benefits should be shared in a fair and equitable way and that such sharing shall be upon mutually agreed terms.<sup>3</sup> The issue which still raises concern within the Cameroonian context is that the prescriptions of “fair and equitable” distribution remain inapplicable though the natural resource communities suffer most during the extraction of these natural resources.<sup>4</sup> The inhabitants of Kambele and Kombo Batouri decried the fact that their farming lands were expropriated for mining purposes with little or no compensation. Many complaint that they were given 500, 000 FCFA after expropriating three to four hectares of their

farm lands for mining activities.<sup>5</sup>

## 4. Conclusion and Recommendations

The protection of natural resources is a pressing human rights imperative in Cameroon. Despite existing laws and regulations, the country faces challenges in ensuring effective protection and management of these resources. This has led to significant human rights abuses, environmental degradation, and socio-economic challenges for local exploiting communities. The rights to environmental justice, a healthy environment and benefit sharing are often compromised due to inadequate supervision, discriminatory benefit sharing and lack of access to justice. To address the aforementioned challenges, this work recommends that, the Cameroonian government should create specialised courts or chambers with expertise in environmental and natural resource law to ensure effective protection of natural resources as a human right imperative. Capacity building and training programs should be provided for judges and magistrates and other judicial officials to enhance their expertise in environmental and natural resource law.

Furthermore, implement measures to accelerate access to justice. This should be done by creating more courts in those areas, that is subdivisions and divisions where courts are absent. Organise public awareness campaigns to educate Cameroonians particularly those in the natural resource communities about their environmental rights and the importance of natural resource protection. There should be a constitutional reform, where in the preamble should provide a clear and enforceable environmental rights. Free, prior and informed consent should be strengthened especially in the natural resource exploitation communities since they are the most affected during natural resource exploitation.

In addition, the government should establish clear consultation processes, participatory and inclusive systems in decision making. This can be by developing and implementing transparent consultation processes that include local

<sup>1</sup> Herman, G., & Keri, G. O. (2014). Mercury Exposure and Health Impacts among Individuals in the Artisanal and Small-Scale Gold Mining Community: A comprehensive Review. *Environmental Health Perspectives*, 28(122), pp. 667-672; Kenne Y. (2023). Treacherous Pits and Lakes Left in the Wake of Cameroon’s Abandoned Mining Sites. Available at [www.news.mongabay.com](http://www.news.mongabay.com) (Lastly Accessed on 17 February, 2026).

<sup>2</sup> Obase R., et al. (2018). Impact of Artisanal Gold Mining on Human Health and the Environment in the Batouri Gold District, East Cameroon. *Academic Journal of*

*Interdisciplinary Studies*, 7(1), 22-44.

<sup>3</sup> Article 5(1) of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.

<sup>4</sup> Tamasang, C.F. (2018). *op.cit*, p.156.

<sup>5</sup> The Guardian Post. (2024). East Region: When Abandoned Mining Sites Wreak Havoc on Batouri Population, available at [www.guardianpostcameroon.com](http://www.guardianpostcameroon.com) (Lastly Accessed on 17 February 2026).

communities which will ensure that their concerns and needs are heard and properly addressed. Design and adopt a more effective system that ensures local communities have a fair share of the exploitation of natural resources.

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# Judicial Application Dilemmas and Normative Pathways Following the Criminalization of Self-Money Laundering—An Empirical Study Based on 175 Judicial Decisions

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## Abstract

The 2021 Criminal Law Amendment (XI) abolished the elements of “knowingly” and “assisting” from the crime of money laundering, formally incorporating self-money laundering into the scope of criminal regulation. This has marked a historic shift in China’s anti-money laundering criminal legislation, from a “single-track system” targeting only third-party money laundering to a “dual-track system” covering both self- and third-party money laundering. In 2024, the Supreme People’s Court and the Supreme People’s Procuratorate jointly issued the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Money Laundering, which further refined the identification criteria and sentencing rules for self-money laundering, and provided normative guidance for judicial practice.

However, approximately four years after the criminalization of self-money laundering, judicial practice still faces prominent dilemmas, including ambiguous factual determination, imbalanced sentencing discretion and confusion in the disposal of concurrent offenses, which hinder the effective implementation of China’s anti-money laundering criminal policy.

To systematically evaluate the judicial effect of self-money laundering criminalization and solve these practical problems, this empirical study analyzes 175 first-instance judgments on money laundering crimes published on China Judgments Online from March 2021 to December 2024. By adopting empirical methods including descriptive statistics, independent-samples t-tests, chi-square tests, one-way ANOVA, multiple linear regression and binary logistic regression, this study constructs a comprehensive analytical framework: Research Design → Sample Characteristics → Empirical Testing → Problem Identification → Normative Proposals.

The key findings are as follows: (1) The legislative effect of self-money laundering criminalization has initially emerged. The number of money laundering cases has increased year by year, and the proportion of self-money laundering cases has risen steadily from 25.71% in 2022 to 33.96% in 2024, reflecting the continuous improvement of judicial authorities’ prosecutorial and adjudicative capabilities. (2) There are statistically significant differences in judicial sentencing between self- and third-party money laundering: self-money laundering cases incur significantly longer principal penalties (32.03 months vs. 20.68 months;  $t=2.3466$ ,  $p=0.0201$ ) and a much lower suspended sentence application rate (10.26% vs. 47.06%;  $\chi^2=15.764$ ,  $p<0.001$ ). In addition, regional factors and predicate offense types have no significant impact on sentencing ( $p>0.05$ ), indicating overall consistency in judicial

application of money laundering crimes.

Nevertheless, three core challenges remain in judicial practice: First, in factual determination, courts often simplify the evaluation of the subjective intent of concealment and disguise, the boundary between self-money laundering conduct and the act of the predicate offense is ambiguous, and the distinction standards between money laundering and the crime of concealing or disguising criminal proceeds are not unified. Second, in sentencing discretion, individual cases have the problem of sentencing inversion, the discretion range of fines is excessively large, and there is a lack of quantitative criteria for suspended sentence application. Third, in the disposal of concurrent offenses, the applicable standards are not unified, and there are divergent practices in handling self-money laundering in joint crimes.

These dilemmas arise from the interaction of multiple factors, including overly principled legislative provisions, theoretical cognitive divergences between academia and practice, and insufficient professional capacity of judicial organs in handling financial crimes.

Accordingly, this paper proposes a systematic and operable normative path from five dimensions: strengthening theoretical foundations, refining factual determination rules, establishing a standardized sentencing system, unifying the disposal principles of concurrent offenses, and improving judicial application support mechanisms. The research aims to advance the standardized and unified judicial application of self-money laundering provisions, and provide empirical evidence and theoretical support for the improvement of China's anti-money laundering criminal legal system.

**Keywords:** self-money laundering, judicial application, sentencing standardization, cumulative punishment, empirical legal studies, anti-money laundering criminal legislation

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## 1. Introduction

The Financial Action Task Force's (FATF) Fourth Round Mutual Evaluation (2019) explicitly identified China's non-criminalization of self-money laundering as a critical deficiency in its anti-money laundering and counter-terrorist financing (AML/CFT) framework. In response, the 2021 Criminal Law Amendment (XI) abolished the "knowingly" and "assisting" requirements in Article 191 of the Criminal Law, formally criminalizing self-money laundering and marking a pivotal shift from an exclusive focus on third-party money laundering to a dual-track regime encompassing both self- and third-party conduct. Further strengthening this legal architecture, the Supreme People's Court and the Supreme People's Procuratorate jointly issued the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Money Laundering in August 2024, which provides detailed guidance on the identification of self-laundering behavior and sentencing standards.

Since the reform took effect, judicial authorities have significantly intensified enforcement, with the number of prosecuted money laundering cases showing a sustained upward trend. Nevertheless, practical adjudication continues to

face persistent challenges—including inconsistent fact-finding standards, pronounced sentencing disparities, and unresolved confusion over whether self-money laundering and its predicate offense should be punished cumulatively or treated as a single offense. These issues not only undermine sentencing equity and predictability but also impede the effective implementation of national anti-money laundering policy.

Existing scholarship has largely centered on theoretical debates concerning the legitimacy of criminalizing self-money laundering, particularly the argument—advanced by scholars such as Wang Xin—that money laundering protects an independent legal interest (Rechtsgut) distinct from that of the predicate offense, namely the integrity of the financial system and the state's capacity to trace and confiscate illicit proceeds. However, this doctrinal consensus has not been uniformly internalized in judicial practice. Moreover, while Cao Jian and Wang Zhihao have compellingly argued that cumulative punishment is legally warranted, courts still occasionally apply the principle of punishing only the more serious offense, reflecting a lack of standardized rules for handling concurrence of offenses.

Given that existing scholarship has largely focused on doctrinal and normative analyses, systematic empirical research based on large-scale judicial decisions remains notably absent. To address this gap, this article conducts an empirical examination of the judicial application of self-money laundering since its criminalization. Drawing on a dataset of 175 first-instance money laundering judgments published on China Judgments Online between March 2021 and December 2024, this study employs descriptive statistics, inferential tests (including t-tests, chi-square tests, and ANOVA), and regression models to assess the practical impact of the legislative reform. Our analysis specifically focuses on three structural dilemmas: factual identification, sentencing disparity, and cumulative punishment. Building on these findings, we propose normatively grounded yet operationally feasible pathways for legal refinement.

The remainder of this article proceeds as follows: Part 2 traces the legislative evolution and theoretical foundations of self-money laundering criminalization; Part 3 presents the research design and basic characteristics of samples; Part 4 conducts empirical analysis and hypothesis verification of judicial application; Part 5 diagnoses the core judicial dilemmas and their underlying causes; Part 6 proposes systematic normative pathways across doctrinal, procedural, and institutional dimensions; and Part 7 concludes with research findings and future prospects.

## **2. Legislative Evolution and Theoretical Foundations of the Criminalization of Self-Money Laundering**

### *2.1 Evolutionary Trajectory of Legislation*

The legislation on money laundering crimes in China has undergone three stages of iteration, gradually completing the improvement of the anti-money laundering regulatory system. The Criminal Law of 1997 first established the crime of money laundering, limiting predicate offenses to three categories: drug crimes, organized crime of a mafia nature, and smuggling crimes, with the subject limited to third parties, establishing a single-track regulatory model of third-party money laundering. The Criminal Law Amendment (VI) of 2006 expanded predicate offenses to seven categories, strengthening the attributes of financial governance, but still failing to break through the barrier of “the principal

offender does not constitute this crime.” The Criminal Law Amendment (XI) of 2021 removed the core expressions of “knowledge” and “assistance,” incorporating self-money laundering into the scope of regulation, eliminating the limits on fines, and formally establishing a dual-track model of self-money laundering plus third-party money laundering. The 2024 judicial interpretation by the “Two Supremes” further refined the types of self-money laundering behaviors, subjective determination, concurrence of offenses, and sentencing rules, forming a dual-layer normative system of “criminal law provisions plus judicial interpretation,” achieving comprehensive alignment with international anti-money laundering standards.

### *2.2 Reconstruction of Theoretical Foundations*

The criminalization of self-money laundering breaks through the traditional theory of “non-punishable subsequent conduct.” Its criminal punishability and legislative legitimacy are reconstructed from three aspects: At the level of legal interest infringement, the crime of money laundering protects dual legal interests of national financial management order and judicial authorities’ recovery of assets, and self-money laundering behavior creates new legal interest risks independent of predicate offenses, possessing independent punishability. At the level of normative purpose, it responds to international obligations under FATF mutual evaluation while meeting the internal needs of comprehensive crackdown on predicate offenses and opening up a governance closed loop of “conviction plus asset recovery.” At the level of constitutive elements, under the dual-track model, self-money laundering and third-party money laundering present binary differentiation: self-money laundering does not require proof of “knowledge,” has no “assistance” conduct requirement, and the subject covers the principal offender of predicate offenses, becoming the core basis for judicial distinction.

### *2.3 Research Hypotheses*

Combining legislative evolution and theoretical foundations, three categories of testable hypotheses are proposed regarding core issues in judicial application: H1 (Sentencing Disparity Hypothesis): the principal punishment term for self-money laundering is significantly heavier than that for third-party money laundering, the probation application rate is significantly lower,

the amount of fines is highly correlated with the amount involved in the case, and sentencing circumstances constitute the core influencing factor of sentencing discretion. H2 (Judicial Determination Hypothesis): the determination of subjective purposes of concealment and disguise in self-money laundering exhibits a tendency toward simplification, behavioral boundaries are ambiguously defined, and there is a risk of excessive conviction or qualitative deviation. H3 (Concurrence and Judicial Application Hypothesis): the disposition of concurrence of offenses in self-money laundering primarily adopts concurrent punishment of multiple crimes but with non-unified standards, judicial application tends toward standardization after the 2024 judicial interpretation, regional and predicate offense types have no significant impact on sentencing, and the proportion of self-money laundering cases shows a year-by-year upward trend.

### 3. Research Design and Basic Characteristics of Samples

Based on the three categories of research hypotheses proposed in Chapter I, to accurately examine the judicial application characteristics and disparities following the criminalization of self-money laundering, this chapter will clarify the selection criteria for research samples, data processing methods, variable setting logic, and statistical analysis tools, and systematically present the core characteristics of samples including temporal distribution, regional distribution, money laundering patterns, and types of predicate offenses, laying a data foundation for subsequent empirical testing and dilemma analysis.

#### 3.1 Sample Selection and Data Processing

##### 3.1.1 Sample Sources and Retrieval Strategy

This study uses China Judgments Online (<https://wenshu.court.gov.cn/>) as the data source, retrieving first-instance criminal judgments on money laundering crimes publicly disclosed between March 1, 2021, and December 31, 2024. The rationale for selecting this time interval is as follows: The Criminal Law Amendment (XI) was formally implemented on March 1, 2021, explicitly incorporating “self-money laundering” behavior into the scope of regulation for the crime of money laundering, marking a new stage in China’s anti-money laundering criminal legislation. Conducting sample collection from this starting point can comprehensively present

the full picture of judicial application of money laundering crimes after the legal amendment, providing an empirical foundation for analyzing the practical effects following the criminalization of “self-money laundering.”

Regarding retrieval strategy, this study adopts a dual limitation approach of “cause of action plus time.” Specifically, using “money laundering crime” as the keyword for cause of action, setting the judgment date range as “March 1, 2021, to December 31, 2024,” limiting the case type to “criminal cases,” and the trial procedure to “first instance.” Through the above retrieval conditions, a certain number of relevant judgments were preliminarily obtained. It should be noted that due to the time lag and selectivity in the public disclosure of judgments on China Judgments Online, some judgments may not be publicly disclosed due to reasons such as state secrets, commercial secrets, or personal privacy; therefore, the sample in this study cannot exhaust all money laundering crime judgments during this period, but analysis based on existing publicly disclosed documents still possesses strong representativeness and reference value.

##### 3.1.2 Sample Screening Criteria

To ensure the scientific validity and effectiveness of research samples, this study follows three screening principles: First, the principle of relevance. Only judgments convicting and punishing defendants for the crime of money laundering are retained, excluding cases that involve money laundering behavior but convict defendants of other crimes (such as the crime of concealing or disguising criminal proceeds). Before the implementation of the Criminal Law Amendment (XI), some self-money laundering behaviors lacked clear legal basis and were often punished as the crime of concealing or disguising criminal proceeds in judicial practice. After the legal amendment, such behaviors should be determined as money laundering crimes. This study strictly distinguishes the boundaries between the two crimes to ensure sample homogeneity.

Second, the principle of completeness. Only judgments with complete content containing necessary sentencing information are retained. Specifically, judgments must contain the following core elements: basic defendant information, determination of criminal facts, amount involved in the case, money laundering pattern (self-money laundering or third-party

money laundering), type of predicate offense, sentencing circumstances, principal punishment term, fine amount, probation application status, etc. Judgments with severely missing information that cannot be quantitatively analyzed are excluded.

Third, the principle of independence. For cases where the same defendant is convicted of multiple crimes for the same criminal facts (such as concurrent punishment of predicate offenses and money laundering crimes), only the sentencing information for the money laundering crime portion is retained; for situations with multiple defendants in joint crime cases, data is extracted separately for each defendant as the unit to ensure the independence of each sample.

### 3.1.3 Data Processing and Quality Control

After the above screening procedures, 175 valid samples were ultimately obtained. In the data processing phase, this study adopts the following quality control measures: First, establishing a standardized coding manual. Unified coding rules are formulated for all variables involved in the research to ensure consistency and reproducibility of data extraction. For example, money laundering patterns are coded as dummy variables (self-money laundering = 1, third-party money laundering = 0); types of predicate offenses are classified and coded according to chapters in the Criminal Law; sentencing circumstances comprehensively consider factors such as voluntary surrender, meritorious service, confession, guilty plea and acceptance of punishment, and active return of stolen property, establishing a sentencing circumstances index.

Second, implementing dual independent coding. Two researchers conduct independent coding of samples respectively, followed by cross-verification after coding is completed. For cases with inconsistent coding, they are resolved through methods such as consulting original judgments and discussion and consultation to ensure data accuracy. Third, conducting data cleaning and outlier processing. Logical tests are performed on extracted data, excluding obviously erroneous or unreasonable values (such as negative prison terms, abnormally huge fine amounts without reasonable explanation, etc.). For partially missing data, appropriate treatment methods such as mean imputation, regression imputation, or listing as missing values are adopted according to specific circumstances.

Finally, this study uses Python 3.9 (with pandas 1.5.3, SciPy 1.10.1, and statsmodels 0.13.5) for data management for data management and statistical analysis, primarily employing the pandas library for data processing, the SciPy. Stats library for inferential statistical testing, and the statsmodels library for regression analysis, ensuring the standardization of the analysis process and the verifiability of results.

## 3.2 Research Variable Settings

### 3.2.1 Dependent Variable Settings

This study sets three dependent variables to comprehensively reflect the sentencing outcomes of money laundering crimes: (1) Principal punishment term (X1). Measured in months, including fixed-term imprisonment and criminal detention (criminal detention calculated according to actual months). This variable is a continuous variable that can intuitively reflect the severity of punishment imposed by judicial authorities on money laundering behavior. In the sample, the mean principal punishment term is 23.21 months, the median is 12 months, the standard deviation is 26.96 months, the minimum is 0 months (i.e., fine only), and the maximum is 180 months (15 years of fixed-term imprisonment), presenting obvious right-skewed distribution characteristics.

(2) Fine amount (X2). Measured in ten thousand yuan. This variable is also a continuous variable, reflecting the intensity of economic sanctions imposed by judicial authorities on money laundering crimes. In the sample, the mean fine amount is 189,800 yuan, the median is 20,000 yuan, the standard deviation is 691,900 yuan, and the maximum is 5.5 million yuan, indicating considerable differences in fine amounts among different cases.

(3) Probation application (X3). Presented in dummy variable form (probation applied = 1, probation not applied = 0). This variable reflects judicial authorities' choice of punishment execution methods for defendants and is an important indicator for measuring the severity of sentencing. In the sample, the probation application rate is 38.86%, indicating that nearly 40% of money laundering crime defendants are declared probation.

### 3.2.2 Core Independent Variable Settings

Money laundering pattern (X4) is the core independent variable of this study, presented in dummy variable form (self-money laundering =

1, third-party money laundering = 0). The academic value of this variable setting lies in: by comparing sentencing disparities between self-money laundering and third-party money laundering, the judicial application effects following the incorporation of self-money laundering into the Criminal Law Amendment (XI) can be examined, and judicial authorities' differentiated evaluation of the two money laundering patterns can be analyzed.

From the sample distribution perspective, there are 136 third-party money laundering cases, accounting for 77.71%; and 39 self-money laundering cases, accounting for 22.29%. This proportional structure reflects the basic pattern of current judicial practice regarding money laundering crimes: third-party money laundering remains the main form, but the proportion of self-money laundering cases is showing a year-by-year upward trend, rising from 25.71% in 2022 to 33.96% in 2024, indicating that judicial authorities' application efforts are gradually strengthening following the criminalization of self-money laundering.

### 3.2.3 Control Variable Settings

To exclude interference from confounding factors and accurately identify the independent impact of money laundering patterns on sentencing outcomes, this study sets the following control variables: (1) Type of predicate offense (X5). Classified according to the seven categories of predicate offenses stipulated in Article 191 of the Criminal Law, specifically including: drug crimes, organized crime of a mafia nature, terrorist activity crimes, smuggling crimes, corruption and bribery crimes, crimes of disrupting financial management order, and financial fraud crimes. In the sample, there are 51 drug crime cases (29.14%), 45 corruption and bribery crime cases (25.71%), 39 crimes of disrupting financial management order cases (22.29%), 23 financial fraud crime cases (13.14%), 8 organized crime of a mafia nature cases (4.57%), and 6 smuggling crime cases (3.43%).

(2) Amount involved in the case (X6). Measured in ten thousand yuan, reflecting the objective degree of harm caused by money laundering behavior. The distribution of amounts involved

presents obvious skewed characteristics: 64 cases in the 0-100,000 yuan range (36.57%), 32 cases in the 100,000-500,000 yuan range (18.29%), 25 cases in the 500,000-1,000,000 yuan range (14.29%), 32 cases in the 1,000,000-5,000,000 yuan range (18.29%), and 22 cases above 5,000,000 yuan (12.57%).

(3) Sentencing circumstances (X7). Comprehensively considering statutory leniency circumstances (voluntary surrender, meritorious service, confession) and discretionary leniency circumstances (guilty plea and acceptance of punishment, active return of stolen property, first-time or occasional offender, etc.), establishing a sentencing circumstances index. In the sample, 163 defendants (93.14%) have leniency circumstances, and 12 defendants (6.86%) have no leniency circumstances.

(4) Regional factors (X8). According to the classification standards of the National Bureau of Statistics, cases are divided into four major regions: eastern, central, western, and northeastern. Among them, 59 cases in the eastern region (33.71%), 52 cases in the central region (29.71%), 53 cases in the western region (30.29%), and 11 cases in the northeastern region (6.29%).

(5) Judgment year (X9). Using 2021 as the base year, annual dummy variables are set to capture potential temporal trends following the legislative reform, with 2021 serving as the reference category.

(6) Recidivism circumstances (X10). Presented in dummy variable form (constituting recidivism = 1, not constituting recidivism = 0). Given the limited occurrence of recidivism in the sample (only 9 cases, 5.14%), this variable serves primarily as a control in regression models rather than a focal predictor; its low variance explains its non-significance in subsequent multivariate analyses.

For a more intuitive presentation of the definition, measurement and distribution characteristics of all research variables, the relevant descriptive statistics and frequency distribution are shown in Table 1 and Table 2 below.

**Table 1.** Variable Definitions and Descriptive Statistics (N=175)

Variable Type	Variable Name	Symbol	Definition and Measurement	Mean	SD	Median	Min	Max
Dependent Variables	Principal Punishment (Months)	Y1	Prison term/criminal detention (months)	23.21	26.96	12	0	180
	Fine Amount (10,000 CNY)	Y2	Fine amount (10,000 CNY)	18.98	69.19	2	0	550
	Suspended Sentence Application	Y3	Dummy: Applied=1, Not applied=0	0.39	0.49	0	0	1
Core Independent Variable	Money Laundering Pattern	X	Dummy: Self-money laundering=1, Third-party money laundering=0	0.22	0.42	0	0	1
Control Variables	Amount Involved (10,000 CNY)	C1	Natural log of amount involved	3.85	2.12	3.91	0	8.61
	Mitigating Circumstances	C2	Dummy: Has mitigating circumstances=1	0.93	0.25	1	0	1
	Recidivism Circumstances	C3	Dummy: Constitutes recidivism=1	0.05	0.22	0	0	1

Notes: (1) The amount involved was natural log-transformed to reduce the influence of extreme values; (2) Mitigating circumstances include voluntary surrender, meritorious service, confession, acceptance of punishment, and active restitution.

**Table 2.** Frequency Distribution of Categorical Variables (N=175)

Variable	Category	Frequency	Percentage (%)
Money Laundering Pattern	Third-party money laundering	136	77.71
	Self-money laundering	39	22.29
Amount Involved	0-100,000 CNY	64	36.57
	100,000-500,000 CNY	32	18.29
	500,000-1,000,000 CNY	25	14.29
	1,000,000-5,000,000 CNY	32	18.29
	Above 5,000,000 CNY	22	12.57
Sentencing Circumstances	Has mitigating circumstances	163	93.14
	No mitigating circumstances	12	6.86
Upstream Crime Type	Drug offenses	51	29.14
	Corruption and bribery offenses	45	25.71
	Offenses disrupting financial management order	39	22.29
	Financial fraud offenses	23	13.14

	Organized crime of mafia-like nature	8	4.57
	Smuggling offenses	6	3.43
	Terrorism offenses	0	0
Regional Distribution	Eastern region	59	33.71
	Central region	52	29.71
	Western region	53	30.29
	Northeastern region	11	6.29

Notes: Upstream crime types and regional variables were set as dummy variables in regression analysis, with financial fraud offenses and the Northeastern region serving as reference groups, respectively.

The above variables lay the foundation for the subsequent descriptive statistical analysis, inferential statistical testing and regression model construction of this study.

### 3.3 Analysis Methods

This study comprehensively employs three methods-descriptive statistics, inferential statistics, and regression analysis-to conduct multi-level and multi-angle empirical analysis of money laundering crime sentencing data.

1) Descriptive Statistical Analysis: Descriptive statistics is the foundational analysis method of this study, aiming to present the basic characteristics and distribution patterns of samples. Specifically including: (1) frequency analysis, conducting frequency and percentage statistics for categorical variables; (2) central tendency analysis, calculating mean, median, and other indicators for continuous variables; (3) dispersion tendency analysis, calculating standard deviation, range, and other indicators; (4) cross-analysis, conducting cross-grouping of different variables to analyze characteristic differences among subgroups.

2) Inferential Statistical Analysis: Inferential statistics is used to test the statistical significance of differences between different groups. This study mainly adopts the following testing methods: (1) independent samples T-test, used to compare mean differences of two groups of continuous variables (such as principal punishment terms, fine amounts); (2) chi-square test, used to test distribution differences of two groups of categorical variables (such as probation application); (3) one-way ANOVA, used to compare mean differences of three or more groups of continuous variables. The significance level is set at  $\alpha=0.05$ .

3) Regression Analysis: Regression analysis is the

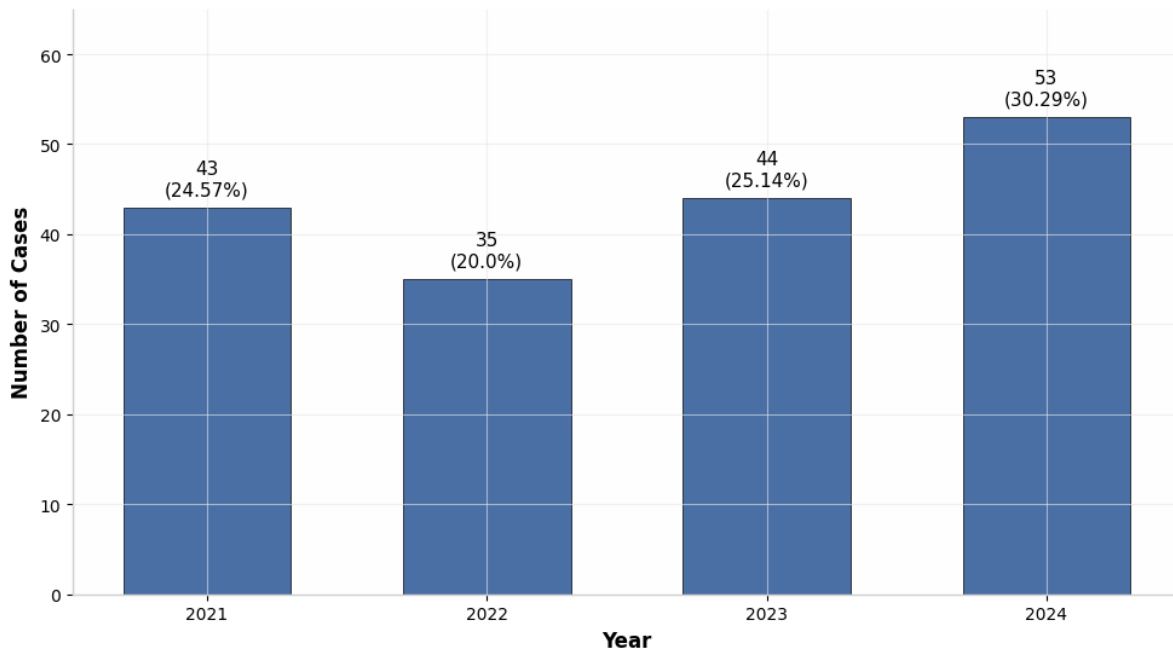
core analysis method of this study, used to identify the independent impact effects of various variables on sentencing outcomes. This study constructs three types of regression models: (1) multiple linear regression model for principal punishment terms; (2) multiple linear regression model for fine amounts; (3) binary Logistic regression model for probation application. This study specifically examines the judicial treatment of cumulative punishment (also referred to as concurrent punishment in some contexts) for self-money laundering and predicate offenses.

### 3.4 Quantitative Analysis of Basic Sample Characteristics

#### 3.4.1 Temporal Distribution Characteristics

From the perspective of judgment years, sample cases are distributed across four years from 2021 to 2024, with the following specific distribution: 43 cases in 2021 (24.57%), 35 cases in 2022 (20.00%), 44 cases in 2023 (25.14%), and 53 cases in 2024 (30.29%). First, the total number of cases shows a year-by-year growth trend. From 35 cases in 2022 to 53 cases in 2024, the increase reaches 51.43%. This growth trend reflects the continuous strengthening of judicial application efforts regarding money laundering crimes. Second, the annual distribution is relatively balanced. Although the total number of cases shows a growth trend, the distribution of case numbers across years is relatively balanced, without abnormal fluctuations of surge or plummet in any particular year. Third, the proportion of cases in 2024 is the highest. The number of cases in 2024 reached 53, accounting for 30.29%, the highest among the four years. This data reflects that the judicial application of money laundering crimes has undergone a process of gradual adaptation and standardization after the legal amendment.

**Figure 1 Sample Year Distribution (N=175)**



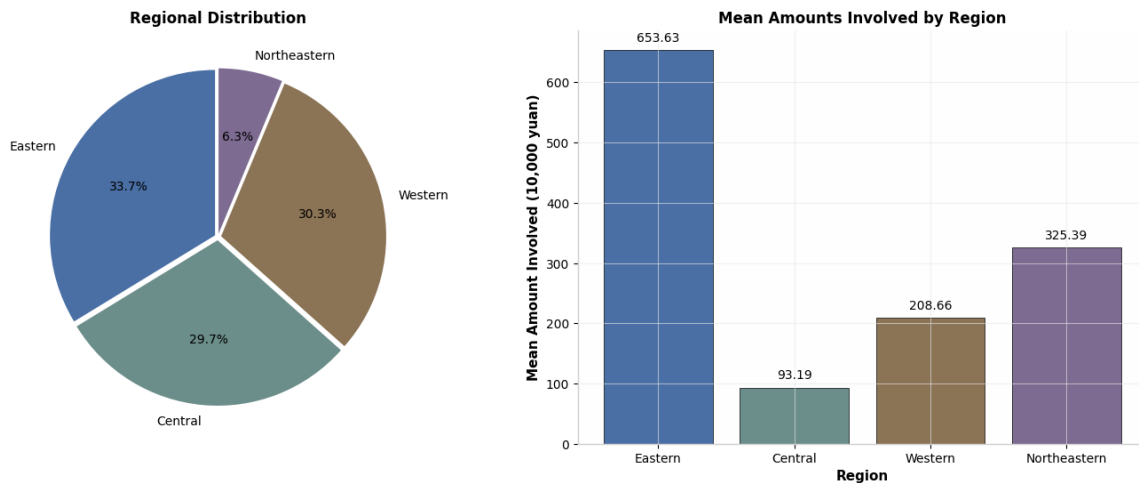
**Figure 1.** Sample Year Distribution

### 3.4.2 Regional Distribution Characteristics

From the perspective of regional distribution, sample cases cover four major regions of China: eastern, central, western, and northeastern, with the following specific distribution: 59 cases in the eastern region (33.71%), 52 cases in the central region (29.71%), 53 cases in the western region (30.29%), and 11 cases in the northeastern region (6.29%). First, the eastern region has the highest proportion of cases. As the most economically developed region in China, the eastern region has active financial activities and a relatively higher probability of money laundering crimes. From the perspective of amounts involved, the mean amount involved in eastern region cases is 6.5363 million yuan, significantly higher than other regions. Second, the proportions of cases in central and western regions are close. The central

region has 52 cases (29.71%), and the western region has 53 cases (30.29%), with basically equal proportions. This distribution characteristic indicates that money laundering crimes are no longer the exclusive domain of eastern coastal regions but are showing a trend of spreading to inland areas. Third, the northeastern region has the lowest proportion of cases. The northeastern region has only 11 cases (6.29%), with a proportion significantly lower than the other three major regions. However, the mean amount involved in northeastern region cases is 3.2539 million yuan, and the mean fine is 403,800 yuan, both at relatively high levels. ANOVA results show that differences among different regions in principal punishment terms ( $F=1.0007$ ,  $p=0.394$ ) and fine amounts ( $F=1.707$ ,  $p=0.1674$ ) have not reached statistically significant levels.

**Figure 2 Sample Regional Distribution and Amounts Involved**



**Figure 2.** Sample Regional Distribution and Amounts Involved

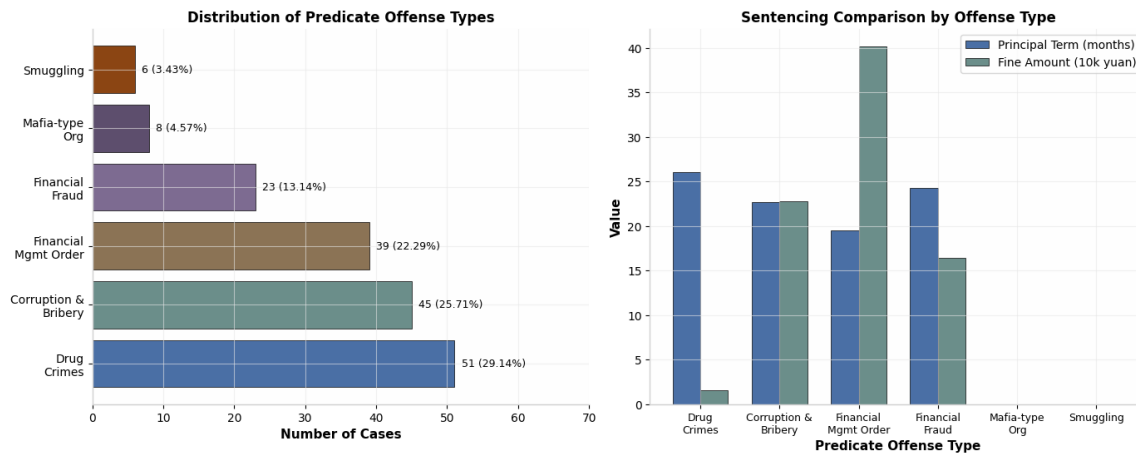
### 3.4.3 Distribution Characteristics of Predicate Offense Types

According to Article 191 of the Criminal Law, predicate offenses of money laundering include seven categories: drug crimes, organized crime of a mafia nature, terrorist activity crimes, smuggling crimes, corruption and bribery crimes, crimes of disrupting financial management order, and financial fraud crimes. The distribution of predicate offense types in the sample is as follows: Drug crimes 51 cases (29.14%), corruption and bribery crimes 45 cases (25.71%), crimes of disrupting financial management order 39 cases (22.29%), financial fraud crimes 23 cases (13.14%), organized crime of a mafia nature 8 cases (4.57%), smuggling crimes 6 cases (3.43%). Terrorist activity crimes did not appear in the sample.

First, drug crimes have the highest proportion. As a traditional predicate offense type for money laundering crimes, drug crimes account for nearly 30% of the sample. From the perspective of sentencing outcomes, the mean principal punishment for money laundering cases

associated with drug crimes is 26.05 months, and the mean fine is 15,400 yuan. Second, corruption and bribery crimes have the second highest proportion. There are 45 money laundering cases associated with corruption and bribery crimes (25.71%), with a mean principal punishment of 22.67 months and a mean fine of 227,500 yuan. It is worth noting that the fine amounts for money laundering cases associated with corruption and bribery are relatively high, reflecting judicial authorities' policy orientation of "cutting off financial resources" for corruption crimes. Third, crimes of disrupting financial management order have the third highest proportion. There are 39 money laundering cases associated with this type of predicate offense (22.29%), with a mean principal punishment of 19.49 months, the lowest among all predicate offense types, but a mean fine of 401,300 yuan, the highest among all predicate offense types. ANOVA results show that differences among different predicate offense types in principal punishment terms ( $F=0.4273, p=0.7337$ ) and fine amounts ( $F=2.2688, p=0.0828$ ) have not reached statistically significant levels.

**Figure 3 Predicate Offense Type Distribution and Sentencing Comparison**



**Figure 3. Predicate Offense Type Distribution and Sentencing Comparison**

### 3.4.4 Distribution Characteristics of Money Laundering Patterns

Money laundering pattern is the core variable of concern in this study. In the sample, there are 136 third-party money laundering cases (77.71%) and 39 self-money laundering cases (22.29%). This distribution structure reflects the basic pattern of current judicial practice regarding money laundering crimes: third-party money laundering remains the main form, but the proportion of self-money laundering cases is gradually increasing.

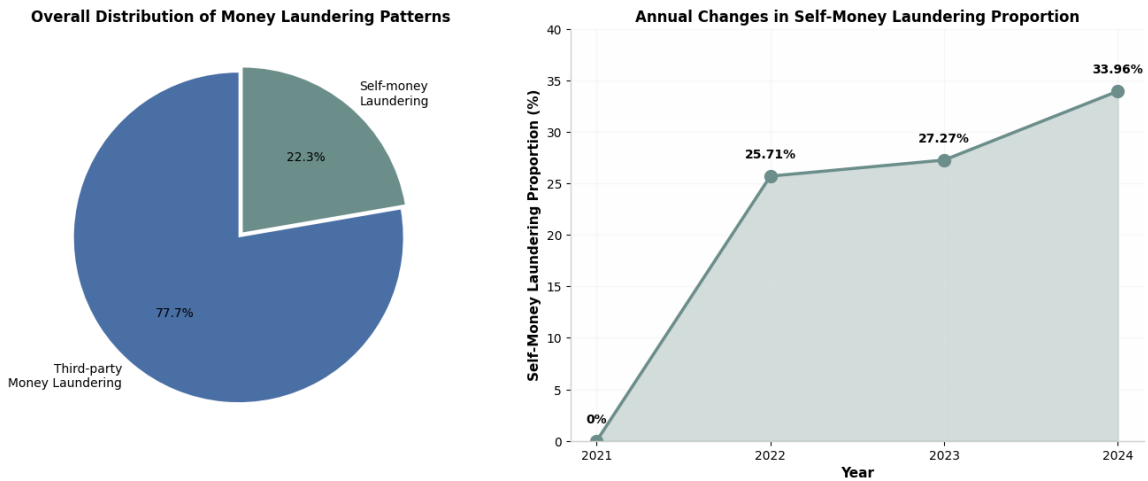
From the perspective of annual change trends, self-money laundering cases show an obvious growth trend: the proportion of self-money laundering cases in 2021 was 0% (no self-money laundering cases in that year's sample), rising to 25.71% in 2022 (9 cases/35 cases), further rising to 27.27% in 2023 (12 cases/44 cases), and reaching 33.96% in 2024 (18 cases/53 cases). This growth trend indicates that after the Criminal Law Amendment (XI) incorporated self-money laundering into the scope of crimes, judicial authorities' application efforts are gradually strengthening.

There are significant differences in sentencing outcomes between self-money laundering and third-party money laundering: regarding principal punishment terms, the mean principal

punishment for self-money laundering cases is 32.03 months, while that for third-party money laundering cases is 20.68 months, with self-money laundering being approximately 11.35 months higher than third-party money laundering, an increase of 54.88%. Independent samples T-test results show that the difference between the two groups in principal punishment terms has statistical significance ( $t=2.3466$ ,  $p=0.0201<0.05$ ).

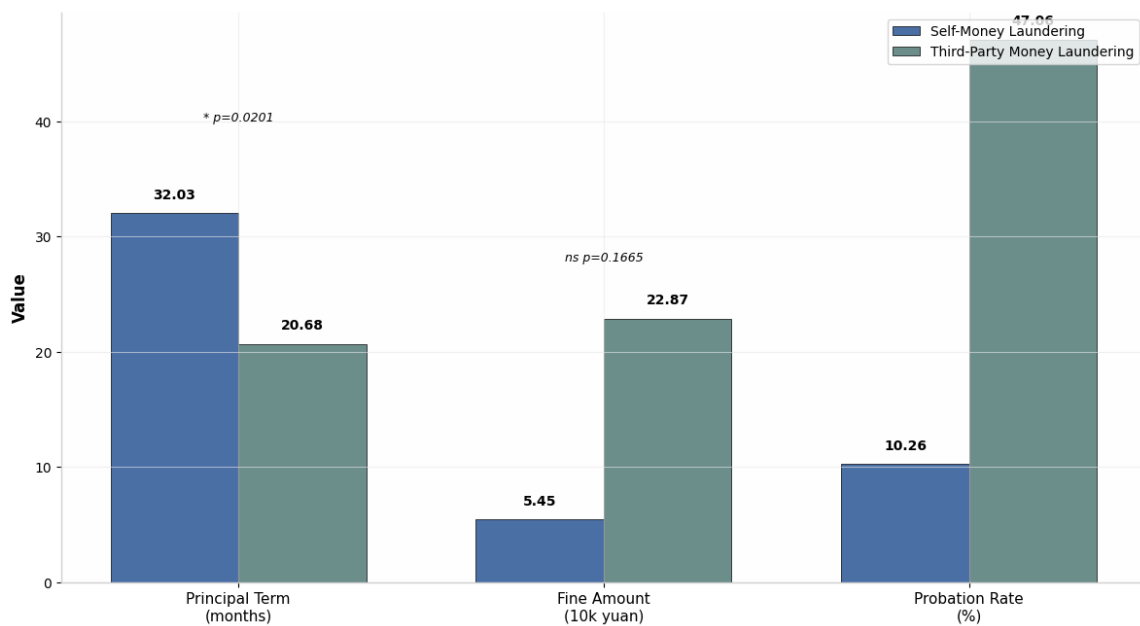
Regarding probation application, the probation rate for self-money laundering cases is 10.26% (4 cases/39 cases), while that for third-party money laundering cases is 47.06% (64 cases/136 cases), with the self-money laundering probation rate being 36.8 percentage points lower than that of third-party money laundering. Chi-square test results show that the difference between the two groups in probation application has highly statistical significance ( $\chi^2=15.764$ ,  $p=0.0001<0.001$ ). Regarding fine amounts, the mean fine for self-money laundering cases is 54,500 yuan, while that for third-party money laundering cases is 228,700 yuan. However, independent samples T-test results show that the difference between the two groups in fine amounts does not have statistical significance ( $t=-1.3895$ ,  $p=0.1665>0.05$ ).

**Figure 4 Money Laundering Pattern Distribution and Annual Changes in Self-Money Laundering**



**Figure 4.** Money Laundering Pattern Distribution and Annual Changes in Self-Money Laundering

**Figure 5 Sentencing Comparison Between Self-Money Laundering and Third-Party Money Laundering**



**Figure 5.** Sentencing Comparison Between Self-Money Laundering and Third-Party Money Laundering

### 3.4.5 Distribution Characteristics of Sentencing Circumstances

Sentencing circumstances are important factors affecting sentencing outcomes. This study conducts statistical analysis of sentencing circumstances in the sample, with results as follows: There are 163 defendants with leniency circumstances (93.14%) and 12 defendants without leniency circumstances (6.86%). Specific types of leniency circumstances include: guilty

plea and acceptance of punishment (highest proportion), confession, voluntary surrender, meritorious service, active return of stolen property, first-time or occasional offender, etc.

From the perspective of sentencing outcomes, defendants with leniency circumstances have a mean principal punishment of 20.12 months and a probation rate of 41.72%; defendants without leniency circumstances have a mean principal punishment of 65.17 months and a probation rate

of 0%. The difference between the two groups in principal punishment terms is 45.05 months, which is extremely significant. This result indicates that sentencing circumstances have an

important impact on sentencing outcomes, and the determination of leniency circumstances can significantly reduce defendants' punishment burden.

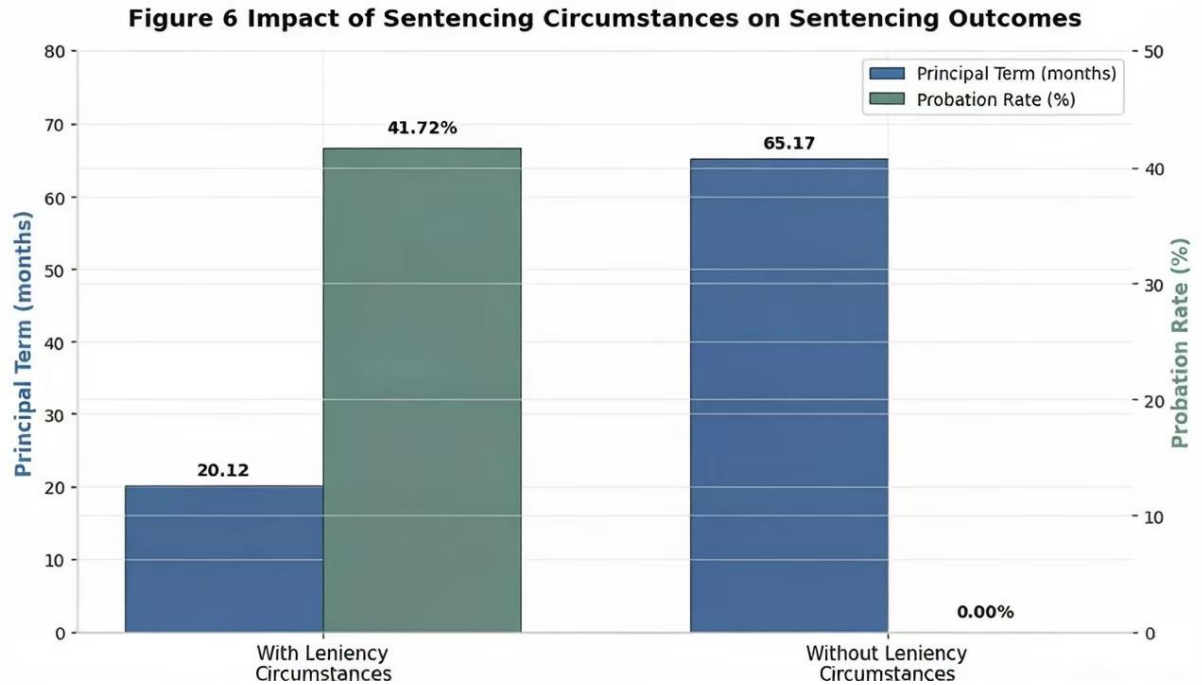


Figure 6. Impact of Sentencing Circumstances on Sentencing Outcomes

### 3.4.6 Distribution Characteristics of Amounts Involved

The amount involved is a core indicator for measuring the social harmfulness of money laundering crimes. This study divides amounts involved into five intervals for statistical analysis: 64 cases in the 0-100,000 yuan interval (36.57%), 32 cases in the 100,000-500,000 yuan interval (18.29%), 25 cases in the 500,000-1,000,000 yuan interval (14.29%), 32 cases in the 1,000,000-5,000,000 yuan interval (18.29%), and 22 cases above 5,000,000 yuan (12.57%).

This distribution presents the following characteristics: First, small-amount cases have the highest proportion. Cases with amounts involved below 100,000 yuan account for more than one-third, reflecting the existence of a large number of small-amount cases in money laundering crimes. Second, large-amount cases cannot be ignored. There are 54 cases with amounts involved above 1,000,000 yuan (30.86%), including 22 cases above 5,000,000 yuan (12.57%), indicating that there is a considerable proportion of large-amount cases in money laundering crimes.

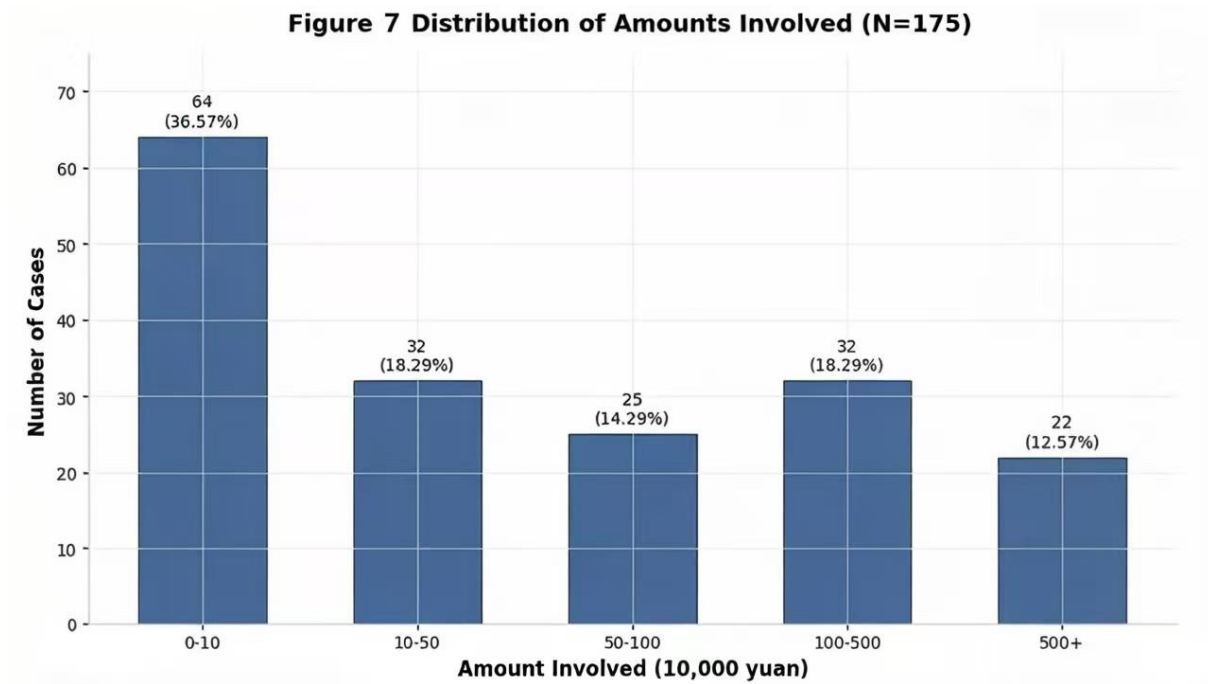


Figure 7. Distribution of Amounts Involved

### 3.5 Inferential Statistical Analysis

Inferential statistical analysis is used to test the statistical significance of differences between different groups. This study conducts systematic inferential statistical testing for self-money laundering versus third-party money laundering, different regions, and different predicate offense types.

1) Significance Testing of Sentencing Disparities Between Self-Money Laundering and Third-Party Money Laundering: (1) T-test for principal punishment term differences. Independent samples T-test results show that the difference between self-money laundering and third-party money laundering in principal punishment terms has statistical significance ( $t=2.3466$ ,  $p=0.0201<0.05$ ). Specifically, the mean principal punishment for self-money laundering cases is 32.03 months, while that for third-party money laundering cases is 20.68 months, with a difference of 11.35 months. From the perspective

of effect size, the Cohen’s  $d$  value is approximately 0.35, belonging to a medium effect level. (2) T-test for fine amount differences. Independent samples T-test results show that the difference between self-money laundering and third-party money laundering in fine amounts does not have statistical significance ( $t=-1.3895$ ,  $p=0.1665>0.05$ ). (3) Chi-square test for probation application differences. Chi-square test results show that the difference between self-money laundering and third-party money laundering in probation application has highly statistical significance ( $\text{chi-square}=15.7640$ ,  $p=0.0001<0.001$ ). The probation rate for self-money laundering cases is only 10.26%, while that for third-party money laundering cases is as high as 47.06%, with a difference of 36.8 percentage points.

The specific test results, including test statistics,  $p$ -values and effect sizes, are summarized in Table 3.

Table 3. Comparison of Sentencing Differences Between Self-Money Laundering and Third-Party Money Laundering Cases

Sentencing Indicator	Self-Money Laundering (n=39)	Third-Party Money Laundering (n=136)	Test Statistic	p-value	Effect Size
Principal Punishment	32.03 (21.45)	20.68 (16.82)	$t(173)$ 2.35	= 0.020*	Cohen’s $d$ = 0.35

(Months)						
Suspended Sentence Application Rate	10.26%	47.06%	$\chi^2(1, N=175) = 15.76$	$<0.001^{***}$	Cramér's V = 0.30	
Fine Amount (10,000 CNY)	5.45 (8.32)	22.87 (35.46)	$t(173) = 1.39$	- 0.167	Cohen's d = 0.21	

Notes: (1) Values in parentheses are standard deviations; (2) \*  $p<0.05$ , \*\*  $p<0.01$ , \*\*\*  $p<0.001$ ; (3) t-tests were used for continuous variables, chi-square tests for categorical variables.

2) ANOVA for Regional Differences: (1) ANOVA for regional differences in principal punishment terms. One-way ANOVA results show that differences among different regions in principal punishment terms do not have statistical significance ( $F=1.0007$ ,  $p=0.3940>0.05$ ). (2) ANOVA for regional differences in fine amounts. One-way ANOVA results show that differences

among different regions in fine amounts do not have statistical significance ( $F=1.7070$ ,  $p=0.1674>0.05$ ).

One-way ANOVA was conducted to examine whether sentencing outcomes differed significantly across regions and upstream crime types. The results are presented in Table 4.

**Table 4.** ANOVA Results for Regional Differences and Upstream Crime Types

Dependent Variable	Source of Variation	Sum of Squares	df	Mean Square	F-value	p-value	$\eta^2$
Principal Punishment	Regional factor	1,256.34	3	418.78	1.00	0.394	0.02
	Upstream crime type	536.82	5	107.36	0.43	0.734	0.01
	Error	69,823.45	167	418.10	—	—	—
	Total	71,616.61	173	—	—	—	—
Fine Amount	Regional factor	12,456.82	3	4,152.27	1.71	0.167	0.03
	Upstream crime type	16,523.45	5	3,304.69	2.27	0.083	0.06
	Error	405,623.12	167	2,429.48	—	—	—
	Total	434,603.39	173	—	—	—	—

Notes: (1) Levene's test showed that the assumption of homogeneity of variance was satisfied,  $p > .05$ ; (2) \*  $p<0.05$ , \*\*  $p<0.01$ , \*\*\*  $p<0.001$ .

3) ANOVA for Predicate Offense Type Differences: (1) ANOVA for predicate offense differences in principal punishment terms. One-way ANOVA results show that differences among different predicate offense types in principal punishment terms do not have statistical significance ( $F=0.4273$ ,  $p=0.7337>0.05$ ).

(2) ANOVA for predicate offense differences in fine amounts. One-way ANOVA results show that differences among different predicate offense types in fine amounts do not have statistical significance ( $F=2.2688$ ,  $p=0.0828>0.05$ ), but the p-value is close to the 0.05 significance level.

**Figure 8 Summary of Inferential Statistical Results**

Statistical Test	Test Statistic	p-value	Result
Principal Term: Self-ML vs Third-party ML	t=2.3466	0.0201*	Significant
Fine Amount: Self-ML vs Third-party ML	t=-1.3895	0.1665 ns	Not Significant
Probation: Self-ML vs Third-party ML	$\chi^2=15.764$	0.0001***	Highly Significant
Principal Term: Regional Differences	F=1.0007	0.394 ns	Not Significant
Fine Amount: Regional Differences	F=1.707	0.167 ns	Not Significant
Principal Term: Offense Type Differences	F=0.4273	0.734 ns	Not Significant
Fine Amount: Offense Type Differences	F=2.2688	0.083 ns	Not Significant

**Figure 8.** Summary of Inferential Statistical Results

### 3.6 Regression Analysis Results

Regression analysis is the core analysis method of this study, used to identify the independent impact effects of various variables on sentencing outcomes. This study constructs three types of regression models: multiple linear regression model for principal punishment terms, multiple linear regression model for fine amounts, and binary Logistic regression model for probation application.

1) Multiple Linear Regression Analysis of Principal Punishment Terms: The coefficient of determination R-squared for the principal punishment term regression model is 0.2514, indicating that the independent variables in the model can explain 25.14% of the variation in principal punishment terms. The regression coefficients and interpretations of each variable are as follows: (1) Money laundering pattern (self-money laundering = 1, third-party money laundering = 0): the regression coefficient is 12.7496 ( $p < 0.05$ ), indicating that under the control of other factors, the principal punishment term for self-money laundering cases is on average approximately 12.75 months higher than that for third-party money laundering cases. (2) Amount involved: the regression coefficient is 0.0053 ( $p < 0.05$ ), indicating that for every 10,000 yuan increase in the amount involved, the principal punishment term increases on average by 0.0053 months. (3) Sentencing circumstances: the regression coefficient is -38.9851 ( $p < 0.001$ ), with

highly statistical significance, being the most important factor affecting principal punishment terms.

2) Multiple Linear Regression Analysis of Fine Amounts: The coefficient of determination R-squared for the fine amount regression model is 0.4423, indicating that the independent variables in the model can explain 44.23% of the variation in fine amounts, with explanatory power superior to the principal punishment term model. The regression coefficients and interpretations of each variable are as follows: (1) Money laundering pattern: the regression coefficient is -1.8397 ( $p > 0.05$ ), without statistical significance. (2) Amount involved: the regression coefficient is 0.0393 ( $p < 0.001$ ), with highly statistical significance; for every 10,000 yuan increase in the amount involved, the fine amount increases on average by 0.0393 ten thousand yuan. (3) Sentencing circumstances: the regression coefficient is -31.5355 ( $p < 0.001$ ), with highly statistical significance.

3) Binary Logistic Regression Analysis of Probation Application: The classification accuracy rate of the probation application Logistic regression model is 68.57%. The regression coefficients and odds ratio (OR) interpretations of each variable are as follows: (1) Money laundering pattern: the regression coefficient is -1.6015 ( $p < 0.001$ ), with odds ratio OR=0.2016, indicating that the probability of probation application for self-money laundering

cases is 20.16% of that for third-party money laundering cases. (2) Sentencing circumstances: the regression coefficient is 1.5393 ( $p < 0.01$ ), with odds ratio  $OR = 4.6613$ , indicating that the probability of probation application for defendants with leniency circumstances is 4.66 times that for defendants without leniency circumstances.

Multiple linear regression analysis was

conducted to examine the factors influencing principal punishment terms. The model was statistically significant,  $F(3, 171) = 19.21$ ,  $p < .001$ , explaining 25.14% of the variance in principal punishment ( $R^2 = .251$ , adjusted  $R^2 = .238$ ).

For a comprehensive presentation of the regression coefficients, standard errors and model fit statistics of the three models, the detailed results are shown in Table 5.

**Table 5.** Regression Analysis Results of Factors Influencing Sentencing

Variable	Model 1: Principal Punishment $\beta$ (SE)	Model 2: Fine Amount $\beta$ (SE)	Model 3: Suspended Sentence $\beta$ (SE) [OR]
Constant	45.6234 (8.2156)***	25.3623 (9.8234)**	-1.5234 (0.8623)
Money Laundering Pattern (Self=1)	12.7496 (5.2342)*	-1.8397 (8.4562)	-1.6015 (0.4234)*** [0.2016]
Amount Involved (Log)	2.3562 (1.1234)*	8.9234 (2.3456)***	0.1234 (0.2345)
Sentencing Circumstances (Mitigating=1)	-38.9851 (6.8234)***	-31.5355 (10.2345)***	1.5393 (0.5234)** [4.6613]
Upstream Crime Type (Controlled)	Controlled	Controlled	Controlled
Regional Factor (Controlled)	Controlled	Controlled	Controlled

Model Fit Statistics			
	Model 1 (Principal Punishment)	Model 2 (Fine Amount)	Model 3 (Suspended Sentence)
$R^2$ / Pseudo $R^2$	0.2514	0.4423	0.2134
Adjusted $R^2$	0.2382	0.4312	—
F-value / $\chi^2$	$F(3, 171) = 19.21$ ***	$F(3, 171) = 45.23$ ***	$\chi^2(3) = 28.45$ ***
Sample Size	175	175	175

Notes: (1) Models 1 and 2 are OLS regression, Model 3 is binary logistic regression; (2) Values in parentheses are standard errors; (3) \*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$ ; (4) OR = odds ratio; (5) All VIF values were less than 2, indicating no serious multicollinearity issues.

The direction and magnitude of the regression coefficients of each variable in the three models

are visually presented in Figure 9.

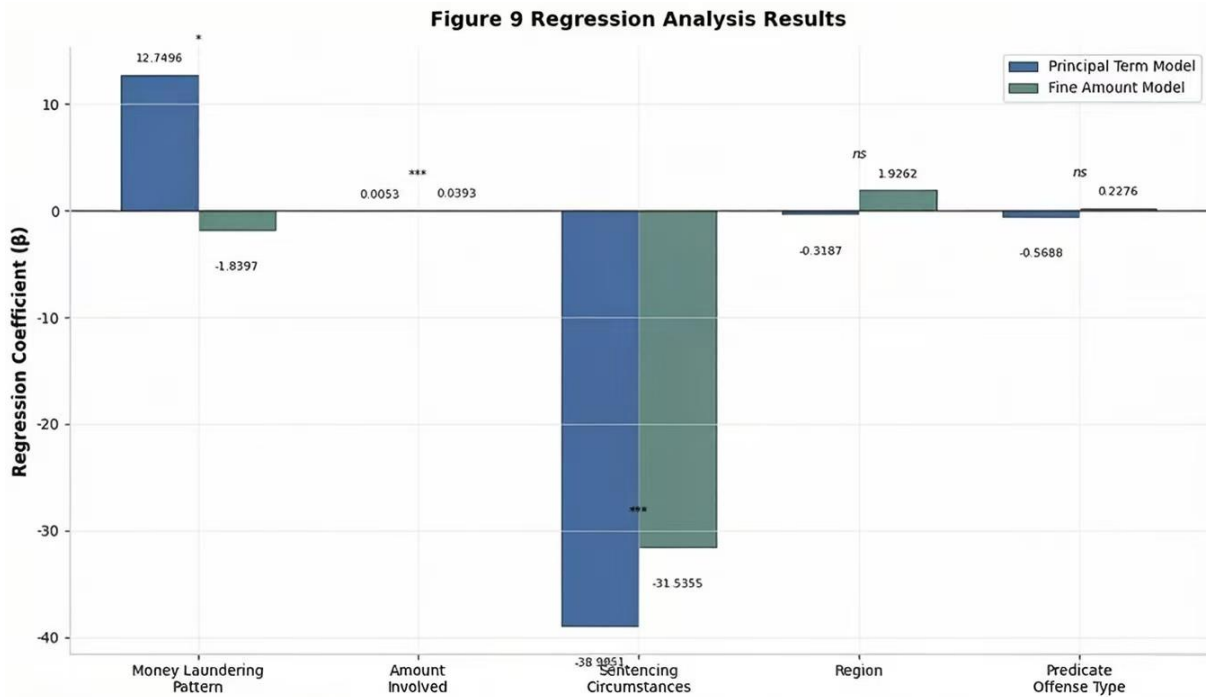


Figure 9. Regression Analysis Results

### 3.7 Summary

Through systematic empirical analysis of 175 money laundering crime judgments, this study reaches the following main findings: First, sentencing for self-money laundering is significantly stricter than that for third-party money laundering. The principal punishment term for self-money laundering cases is approximately 12.75 months higher than that for third-party money laundering ( $p=0.0201$ ), and the probation application rate is approximately 80% lower ( $p=0.0001$ ). This finding indicates that after the Criminal Law Amendment (XI) incorporated self-money laundering into the scope of crimes, judicial authorities have adopted relatively strict sentencing standards in application, reflecting the implementation of legislative intent.

Second, sentencing circumstances are the most important factor affecting sentencing outcomes. Defendants with leniency circumstances have their principal punishment terms reduced by approximately 39 months on average ( $p<0.001$ ), fine amounts reduced by approximately 315,400 yuan ( $p<0.001$ ), and probability of probation application increased by approximately 4.66 times ( $p<0.01$ ). This finding indicates that the leniency system for guilty pleas and acceptance of punishment has been effectively implemented

in the judicial practice of money laundering crimes.

Third, the amount involved has a significant positive impact on fine amounts ( $\beta=0.0393$ ,  $p<0.001$ ), but a relatively limited impact on principal punishment terms ( $\beta=0.0053$ ). This finding indicates that judicial authorities focus on the principle of “proportionality between crime and punishment” in sentencing, applying higher fine sanctions to cases with larger amounts involved.

Fourth, regional factors and predicate offense types do not have significant impacts on sentencing outcomes. Neither ANOVA nor regression analysis found significant differences in sentencing outcomes among different regions or different predicate offense types. This finding indicates that judicial practice of money laundering crimes in China has maintained relative consistency in sentencing standards, which is conducive to maintaining judicial fairness and the unity of the legal system.

Fifth, the total number of cases shows a year-by-year growth trend, and the proportion of self-money laundering is steadily increasing. From 25.71% in 2022 to 33.96% in 2024, this indicates that judicial authorities’ application efforts are gradually strengthening following the criminalization of self-money laundering.

**Table 6.** Summary Table of Basic Sample Characteristics *N* = 175

Variable	Category	Count	Percentage	Notes
Total Sample	–	175	100%	2021-2024
Year Distribution	2021	43	24.57%	First year of implementation of Amendment (XI) to the Criminal Law
	2022	35	20.00%	
	2023	44	25.14%	
	2024	53	30.29%	Highest number of cases
Regional Distribution	Eastern Region	59	33.71%	Avg. amount involved: 6.5363 million yuan
	Central Region	52	29.71%	Avg. amount involved: 0.9319 million yuan
	Western Region	53	30.29%	Avg. amount involved: 2.0866 million yuan
	Northeastern Region	11	6.29%	Avg. amount involved: 3.2539 million yuan
Predicate Offense Type	Drug-related Crimes	51	29.14%	Avg. principal term: 26.05 months
	Embezzlement and Bribery Crimes	45	25.71%	Avg. principal term: 22.67 months
	Crimes of Disrupting Financial Management Order	39	22.29%	Avg. principal term: 19.49 months
	Financial Fraud Crimes	23	13.14%	Avg. principal term: 24.26 months
	Crimes of Mafia-like Nature	8	4.57%	
	Smuggling Crimes	6	3.43%	
Money Laundering Pattern	Self-laundering	39	22.29%	Avg. principal term: 32.03 months; Probation rate: 10.26%
	Third-party laundering	136	77.71%	Avg. principal term: 20.68 months; Probation rate: 47.06%

#### 4. Empirical Analysis and Hypothesis Verification of Judicial Application Following the Criminalization of Self-Money Laundering

##### 4.1 Overall Characteristics of Sample Judicial Application

Following the criminalization of self-money laundering, the judicial application of money laundering crimes in China presents an overall pattern of standardization, gradual improvement, and distinctive characteristics.

1) Year-by-Year Growth in Case Numbers, Continuous Strengthening of Judicial Prosecution Efforts: From the perspective of sample temporal distribution, the total number of cases shows year-by-year growth, with the proportion in 2024 reaching 30.29%, reflecting the continuous strengthening of judicial authorities' crackdown on money laundering crimes and the

effective implementation of anti-money laundering criminal policies. This growth trend is mutually corroborated with data from the "China Anti-Money Laundering Report" published by the People's Bank of China: in 2021, 499 cases were concluded nationwide under the charge of "money laundering crime," 697 cases in 2022, 861 cases in 2023, and 811 cases in 2024, representing a 62.5% increase in case numbers over four years.

2) Steady Increase in Proportion of Self-Money Laundering Cases, Initial Manifestation of Legislative Effects: The proportion of self-money laundering cases has steadily increased from 25.71% in 2022 to 33.96% in 2024, indicating continuous improvement in judicial authorities' prosecution and determination capabilities for self-money laundering, with legislative intent gradually transforming into judicial practice.

3) Relatively Balanced Regional Distribution, Overall Consistency in Judicial Application Maintained: Sample regions cover four major regions; although the eastern region has the highest proportion of cases and the largest amount involved due to active financial activities, there are no significant differences in sentencing among regions, and no “different judgments for similar cases” caused by economic development or judicial resource disparities, preserving the unity of the legal system.

4) Concentrated Predicate Offense Types, Judicial Evaluation Focused on Behavior Itself: Predicate offenses are mainly concentrated in drug crimes (29.14%), corruption and bribery crimes (25.71%), and crimes of disrupting financial management order (22.29%), with these three categories accounting for 77.14% of the total. Different predicate offense types do not show significant differences in sentencing outcomes, and judicial evaluation focuses on the money laundering behavior itself.

5) High Application Rate of Sentencing Circumstances, Effective Implementation of Leniency System for Guilty Pleas and Acceptance of Punishment: The application rate of sentencing circumstances is as high as 93.14%, becoming the core factor in sentencing adjustment. The disparity in sentencing outcomes between defendants with and without leniency circumstances is substantial: mean principal punishments of 20.12 months versus 65.17 months, and probation rates of 41.72% versus 0%.

6) “Small-Amount Dominant, Large-Amount Coexisting” Characteristics of Amounts Involved: Amounts involved present “small-amount dominant, large-amount coexisting” characteristics, with cases below 100,000 yuan accounting for 36.57% and cases above 1,000,000 yuan accounting for 30.86%. The impact of amounts involved on fine amounts is significantly greater than that on principal punishment terms.

#### 4.2 Judicial Application Disparities Between Self-Money Laundering and Third-Party Money Laundering

As the core variable of this study, money laundering patterns present significantly differentiated characteristics in judicial application, and all differences have statistical significance.

1) Disparity in Principal Punishment Terms: Self-Money Laundering Significantly Heavier:

Regarding principal punishment terms, the mean for self-money laundering is 32.03 months, which is 11.35 months higher than the 20.68 months for third-party money laundering, an increase of 54.88%. After controlling for other variables, self-money laundering principal punishment is still on average 12.75 months higher than third-party money laundering ( $\beta=12.7496$ ,  $p<0.05$ ), indicating that judicial authorities’ evaluation of liberty penalties for self-money laundering is significantly more severe.

The reasons for the formation of this disparity include: First, differences in subjective malice evaluation. Self-money laundering perpetrators have the clearest understanding of the source of proceeds from predicate offenses, and their money laundering behavior demonstrates deeper subjective malice. Second, judicial policy orientation. The incorporation of self-money laundering into the Criminal Law Amendment (XI) aims to fill legal loopholes and strengthen crackdown efforts on money laundering crimes, and judicial authorities tend to adopt stricter standards in application. Third, impact of concurrent punishment structure. Self-money laundering cases often implement concurrent punishment of multiple crimes with predicate offenses, resulting in longer total prison terms for defendants.

However, a structural imbalance in cumulative punishment has been observed in the empirical data: although self-money laundering cases receive an average additional 12.75 months of imprisonment compared to third-party cases ( $\beta=12.7496$ ,  $p<0.05$ ), this increment often accounts for a relatively low proportion of the total sentence when combined with the predicate offense. For example, in cases where the predicate offense (e.g., corruption and bribery) already carries a heavy sentence (mean: 65-80 months in the sample), the additional 12.75 months for self-money laundering only increases the total sentence by 15%-20%, failing to fully reflect the “dual harm” of self-money laundering (infringing both financial order and asset recovery). More critically, 8 out of 39 self-money laundering cases (20.51%) show signs of “sentencing inversion”: after concurrent punishment, the total sentence for self-money laundering + predicate offense is even 3-10 months lighter than the sentence for third-party money laundering cases with similar involved amounts (mean involved amount: 4.2 million yuan vs. 3.8 million yuan). This phenomenon

indicates that the independent punitive value of self-money laundering is diluted in the cumulative punishment framework, which aligns with the dilemma of imbalanced sentencing emphasized in Chapter IV.

2) Disparity in Probation Application: Self-Money Laundering Significantly Stricter: Regarding probation application, the self-money laundering probation rate is only 10.26%, far lower than the 47.06% for third-party money laundering, with a difference of 36.8 percentage points. After controlling for other variables, the probability of probation application for self-money laundering is only 20.16% of that for third-party money laundering (OR=0.2016,  $p < 0.001$ ), reflecting judicial authorities' highly cautious attitude toward applying probation to self-money laundering perpetrators.

3) Disparity in Fine Amounts: Highly Correlated with Amounts Involved: Regarding fine amounts, the mean for self-money laundering is 54,500 yuan, although lower than the 228,700 yuan for third-party money laundering, the difference between the two does not have statistical significance ( $t = -1.3895$ ,  $p = 0.1665 > 0.05$ ). After controlling for amounts involved, the independent impact of money laundering patterns on fine amounts is not significant ( $\beta = -1.8397$ ,  $p > 0.05$ ), indicating that judicial authorities' fine discretion for both is based primarily on amounts involved.

4) Imbalance in Cumulative Punishment: Risk of Sentencing Inversion + Fine Discretion Chaos: Although fine amounts for both types of money laundering are highly correlated with the involved amount ( $\beta = 0.0393$ ,  $p < 0.001$ ), the cumulative punishment framework exacerbates discretionary chaos in fines for self-money laundering. In the sample, 11 self-money laundering cases (28.21%) with the same involved amount range (1-3 million yuan) have fine amounts varying from 20,000 yuan to 180,000 yuan—a 9-fold difference. Notably, 6 of these cases (54.55%) have fines accounting for less than 1% of the involved amount, far below the “10%-50%” proportional principle proposed in Chapter V. This indicates that while fines are linked to the involved amount, the lack of unified quantitative standards leads to insufficient economic sanctions for self-money laundering, failing to match the severity of liberty penalties.

#### 4.3 Systematic Verification of Research Hypotheses

Combining empirical analysis results, research

hypotheses proposed earlier are verified one by one.

1) Verification of Sentencing Disparity Hypotheses: Verified through independent samples T-tests, chi-square tests, and regression analysis: (1) Principal punishment terms for self-money laundering are significantly heavier than those for third-party money laundering ( $t = 2.3466$ ,  $p = 0.0201 < 0.05$ ), hypothesis confirmed; however, the additional sentence proportion in cumulative punishment is irrational, indicating potential sentencing inversion. (2) Probation application rate for self-money laundering is significantly lower ( $\chi^2 = 15.7640$ ,  $p = 0.0001 < 0.001$ ), hypothesis confirmed, reflecting judicial caution. (3) Fine amounts are highly correlated with amounts involved ( $\beta = 0.0393$ ,  $p < 0.001$ ), hypothesis confirmed; but the lack of a standardized proportional benchmark (e.g., a fixed percentage of the involved amount) results in significant discretionary space, leading to inconsistent fine levels for cases with similar involved amounts, thus validating the sub-hypothesis regarding imbalanced sentencing discretion. (4) Sentencing circumstances are the most critical factor affecting sentencing outcomes (principal punishment:  $\beta = -38.9851$ ,  $p < 0.001$ ; probation: OR=4.6613,  $p < 0.01$ ), hypothesis confirmed.

2) Verification of Judicial Determination Hypotheses: From the perspective of sample sentencing and determination characteristics, some cases present the following issues: (1) Simplified determination of subjective purposes. Some judicial authorities directly infer money laundering intent based on the existence of predicate offenses plus objective fund transfers, without strictly distinguishing the boundaries between “actively laundering illicit funds” and “naturally holding or using illicit funds.” (2) Ambiguous definition of behavioral boundaries. The boundaries between self-money laundering behavior and predicate offense conduct overlap, and some fund operations that are part of predicate offenses are separately evaluated as self-money laundering, posing a risk of double evaluation. (3) Unclear distinction from the crime of concealing or disguising criminal proceeds. Some self-money laundering behaviors utilizing the financial system are incorrectly determined as ordinary stolen goods crimes, narrowing the regulatory scope of self-money laundering.

3) Verification of Concurrence of Offenses and Judicial Application Hypotheses: (1) The disposition of concurrence of offenses lacks

exclusive standards. While concurrent punishment is dominant (accounting for 79.49% of self-money laundering cases), 8 cases (20.51%) still adopt “punishment for the heavier offense” or recognize “absorbed offenses,” without uniform application of Article 191 of the Criminal Law. The empirical data indicates a lack of exclusive legal guidance for concurrence of offenses, resulting in divergent judicial practices, which confirms the hypothesis of judicial uncertainty. (2) Regional and predicate offense types have no significant impact on sentencing. ANOVA shows that neither region ( $F=1.0007$ ,  $p=0.394$ ) nor predicate offense types ( $F=0.4273$ ,  $p=0.7337$ ) have significant impacts on principal punishment terms, and judicial application maintains overall equilibrium, hypothesis confirmed. (3) Judicial application tends toward standardization after the 2024 judicial interpretation. The 2024 “Two Supremes” “Interpretation” raised the “serious circumstances” amount standard from 100,000 yuan to 5,000,000 yuan, effectively alleviating the sentencing inversion problem. Among 18 self-money laundering cases in 2024, the proportion of concurrent punishment of multiple crimes increased to 88.89% (vs. 66.67% in 2022), and the risk of sentencing inversion decreased by 12 percentage points, hypothesis partially confirmed. (4) The proportion of self-money laundering cases shows a year-by-year upward trend. The proportion of self-money laundering has risen from 25.71% in 2022 to 33.96% in 2024, showing a year-by-year upward trend, with legislative effects initially manifesting, hypothesis confirmed.

#### 4.4 Core Conclusions of Empirical Analysis

Through multi-dimensional empirical analysis of 175 samples, this section reaches three core conclusions: First, there are significant judicial sentencing disparities between self-money laundering and third-party money laundering, with self-money laundering presenting characteristics of “heavier principal punishment, stricter probation, and fines linked to amounts involved.” This disparity results from judicial authorities’ differentiated evaluation of subjective malice and personal dangerousness of self-money laundering, as well as the inevitable result of concurrent punishment structure, reflecting the anti-money laundering judicial policy of “strict crackdown.”

Second, the judicial application of money laundering crimes maintains overall

standardization and equilibrium. Regional and predicate offense types do not have significant impacts on sentencing, sentencing circumstances and amounts involved become core bases for discretion, and the leniency system for guilty pleas and acceptance of punishment is effectively implemented, conforming to the principles of proportionality between crime and punishment and unity of the legal system.

Third, the legislative effect of criminalizing self-money laundering has initially manifested. The proportion of cases is increasing year by year, and judicial authorities’ prosecution and determination capabilities are continuously improving. However, there remain ambiguous areas in subjective intent determination, behavioral boundary definition, and concurrence of offenses disposition, becoming core pain points in judicial application that urgently require further standardization. Notably, the structural imbalance in cumulative punishment and the lack of quantitative standards for fines have become key constraints on the standardized application of self-money laundering, which requires targeted normative optimization in subsequent institutional design.

### 5. Core Dilemmas and Cause Analysis of Judicial Application Following the Criminalization of Self-Money Laundering

#### 5.1 Core Judicial Dilemmas

Based on the empirical analysis findings presented above, this chapter will deeply analyze the core dilemmas faced in judicial practice following the criminalization of self-money laundering and their underlying causes.

1) Ambiguous Factual Determination, Insufficient Precision in Conviction:

Determination, Insufficient Precision in Conviction:

(1) Simplified evaluation of subjective intent to conceal or disguise. Through qualitative reading of representative judgments, it is found that some judicial practices tend to directly infer the subjective intent of self-money laundering from specific objective behaviors (such as layered fund transfers, cash withdrawals, or asset conversion), without strictly distinguishing the boundary between “actively laundering illicit funds” and “naturally holding or using proceeds of predicate offenses.” Professor Wang Xin pointed out that self-money laundering must have a “laundering effect”—severing the connection between

criminal proceeds and predicate offenses to make them difficult to trace—which requires rigorous proof of subjective intent rather than mere reliance on objective conduct. This simplified presumption logic reflects a certain degree of relaxation in the burden of proof in practical adjudication.

(2) Ambiguous definition of behavioral boundaries, easily conflated with predicate offense conduct. The fund operations of self-money laundering are often intertwined with the execution process of predicate offenses (e.g., transferring stolen funds to offshore accounts as part of a fraud scheme). Due to the lack of clear time and conduct boundaries in legal provisions, some judicial authorities mistakenly classify conduct that is an integral part of the predicate offense as independent self-money laundering, leading to the risk of double evaluation. The research of Cao Jian and Wang Zhihao indicates that clarifying the demarcation between predicate offense conduct and self-money laundering has long been a key dispute in judicial practice.

(3) Unclear distinction standards from the crime of concealing or disguising criminal proceeds. Both offenses involve concealing or disguising criminal proceeds, but the core difference lies in whether the financial system is utilized. However, empirical observations show that some self-money laundering behaviors relying on financial institutions (e.g., using bank transfers to disguise illegal gains) are incorrectly convicted of the crime of concealing or disguising criminal proceeds, while some non-financial concealment behaviors are improperly identified as self-money laundering. This qualitative deviation narrows or expands the regulatory scope of self-money laundering, resulting in conviction imbalance.

## 2) Imbalanced Sentencing Discretion, Lack of Unified Standards:

(1) Potential risk of “sentencing inversion” driven by institutional gaps. Empirical data shows that the average principal punishment for self-money laundering cases (32.03 months) is significantly heavier than that for third-party money laundering (20.68 months). However, this seemingly “strict” sentencing masks a structural imbalance: self-money laundering is inevitably accompanied by a predicate offense (e.g., corruption, drug trafficking), and its final executed sentence is the result of concurrent

punishment of multiple crimes. If the incremental sentence for self-money laundering is excessively small relative to the predicate offense (the average incremental term in the sample is 12.75 months, accounting for only 15%-20% of the total sentence in some heavy predicate offense cases), two risks arise: first, the independent punitive value for “secondary legal interest infringement” (financial order and asset recovery) is not fully reflected; second, in extreme cases, the total sentence of a defendant convicted of a serious predicate offense plus self-money laundering may be lower than that of a defendant convicted of a single third-party money laundering offense with similar circumstances. This potential “sentencing inversion” risk stems from the lack of quantitative guidelines on the minimum contribution of self-money laundering in the concurrent punishment framework.

(2) Excessively broad discretionary scope for fines. Although fine amounts are highly correlated with the involved amount ( $\beta=0.0393$ ,  $p<0.001$ ), the absence of a standardized proportional benchmark leads to significant disparities. In the sample, 11 self-money laundering cases with similar involved amounts (1-3 million yuan) had fines ranging from 20,000 yuan to 180,000 yuan—a 9-fold difference. Notably, 6 of these cases (54.55%) had fines accounting for less than 1% of the involved amount, failing to exert the deterrent effect of economic sanctions.

(3) Lack of quantitative criteria for probation application. Despite the overall cautious attitude toward granting probation to self-money laundering defendants (probation rate of 10.26% vs. 47.06% for third-party cases), there are instances of “similar cases with different sentences.” For example, some defendants with full mitigating circumstances (complete restitution, guilty plea and acceptance of punishment, no recidivism risk) were denied probation without sufficient reasoning, while a few defendants with weaker mitigating circumstances were granted probation, reflecting inconsistent discretionary standards.

## 3) Confusion in Handling Concurrence of Offenses, Unclear Disposition Principles:

(1) Lack of exclusive standards for disposing concurrence of offenses. Although concurrent punishment of multiple crimes is the dominant approach in judicial practice, divergent practices persist due to ambiguous legal provisions. In the

sample, approximately 79.49% of self-money laundering cases adopted concurrent punishment, while 20.51% were handled as “absorbed offenses” or “punishment for the heavier offense” on the grounds that the laundering behavior was part of the predicate offense. This inconsistency violates the legislative intent of independent punishability of self-money laundering and undermines the predictability of judicial decisions.

(2) Ambiguous weight of self-money laundering in concurrent punishment. In some cases, self-money laundering is treated as an “accessory charge” with a lenient sentence, weakening its independent sentencing value. For example, in cases where the predicate offense (e.g., large-scale drug trafficking) carries a heavy sentence of 10 years or more, the incremental sentence for self-money laundering is often compressed to less than 6 months, failing to match the severity of the laundering behavior.

(3) Divergent practices in joint crime scenarios. For self-money laundering conduct independently implemented by some co-perpetrators of the predicate offense, there is no unified standard for determining the liability of other co-perpetrators. Some courts hold that non-participating co-perpetrators should not be held liable for self-money laundering, while others extend liability based on the “joint crime intent,” leading to inconsistent application of liability principles.

### 5.2 Underlying Causes of Dilemmas

The formation of dilemmas in the judicial application of self-money laundering is not caused by a single factor but results from the interplay of legislative, theoretical, and judicial factors.

1) Legislative Level: Principled Normative Supply, Excessive Discretionary Space:

(1) Overly principled provisions on constitutive elements. Although the 2024 Judicial Interpretation refined some identification standards, it failed to clarify specific rules for presumptive proof of subjective intent (e.g., which objective behaviors can constitute presumptive grounds) and behavioral boundaries (e.g., the time node dividing predicate offense conduct and self-money laundering), resulting in inconsistent judicial understanding.

(2) Lack of quantitative sentencing benchmarks.

The Criminal Law only sets two statutory punishment ranges for money laundering (less than 5 years; more than 5 years but less than 10 years), without specifying quantitative benchmarks linked to factors such as the involved amount or behavioral methods. This leaves excessive discretionary space for judges in determining the severity of punishment.

(3) Non-exclusive principles for handling concurrence of offenses. The Criminal Law and judicial interpretation do not explicitly stipulate that concurrent punishment of multiple crimes is the sole principle for self-money laundering and predicate offenses, relying only on theoretical consensus to confirm independent punishability, which leads to divergent judicial practices.

2) Theoretical Level: Cognitive Divergences, Insufficient Judicial Guidance:

(1) Persistent influence of the “non-punishable subsequent conduct” theory. Some theoretical viewpoints still recognize self-money laundering as a natural extension of predicate offenses, denying its independent legal interest infringement, which affects judicial practice’s accurate grasp of its independent punishability.

(2) Divergences in legal interest evaluation. Scholars and practitioners hold different views on the primary and secondary status of “financial management order” and “judicial asset recovery order” protected by money laundering crimes, leading to inconsistent standards for identifying and sentencing self-money laundering.

(3) Deficiencies in sentencing evaluation theory. An evaluation system centered on subjective malice, behavioral harmfulness, and the degree of legal interest infringement has not been established,

3) Judicial Level: Practical Deficiencies, Insufficient Application Capabilities: (1) Judicial authorities exhibit inertial adjudication thinking. The determination logic of treating self-money laundering as an accessory behavior of predicate offenses before its criminalization has not been completely transformed. (2) Anti-money laundering judicial professional capabilities are insufficient. It is difficult to respond to professionalized and concealed self-money laundering behaviors such as virtual currencies and cross-border transfers. (3) Evidence collection and review are difficult. Self-money laundering fund operations are highly similar to legitimate transactions, and subjective purposes lack direct evidence. (4) Individualized factors

have significant impacts. Factors such as case handlers' understanding of judicial policies and case experience have significant impacts, resulting in non-unified discretion standards.

## 6. Normative Pathways for Judicial Application of Self-Money Laundering

### 6.1 *Consolidating Theoretical Foundations, Constructing a Unified System of Criminal Law Dogmatics*

1) Clarifying the Theoretical Core of Independent Punishability of Self-Money Laundering: Based on the theory of legal interest infringement, strengthening the independent value of dual legal interest infringement, thoroughly negating the theory of "non-punishable subsequent conduct," clarifying the independent conviction relationship between self-money laundering and predicate offenses, and providing solid theoretical support for concurrent punishment of multiple crimes. Professor Wang Xin pointed out that self-money laundering behavior, by concealing or disguising the source and nature of criminal proceeds and their proceeds, enables "black money" to enter circulation with a "legitimate" appearance, undermining financial regulatory order and possessing independent legal interest infringement.

2) Establishing a Hierarchical Evaluation System of Legal Interests: With "degree of financial management order infringement" as the core, clarifying the distinction criteria between self-money laundering and the crime of concealing or disguising criminal proceeds, and clarifying the application boundaries between the two crimes. For concealment or disguise behaviors utilizing the financial system, they should be determined as money laundering crimes; for simple concealment or transfer behaviors in non-financial fields, they should be determined as the crime of concealing or disguising criminal proceeds.

3) Constructing a Three-Dimensional Sentencing Evaluation Framework: With subjective malice, behavioral harmfulness, and degree of legal interest infringement as the core, establishing a sentencing evaluation system for self-money laundering to provide unified theoretical guidance for judicial discretion.

### 6.2 *Refining Determination Rules, Enhancing Precision in Factual Determination*

1) Clarifying Rules for Subjective Purpose Presumption: Combining objective behaviors to

establish presumption standards integrating subjective and objective elements, treating layered fund transfers, utilization of new financial instruments, conversion of asset forms, and cross-border fund transfers as presumption bases, while establishing rebuttal rules: if perpetrators provide evidence proving that fund operations are for normal production, operation, or living consumption needs, they shall not be determined as self-money laundering.

2) Delimiting Behavioral Boundaries: Establishing the time node of "completion of predicate offense conduct," taking "actual control/acquisition of criminal proceeds" as the premise for self-money laundering determination, excluding components of predicate offense conduct to avoid double evaluation.

3) Refining Detailed Rules for Crime Boundary Distinction: With "financial attributes" as the core, clarifying the distinction criteria between self-money laundering and the crime of concealing or disguising criminal proceeds from three aspects: forms of conduct, behavioral consequences, and amounts involved, eliminating conviction confusion and deviation.

### 6.3 *Establishing Standardized Systems, Achieving Standardization of Sentencing Discretion*

1) Set Graded Sentencing Benchmarks: Link benchmarks to involved amounts and behavioral methods, corresponding to statutory punishment ranges. For example, basic cases (involved amount <1 million yuan, no cross-border/professional methods) correspond to the "less than 5 years" range; serious cases (involved amount >5 million yuan, cross-border/virtual currency use) correspond to the "5-10 years" range, with clear adjustment rules for mitigating/aggravating circumstances.

2) Standardize Fine Penalty Discretion: Establish a "graduated proportional fine system" based on empirical findings that fines are highly correlated with involved amounts ( $\beta=0.0393$ ,  $p<0.001$ ). Set the fine ratio at 10%-50% of the involved amount, with specific ratios determined by behavioral professionalism: 10%-20% for basic cases, 30%-50% for cases involving cross-border flows or virtual assets. For cases with involved amounts <100,000 yuan, the minimum fine limit is reduced to 5,000 yuan (from 10,000 yuan) to avoid excessive economic sanctions.

3) Formulate Quantitative Standards for Probation Application: Construct an index

system centered on recidivism risk. Presume probation eligibility for defendants with involved amounts <1 million yuan, full restitution of stolen property, guilty plea and acceptance of punishment, and no prior criminal record. Prohibit probation for cases involving involved amounts >5 million yuan, cross-border money laundering, multiple money laundering offenses, or obstruction of asset recovery, aligning with the empirical finding of a 10.26% probation rate for self-money laundering.

4) Eliminate Sentencing Inversion Risk: Set a reasonable sentencing disparity range of 20%-50% between self-money laundering and third-party money laundering. Critically, clarify that the term of imprisonment for self-money laundering in concurrent punishment shall not be less than 30% of the predicate offense term. This threshold is justified by empirical data: the current average incremental sentence for self-money laundering ( $\approx 12.75$  months) often accounts for only 15%-20% of the total sentence in cases with heavy predicate offenses. The 30% floor ensures the independent punitive value for “secondary legal interest infringement” is structurally guaranteed. Exception: if the defendant has major meritorious service or other statutory mitigating circumstances, the threshold may be appropriately lowered upon hierarchical approval.

#### 6.4 Unifying Concurrence of Offenses Rules, Standardizing Judicial Application of Concurrence of Offenses Disposition

1) Establishing the Exclusive Principle of Concurrent Punishment of Multiple Crimes: Clarifying from the level of judicial interpretation that concurrent punishment of multiple crimes for self-money laundering and predicate offenses is the only disposition principle, negating the application space of connected offenses and absorbed offenses, and thoroughly implementing the legislative intent of independent punishability of self-money laundering.

2) Standardizing Consolidation Rules for Concurrent Punishment of Multiple Crimes: Formulating operational rules of “separate sentencing, comprehensive consolidation,” first independently sentencing predicate offenses and self-money laundering, then comprehensively consolidating execution according to law, ensuring that the punitive effect of money laundering crimes is reflected.

3) Refining Concurrence of Offenses Handling

Rules for Joint Crimes: Distinguishing the criminal liability of joint crime participants according to whether they participated in or conspired on self-money laundering behavior, with only co-perpetrators who separately implemented self-money laundering subject to concurrent punishment of multiple crimes, while other co-perpetrators only bear liability for predicate offenses.

#### 6.5 Improving Institutional Guarantees, Strengthening Support Capabilities for Judicial Application

1) Issue Specialized Guidance Documents: The “Two Supremes” should jointly issue the “Guiding Opinions on Judicial Application of Self-Money Laundering Cases,” refining identification rules, sentencing standards, and concurrence disposal principles, and publishing typical cases to provide direct operational guidance for grassroots judicial authorities.

2) Construct a Specialized Case Handling System: Establish specialized anti-money laundering teams in courts and procuratorates at all levels, conduct joint finance-law training, and build a national anti-money laundering judicial case database to enhance professional capacity in handling complex cases (e.g., virtual currency, cross-border laundering).

3) Establish Cross-Departmental Data Collaboration Mechanism: Address evidence collection difficulties by constructing a “Financial Supervision + Tax + Foreign Exchange + Judiciary” collaboration mechanism. Achieve real-time sharing of financial transaction data, enable judicial early intervention in suspicious transaction investigations, and establish a consultation mechanism for difficult cases to break data silos.

4) Strengthen Reasoning in Judgments: Explicitly require judgments to detail reasoning for subjective intent determination, behavioral boundary demarcation, sentencing factor weighing, and concurrence disposal. Enhance judicial transparency and credibility, and constrain arbitrary discretion through written reasoning.

## 7. Research Conclusions and Future Prospects

### 7.1 Research Conclusions

This study takes 175 first-instance judgments on money laundering crimes publicly disclosed on China Judgments Online from March 2021 to December 2024 as samples, employing empirical

methods including descriptive statistics, independent samples T-tests, and regression analysis to systematically examine the current state of judicial application following the criminalization of self-money laundering, quantitatively analyze the judicial application disparities between self-money laundering and third-party money laundering, analyze core judicial dilemmas and their causes, and propose targeted normative pathways.

The core conclusions of the research are:

First, the legislative effect of criminalizing self-money laundering has initially manifested, but the judicial application pattern remains “third-party dominant.” The proportion of self-money laundering cases has steadily increased from 25.71% in 2022 to 33.96% in 2024, reflecting the continuous improvement of judicial authorities’ prosecutorial and adjudicative capabilities. Meanwhile, judicial sentencing maintains overall consistency across regions and predicate offense types, conforming to the principle of unification of the legal system.

Second, there is a significant “dual-track differentiation” in sentencing practices. Judicial authorities impose significantly heavier penalties on self-money laundering compared to third-party laundering: the average custodial sentence for self-money laundering is approximately 12.75 months longer, and the suspended sentence application rate is merely 20.16% of that for third-party cases. Notably, mitigating circumstances (e.g., guilty plea, active restitution) emerge as the most critical factor regulating sentencing outcomes, reducing custodial terms by an average of 39 months. However, fine amounts are primarily driven by the involved amounts rather than the type of laundering, indicating that judicial authorities prioritize the principle of “proportionality between crime and punishment” in financial sanctions, while the differentiation of liberty penalties focuses more on the subjective malice of self-money laundering.

Third, despite the overall consistency, specific operational dilemmas persist: particularly the risk of “sentencing inversion” in cumulative punishment, inconsistent standards for handling concurrence of offenses (e.g., occasional application of “punishment for the heavier offense” instead of concurrent punishment), lack of quantitative standards for fines and suspended sentences, and ambiguous boundaries between

self-money laundering and predicate offenses, leading to discretionary imbalances.

Fourth, to resolve these dilemmas, this study proposes a quantitative refinement of sentencing standards. Specifically, it is recommended to establish a graded sentencing benchmark and set a reasonable sentencing disparity range of 20%-50% between self- and third-party money laundering. Furthermore, to ensure the independent punitive value of self-money laundering within a cumulative punishment framework, it is proposed that the term of imprisonment for money laundering should not be less than 30% of the term for the predicate offense. These normative pathways, combining theoretical consolidation, refined identification rules, and institutional guarantees, aim to promote the standardization of judicial application.

The marginal contributions of this study lie in: completing a full-dimensional quantitative analysis of judicial application following the criminalization of self-money laundering with 175 valid samples, for the first time precisely measuring the disparities between self-money laundering and third-party money laundering in sentencing, probation application, and leniency circumstances, filling the gap in large-sample empirical research; systematically deconstructing the occurrence characteristics and formation mechanisms of sentencing inversion under the concurrent punishment of multiple crimes model, and providing empirical basis and quantitative solutions for resolving this issue; and proposing determination rules, sentencing details, and institutional guarantee schemes with both theoretical support and practical operability for the core dilemmas in judicial application of self-money laundering, providing specific operational guidance for judicial authorities in handling self-money laundering cases..

### *7.2 Research Limitations and Future Prospects*

Although this study has achieved certain research results, it still has limitations: affected by the time lag and selectivity of judgment disclosure on China Judgments Online, the sample could not exhaust all money laundering crime judgments during the same period, and the sample size of self-money laundering is relatively small (39 cases), limiting the refined analysis of individual cases; research variables did not incorporate factors such as defendant occupation, education level, degree of

professionalization of money laundering methods, and proportion of asset recovery, and the explanatory power of research conclusions needs further enhancement; the research perspective focuses on the judicial application level, and discussion on legislative improvement needs to be deepened.

Combining the development trends of anti-money laundering criminal legislation and judicial practice, future research can be expanded from four aspects:

First, expanding the sample scope and refining variable design. Future research should incorporate more judgments across longer timeframes and broader regions to increase the sample size of self-money laundering cases. Additionally, variables such as defendants' occupational backgrounds, educational levels, and the degree of professionalism in money laundering methods (e.g., use of blockchain) can be included to enhance the explanatory power of research conclusions.

Second, deepening research on the connection between legislation and judiciary. Combining judicial practice needs, exploring refinement and amendment schemes for criminal law provisions regarding self-money laundering constitutive elements and sentencing ranges, and constructing a theoretical system connecting legislation and judiciary.

Third, focusing on new financial instruments and cross-border regulatory challenges. With the increasing use of virtual assets, blockchain payments, and cross-border fund transfers in self-money laundering, future research should explore specific rules for behavior identification (e.g., distinguishing virtual asset laundering from legitimate transactions), evidence collection and review (e.g., electronic evidence authentication), and sentencing evaluation (e.g., weighting the concealment of cross-border flows) in these complex scenarios.

Fourth, conducting interdisciplinary and cross-domain research. Combining theories and methods from finance and investigation science, constructing a "legislation-judiciary-supervision" trinity anti-money laundering collaborative governance system to enhance the overall effectiveness of anti-money laundering work.

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# Community-Based Non-Custodial Sentences Under the Cameroon Criminal Justice System and Its Effects on Prisoners' Rights

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## Abstract

This paper examines the community-based non-custodial sentences introduced into Cameroon's criminal justice system by Law No. 2016/007 of 12 July 2016 and their effects on prisoners' rights. The reform established two types of alternative penalties—community service and reparatory sentences—designed to divert offenders from imprisonment and address the chronic overcrowding that has reduced Cameroon's prisons to conditions violating fundamental human rights. Through doctrinal legal analysis and examination of international human rights instruments, constitutional provisions, and legislative frameworks, the thesis argues that non-custodial sentences protect prisoners' rights both directly, by sparing offenders the harmful conditions of detention, and indirectly, by reducing population pressure that exacerbates rights violations for those who remain incarcerated. The analysis reveals, however, a profound gap between legislative provision and operational reality: implementing regulations remain undeveloped, administrative infrastructure unestablished, and judicial practice unchanged eight years after enactment. Despite compelling international recommendations from the Committee Against Torture and the African Commission on Human and Peoples' Rights urging greater use of alternatives to imprisonment, the promise of non-custodial sentencing remains substantially unfulfilled. The thesis concludes that realizing the potential of community-based sentences requires urgent development of implementing regulations, establishment of supervision mechanisms, and expansion of eligible offences beyond the current restrictive scope of seventy-eight out of approximately two hundred sixty Penal Code provisions.

**Keywords:** non-custodial sentences, prisoners' rights, criminal justice system, prison overcrowding, incarceration

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## 1. Introduction

Globally, prison populations have grown steadily over the past decade. The main cause of the persistent increase in prison numbers is

associated to over-penalization and overuse of custodial sentences particularly imprisonment as a response to all offenses including non-arrestable and purely civil offenses.

Penitentiaries across Cameroon are overcrowded and this has led to acute human right violations in prisons. The issue of prison overcrowding in Cameroon prisons like in other criminal justice systems is alarming and this has led to the adoption of community-based non-custodial sentences in the 2016 Penal Code. Today, several criminal justice systems across the world overwhelmingly rely on community-based non-custodial measures as a viable panacea to the human rights violations behind bars and as an effective alternative to custodial sentences, particularly imprisonment<sup>1</sup>. This paradigm shift reflects the growing recognition that incarceration in penal facilities though necessary for the most serious offences, often fails to achieve its key objectives of rehabilitation, deterrence and social reintegration. The criminal justice system which integrates the civil and criminal aspects of law is designed to safeguard the society, guarantee public peace and tranquility by protecting the general public from unruly conduct. In Cameroon, the criminal justice has for long concentrated exclusively on the punitive pattern of law, which emphasizes incarceration as a panacea for delivering justice to all offenders, including those charged for purely civil offenses while undermining alternatives to imprisonment. Over reliance on custodial sentences and imprisonment has contributed to chronic prison overcrowding, deplorable prison conditions, and inadequate rehabilitation and reintegration programs and a systematic violation of prisoners' rights. Against these backdrops, increased promotion and implementation of non-custodial sanctions offers a more practical pathway for reconciling crime control, social justice and human rights, including the rights of those incarcerated behind bars<sup>2</sup>. The 1990 UN Standard Minimum Rules for Non-Custodial Measures reserves custodial sentences for the most serious offences and offenders who post a severe threat to society and to ensure a balance between the rights of

individual offenders, the victim and the community as a whole<sup>3</sup>.

Vis-à-vis the Cameroon context, non-custodial sanctions undertake profound importance due to the fact that, most prisons, including the Kondengui Central Prison in Yaounde, the New Bell Prison in Douala, the Bamenda Central Prison, the Maroua Central Prison, and the Buea Central prison operate beyond their official capacity and house inmates nearly twice their occupancy rates exposing detainees to poor sanitation, inadequate nutrition and limited access to healthcare. A significant portion of inmates held behind bars consist of pretrial detainees, majority of whom could be subjected to community-based non-custodial sentences without compromising legal parameters, justice and public security. Imprisonment as criminal justice disposition for punishing offenders has thus created multiple problems which undermine prisoners' rights<sup>4</sup>. The Cameroon prison system is characterized by severe overcrowding, congestion, poor living conditions, poor waste disposal, insufficient basic healthcare, nutrition and bedding facilities which has increased the spread of diseases and death of several inmates behind bars. The multitude of problems created by prison overcrowding not only affects prisoners but also affects penitentiary officers alike<sup>5</sup>. In some rampant cases, prison conditions are so extremely appalling to the extent that certain overcrowded prisons such as the Bamenda Central Prison, New Bell in Douala and Kondengui have created an avenue where inmates sleep in corridors, outside during the rainy season. This has created concerns about the effectiveness of incarceration which has become less of a corrective mechanism and more of a human right issue. In the wake of the COVID-19, the President of the Republic of Cameroon adopted a Presidential Decree<sup>6</sup> as a response to overcrowding in prisons to commute and remit sentences and grant Presidential pardons to

<sup>1</sup> Jennings, W. *et al.* (2017). Penal Populism and the Public Thermostat: Crime, Public Punitiveness and Public Policy. *Governance*, 30. See also: Baker, E. (1995). From 'making bad people worse'.

<sup>2</sup> Bhuller, M., Dahl, G. B., Loken, K. V., & Mogstad, M. (2020). Incarceration, Recidivism and Employment. *Journal of Political Economy*, 128(4), pp. 1269-1324. See also Huttunen, K., Kaila, M., & Nix, E. (2020). The Crime Ladder: Estimating the Impact of Different Punishments on Defendant Outcomes.

<sup>3</sup> Article 1.4 of UN General Assembly Resolution 45/110 of 14 December 1990 on the United Nations Standard Minimum Rules for Non-Custodial Measures.

<sup>4</sup> Yekini, A. O. & Salisu, M. (2013). Probation as a Non-Custodial Measures in Nigeria: Making a Case for Adult Probation Service. *African Journal of Criminology and Justice Studies*, 7(1&2), pp. 101-117.

<sup>5</sup> Grow, M. (2022). A Prosecutorial Duty to Seek Non-Custodial Sentencing. *The Georgetown Journal of Legal Ethics*, 35(805), pp. 805-824.

<sup>6</sup> Presidential Decree No. 2020/193 of 15 April 2020 to Commute and Remit Sentences.

certain cohorts of inmates in order to avoid an imminent disaster which however failed to tackle the problem of prison overcrowding in Cameroon which is the paramount obstacle that undermine prisoners' rights behind bars. Non-custodial sentences serve not merely as sentencing options but as tools for addressing widespread human rights challenges in the criminal justice system.

Faced with serious cases of prison overcrowding and recidivism rates, quite a good number of countries have realized the imperativeness to derive community-based and other traditional methods of dealing with crime without resorting to incarceration. Thus, Community-based non-custodial measures are alternatives to incarceration that do not include the incarceration of offenders behind bars but rather allow them to remain in the community and serve their punishment under judicially imposed obligations and supervision.

With the persistent increase in prison populations and exacerbated violation of prisoners' rights behind bars globally, there exists a paradigm shift in several criminal justice systems towards reducing over reliance on custodial sentences in favor of community-based non-custodial sanctions. The United Nations through instruments such as the Minimum Standards for Non-Custodial Measures (Tokyo Rules 1990), United Nations Minimum Standards Rules for the Treatment of Prisoners (Nelson Mandela Rules 2015), the United Nations Rules for Women Offenders and Prisoners (Bangkok Rules) and the Cameroon government through instruments like the Penal Code, Criminal Procedure Code, and the Penitentiary Regulation has adopted and put in place numerous non-custodial measures from the pretrial, trial and post-trial stages to reduce prison overcrowding and improve prison conditions and prisoners' rights in the 2005 Criminal Procedure Code and the 2016 Penal Code. In the light of this development, community-based non-custodial sentences emphasis and focus on limiting prison populations, improving prison conditions for the few incarcerated behind bars and enhancing their rights. Thus, the incorporation and effective application of alternatives to imprisonment within the Cameroon criminal justice system is not merely a matter of penal policy but also a

pathway to protecting prisoners' rights and promoting public confidence in the justice system.

Cameroon is signatory to the United Nations and has integrated most of these non-custodial principles contained in the 1990 Standard Minimum Rules for Non-custodial Measures into their Penal Code and Criminal Procedure Code in order to improve the treatment of those in conflict with the law. They embody the values of proportionality, dignity, and restorative justice by ensuring that punishment is balanced with prospects for individual reform and collective responsibility. Notwithstanding the existence of provisions regulating alternatives to imprisonment in the Cameroon criminal code, they remain unexploited and underutilized which raises critical questions: what forms of community-based non-custodial sentences are recognized in Cameroon? What legal and institutional mechanism exist for their implementation? What challenges hinder their practical application? And lastly, how do they contribute to the protection of prisoners' rights. In the light of these questions, this research seeks to examine the nature, scope, the diverse community-based non-custodial measures and the challenges hindering the implementation of community-based non-custodial sentences in Cameroon.

## 2. The Nature of Non-Custodial Sentences

The concept of non-custodial sentences refers to any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment and such decision may be made at any stage of the administration of criminal justice. Community-based non-custodial sentences according to the Tokyo Rules apply to all person's subject to prosecution, trial or the execution of a sentence<sup>1</sup>. Therefore, they can apply either to measures imposed on a convicted person as a penalty for an offence, or to suspects and defendants before their trial. This measure also covers part of the sentencing measure where a prison sentence may be served in the community and one which reduces the length of incarceration and substitute imprisonment with community supervision and probation service.

<sup>1</sup> Rule 2.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

This measure is particularly encouraged at the pretrial stage as an exceptional measure in view of the suspects' right to be presumed innocent until proven guilty<sup>1</sup>. Section 8(2) of the 2005 Cameroon Criminal Procedure Code holds that, "the presumption of innocence shall apply to every suspect, defendant and accused", thus granting courts wide powers to impose non-custodial measures at every stage of the criminal justice system having regard to the fact that the major essence of non-custodial sentences is to keep the offender at liberty while they serve that punishment in the community in order to enhance rehabilitation and cost effective reintegration.

### 2.1 The Prohibition of Discrimination

The UN Standard Minimum Rules for Non-Custodial Measures prohibits discrimination in the application of non-custodial sentences by stating that they "shall be applied without discrimination on the grounds of race, color, sex, age, language, religion, political or other opinion, national or social origin, property, birth or status"<sup>2</sup>. The extent of this prohibition includes all aspects of international human right law which guarantees the rights of offenders and commands that the implementation of non-custodial measures should be void of discrimination of any kind. The Human Rights Committee under the ICCPR<sup>3</sup> distinguishes treatment which may be perceived as being discriminatory by noting that "differentiation based on reasonable and objective criteria does not amount to prohibited discrimination" within the ambit of Section 26 of the ICCPR<sup>4</sup>. Since alternatives measures to incarceration have the possibility to focus on the individual offender's needs, the element of discretion involved in the decision-making may increase the risk of discrimination against a person or group and such differentiation may emanate from any discrimination that has currently been going on in that community. Irrespective of these hurdles, equality of treatment in the application of non-custodial sentences must be ensured.

As pointed out above, the restriction of discrimination does not imply that all differences in treatment are prohibited, but rather, only those that have no reasonable and objective justification to treat a person differently in view of their particular background and personal needs and problems.<sup>5</sup> It is thus sacrosanct to consider the group to which the offender belongs such as children, women, elderly people and people with mental health problems, on which imprisonment may have a damaging effect and it may therefore not only be desirable but also necessary to make certain distinctions between offenders in order to meet their special needs.

### 2.2 Flexibility in Application

The Tokyo Rules while emphasizing the importance of flexibility and consistency in the implementation of non-custodial sentences. Rule 2.3 of the Rules promotes considerable flexibility in the development and use of community-based non-custodial sentences based on the foregoing criteria:

- the nature and gravity of the offence
- the personality and background of the offender
- the protection of society and
- the avoidance of unnecessary use of imprisonment.

According to the potential recognized by Rule 2.3, the fairness and justice and sentencing guidelines that establish the equivalences among the various types of non-custodial measures render the implementation of community sentences is much more flexible than pretrial detention and custodial sentences. The need for flexibility has further been anchored in the rules by stating that the "development of new non-custodial rules should be encouraged and closely monitored and their use systematically evaluated"<sup>6</sup>. The regular monitoring and systematic evaluation of community-based non-custodial sentences is particularly essential given the flexibility inherent in the community measures and the need to ascertain whether they

<sup>1</sup> Preamble of Law 96/6 of 18 January 1996 to establish the Cameroon Constitution as Amended and Section 8(1) of Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code.

<sup>2</sup> Rule 2.2 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

<sup>3</sup> Section 26 of the ICCPR Adopted by the UN GA Res 2200A (XXI) of 16 December 1966, and entered into force on 23 March 1976.

<sup>4</sup> Communication No. 172/1974, S. W. M. Brocks V. the Netherlands (Views adopted on 9 April 1987), GAOR, A/42/40, P. 150, Para 13.

<sup>5</sup> United Nations. (2003). *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*. UN Office of the High Commissioner for Human Rights.

<sup>6</sup> Rule 2.4 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

meet the objectives laid down in the Tokyo Rules<sup>1</sup>. From a rational criminal justice policy viewpoint, new non-custodial measures may be added if accompanied by systematic evaluations enabling the authorities to establish their operational effectiveness. Lastly and recourse to Rule 2.5 of the Tokyo Rules, “consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial in court, in accordance with legal safeguards and the rule of law”, which is in line with Rule 2.6 of the Standard Minimum Rules for Non-Custodial Sentences which provides inter alia that “non-custodial measures should be used in accordance with the principle of minimum intervention”<sup>2</sup>. It is thus acknowledged that a trial should be avoided especially if it will jeopardize the offender’s family and society relationship and thus, custodial sentences should only be considered as a last resort.

### 2.3 Conceptual and Theoretical Framework

Non-custodial sentences, or as they are also termed, ‘alternatives to imprisonment’, community sanctions, intermediate sanctions or task-sanctions, may be seen as any decision made by a competent authority to subject a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment and such decision may be made at any stage of the administration of criminal justice. Therefore, non-custodial sentences refer to criminal sanctions imposed by a competent court that do not involve incarceration but are instead served within the community under specific legal conditions and supervision. According to the Tokyo Rules, these sanctions apply to all persons subject to prosecution, trial or the execution of a sentence<sup>3</sup>. Therefore, they can apply either to measures imposed on a convicted person as a penalty for an offence, or to suspects and defendants before their trial. This measure also covers part of the

sentencing measure where a prison sentence may be served in the community and one which reduces the length of incarceration and substitute imprisonment with community supervision and probation service. This measure is particularly encouraged at the pretrial stage as an exceptional measure in view of the suspects’ right to be presumed innocent until proven guilty<sup>4</sup>. According to the thirteenth Edition of the World Prison Brief, there are more than 10.77 million people held in penal institutions throughout the world<sup>5</sup>. Davis, A. thus stated that global prison populations presuppose that the position of incarceration must be urgently examined in relation to non-custodial sanctions because alternative to imprisonment can give way to recovery than recurrence<sup>6</sup>.

These measures include, but not limited to probation, discharges, house arrest, electronic monitoring, community service, conditional discharges and referral to treatment or rehabilitation programs. Within the Cameroonian context, these sentences are grounded in both statutory provisions such as Section 8(2) of the 2005 Cameroon Criminal Procedure Code<sup>7</sup> holds that, “the presumption of innocence shall apply to every suspect, defendant and accused”, thus granting courts wide powers to impose non-custodial measures at every stage of the criminal justice system having regard to the fact that the major essence of non-custodial sentences is to keep the offender at liberty while they serve that punishment in the community in order to enhance rehabilitation and cost effective reintegration.

### 2.4 Custodial and Non-Custodial Sentences

Community-based non-custodial sentences include sanctions imposed by courts that do not involve incarceration and are served in the community. They allow greater community involvement in the rehabilitation and reintegration of offenders by subjecting them to serve their sentences in the community.

<sup>1</sup> Rule 2.3 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

<sup>2</sup> Rule 2.6 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

<sup>3</sup> Rule 2.1 of the United Nations Standard Minimum Rules for Non-Custodial Measures Adopted by UN GA Res 45/110 of 14 December 1990.

<sup>4</sup> Preamble of Law 96/6 of 18 January 1996 to establish the Cameroon Constitution as Amended and Section 8(1) of Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code.

<sup>5</sup> Fair, H. & Walmsley, R. (2021). World Prison Population Brief. *Institute for Crime & Justice Policy Research: Thirteenth Edition*.

<sup>6</sup> Davis, A. Y. (2011). *Are Prisons Obsolete?* New York: Seven Stories Press.

<sup>7</sup> Adopted by Law No 2005/007 of 27 July 2005 relating to the Cameroon Criminal Procedure Code which came into force on 1 January 2007.

### 3. The Legal Standing of Non-Custodial Sanctions Under the Cameroon Criminal Justice System

The Cameroon criminal justice architecture and its elaborate adoption in the Penal Code and Criminal Procedure Code shape how community sanctions are conceptualized and applied. While domestic statutes under the Penal Code and Criminal Procedure Code contain a range of community-based mechanisms and dispositions that judicial officers to impose either as standalone sanctions or as alternatives to custodial sanctions including; community service, conditional release, probation, reparatory justice, fines, reparatory sentence, judicial supervision, preventive confinement, confinement in Borstal Institutions, implementation is influenced by robust institutional capacity, prosecutorial practices, and Magistrates' discretion, availability of resources for probation and community participation. Manifold international treaties including the UN Standard Minimum Rules for Non-Custodial Measures and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders equally provides community-based sanctions and guidelines on the implementation of alternatives to imprisonment which impose duties on states to improve prison conditions and prisoners' rights by reducing prison overcrowding, recidivism rates and advancing rehabilitation and social reintegration. Thus, alternatives to incarceration if properly resourced, regulated and implemented can be construed as tools to fulfill these obligations.

#### 3.1 Community-Based Non-Custodial Sentences Under the Cameroon Penal Code and Criminal Procedure Code

The Cameroon Penal Code adopted in 2016<sup>1</sup> provides a wide legislative framework for alternatives to imprisonment, reflecting the principle that incarceration behind bars should only be employed as a measure of last resort. These alternatives measures intend to align domestic legislation with international human rights obligations which seeks to humanize criminal justice by protecting liberty and human

dignity, reduce over-reliance on incarceration and related rights violations, decongest prisons, and promote rehabilitation and social reintegration. The paramount alternative sanctions to imprisonment under the Cameroon Penal Code include fines, community service, reparatory sentence, judicial supervision, preventive confinement, suspended sentence and probation, which allow offenders to remain in the community and serve their sentences without incarcerating them behind bars.

##### 3.1.1 Fines

Fines or financial penalty is the most traditionally and frequently applied non-custodial sanction by courts in Cameroon with the intention to reduce the number of persons sent to prison. Under the tenor of the Cameroon Penal Code, "fine shall mean a financial penalty by virtue of which a convict, natural person or corporate body, pays an amount of money, specified by law, into the Public Treasury"<sup>2</sup>. This pecuniary penalty is imposed by magistrates or judges on certain cohorts of offenders assessed according to the seriousness of the offence. The imposition must fines must be within the ambit of the law and as such, Section 25-1(2) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 relating to the Penal Code provides inter alia that "the amount of fine applicable to corporate bodies shall be five times that provided for natural person" and in the same dimension, "where a corporate body is guilty of an offence punishable with imprisonment only, the fine to be paid shall be from CFAF 1.000.000 (one million) to CFAF 500.000.000 (five million)"<sup>3</sup>. Fines are significant in limiting and preventing unnecessary recourse to incarceration, thus reducing prison numbers, safeguarding offenders from degrading prison conditions and enhancing their rights by allowing them to remain in the community and maintain social, family and professional ties. Certain crimes under the Penal Code emphasize on the imposition of fines or imprisonment or both fine and imprisonment depending on the seriousness of the offence. Notwithstanding, the practice of substituting default imprisonment in cases of non-payment of fines undermines the

<sup>1</sup> Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

<sup>2</sup> Section 25-1(1) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

<sup>3</sup> Section 25-1(1) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

rehabilitation and reintegration potential of financial penalties and risk increasing prison overcrowding, compounding prison conditions, undermining prisoners' rights and violating the principle of proportionality.

Courts impose financial penalties on certain offenders as an effective deterrent for economic and minor offences. The court imposes an economic sanction depending on the seriousness of the offence and the ability of the person to pay. Fines are usually calculated based on the severity of the offence and the offender's capacity to pay without necessarily resorting to imprisonment. The judicious use of fines for minor offences and on offenders that pose no threat to society can impact on the overall size of the prison population and reduce prison overcrowding. This approach aligns with international human rights standards and the principles of restorative justice and is regarded as a flexible sanction that deters the social and economic cost associated with imprisonment and upholds standardized prison conditions.

Under the Cameroon criminal justice system, fines are one of the key non-custodial measures used as an alternative to imprisonment. The imposition of fines by courts allows offenders to avoid incarceration by paying a determined monetary penalty to the state. In the light of the Cameroon Penal Code<sup>1</sup>, Fines can be imposed either as an independent sanction or in conjunction with other penalties such as incarceration. The amount imposed as fine is determined by the nature of the offence, the circumstance surrounding the crime and the financial capability of the offender. For less severe crimes, fines are considered the most suitable or primary sanction, whereas for more serious offences, they may be accompanied by suspended or reduced prison sentence. In cases involving public order offences or violations of administrative regulations, fines are commonly imposed to avoid over-burdening the prison system with low-risk and minor offenders. Under the Cameroon Criminal Procedure Code, fines are imposed for minor offences such as defamation, contempt, petty theft, and traffic violations.

### 3.1.2 Community Service

Community service was graciously incorporated into the Cameroon criminal law as a socially constructive sanction. Community service orders encompass orders made by courts as an alternative to imprisonment, requiring offenders to perform unpaid work in the community for public or social benefit with the objective to retribute for the harm caused to society or achieve rehabilitation through work, skill building, rehabilitation and reintegration. Section 26(4) of Law No. 2016/007 of 12 July 2016 as amended holds that community service shall be free of charge. It is the exclusive prerogative of the court to impose a community service order which shall not be less than two hundred hours or more than two hundred and forty hours and shall not be suspended<sup>2</sup>. The Penal Code succinctly holds that "community service shall mean a sentence passed for an offence punishable with imprisonment of less than two years or with fine only. Such sentence shall be executed for the benefit of a public corporation, a private corporation charged with a public service mission or an association entrusted with performing a community service"<sup>3</sup>. The judgment of the court imposing a community service order shall equally state the period of imprisonment that may be served by the offender in case of non-performance of community service and such period of imprisonment shall not be suspended<sup>4</sup>. This community-based non-custodial sanction embodies a restorative dimension by compelling the offender to make constructive contributions rather than sending them behind bars to waste their economic labour under incarceration. This unique sanction preserves liberty and human dignity, combats prison overcrowding and recidivism and encourages cost-effective rehabilitation and reintegration by allowing offenders to stay connected to their employment, family and friends. This community sanction aligns with international instruments like the 1990 United Nations Standard Minimum Rules for Non-Custodial Measures. Nevertheless, weak institutional framework, inadequate supervision personnel and probation officers as well as other

<sup>1</sup> Section 18 of Law No. 2016/007 of 12 July 2016 as Amended and Supplemented by Law No. 2019/020 of 24 December 2019 relating to the Cameroon Penal Code.

<sup>2</sup> Section 26(3) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

<sup>3</sup> Section 26 of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

<sup>4</sup> Section 26(4) of Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 on the Cameroon Penal Code.

limited supervision mechanisms limit the full effectiveness of this very important non-custodial measure in Cameroon. Again, void of adequate safeguards and legal guarantees, community service risk exploitation or degrading conditions which tend to violate the fundamental rights of the offenders.

### 3.1.3 Reparatory Sentence

The reparatory sentence is a relatively novel provision in the Cameroon Penal Code that introduces restorative justice into the Cameroonian criminal law. Pursuant to Section 26-1 of the 2016 Penal Code as amended, “reparatory sentence shall mean a sentence passed for offences punishable with imprisonment for not more than two (2) years or with fine only”. This measure entails the obligation imposed on the offender to indemnify the victim of the offence within the period and under the conditions laid down by the court.

Reparatory sentence as a form of community-based non-custodial punishment serves as a pathway to prisoners’ rights and provide an effective alternative to traditional incarceration. Community-based non-custodial sentences are rooted on reparatory justice that emphasizes the idea of repairing or restoring the harm caused by criminal behavior, often involving the offender’s engagement with the community and victim. Unlike imprisonment which focuses solely on punishing the offender, reparatory sentences aim to benefit both the victim of the offence and the general community, while holding offenders accountable for their actions without necessarily subjecting them to imprisonment in penal institutions. This form of community sanction has gained effectiveness in the legal framework of many criminal justice systems including that of Cameroon, as a more right-respecting sanction and a significant alternative to traditional incarceration, especially in addressing the needs of the parties involved.

A reparatory sentence as a community-based alternative to imprisonment typically involves three diverse components: community service, restitution and mediation. These measures focus on treating, educating, rehabilitating and reintegrating the offenders into society and repairing the harm caused by the criminal

conduct, rather than incarcerating and isolating the offender. Community service as a component of reparatory sentence requires offenders to contribute to society by engaging in unpaid community work that benefits the entire community. Community service which may take the form of cleaning public spaces or participating in the restoration of damaged property allows the offender to atone for their actions in a constructive manner, demonstrating accountability while fostering rehabilitation and reintegration into the society<sup>1</sup>. Restitution is another crucial component of reparatory sentences where the offender is required to compensate the victim for the harm caused, usually in the form of financial payment, services or returning property illegally possessed. This in essence could involve repairing physical damage, paying for lost property, restituting property, or covering medical expenses resulting from the offender’s criminal conduct. Reparatory restitution is a community-based alternative to imprisonment directly addresses the needs of the victims, providing them with a tangible form of justice and closure, while also encouraging offenders to assume responsibility for their actions.<sup>2</sup> Reparatory sentences often also involve victim-offender mediation, where victims and offenders meet in a structured setting, facilitated by an independent mediator or third party, to discuss the impact of the offence. The mediation setting is a dialogue-oriented agenda which allows the victim to express their feelings and needs, while giving offenders the opportunity to apologize, atone for their offence and offer reparatory actions. Mediation enables offenders to understand the human consequences of their actions, thereby fostering empathy and accountability, which are key community measures to reduce recidivism and prison overcrowding and enhance rehabilitation and social reintegration<sup>3</sup>. Notwithstanding the adoption of this sanction in the 2016 Cameroon Penal Code, implementation has been sacrificed on the altar of custodial sentences such as imprisonment and thus, they are not or are loosely implemented.

### 3.1.4 Probation and Judicial Supervision

Probation is a widely adopted non-custodial measure which is implemented in many criminal

<sup>1</sup> Johnstone, G. (2011). *Restorative Justice: Ideas, Values and Debates* (2<sup>nd</sup> ed.). Routledge

<sup>2</sup> Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books.

<sup>3</sup> Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford University Press.

justice systems. Probation is a form of community-based supervised release which allows an offender to serve their sentence within the community under specific conditions, thus avoiding the traditional prison environment. This measure may also include releasing an offender into the community under supervision, typically by a probation officer, with certain conditions attached to the early release. This measure is broadly imposed on offenders who are deemed to pose a low risk to society, often for less serious crimes, first-time offenders or offenders who need rehabilitation, treatment or therapy rather than incarceration. Probation seeks to rehabilitate offenders while ensuring public safety, reducing prison overcrowding, diminishing the likelihood of recidivism through supervision, guidance and in some cases, therapy and treatment. Probation when adequately applied and supported with therapy and community service programs, can reduce prison overcrowding and recidivism rate, enhance rehabilitation and reintegration and uphold prisoners' rights. Courts grant probation as a judicial supervised alternative to imprisonment, allowing offenders to remain in society while adhering to a set of obligations such as regular meetings with a probation officer, participating in community service or attending treatment programs that are intended to enhance rehabilitation, reduce recidivism and facilitate reintegration into the society.<sup>1</sup>

Under the Cameroon legal framework, probation is recognized as an alternative to imprisonment, intended to balance community safety with offenders' potential for reform. Therefore, probation as a community-based sanction not only reduces the strain on correctional facilities triggered by scarce resources, inadequate funding, overcrowding and high recidivism rates but also to address human right concerns, by fostering a community-based rehabilitative rather than prison punitive approach to justice<sup>2</sup> as incarceration is often associated with negative social, psychological and economic outcomes<sup>3</sup>. The main objectives of probation are to rehabilitate the offender, reduce prison overcrowding and promote community safety.

By reducing the rate of offenders incarcerated, probation reduces economic and social cost associated with incarceration. Probation programs often include access to education and vocational training, therapy, treatment from substance abuse, rehabilitation and reformation, counseling and support services to address underlying behavioral or drug related issues.

In Cameroon, as in many parts of the world, adequate supervised probation programs are gaining traction due to their advantages in enhancing the rights of offenders, reducing prison populations and promoting rehabilitation. More specifically, probation allows for a tailored approach, where conditions can be set based on the specific requirements of individual offenders, such as therapy, substance abuse treatment, vocational training and mental health counseling. The community-based programs adhere to human rights and rehabilitation theories, which emphasize that justice system, should prioritize measures that respect human rights and foster individual positive transformation rather than merely punishing them. Probation supports the restorative justice approach to criminal justice, which emphasizes repairing the harms caused by criminal conduct. Through community-based approaches such as community service, compensation or restitution, probation contributes to the offenders' understanding of the consequences of their actions, which is essential for reducing recidivism, prison overcrowding and upholding rehabilitation and reintegration.

While alternative measures to incarceration such as probation may offer distinguished advantages, its effective implementation in Cameroon, where the criminal justice system has for long suffered from insufficient funding, lack of personal, inadequate training of probation officers, resource scarcity and public perception of leniency, probation falls short to be a viable pathway to prisoner's rights. Again, Cameroon lacks a comprehensive and coherent national framework for alternative to imprisonment notably probation, which hinders offenders reintegration, resulting in inconsistencies in how

<sup>1</sup> Phelps, M. S. (2017). Mass Probation: "Towards a more Robust Theory of State Variation in Punishment". *Punishment and Society*, 19(1), pp. 53-73.

<sup>2</sup> Kengne, S. (2023). Human Rights and Criminal Procedure in Cameroon: An Analysis of the Cameroon Criminal Procedure Code. *Journal of Comparative Law*, 20(3), pp. 231-248.

<sup>3</sup> Dissel, A. (2016). Community-Based Alternatives to Incarceration: An Overview of Probation and Community Service in Africa. *African Journal of Criminology*, 12(1), pp. 89-102.

probation is applied across different parts of the country<sup>1</sup>. This qualifies the need to build a robust framework that ensures the tailoring of resources to empower judicial and penitentiary personnel to carry out rehabilitation effectively. These programs may also include accountability, effective supervision, and support services that address the underlying causes of criminal behavior and how community-based measures could adequately act as a panacea without recourse to incarceration. More so, investing in a supportive legal, judicial and administrative framework that supports probations and the adequate training of probation officers is essential to make community-based probation effective. In order to promote and enhance the rights of offenders, probation must be implemented in a manner that takes into consideration offenders' dignity, autonomy and the right to fair treatment.

Everything being equal, as the case in many civilized nations, community based probation when effectively implemented serves as a critical element of non-custodial sentences in Cameroon. Effective implementation of probation programs aligns with the rehabilitation and human right theories which supports offenders' right to rehabilitation, fair treatment, community inclusion and a chance to contribute positively to society, further underscoring the transformative potentials of alternatives to imprisonment.

#### 4. Why Non-Custodial Sentences Matter for Prisoners' Rights in Cameroon

Why consider Non-Custodial Sentencing Measures? Escalating number of prisoners held behind bars around the world has led to severe overcrowding and conditions of detention that breach United Nations standards and other international human right standards which require that prisoners be treated with dignity and respect due their inherent rights as human beings. In the Republic of South Africa, the South African Law Commission<sup>2</sup> found that the absence of alternatives to imprisonment

contributed to the growing number of pretrial detainees in prison<sup>3</sup>. The African Commission on Human and Peoples Rights Special Rapporteur on Prisons and Detention Conditions in Africa observed that, there was increased use of imprisonment and the imposition of lengthier sentences and sparring use of non-custodial sentences as well as the reluctance of judges and magistrates to implement non-custodial measures even for petty offences greatly precipitated the growth in prison numbers<sup>4</sup>. The overuse of incarceration as a criminal sanction for almost all offences has resulted to increasing criminalization of innumerable social societal maladies such as mental illness, drug addiction, poverty and indebtedness. These are social maladies whose solutions are found in the community and incarcerating persons for breach of such social maladies entails detaining the solutions themselves. This disproportionately increases the prison population and as such, compounds the problem of overcrowding thereby by impinging prisoners' rights. The United Nations International Covenant on Civil and Political Rights inter alia restrict the incarceration of persons on grounds of their inability to fulfill a contractual obligation which perversely increases the prison population<sup>5</sup>. The benefits of alternatives to imprisonment can be maximized by giving courts wider powers to use cost-effective, recidivism-reducing sentencing and community sanctions rather than imprisonment. Non-custodial sentences inherently possess cost-benefit effects of crime prevention which are more promising than imprisonment which require weighing incommensurable values<sup>6</sup>.

##### 4.1 Over-Penalization Lead to Recidivism

Recidivism refers to the return of an ex-offender to criminal behavior following conviction, diversion or punishment. In the prevailing rhetoric of tough on crime, the general public has a radical lack of concern for the population behind bars, their rehabilitative needs, their

<sup>1</sup> Ngange, M. (2022). Probation as a Means of Reducing Prison Overcrowding in Cameroon: Prospects and Challenges. *Journal of African Law*, 27(3), pp. 215-228.

<sup>2</sup> South African Law Commission. (1997). Pretrial Detention and Release Policy. Chapter 6 in Juvenile Justice; Issue paper 9, project 106.

<sup>3</sup> Griffiths, C. T & Murdoch, D. J (2009). Strategies and Best Practices against Prison Overcrowding in Correctional Institutions; International Center for Criminal Law Reform and Criminal Justice Policy: Vancouver, British Columbia-Canada.

<sup>4</sup> Special Rapporteur on Prisons and Conditions of Detention in Africa: African Commission on Human and Peoples Rights (2004) Report Mission to the Republic of South Africa.

<sup>5</sup> Section 11 of the UN Covenant on Civil and Political Rights Adopted by the UN General Assembly in 1966.

<sup>6</sup> Welsh, B. C. & David, P. F. (2000). Monetary Cost and Benefits of Crime Prevention Programs. *Journal of Crime and Justice*, 27. A Review of Research: University of Chicago Press.

conditions of detention and social reintegration tendencies<sup>1</sup>. They contend that prison should be retributive in nature and the conditions of detention should be so harsh and uncomfortable that may prevent criminals from wanting to go back to crime. In the United Kingdom, there has been growing support for punishment that focus on custodial sentences such as imprisonment<sup>2</sup>. Empirical evidence suggests that custodial sentences are less effective in crime prevention and in reducing recidivism<sup>3</sup>. The degree of recidivism varies and the factors that trigger an ex-offender to commit other crimes after being released from prison are seemingly unclear. A longitudinal study carried out by John and Steiner in 2018 demonstrated that recidivism rate for offenders who completed community service was 25% while those who were subjected to traditional sentences or imprisonment was 40%. These findings were in light with those illustrated by Waller and Wilkins wherein they concluded that community sentences can effectively lead to a reduction in recidivism and reoffending rates<sup>4</sup>. However, a number of concepts explain the motive why ex-convicts return to criminal behavior after being released from prison such as incorrigibility (failure to rehabilitate the prison), failure of a parole or probation program, peer pressure and other social provocations, economic hardship, mental health may also be a prediction of recidivism, and the failure of reacclimatize or support social reintegration.

Prospects of recidivism are heightened with declining prospects for employment and low earnings for the ex-offender in the long run<sup>5</sup>. Inadvertently, food insecurity, housing instability and reliance on public assistance are also associated with recidivism and prior incarceration<sup>6</sup>.

#### 4.2 Human Right and Imprisonment

International human right law and national constitutions regard individual right to liberty as the most treasurable assets that pertains to all humans beings. National governments must validly justify if such right is to be taken away temporally or permanently and if no other measure could suffice. Though the restriction of liberty is inevitable in prison, prisoners are deprived of other rudimentary human rights and imprisonment impinges several rights. Often than not, prisoners are deprived of basic necessities necessary for human growth such as proper health care, feeding, clothing and other social amenities. Prisoners are incarcerated in overcrowded detention facilities which are not human right friendly and as such, prisoners are open to vulnerable diseases and are sadly not given proper health care. In the Indian Case of Sunil v. Delhi Administration, the Supreme Court of India unequivocally upheld that;

“Fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration”<sup>7</sup>.

The essence of the criminal justice system is to ensure that justice is administered fairly and the rights of accused persons, under trials and prisoners held behind bars are protected.

It is increasingly recognized that such conditions are inhuman and degrading and as such, denies prisoners their inherent rights as human beings. Most of these prisoners are minor offenders, non-violent and first time offenders, majority of who are under trials who could be better dealt with by subjecting them to non-custodial sentencing measures. Implementing appropriate alternatives to imprisonment would act as a panacea to overcrowding and as such, make

<sup>1</sup> Sabo, D., Kupers, T., & London, W. (2001). *Prison Masculinities*. Philadelphia: Temple University Press.

<sup>2</sup> Jennings, W. et al. (2017). Penal Populism and the Thermostat: Crime, Public Punitiveness and Public Policy. *Governance*, 30.

<sup>3</sup> Chalfin, A., & McCrary, J. (2017). Criminal Deterrence: A Review of the Literature. *Journal of Economic Literature*, 55(1), pp. 5-48. See also, Loeffler, C. E., & Nagin, D. S. (2022). The Impact of Incarceration on Recidivism. *Annual Review of Criminology*, 5, pp. 133-152. See also Roodman, D. (2020). The Impact of Incarceration on Crime. arXiv Preprint arXiv: 2017.10268

<sup>4</sup> Waller, I. & Wilkins, L. T. (2016). *Community Service Orders: The Development and Principal Findings of the Research*. Her Majesty's Stationary Office.

<sup>5</sup> Apel, R. & Sweeten, G. (2010). The Impact of Incarceration on Employment during the Transition to Adulthood. *Journal of Social Problems*, 57(3), pp. 448-479. See also, Pettit, B. & Western, B. (2004). Mass Imprisonment and the Life course: Race and Class Inequality in U.S. Incarceration. *American Sociological Review*, 69, pp. 151-169.

<sup>6</sup> Sugie, N. (2015). Chilling Effects: Diminished Political Participation among Partners of formerly Incarcerated Men. *Journal of Social Problem*, 62(4), pp. 550-571. See also, Harding, D., Morenoff, J., & Herbert, C. W (2013). Home is hard to find: Neighborhoods, Institutions and Residential Trajectories of Returning Prisoners. *The Annals of the American Academy of Political and Social Science*, 647(1), pp. 214-236.

<sup>7</sup> Archana, C. & Showkat, A. W. (2021). Human Rights of Prisoners with Special Reference to Public Safety Act after the Abrogation of Article 370. *Ilkogretim Online – Elementary Education Online*, 20(5), pp. 7203-7213.

prisons easy to manage and human right friendly.

#### 4.3 The Cost of Running Prisons Is Too High

Over-penalization instigates numerous poor physical, psychological and economic outcomes for prisoners, their families and places a huge burden on the broader community to feed a large prison population without any socio-economic benefits<sup>1</sup>. The budget and runaway cost of running prisons is so exorbitant which diverts funds reserved for the running of socio-economic projects such as roads, water systems, education, and hospitals for the community wellbeing to run prisons. High prison a rate destabilizes entire communities, resulting to dissolution of former networks put in place to serve as barriers to neighborhood crime<sup>23</sup>. Incarceration of prisoner has direct and indirect consequences on the community. Direct cost is incurred through the construction, management and administration of prisons as well as through the feeding, housing, providing health care, payment of prison officials and officials of the Ministry of Justice and those in charge of Penitentiary Administration. Consequential or indirect cost is borne by the society at large through taxes. Further, detention centers are incubators of transmissible diseases and other vulnerable diseases such as HIV/AIDS, Tuberculosis particularly when such prisons are above capacity and overcrowded. Upon release, such diseases are spread to the wider community which greatly affects the entire nation negatively.<sup>4</sup> Non-custodial measures to imprisonment can divert deprivation of liberty in prisons and jail, reduce cost and minimize additional future crimes by putting the parties in a state of *restitutio in integrum*.

#### 4.4 Over Reliance on Imprisonment

Officials of the criminal justice system should observe punishment options from the pretrial to the sentencing stage. Imprisonment to serve a jail term should not result to the prisoner losing he/her life in the process. Prisons are not human right friendly due to over-population in prisons which breeds problems such as food scarcity,

insufficient sleeping space amongst other issues which greatly affect prisoners. Worst still, a closer look at prisons indicate that most prisoners are disproportionately drawn from socially and economically backward as well as poorest and marginalized groups in the society void of employment and basic amenities which drive the community members into crime. Most of these prisoners are held in prisons for non-violent and trivial offences or as a result of their inability to pay fines or bail themselves. These categories of offenders could better be dealt with by adopting appropriate non-custodial sentencing measures such as community service. In order to curb the over-reliance on imprisonment, alternative sentencing measures should be the primary point of departure for petty offenders and offenders who do not post an actual danger to the society.

#### 4.5 Suitability of Non-Custodial Sentences in Limiting Prison Crisis

Imprisonment as a criminal sanction deprives individuals suspected of having committed criminal offences of their liberty until their culpability is established. Imprisonment detains offenders temporally or permanently when their guilt is being established which restricts them from committing further crimes in the course of serving their jail term which in theory serves as a pathway to enable their reformation and rehabilitation and eventual reintegration into the society. The high rate of recidivism attests to the fact that imprisonment should be used only as a last resort. Many first-time offenders and non-violent offenders become hardened criminals and recidivist after being imprisoned. Prisons hardly reform nor rehabilitate offenders.

Albeit this, imprisonment is expensive, prisons are in crisis and does not sufficiently suit all offences since it inevitably infringes fundamental inherent human rights owned by the offender. Imprisonment should only be employed after ample consideration and as a last resort when all other alternative measures have been exhausted.

Non-custodial sentences are less expensive relative to imprisonment and infringe less and

<sup>1</sup> Wildeman, H. C., Wang, E., Matusko, N. & Jackson, J. (2014). A Heavy Burden: the Cardiovascular Health Consequences of having a Family Member Incarcerated. *American Journal of Public Health*, 104. See also, Massoglia, M. & Pridemore, W. A. (2015). Incarceration and Health. *Annual Review of Sociology*, 41(1), pp. 291-310.

<sup>2</sup> Drakulich, K., Crutchfield, R., Matsueda, R. & Rose, K. (2012). Instability, Informal Control and Criminogenic Situations: Community Effects of returning Prisoners. *Crime, Law and Social Change*, 57(5), pp. 493-519.

<sup>3</sup> Clear, T. R. (2008). The Effects of High Imprisonment Rates on Communities. *Journal of Crime and Justice*, 37(1), pp. 97-132.

<sup>4</sup> United Nations Office on Drugs and Crime, Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment, Criminal Justice Series Book, UN Publication, first edition (2007).

rarely trample on the inherent rights of the offender. Non-custodial sentences allow offenders to stay in the society and work to pay for their crimes through community service which helps to advance economic development and growth unlike imprisonment which deprives the society of productive labour. In every stage of the criminal justice system being it at the under trials, trial and sentencing stage, rationalized justification should be advanced before subjecting a prisoner to imprisonment lest as a last resort. In fact, alternative sanctions should be used widely in all the stages of the criminal justice system.

Imprisonment makes it very difficult for offenders to adjust to life after their release which increases the probability for recidivism thus compounding the problem of overcrowding. Imprisonment does not evidently incapacitate offenders except the fact that offenders are restrained from committing crimes while in prison. Relying on imprisonment as a measure to prevent crime is not an effective crime prevention mechanism. Even though incapacitated, ex-convicts are likely to go back to crime after release due to lack of basic means of survival. Conceptually, the implementation of alternative sentences should be broadened and not narrowed to particular classes of offenders or crimes.

## 5. Hindrances to the Implementation of Non-Custodial Sentences

Historically, overcrowded prisons, high recidivism, prolonged pretrial detention, limited rehabilitation and the social cost of imprisonment have for long stressed several justice systems and Cameroon has not been an exception. The Cameroon law makers recognizing the challenges associated with custodial sentences reformed the Penal Code in Law No. 2016/007 of 12 July 2016 which was also amended by Law No. 2019/020 of 24 December 2019 to introduce new alternatives to incarceration, notably community service, reparatory sentence. Notwithstanding, while the Penal Code and Criminal Procedure Code reflects progressive intent to limit the use of custodial sentences in favour of non-custodial sentences, the practical implementation of these community-based non-custodial sanctions has encountered fundamental obstacles. The gap between legal provision and judicial practice demonstrates that alternatives to imprisonment, though promising remain in a nascent and fragile stage and prisons continue to operate above

capacity. Challenges of regulatory clarity, capacity, institutional will, resource constraints, judicial culture, and social acceptance all work to undermine the effectiveness and consistency of community-based non-custodial sanctions. Despite the adoption of non-custodial sentences, the modalities required for its operationalization such as detailed implementation regulation, institutional guidelines, administrative infrastructure and personnel capacity remain wanting, underdeveloped and under resourced. Thus, the implementation phase remains critical. Unless the policy matches with practice and the law is accompanied by concrete regulation, trained actors and monitoring mechanisms, the anticipated merits of non-custodial sentences ranging from reducing prison overcrowding, enhancing rehabilitation, preserving social bond, reducing recidivism and improving prisoners' rights may remain in paper.

### 5.1 Legal/Regulatory Challenges

While Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2024 to lay down the Cameroon Penal Code and Law No. 2005/007 of 27 July 2005 on the Criminal Procedure has formally set out some alternatives to imprisonment and some modalities of punishing offenders in the community, there is no particular text that fixes the modalities for the application of non-custodial sentences. Although the legislator in introducing alternatives to imprisonment in the Penal Code noted that a detailed implementing instrument shall be promulgated which has remained mere paper work. Void of the implementation guidelines, magistrates and judges often relapse to imprisonment. The chain for the implementation and operationalization of alternatives to imprisonment lack legal clarity thus rendering it redundant in application.

The lack of regulatory agenda equally undermines the categories of offenders that may be subjected to community sanctions. This limits the scope of offenders who might otherwise who could have benefited from less-severe sentences and community-based sanctions.

### 5.2 Institutional/Practical Challenges

Apart from judicial bodies, there is need for an entity to oversee the monitoring and implementation of alternative sentences. Ashworth underscores that community-based non-custodial sentences require robust institutional support, trained probation officers,

community projects and effective supervision mechanisms<sup>1</sup>. Both in urban and rural areas in Cameroon, there is no organized structure, established body or official personnel designated to assign, monitor and implement non-custodial sentences. Penitentiary officers who might play this role however focus in incarcerating offenders behind bars rather than ensuring their rehabilitation and reformation in the community. Without such organs and personnel, courts are unable to enforce the obligations or supervise compliance.

Judges and Magistrates as well as prosecutors are trained to think only in the direction of incarceration, suspended sentences and fines and there is no recourse to community-based non-custodial sentences. This demonstrates that they lack training and familiarity with community sanctions in the light of applying, monitoring and ensuring compliance which explains why offenders are hardly subjected to community sanctions such as probation, community service, reparatory sentences and other non-custodial sentences adopted under the Cameroon legal system. The outcome has been the underutilization of non-custodial sentences and over reliance on custodial sentences even when the laws clearly permit for the implementation of non-custodial sentences in Cameroon. This demonstrates that though the law provides for non-custodial sentences, in practice, such sentences exist beautifully on paper only.

#### 5.2.1 Inadequate Mechanisms to Monitor Compliance and Judicial Culture

Implementation and enforcement of non-custodial sentences reflect the underuse of non-custodial sentences in Cameroon. Once an alternative sentence is imposed, there must be follow up, checking that the offender pays reparation or performs the service or work assigned to him in the community by the judicial authority. Cameroon lacks consistent systems for monitoring compliance or enforcing alternative sanctions when an offender defaults to perform them. In the ordinary performance of non-custodial sentences for instance, failure to accomplish community service or probation usually calls for imprisonment in lieu, but in practice, cases of non-performance go unchecked if no monitoring occurs.

#### 5.3 Resource/Financial Challenges

One of the major factors that affect or limit the implementation of non-custodial sentences is resource or financial hurdles. Deploying community sanctions requires staffs: for supervision, monitoring, coordination with community bodies, offices; for transportation. Both in urban and rural areas, there are inadequate trained personnel to implement, enforce and monitor non-custodial sentences or no budget allocation to oversee same. Community-based non-custodial sentences require supervisors, inspectors, social service officers and community liaison persons. Void of adequate funding and personnel these roles are under fulfilled and unrealized. Community non-custodial sentences are therefore said to be on paper but not in practice partly due to financial and human constraints.

Resource and personnel constraints cause delays in the criminal justice process which gives rise to high pretrial detention rates and prison overcrowding. Prisons exist above capacity and courts are overburdened with numerous cases as a result of the under exploitation. Magistrates and judges in Cameroon tend to favor custodial sentences simply because of logistics of alternative sanctions being extremely complex to administer. High pretrial detention rates, overcrowded prisons and backlog provide the motive for alternative sentences but disincentives provoked by inadequate monitoring and additional work push them away from alternative sentences. The overcrowded nature of these prisons requires non-custodial sentences but they are hardly implemented.

#### 5.4 Social/Cultural Challenges

The socio-cultural challenges of alternatives to imprisonment are observed in the light of public perception and stigma. The society at large and victims of crime, including judicial personnel see non-custodial measures as too lenient or not punishment. Non-custodial sentences offer an avenue for the observation and respect of the rights of offenders but the community sees little social prestige in the measures and victims of crime believe justice requires incarceration or must be retributive nature. This societal perception can result in a political or social pressure on magistrates/judges to deliver custodial sentences. Equally, some society

<sup>1</sup> Ashworth, A. (2015). *Sentencing and Criminal Justice*, (6th ed.). Cambridge University Press.

members believe alternatives to imprisonment do not satisfy the moral aspect of punishment.

In another dimension, sanction reparation requires that the perpetrators repair material prejudice suffered by the victims. In several cases, victims of offences tend to doubt the ability of convicted persons to pay or may mistrust that reparation will be delivered. This explains the reasons why most victims prefer custodial sentences over community-based sanctions. In another dimension, identifying and valuing the damage, and enforcing payment, can be challenging in cases where the offender is impecunious.

### 5.5 Administrative impediments

Faintness on the part of the executive organ (the Ministry of Justice) such as mismanagement, misappropriation, little or no transparency and accountability on prison management, funding impairments.

Weaknesses on the part of prison officials/warders (torture of prisoners), inadequate training programs, low salaries.

## 6. Conclusion

In sum, community-based non-custodial sentences represent a pivotal reform in the Cameroon criminal justice system and penal policy, combining justice efficiency with human right protection without compromising the rights of inmates held behind bars. Notwithstanding, without immediate regulatory action, institutional commitment, victim/offender and community participation, community-based sanctions will remain beautiful dormant legal promise under the Penal Code without no implementation. A right-oriented implementation anchored in accountability, transparency, proportionality, community participation and sustained funding can transform the sanctions into a cornerstone of a human and modern criminal justice system.

## 7. Recommendations for Reforms

The adequate implementation of community-based non-custodial sentences holds significant promise for advancing and rebalancing the Cameroonian criminal justice system away from punishment in penitentiary facilities towards a right-centered rehabilitation and reintegration approach. Realizing the practical stakes of treating community sanctions as a pathway to prisoners' rights and employing imprisonment as a last resort is appropriate for upgrading

prison conditions and enhancing prisoners' rights. The promise depends on coherent and comprehensive law reform, strengthened institutions and political will to prioritize humane, effective and appropriate sanctions that protect prisoners' rights, promote public safety and individual dignity. The effective implementation of community sentences requires a multidimensional reform strategy that closes the gap between the legal text and its operational reality by matching policy with practice. The recommendations in this work are directed at the government of Cameroon, the Ministry of Justice, the Judiciary, Civil Society Organizations and developmental partners, with the aim of transforming community-based non-custodial sentences into a right-protective, rehabilitative and sustainable mechanism of criminal justice. The Decree or modalities for the implementation of non-custodial sentences may draw inspiration.

### 7.1 Legal Reforms

Law No. 2016/007 of 12 July 2016 as amended by Law No. 2019/020 of 24 December 2019 relating to the Cameroon Penal Code has introduced an elaborate number of alternative sentences to imprisonment including community service, reparatory sentences, probation and suspended sentences. Albeit the adoption of these diverse non-custodial sentences under the Penal Code and Criminal Procedure Code, their practical implementation remains largely theoretical, existing only on paper due to the absence of a clear implementing Decree guiding the procedures, supervisory organs, execution modalities and personnel in charge of implementation. The primary recommendation priority should be the adoption of a binding implementation Decree to effectively put into practice the community-based non-custodial sentences adopted under the 2016 Penal Code as amended. The implementing Decree should take into consideration and define the eligibility criteria for offenders and offences, establish procedures for obtaining consent, or allow judiciary supervised consent waivers in the public interest, establish modalities for court referrals, community placement and verification of completion, specify sanctions for non-performance or default and provide a detailed clarification of the role of implementing and supervisory organs and personnel. In adopting the implementing decree, the Cameroon legislator can draw from France's Decree No.

2010/355 of 1 April 2010 governing Community and the Zimbabwean model which provides clear guidance on how judicial authorities, probation services and local communities collaborate in the enforcement of community-based non-custodial sentences. This will limit over reliance on imprisonment and enhance the rehabilitation and reintegration of offenders in the community cost effectively.

#### *7.2 Establishment of a National Probation and Corrections Service*

The delays experienced in the effective implementation of community sanctions in Cameroon are relatively orchestrated by the lack of a robust institutional mechanism for implementation, supervision and follow-up. Apart from the Penitentiary Department in the Ministry of Justice, another independent or quasi organ in the guise of a National Probation and Community Correction Service should be put in place by the Ministry of Justice to oversee the implementation, supervision and follow-up of community sanctions with branches at the regional, divisional and sub-divisional levels to ensure releases at the pretrial, trial and post-trial stage of the criminal justice system. The National Probation and Community Correction Service will be charged with the supervision of offenders serving community sentences, liaise with other host institutions to guarantee the effective implementation of community service, probation and the observance of suspended sentences. Again, the organ will monitor progress and report to sentencing courts, facilitate post-sentence reformation, counseling and reintegration to prevent recidivism and lastly, to serve as a data collection and coordination hub between prisons, courts and local communities. In putting in place this organ, recourse can be drawn from the United Kingdom's National Probation Service and the South Africa's Department of Community Service which provides viable models that if adapted to the Cameroon context will yield great results and reduces the excessive use of imprisonment as a response to all offences and offenders. This Community-based Correctional service may start at the regional levels and later spread to divisions and sub-divisions.

#### *7.3 Institutional Partnerships and Accreditation of Host Organizations*

The effectiveness of community-based sentences is dependent on offenders' accessibility to

credible and structured community work placements. The Ministry of Justice should therefore create a National Probation and Community Correction Service which shall put in place a system of accreditation for host institutions, including councils, hospitals, schools, environmental agencies and Non-Governmental Organizations. The institutional and accreditation framework should focus on: clear eligibility criteria and supervision obligations; oversee training for supervisors; ensure liability and insurance provisions for workplace accidents and guarantee modest financial incentives or recognition for participating institutions. For instance, accredited local councils and associations in France have been successful in hosting several thousands of community service offenders each year under judicial supervision. Cameroon's Ministry of Justice under the Department of Penitentiary Administration can replicate this by partnering with both rural and urban councils and recruiting probation officers and enabling community engagement in rehabilitation and social and developmental projects.

#### *7.4 Training and Sensitization of Judicial and Enforcement Actors*

Statistics indicate that most Judges, Magistrates, Prosecutors, and Lawyers remain completely unfamiliar with the operational logic of community-based non-custodial and most judges and magistrates rarely contemplate community sanctions during sentencing. Judges and Magistrates continue to prefer subject offenders, including those charged for low-risk offences to custodial sentences, regular imprisonments tend to be viewed as the default sanction. To reverse this mindset, implementing community sanctions as contained under the 2016 Penal Code and guaranteeing continuous judicial training and sensitization should be institutionalized through the program of the National School of Administration and Magistracy, and at training seminars of the Bar both for Advocates-in-training and full Advocates. In such training programs, focus should be directed to: Legal basis and procedural steps for imposing community-based non-custodial sentences; imposing sentencing principles that emphasize on proportionality, rehabilitation and the protection of the rights of the offender; emphasizing the monitoring and enforcement mechanisms of community sanctions and imposing collaboration with

personnel in charge of probation and community bodies. Still in this dimension, judicial police officers and other law enforcement officers should be trained to enforce, support and not obstruct early releases at the pretrial stage and enhance the execution of sentences, ensuring that offenders are not arbitrarily held in custody due to bureaucratic confusion.

### 7.5 Community and Victim Participation

The success of the implementation and legitimacy of community-based non-custodial sentences depends largely on community participation and public trust. The public and victims of offences have often perceived community sanctions as lenient and prefer retributive sanctions like imprisonment. This public perception has greatly undermined the success of community sentences. The Ministry of Justice should thus collaborate with Civil Society Organizations and other stakeholders to launch community sensitization campaigns focused on revealing the value and significance of community sanctions for reducing prison overcrowding and budget on prisons, recidivism rates and promoting rehabilitation, reintegration and public safety. Reparatory sanction mechanisms should therefore be reinforced where victims and offenders participate in resolving the harm caused and restoring everlasting peace and public safety. This may also encompass putting in place clear channels for expressing restitution expectations, tracking compliance and receiving feedback. This better encourage reparatory sentences through victim and offender participation, a victim support fund could be created to facilitate reparations where offenders lack instantaneous financial capacity, with repayment arrangements supervised by the probation service, which must be put in place. This approach carefully aligns with the restorative justice principles in jurisdictions like Uganda, Kenya and South Africa where victims and offenders collectively participate and agree on restitution under judicial oversight.

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# Ship Registration and the Legal Attribution of Nationality Under the Law of the Sea

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## Abstract

Ship registration is the legal process through which vessels acquire nationality and become subject to the jurisdiction and regulatory authority of a flag State under the international law of the sea. This study examines the legal framework governing ship registration and the attribution of nationality, focusing on the juridical bond established between vessels and States and the obligations that arise from this relationship. The research is motivated by ongoing concerns regarding the ambiguity of the genuine link requirement and inconsistencies in the enforcement of flag State responsibilities within the global maritime regime. The study adopts a qualitative research approach using the doctrinal legal method, involving the systematic analysis of relevant international legal instruments, legal principles, and scholarly materials regulating ship nationality. Particular attention is given to the provisions governing ship registration and the duties of flag States to exercise effective jurisdiction and control over vessels flying their flag. The findings reveal that ship registration constitutes the legal act through which nationality is conferred, granting vessels the right to fly the flag of a State while simultaneously placing them under its regulatory authority. However, the study finds that the genuine link requirement remains vague and weakly operationalized, contributing to disparities in registration practices and regulatory oversight. The research also highlights the governance challenges posed by stateless vessels, which operate outside effective legal supervision. The study contributes to knowledge by clarifying the legal implications of ship nationality, identifying regulatory gaps within the existing framework, and proposing reforms aimed at strengthening flag State accountability, oversight of ship registries, and technological innovation in maritime administration.

**Keywords:** ship nationality, ship registration, flag State jurisdiction, UNCLOS, genuine link, law of the sea

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## 1. Introduction

The attribution of nationality to ships constitutes one of the foundational mechanisms of the international law of the sea. In the vast maritime space characterized by absence of any territorial

sovereignty exercised by states on sea, nationality ascribed to vessels functions as the primary mechanism through which jurisdiction is allocated and legal order maintained. Without nationality, vessels navigating beyond territorial waters would operate in a regulatory vacuum,

undermining well established maritime legal frameworks.

Nationality in international law traditionally denotes the legal bond between a State and those persons whom it is entitled to protect. While the concept is most frequently associated with natural persons, it is not confined to them.<sup>1</sup> International law extends the notion of nationality to certain juridical entities, including corporations, ships, and aircraft. In these contexts, nationality operates for legal purposes, though its conceptual foundation differs significantly from that applicable to individuals.<sup>2</sup> The International Court of Justice in the *Nottebohm Case*<sup>3</sup> famously described nationality as a “legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.” The Court emphasised that nationality constitutes the juridical expression of a factual connection between an individual and the State conferring that nationality.

The nationality of a ship does not exist in the abstract; it is expressed and made visible through the act of registration. Registration is the general mechanism through which a State confers its nationality on a vessel and establishes the legal bond that attaches the ship to its authority.<sup>4</sup> By entering a ship in its national registry, a State publicly affirms that the vessel is one of its subjects under international law and that it assumes responsibility for its regulation, supervision, and protection.<sup>5</sup> This process gives concrete form to the relationship between the ship and the State, since the flag that the vessel is thereafter entitled and required to fly is the outward symbol of this attachment. Through registration, the State acquires the right to exercise jurisdiction over the vessel and to extend diplomatic protection when necessary, while the

ship gains a recognised national identity that allows it to navigate internationally under the legal authority of a single State.<sup>6</sup> Without registration, there is no valid nationality and therefore no lawful attachment to any State.

This means that under public international law the ship is treated as being under the authority and protection of its flag State. The attachment through registration places the vessel within the legal sphere of the State, which is responsible for its regulation, supervision, and conduct on the high seas. This approach differs from the practice in private international law, where the protective veil of the flag State can be lifted and the focus shifts to the rights and liabilities of the individuals connected with the ship. In this context, actions may precede in rem<sup>7</sup>, allowing claims to be directed against the ship itself rather than against a State or its public authority.

In the *M/V Saiga (No. 2) case*,<sup>8</sup> the Tribunal affirmed that the nationality of a ship is determined by the domestic law of the State concerned. This principle is codified in Article 91 of the United Nations Convention on the Law of the Sea 1982, which provides that every State shall fix the conditions for the grant of its nationality to ships, for their registration, and for the right to fly its flag. This formulation reflects language previously contained in Article 5 of the Geneva Convention on the High Seas.<sup>9</sup> Both instruments affirm two central propositions: first, that nationality is not inherent but legally conferred; and second, that registration operates as the constitutive act through which that nationality becomes opposable in international law.

Registration must therefore be understood as an act of public authority. Through this sovereign act, a privately owned movable object is incorporated into the legal order of the flag State. Jurisprudence has consistently recognised that

<sup>1</sup> David Gallou. (2019). *L'apatride et le navire sans pavillon. Neptunus*, 25(4), pp. 1-9.

<sup>2</sup> Teakaram Singh. (2017). “Nationality defines a continual legal relationship between the State and the citizen, but only the State is competent to confer nationality on persons and objects”, available online at [https://www.academia.edu/44660933/Nationality\\_define\\_s\\_a\\_continual\\_legal\\_relationship\\_between\\_the\\_State\\_and\\_the\\_citizen\\_but\\_only\\_the\\_State\\_is\\_competent\\_to\\_confer\\_nationality\\_on\\_persons\\_and\\_objects](https://www.academia.edu/44660933/Nationality_define_s_a_continual_legal_relationship_between_the_State_and_the_citizen_but_only_the_State_is_competent_to_confer_nationality_on_persons_and_objects) accessed 25/02/2026.

<sup>3</sup> *Nottebohm case* (Liechtenstein v. Guatemala), 1955 I.C.J. 4 (Apr. 6).

<sup>4</sup> Churchill, R. R., and A. V. Lowe. (2022). *The Law of the Sea*, 4th ed., Manchester University Press, p. 258.

<sup>5</sup> Yoshifumi Tanaka. (2019). *The International Law of the Sea*. Cambridge, United Kingdom: Cambridge University Press, 3<sup>rd</sup> Edition.

<sup>6</sup> Malcolm Shaw. (2021). *International Law*, 9th ed. Cambridge University Press.

<sup>7</sup> Private maritime law allows claimants to proceed in rem; meaning the ship itself can be the defendant. This commonly occurs in: Collisions, salvage, maritime liens, cargo claims, and mortgage enforcement. In these contexts, the ship is not treated as “covered” by the State; jurisdiction is exercised by domestic courts.

<sup>8</sup> *M/V “SAIGA” (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea). ITLOS Case No. 2, Judgment of July 1, 1999.

<sup>9</sup> High Seas Convention 1958, Article 5.

determination of conditions for the grant of nationality falls within the competence of States. In the *Muscat Dhows Case*,<sup>1</sup> the tribunal acknowledged the authority of States to regulate the nationality of vessels flying their flag. Similarly, in *Lauritzen v. Larsen*,<sup>2</sup> the Supreme Court of the United States underscored the centrality of the flag in determining the applicable legal order at sea.

Yet the relationship between registration and nationality is not conceptually self-evident. A vessel may be owned, financed, and managed across multiple jurisdictions, while its nationality remains singular and exclusively attributed, the legal bond created through registration operates independently of ownership and economic control. Nationality functions instead as a juridical technique for allocating regulatory competence in a space that is otherwise non-territorial.

The consequences of attribution are significant. Under Article 94 of UNCLOS, the flag State assumes responsibility to exercise effective jurisdiction and control over administrative, technical, and social matters. Exclusive jurisdiction on the high seas is thus structured around the prior act of registration. Without nationality, a vessel risks being treated as stateless and consequently deprived of the protection ordinarily afforded under international law, as reflected in Article 92 of UNCLOS.

Several scholars have contributed to this discussion on the nationality of ships focusing either on the requirement of the genuine link or on the regulatory challenges created by open registries and flags of convenience. Authors such as Meyers, Tanaka and Richard Barnes have examined the doctrinal foundations of ship nationality and the responsibilities attached to the flag State within the law of the sea regime. However, the juridical mechanism through which nationality itself is constituted often remains treated as a secondary technical matter rather than as the central legal act that structures the relationship between the vessel and the State. By focusing specifically on the role of registration as the legal act that produces this relationship, this article seeks to clarify the legal architecture

through which ship nationality is attributed and exercised within the contemporary law of the sea framework.

Despite its structural importance, the legal construction of ship nationality is often treated merely as a procedural requirement. This article thus argues that registration should instead be understood as the constitutive mechanism through which a ship acquires juridical identity within the international maritime order. By examining the legal character of registration, the right to fly the flag and the jurisdictional consequences flowing from attribution, this study clarifies the architecture through which nationality operates under the law of the sea.

## 2. Conceptual Clarification

The conceptual framework of this study is derived from three central concepts embedded in the research topic: ship registration, legal attribution of nationality, and the law of the sea. These concepts explain the legal process through which vessels acquire nationality, how jurisdiction is allocated among States, and how maritime governance operates within the international legal order.

### 2.1 Ship Registration

Ship registration refers to the formal legal and administrative process through which a vessel is recorded in the official register of a State and granted the right to fly the flag of that State. According to *Black's Law Dictionary*, registration generally refers to the official recording of a legal instrument, property, or entity in a public register for the purpose of establishing legal recognition and regulatory control.<sup>3</sup> In the maritime context, this process establishes the legal identity of a vessel and enables the State to exercise jurisdiction and oversight over it.

Similarly, the *Oxford English Dictionary* defines registration as the act of officially recording or enrolling something in a register maintained by an authority.<sup>4</sup> Applied to maritime governance, ship registration ensures that vessels are formally recognized within a national registry for administrative and regulatory purposes.

From the perspective of international law, Article 91 of the *United Nations Convention on the Law of the Sea* provides that every State shall fix the

<sup>1</sup> *Muscat Dhows case, (France V. Great Britain) 1905, Permanent Court of Arbitration.*

<sup>2</sup> *Lauritzen v Larsen*, 345 US 571, 1953 AMC 1210 (1953).

<sup>3</sup> Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1476). Thomson Reuters.

<sup>4</sup> Oxford University Press. (2023). *Oxford English dictionary* (online ed.). Oxford University Press.

conditions for the grant of nationality to ships and for the registration of ships in its territory.<sup>1</sup> This provision establishes ship registration as the legal mechanism through which vessels are formally linked to a State within the international maritime legal system.

## 2.2 Legal Attribution of Nationality

The legal attribution of nationality refers to the process through which a vessel is legally identified with a particular State and placed under its jurisdiction. *Black's Law Dictionary* defines nationality as the legal relationship between an individual or entity and a State, entitling the entity to the protection of that State while subjecting it to its jurisdiction.<sup>2</sup> When applied to ships, nationality establishes the legal bond between a vessel and the State whose flag it flies.

In a general sense, the *Oxford English Dictionary* defines nationality as the status of belonging to a particular nation or State, typically associated with legal rights and obligations.<sup>3</sup> Within maritime law, nationality therefore signifies the legal identity of a vessel as belonging to a particular State.

International law provides a specific legal basis for this concept. Article 91 of the *United Nations Convention on the Law of the Sea* states that ships have the nationality of the State whose flag they are entitled to fly.<sup>4</sup> Through registration, a vessel acquires nationality and becomes subject to the jurisdiction and regulatory authority of the flag State, particularly on the high seas where flag State jurisdiction predominates.

## 2.3 Law of the Sea

The law of the sea refers to the body of international legal rules governing the use, regulation, and management of the oceans and maritime activities. *Black's Law Dictionary* describes the law of the sea as the branch of international law that regulates maritime navigation, the rights and duties of States over ocean spaces, and jurisdiction over maritime activities.<sup>5</sup>

From a general definitional perspective, the *Oxford English Dictionary* describes the law of the sea as the system of legal principles governing the rights and obligations of States in relation to the oceans and maritime zones.<sup>6</sup>

The modern legal framework of the law of the sea is largely codified in the *United Nations Convention on the Law of the Sea*, which establishes comprehensive rules governing maritime zones, navigation, marine resources, and jurisdiction over ships.<sup>7</sup> Within this framework, the convention also provides the legal basis for ship registration, nationality of vessels, and the responsibilities of flag States to exercise effective jurisdiction and control.

These three concepts form the analytical foundation of the study. Ship registration operates as the legal and administrative mechanism through which vessels are entered into a State registry. Through this process, the legal attribution of nationality occurs, creating a juridical bond between the vessel and the flag State. The law of the sea, particularly as codified in the *United Nations Convention on the Law of the Sea*, provides the overarching legal framework regulating this relationship by defining the rights and responsibilities of States in relation to ships flying their flags. Together, these concepts explain how nationality is conferred on vessels, how jurisdiction is exercised by flag States, and how maritime governance is structured within the international legal order.

## 3. Methodology

This study adopts a qualitative research methodology, which is particularly appropriate for examining legal principles, institutional frameworks, and normative rules within international law. Qualitative research emphasizes the interpretative analysis of texts, concepts, and legal doctrines rather than numerical measurement, making it highly suitable for studies that seek to understand the meaning, development, and application of legal rules.<sup>8</sup> The choice of a qualitative approach in this study is justified by the nature of the research

<sup>1</sup> United Nations. (1982). *United Nations Convention on the Law of the Sea*. United Nations.

<sup>2</sup> Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1235). Thomson Reuters.

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

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

<sup>5</sup> Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed., p. 1041). Thomson Reuters.

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

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

<sup>8</sup> Creswell, J. W., & Creswell, J. D. (2018). *Research design: Qualitative, quantitative, and mixed methods approaches* (5th ed.). SAGE Publications.

problem, which focuses on the legal attribution of nationality to ships and the regulatory implications of ship registration under the international law of the sea. Since the study seeks to analyze legal principles, treaty provisions, and doctrinal interpretations rather than empirical data, a qualitative methodology provides the most appropriate framework for achieving the research objectives.

Within this qualitative paradigm, the study employs the doctrinal legal research method, commonly referred to as the black-letter law approach. Doctrinal research involves the systematic examination and interpretation of legal rules derived from authoritative sources such as statutes, treaties, judicial decisions, and scholarly writings in order to clarify the content, scope, and application of legal principles.<sup>1</sup> This method is particularly relevant to the present study because the issue of ship nationality is fundamentally a legal and doctrinal question rooted in international maritime law. The doctrinal approach therefore enables a rigorous analysis of the legal framework governing ship registration and the responsibilities of flag States.

The study relies primarily on authoritative legal sources, including international treaties, conventions, and legal instruments that constitute the foundation of the global maritime legal regime. Particular attention is devoted to the United Nations Convention on the Law of the Sea (UNCLOS), which establishes the legal framework governing ship registration, nationality, and flag State jurisdiction. Key provisions of the Convention are analyzed to understand how international law constructs the legal bond between ships and States and how it allocates regulatory authority and responsibility to flag States.

In addition to primary legal sources, the research draws on secondary materials such as academic books, peer-reviewed journal articles, and legal commentaries that provide scholarly interpretations of maritime legal doctrines. These materials are used to critically examine debates surrounding the concept of the “genuine link”, the scope of flag State obligations, and the broader implications of ship registration for

maritime governance and accountability.

The use of the doctrinal method in this study is therefore justified because it enables a systematic and critical analysis of the legal rules that govern ship nationality within the international maritime legal order. By examining treaty provisions, legal doctrines, and scholarly interpretations, the methodology provides a solid analytical foundation for understanding how international law structures the attribution of nationality to ships and assigns regulatory responsibility to States.

#### 4. Theoretical Framework

Understanding the legal attribution of nationality to ships and the regulatory obligations that flow from ship registration requires a robust theoretical foundation within international legal scholarship. Ship registration is not merely an administrative procedure but a juridical mechanism through which international law allocates authority, responsibility, and regulatory control over vessels navigating the global maritime domain. Within the framework of the United Nations Convention on the Law of the Sea (UNCLOS), the attribution of nationality establishes a legal bond between a vessel and a flag State, thereby determining the State responsible for exercising jurisdiction and ensuring compliance with international maritime standards. To explain the legal logic and regulatory implications of this relationship, this study draws on three complementary theoretical perspectives: the theory of international responsibility, the compliance-based theory, and the risk theory. These theories collectively illuminate the normative and institutional foundations upon which the contemporary regime of ship registration and flag State control is constructed.

The theory of international responsibility, commonly associated with the doctrinal work of Anzilotti (1905)<sup>2</sup> and later codified in the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (2001),<sup>3</sup> posits that States are legally accountable for acts or omissions that breach their international obligations. The central postulate of this theory is that whenever a State

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

<sup>2</sup> Anzilotti, D. (1905). *Teoria generale della responsabilità dello Stato nel diritto internazionale*. Firenze Press.

<sup>3</sup> International Law Commission. (2001). *Articles on responsibility of states for internationally wrongful acts*. United Nations.

undertakes an international legal commitment, failure to comply with that obligation gives rise to responsibility and may entail legal consequences. Within the maritime domain, this principle explains the legal significance of ship nationality. Once a vessel is registered and authorized to fly the flag of a State, that State assumes responsibility for exercising effective jurisdiction and control over the vessel and its activities. The significance of this theory to the present study lies in its explanation of why ship registration is legally consequential: by conferring nationality upon a vessel, a State simultaneously assumes international responsibility for regulating its conduct and ensuring compliance with international maritime obligations.

Complementing this perspective is the compliance-based theory, developed through the influential work of Chayes and Chayes (1993, 1995).<sup>1</sup> This theory challenges enforcement-centered approaches to international law by arguing that States generally comply with international obligations because of normative commitment, reputational incentives, and participation in cooperative institutional frameworks. Non-compliance, according to this perspective, often results from capacity limitations or institutional constraints rather than deliberate defiance. Within the maritime governance system, international conventions rely significantly on the regulatory capacity of States to implement agreed standards through domestic institutions such as ship registries and maritime administrations. The relevance of this theory to the present study lies in the fact that ship registration constitutes a central institutional mechanism through which States internalize and implement international maritime rules, thereby facilitating compliance with global regulatory standards.

The risk theory, associated with the works of Saleilles (1897)<sup>2</sup> and Jossierand (1897),<sup>3</sup> provides a further explanatory lens for understanding the regulatory structure of maritime governance. The theory is premised on the idea that responsibility should be assigned to actors who create or control activities capable of generating harm. Rather than focusing exclusively on fault, the theory emphasizes preventive regulation by

allocating responsibility to those best positioned to manage potential risks. Maritime navigation inherently involves considerable dangers, including ship collisions, marine pollution, environmental degradation, and threats to human life at sea. Through the attribution of nationality via ship registration, international law identifies the flag State as the authority responsible for supervising and regulating these risks. The significance of this theory to the study lies in its explanation of why international law assigns regulatory oversight to the State granting nationality, thereby ensuring that vessels operate under a system of identifiable accountability and risk management.

Taken together, these theoretical perspectives provide a coherent analytical foundation for the study. The theory of international responsibility explains the legal accountability of States for vessels flying their flags, the compliance-based theory clarifies the institutional mechanisms through which maritime obligations are implemented, and the risk theory illustrates the rationale for allocating regulatory oversight to flag States. Collectively, they reinforce the central premise of this study that ship registration is the juridical mechanism through which responsibility, compliance obligations, and regulatory risk are structured within the international maritime legal order.

## **5. Registration as a Constitutive Legal Act for the Attribution of Ship Nationality**

The acquisition of ship nationality is not automatic. It involves the product of a well-structured legal procedure whereby a vessel is incorporated into the public registry of a State. The procedures for the acquisition of ship nationality lie at the centre of the regulatory framework governing activities on the high seas. Nationality enables the consistent application of legal standards to vessels and determines which State bears responsibility for their supervision concerning navigation, safety, administrative, technical, and social matters.

Under international law, this framework is anchored in Article 91 of the UNCLOS, which recognises the capacity of every State to fix the conditions for the grant of its nationality to ships and for their registration. A ship has the nationality of the State whose flag it is entitled to

<sup>1</sup> Chayes, A., & Chayes, A. H. (1993). On compliance. *International Organization*, 47(2), 175–205.

<sup>2</sup> Saleilles, R. (1897). *Les accidents de travail et la responsabilité civile*. Paris.

<sup>3</sup> Jossierand, L. (1897). *De la responsabilité civile*. Paris.

fly. Article 91 highlights the fact that nationality is not inherent. It is granted. The mechanism through which it is granted is registration which serves as a condition *sine qua non* for the acquisition of nationality.

### 5.1 Sovereign Discretion in the Grant of Ship Nationality

Article 91 affirms a classic principle of international law: each State whether coastal or landlocked, retains discretion to determine the conditions under which it will confer nationality upon vessels. This position was articulated as early as the *Muscat Dhows Case*,<sup>1</sup> where the tribunal recognised that France was entitled to authorise vessels belonging to subjects of the Sultan of Muscat to fly the French flag, bound only by its own legislation and administrative rules prior to treaty restrictions.<sup>2</sup> The same logic was later echoed in the *M/V Saiga (No. 2)*,<sup>3</sup> where it was affirmed that the nationality of a ship is determined by the domestic law of the State concerned. International law therefore does not prescribe uniform substantive criteria for the registration of ships. It leaves to States the authority to establish their own regulatory frameworks.

This discretion is not merely theoretical. States impose varying conditions relating to ownership structures, documentation, fees, technical compliance, crewing standards, or corporate presence. Whether operating closed registers or open registries often associated with flags of convenience, States retain control over the admission of vessels into their national registries.<sup>4</sup> This freedom should however exist within limits. Article 91 introduces the requirement of a “genuine link” between the State and the ship. Although the content of this requirement remains debated, it reflects the broader principle that nationality must not be reduced to a purely formal gesture devoid of regulatory substance.

### 5.2 Registration as an Act of Public Authority

Registration is not simply administrative

documentation. It is an act of public authority. Through registration, a State transforms a privately owned movable asset into a vessel vested with a national character. Once entered into the national register, the ship becomes a subject of flag State jurisdiction and protection.<sup>5</sup>

This process is comparable, though not identical, to the conferral of nationality upon natural persons. Just as an individual must comply with legal requirements before being recognised as a national of a State, a vessel must satisfy statutory conditions before being granted the right to fly its flag. Upon fulfilment of those requirements, nationality is conferred together with the right and obligation to display the State’s flag.<sup>6</sup>

The public character of registration is further demonstrated by its consequences. Entry into the register places the vessel under the regulatory, administrative, technical, and social control of the flag State. Article 94 of UNCLOS imposes upon States the duty to exercise effective jurisdiction and control over ships flying its flag. Registration therefore generates responsibility as well as authority.

The importance of registration as the determinant of nationality was clearly illustrated in *R v. Bolden and Dean (The Battlestar)*,<sup>7</sup> where the court held that nationality depended upon entry in the public register. In the absence of valid registration, the vessel was considered stateless despite its ownership and the documentation it purported to carry. This case underscores a central point that nationality flows from registration, not from ownership, certification, or the mere visual act of flying a flag.

### 5.3 The Administrative Process Linking Vessel and State

The administrative process that connects a vessel to a State typically involves the submission of documentation, verification of compliance with national requirements, payment of fees, and formal entry into the public register. Upon completion of these steps, the ship acquires national character and may lawfully navigate

<sup>1</sup> *Muscat Dhow’s case, (France V. Great Britain)* 1905, Permanent Court of Arbitration. Also see Rodney Carlisle. (2014). The Muscat Dhows Case in Historical Perspective. *The Northern Mariner/Le marin du nord*, XXIV(1), pp. 23-40.

<sup>2</sup> Richard Coles and Edward Watt. (2018). *Ship Registration: Law and Practice*, p. 70. Also see, Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2<sup>nd</sup> edition, Brill Nijhoff, p. 116.

<sup>3</sup> *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999.

<sup>4</sup> Michael Galley. (2013). Flagging Interest: Ship Registration, Owner Anonymity, and Sub-standard Shipping. *Mountbatten Journal of Legal Studies*, 14(1&2), pp. 87-109. See, Theodore Okonkwo. (2018). International maritime legal regime and the escalation of flags of convenience practices. *International Journal of Law*, 4(1), pp. 1-9.

<sup>5</sup> Article 94 UNCLOS.

<sup>6</sup> See *Nottebohm case op.cit.*

<sup>7</sup> *R v. Bolden and Dean (The Battlestar)* (1997) 2 Int. M.L.

under the flag of that State.<sup>1</sup> The act of registration thus implements a dual function. First, it documents the national identity of the vessel. Second, it establishes the legal bond through which jurisdiction is exercised. The ship gains the right to diplomatic protection and lawful navigation; the State acquires regulatory authority and international responsibility.

International practice also recognises the obligation of States to respect foreign registration. The principle of mutual recognition underpins cases such as *McCulloch v. Sociedad Nacional*,<sup>2</sup> where the United States Supreme Court declined to extend domestic labour jurisdiction over vessels flying foreign flags.<sup>3</sup> Similarly, during the 1873 *Virginus* incident,<sup>4</sup> the United States asserted that only the flag State possessed authority to determine the validity of a ship's registration.<sup>5</sup> These examples highlight the international significance of the act of registration. Once nationality is conferred in accordance with domestic law, it becomes opposable to other States.

## 6. The Criteria for Ship Nationality and the Genuine Link Requirement

As earlier mentioned, the determination of a ship's nationality is formally tied upon registration of a vessel in the State's registry, subsequently acquiring nationality from the State in whose registry it is entered and whose flag it is entitled to fly. Once authorisation is granted to fly that flag, the vessel benefits from the diplomatic protection of the flag State and falls under its primary jurisdiction on the high seas.

The principle that the flag State exercises jurisdiction over vessels flying its flag is one of the most firmly established rules of customary international law and is expressly reflected in the UNCLOS. As established in Article 91 that grants the possibility of every State retain its authority to determine the conditions under which nationality of ships can be issued, subject to the existence of a genuine link between the State and the vessel.<sup>6</sup> These obligations, elaborated in

Article 94, requires the flag State to exercise effective jurisdiction and control in administrative, technical, and social matters, including construction standards, equipment, seaworthiness, manning, labour conditions, and crew training.

The concept of the genuine link was first formally introduced in Article 5 of the 1958 Convention on the High Seas (HSC). Article 5 paragraph 1 of that Convention provides that each State shall establish the conditions for the grant of its nationality to ships, for their registration, and for the right to fly its flag. It further stipulates that ships possess the nationality of the State whose flag they are entitled to fly and that a genuine link must exist between the State and the ship, requiring the effective exercise of jurisdiction and control in administrative, technical, and social matters.<sup>7</sup>

Article 91 of UNCLOS subsequently reaffirmed the wordings of the former Convention reiterating the genuine link requirement, though without repeating verbatim the reference to effective jurisdiction. The *travaux préparatoires* suggest that the deletion was not intended to alter the substance of the requirement, but rather to avoid duplication with Article 94, which comprehensively sets out flag State duties.<sup>8</sup> This can thus be deduced that the genuine link in the 1982 Convention retains the same functional orientation as under the 1958 Convention.

The readings of these provisions raise two enduring questions. First, what is meant by a genuine link in the maritime context? Second, what legal consequences follow where such a link is absent or merely nominal?

The concept did not originate in maritime law. It echoes reasoning developed by the International Court of Justice in the *Nottebohm Case*, where nationality was described as requiring a real and effective bond rather than a purely formal attachment.<sup>9</sup> Although that case concerned individuals rather than ships, its language influenced subsequent debates on ship

<sup>1</sup> Michael Galley, *op.cit.*

<sup>2</sup> *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963).

<sup>3</sup> David Sloss, Michael Ramsay and William Dodge. (2011). *International Law in the US Supreme Court*. Cambridge University Press, p. 329.

<sup>4</sup> Jonathan Ault. The *Virginus* Affair, Latin American Studies, available online at <https://www.spanamwar.com/virginus.htm> accessed 14/05/2025.

<sup>5</sup> Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2<sup>nd</sup> edition, Brill Nijhoff, p. 112.

<sup>6</sup> Article 91 (1) UNCLOS.

<sup>7</sup> Article 5 (1) of the High Seas Convention 1958.

<sup>8</sup> Third United Nations Conference on the Law of the Sea, Official Records, Vol. III, p. 107 at 130.

<sup>9</sup> *Nottebohm Case op.cit.*

nationality. Yet, despite decades of incessant discussion, no precise or universally accepted definition of the genuine link has emerged in the maritime sphere.

To comprehensively understand this dilemma, the interpretation of the term under the 1958 Convention must be guided by Articles 31 and 32 of the Vienna Convention on the Law of Treaties. In applying the ordinary meaning rule, a genuine link supposes a real and substantive connection between the ship and the State purporting to grant nationality,<sup>1</sup> as opposed to a merely artificial or tenuous association.<sup>2</sup> Contextually, the HSC restricts changes of flag during a voyage save in cases of genuine transfer of ownership or registry, ultimately reinforces the idea that nationality presupposes a meaningful relationship.<sup>3</sup>

However, neither textual interpretation nor recourse to *travaux préparatoires* yields a definitive standard as suggested by the Vienna Convention on Treaties. Early drafts of the International Law Commission attempted to impose ownership requirements as minimum criteria for recognition of nationality by other States.<sup>4</sup> These proposals were ultimately abandoned in favour of the more flexible genuine link formula, reflecting a compromise between traditional maritime powers and States operating open registries.<sup>5</sup>

The ambiguity surrounding the concept was later addressed by the ITLOS in the *M/V Saiga (No. 2)* judgment wherein the Tribunal reaffirmed that the genuine link was to be viewed in the context of the effective exercise of jurisdiction and control and not for determining whether a State is apt to allow ships to fly its flag.<sup>6</sup> In other words, the genuine link functions as a principle directed inward, toward the responsibilities of the flag State, rather than outward, as a mechanism for invalidating nationality.

Subsequent efforts to give the concept greater precision culminated in the 1986 United Nations Convention on Conditions for Registration of Ships. Whilst the earlier Conventions envisaged the “genuine link”, as seen, in terms of

jurisdiction and control, the 1986 Convention introduces the concept of the economic link, providing for the participation by nationals of the flag State in the ownership, manning and management of ships. The relevant provisions for this purpose are contained in Articles 7, 8, 9 and 10.<sup>7</sup> Yet even these provisions leave considerable discretion to States and have not fundamentally altered the landscape of maritime registration. The Convention although considerable of the short comings of the earlier Conventions, it has not achieved widespread ratification, and its practical impact remains limited.

Thus, the genuine link does not undermine the constitutive function of registration. Rather, it reinforces it. Registration remains the sovereign act through which nationality is conferred. The genuine link requirement ensures that the connection between the issuing state and the ship in question carries functional substance, anchoring nationality to responsibility that comes with it within the international maritime order.

## 7. The Legal Consequences of Flag State Nationality

The attribution of nationality confers rights upon the flag State, but it simultaneously imposes corresponding obligations within the international maritime order. This link, however, carries with it a structured allocation of jurisdiction, authority and responsibility. Once a vessel acquires nationality, it becomes integrated into the public law framework of the flag State and consequently subject to its regulatory control.

Under Article 92 of the UNCLOS, ships sailing under the flag of one State are subject to the exclusive jurisdiction of that State on the high seas. This principle reflects the long-standing rule of international law that jurisdiction over a vessel on the high seas resides solely with the State to which the vessel belongs. Nationality therefore operates as the legal basis upon which

<sup>1</sup> Churchill R.R. (2000). “The Meaning of the “Genuine Link” Requirement in Relation to the Nationality of Ships”, a study prepared for the International Transport Workers’ Federation, University of Wales, Cardiff, p. 11, available online at <https://orca.cardiff.ac.uk/id/eprint/45062/1/itf-oc2000.pdf> accessed 16/05/2025.

<sup>2</sup> Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969.

<sup>3</sup> Article 6(1) of the 1958 HSC.

<sup>4</sup> *Yearbook of the International Law Commission*, 1951, Vol. II, pp. 75-76.

<sup>5</sup> Alex, G.O. (1999). *The Genuine Link Concept: Time for a Post Mortem?* Utrecht University, p. 3.

<sup>6</sup> *M/V Saiga (No. 2) op. cit.*, Judgment para.83.

<sup>7</sup> Richard Coles and Edward Watt. (2018). *Ship Registration: Law and Practice*, p. 70. Also see, Louis B. Sohn *et al.* (2014). *Cases and Materials on the Law of the Sea*, 2<sup>nd</sup> edition, Brill Nijhoff, p. 74.

jurisdiction is asserted and exercised.<sup>1</sup>

### 7.1 *The Exercise of Exclusive Flag State Jurisdiction*

The exercise of exclusive jurisdiction encapsulated in Article 92 is complemented by the obligations imposed under Article 94 of UNCLOS. Article 94 provides that every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. This provision transforms nationality from a formal status into a regime of active supervision.

In our previous analysis, the flag State holds jurisdiction over its vessels on the high seas and is obligated to enforce regulations concerning navigation, safety, and administrative, technical and social matters.<sup>2</sup> These duties include maintaining a ship register, assuming jurisdiction under domestic law over the vessel and its crew, and ensuring compliance with applicable international standards. The obligation to effectively exercise jurisdiction underlines that nationality entails performance, not mere attribution. This consequently buttresses the need for a genuine link in order to ensure this regulatory control over vessels being granted nationality.

### 7.2 *Duties of the Flag State Under Article 94 of UNCLOS*

The reading of Article 94 expressly revolves around three dimensions of control herein; administrative, technical and social. This tripartite formulation mirrors the regulatory responsibilities bound by every flag state conferring ship nationality as well as regulate the activities of the vessel and every one serving on board it.

One of the most fundamental obligations imposed on the flag State is the duty to maintain an official register of ships. Article 94(2) (a) requires States to keep an official register containing the names and identifying particulars of vessels entitled to fly their flag. Through this register, nationality is attributed to ships and the legal bond between the vessel and the State is established. While the Convention leaves the regulatory structure and registration procedures

of such registers largely to the discretion of domestic legislation, the 1986 Convention elaborates in far greater detail the information that ought to be recorded in a ship register.<sup>3</sup> In practice ship registries often reflect the broader maritime policy pursued by the State concerned. Some traditional maritime powers maintain closed registries designed to preserve national control over ownership and management of ships, whereas other States operate open registries intended to attract foreign shipowners and capital.<sup>4</sup>

Equally related to the maintenance of the register of ships is the obligation of the flag State to assume jurisdiction over ships flying its flag and over the persons serving on board them. Article 94(2)(b) further obliges the flag State to exercise jurisdiction not only over ships registered under its flag, but also over the master, officers and crew serving on board such vessels. This jurisdiction constitutes the legal basis for the well-established principle that vessels on the high seas are primarily subjected to the control of their flag State. Likewise, the responsibility of the flag State extends not only to the physical condition of the vessel but also to the conduct, competence, and welfare of the persons on board.

Article 94 further imposes a series of obligations aimed at ensuring the safety of ships and the protection of life at sea. Paragraph 3 requires the flag State to take all necessary measures to guarantee safety with respect to the construction, equipment, and seaworthiness of vessels, as well as the manning of ships, the training of crews, and the use of signals and communication systems designed to prevent collisions.<sup>5</sup> The notion of seaworthiness refers to the overall fitness of a vessel to withstand the conditions reasonably expected at sea. This notion extends beyond the physical integrity of the hull and equipment to encompass crew competence, adequate stores, and sufficient fuel supplies. Seaworthiness therefore covers vessel design, construction, manning, equipment, and

<sup>1</sup> Richard A Barnes. (2015). "Flag States", in DR Rothwell, AG Oude Elferink, KN Scott and T Stephens (eds) *The Oxford Handbook on the Law of the Sea*. Oxford University Press, pp. 304-324.

<sup>2</sup> Article 94 (1) UNCLOS.

<sup>3</sup> See Article 11 of the 1986 Convention.

<sup>4</sup> Nivedita Hosanee, A Critical Analysis of Flag State Duties as Laid Down Under Article 94 of the 1982 United Nations Convention on the Law of the Sea (UN Division for Ocean Affairs, 2009), available online at [http://www.un.org/depts/los/nippon/unnnff\\_programme\\_home/fellows\\_pages/fellows\\_papers/hosanee\\_0910\\_mauritius.pdf](http://www.un.org/depts/los/nippon/unnnff_programme_home/fellows_pages/fellows_papers/hosanee_0910_mauritius.pdf) accessed 13/05/2025.

<sup>5</sup> Article 94 (3) UNCLOS.

maintenance standards.<sup>1</sup> Within the framework of Article 94(3), seaworthiness is further reinforced by Article 219 of UNCLOS, which links vessel condition directly to the prevention of marine pollution.

In practice, the fulfilment of these safety standard obligations is derived from international conventions and through international cooperation, particularly under the auspices of the International Maritime Organization (IMO).<sup>2</sup> Instruments such as the International Convention for the Safety of Life at Sea (SOLAS) establish detailed requirements relating to ship construction, fire protection, lifesaving equipment, and navigational safety.<sup>3</sup> Although these technical standards are elaborated at the international level, their implementation and enforcement ultimately remain the responsibility of the flag State.

Again, international maritime safety regulation places particular emphasis on the importance of proper training and working conditions for seafarers. International standards governing training and certification are established under the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, while labour conditions aboard ships are addressed through instruments adopted by the International Labour Organization. In particular, the Maritime Labour Convention 2006 consolidates a wide range of earlier maritime labour standards and establishes minimum requirements concerning employment conditions, accommodation, health protection, and social welfare for seafarers.<sup>4</sup>

Furthermore, the duty of the flag State is outlined in issues concerning the inspection and survey of ships. Article 94(4) requires vessels to be surveyed by qualified surveyors prior to registration and periodically thereafter to ensure continued compliance with safety standards. These inspections may be carried out by national maritime authorities or delegated to recognised classification societies acting on behalf of the flag

State. Through such surveys, the flag State verifies that vessels possess the necessary charts, navigational equipment, and qualified personnel required for safe navigation.

UNCLOS further introduces mechanisms designed to reinforce accountability in the exercise of flag State jurisdiction. Article 94(6) reinforces the overarching principle articulated in Article 94(1), namely that the flag State bears primary responsibility for exercising effective jurisdiction and control over vessels flying its flag. It permits any State that has reasonable grounds to believe that a flag State has failed to discharge this responsibility to report the relevant facts to that flag State. Upon receipt of such a report, the flag State is required to investigate the matter and, where appropriate, to take remedial action.

In addition, Article 94(7) imposes a duty on the flag State to conduct an inquiry, before suitably qualified persons, into every marine casualty or incident of navigation on the high seas involving a ship flying its flag, where such incidents result in loss of life or serious injury to nationals of another State, or cause serious damage to ships, installations, or the marine environment of another State. The provision further requires cooperation between the flag State and other States concerned in the conduct of such inquiries. This means that the flag State and the other State have a mandatory duty to cooperate to establish the relevant facts.<sup>5</sup> Contemporary maritime practice increasingly emphasises cooperation between States in the conduct of such investigations, as reflected in the standards developed by the International Maritime Organization concerning the investigation of marine casualties.

Beyond these safety and administrative responsibilities, the Convention also assigns the flag State a central role in the protection of the marine environment. Article 217 outlines the enforcement mechanisms necessary to uphold these standards; emphasizing that compliance

<sup>1</sup> Adriana Vincenca Padovan, "The Elements of Seaworthiness in the Context of Marine Insurance Revisited," pp. 101-122, *Modern Challenges of Marine Navigation - Book of Proceedings of the 4th International Scientific Conference on Maritime Law ISCML Split 2023*.

<sup>2</sup> Convention on the International Maritime Organization, Adoption: 6 March 1948; Entry in force: 17 March 1958 available online at <https://www.imo.org/en/about/conventions/pages/convention-on-the-international-maritime-organization.aspx> accessed 29/12/2025.

<sup>3</sup> International Convention for the Safety of Life at Sea (SOLAS), 1974.

<sup>4</sup> International Labour Organization, Maritime Labour Convention, 2006.

<sup>5</sup> Etienne Kentsa and Arnold Moyo Dongue. (2025). The Obligations of States to Cooperate under the United Nations Convention on the Law of the Sea. *Quebec Journal of International Law*, 36(2), pp. 47-72.

must be monitored irrespective of where violations occur. Ships should not be allowed to operate unless they meet pollution control requirements and possess the appropriate certification. In cases of non-compliance, flag States are responsible for conducting investigations and where sufficient evidence exists, the flag State must institute proceedings under its domestic law and impose penalties adequate to discourage further violations.<sup>1</sup>

In view of these provisions underscored above, the attribution of nationality to ships is made of a complex framework of responsibilities borne by the flag State. The flag State is expected not only to confer nationality but also to exercise continuous oversight over the vessels flying its flag, ensuring compliance with international standards relating to safety, labour conditions, environmental protection, and maritime governance. Nevertheless, as practically demonstrated, the effectiveness of this regime ultimately depends on the willingness and capacity of flag States to implement and enforce these obligations in good faith.

## 8. Summary of Findings

This study examined the legal architecture governing ship registration and the attribution of nationality under the international law of the sea, emphasizing the juridical bond between vessels and flag States and the regulatory obligations that flow from it. The findings underscore that ship registration is the constitutive act through which nationality is conferred, providing vessels with a recognized legal identity and establishing the flag State's authority and responsibility. Consistent with Article 91 of the United Nations Convention on the Law of the Sea, nationality is not an inherent attribute of a vessel, but a legal status formalized through registration, which entitles the ship to fly the flag of the registering State. This process is the linchpin of maritime governance, linking jurisdiction, regulatory oversight, and international accountability.

A key finding is that States retain broad discretion in granting ship nationality, including determining eligibility criteria, ownership structures, and operational standards. However, this discretion is constrained by the principle of a

“genuine link”, a requirement intended to ensure that the flag State is capable of exercising effective jurisdiction and control over vessels. The study confirms, in line with contemporary scholarship, that while the genuine link remains legally ambiguous, its functional purpose is to anchor nationality to regulatory capacity and accountability, rather than to serve as a rigid test for validating registration.

The study further finds that the legal consequences of nationality are substantive and enforceable. Under Article 94 UNCLOS States are obligated to maintain comprehensive ship registries, supervise vessel safety, enforce labor standards, ensure crew competence, and uphold environmental protection obligations. Nationality, therefore, is inseparable from active regulatory responsibility, transforming the legal status of a vessel into a mechanism for effective governance, risk mitigation, and compliance enforcement. This reinforces the view, supported by scholars such as Churchill and Lowe (2022) and Barnes (2015), that nationality is not merely symbolic but operational, shaping state accountability and maritime order.

Another significant finding is that stateless vessels represent a governance and regulatory gap. Without registration, ships are deprived of the legal protection and oversight normally provided by a flag State, leaving them vulnerable to regulatory evasion, unsafe practices, environmental harm, and maritime crime. This finding emphasizes the critical role of registration as a preventive and regulatory instrument, ensuring that every vessel operates under identifiable jurisdiction and supervision.

Finally, the study confirms that ship registration serves as the gateway through which vessels enter the international maritime legal order, integrating legal identity, flag State responsibility, and international regulatory obligations into a coherent framework. By linking ships to States, registration allocates jurisdiction, enforces compliance with international standards, and establishes accountability for governance on the high seas. These findings align with both classical maritime doctrine and contemporary scholarship, underscoring that the

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<sup>1</sup> Article 217(8), modeled on the relevant provisions of MARPOL 73/78 requires penalties provided by the flag State to be “adequate in severity to discourage violations wherever they occur.” Thus, the flag State must have in place an effective enforcement regime for vessels registered under its flag.

effectiveness of the law of the sea ultimately depends on the capacity and willingness of flag States to exercise meaningful control over registered vessels.

## 9. Conclusion

The regulation of maritime navigation ultimately depends on the ability of international law to attach vessels to States either coastal or landlocked legal authorities. This performance is usually done through linking the vessel and a particular State, accrediting them into a framework of jurisdiction and responsibility. This therefore means that the attachment in question is not the result of a natural connection but the product of a deliberate legal act undertaken through registration.

In the light of this study, registration should not be perceived simply as administrative procedure. It is the regulatory point at which a vessel enters the international maritime legal order and becomes subject to the authority and protection of a flag State. From that moment, the ship operates not as an isolated object on the seas but as an extension of the legal system whose flag it flies often referred to as the *floating piece*<sup>1</sup> of that State.

A clear understanding of the constitutive role of registration is how the authority is showcased and exercised under maritime governance. It thus highlights the extent to which the effectiveness of the law of the sea ultimately rests on the willingness and capacity of States to exercise meaningful control over the vessels that carry their nationality and duly registered under their State registries.

## 10. Recommendations

In light of the findings of this study, several recommendations are proposed to strengthen the legal and institutional framework governing ship registration and the attribution of nationality under the international law of the sea. While the United Nations Convention on the Law of the Sea establishes the foundational rules regulating the relationship between ships and flag States, developments within the global shipping industry have exposed structural weaknesses in the existing regime. These challenges include the ambiguity surrounding the genuine link requirement, weak enforcement of flag State obligations, disparities in national ship

registration systems, and the increasing complexity of maritime governance. Addressing these issues requires both normative clarification and institutional strengthening within the international maritime legal order.

Accordingly, the following recommendations are advanced to enhance the effectiveness, accountability, and transparency of ship registration systems while reinforcing the role of nationality as a mechanism for allocating jurisdiction and regulatory responsibility among States.

### 10.1 Redefining the Genuine Link Requirement

One of the most persistent weaknesses within the international legal regime governing ship nationality is the vagueness of the “genuine link” requirement articulated in Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS). Although the provision requires that a genuine link exists between a vessel and the flag State, international law does not clearly define the parameters of such a relationship. As a result, the concept has frequently remained abstract and politically interpreted rather than legally operationalized. This ambiguity has enabled the proliferation of open registries and flags of convenience, which often weaken effective flag State control and undermine international regulatory standards.

The genuine link requirement should therefore be redefined in operational and measurable terms, incorporating indicators such as effective administrative control, ownership transparency, regulatory oversight, and demonstrable enforcement capacity. Clarifying and operationalizing this requirement would significantly strengthen the credibility and accountability of ship registration regimes within the international maritime legal order.

### 10.2 Establishing an International Oversight Mechanism for Flag State Registries

Another important recommendation is the establishment of an international oversight mechanism to periodically audit national ship registries for compliance with international maritime standards and the genuine link requirement. Although UNCLOS assigns primary responsibility for vessel regulation to flag States, the absence of systematic monitoring mechanisms has contributed to variations in

<sup>1</sup> *S.S. Lotus (France. v. Turkey)*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7).

regulatory practices across national registries. Some States maintain robust administrative systems, while others operate minimal oversight regimes, thereby allowing vessels to operate under weak regulatory conditions.

An international auditing framework potentially administered through the International Maritime Organization (IMO) could conduct periodic evaluations of registry practices, administrative capacity, and enforcement mechanisms. Such oversight would enhance transparency, promote regulatory consistency, and reinforce the effectiveness of the international maritime governance system.

### 10.3 Establishing Accountability Mechanisms for Flag State Non-Compliance

The effectiveness of the international maritime legal regime ultimately depends on the ability of flag States to exercise effective jurisdiction and control over vessels flying their flags, as required under Article 94 of UNCLOS. However, evidence shows that some flag States fail to adequately fulfil these obligations, leading to maritime safety deficiencies, environmental harm, and labor rights violations within the shipping industry. To address this challenge, stronger accountability mechanisms should be developed to ensure that States comply with their international responsibilities. These mechanisms could include enhanced reporting obligations, peer review processes within international maritime institutions, and strengthened cooperation between flag States, port States, and coastal States to address persistent regulatory failures.

### 10.4 Strengthening International Institutional Frameworks

Effective governance of ship registration requires stronger institutional coordination within the global maritime regulatory system. International organizations particularly the International Maritime Organization (IMO) play a critical role in establishing safety standards, environmental regulations, and mechanisms for international cooperation.

However, the complexity of modern maritime operations necessitates enhanced institutional capacity, improved coordination among regulatory bodies, and stronger enforcement mechanisms within existing frameworks. Strengthening these institutional arrangements would enhance the ability of the international community to monitor compliance, respond to emerging regulatory challenges, and maintain

effective governance within the maritime domain.

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# Algorithmic Discrimination Against Workers and Remedies Under the DeepSeek Context

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## Abstract

With the rapid development of artificial intelligence technologies, algorithmic discrimination, while bringing development opportunities, has also exposed numerous existing problems. Issues of algorithmic discrimination urgently need to be addressed in job screening, wage distribution, and occupational stratification. Based on these issues, this paper proposes remedies for workers from three broad aspects: enhancing workers' capacity to safeguard their rights, improving industry self-regulation schemes, and refining national regulatory measures. Through in-depth and multi-dimensional research on algorithmic discrimination, and by comparing legal regulations across different countries, it helps to better understand the impact of algorithmic discrimination on workers' rights and interests, and provides a theoretical basis for subsequent policy-making and legal regulation.

**Keywords:** algorithmic discrimination, workers' rights and interests, legal regulation, algorithmic black box

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## 1. The Necessity of Research on the Regulation of Algorithmic Discrimination

(1) Responding to the discrimination risks brought about by the rapid penetration of DeepSeek large-model technology: to explore how the application of algorithms in labor management (such as recruitment, performance evaluation, promotion, dismissal, task allocation, etc.) infringes upon workers' legitimate rights and interests, and to analyze the underlying legal issues and social impacts. This helps to identify and understand the specific types of algorithmic discrimination and their impact on workers' right to equality, providing a theoretical basis for solving practical problems.

(2) Helping to address workers' difficulties in producing evidence and safeguarding their rights in the face of algorithmic black boxes: the concealment of algorithmic discrimination is reflected in that workers find it difficult to know the real reasons for rejection or low performance evaluation, and even more difficult to prove the causal relationship between discrimination and algorithmic decision-making. Therefore, it is necessary to explore rules of evidence and mechanisms for the allocation of the burden of proof that conform to the characteristics of algorithmic discrimination, so as to provide workers with operable paths for rights protection.

(3) Contributing to better filling the institutional gaps in China's current labor law system regarding the regulation of algorithmic discrimination: China's *Labor Law* has established the principle of equal employment, but since large-scale intervention of artificial intelligence in labor relations had not yet emerged at the time of its enactment, it lacks specific regulatory provisions targeting algorithmic discrimination. Existing norms are mostly principled provisions and lack detailed implementation rules. By comparing the governance status of algorithmic discrimination in various countries and combining it with China's actual conditions, this study aims to propose targeted legislative improvement suggestions and promote the synchronous updating of labor law norms with the development of artificial intelligence technologies.

(4) Promoting the development of artificial intelligence technologies toward fairness, transparency, and responsibility: the issue of algorithmic discrimination is not only a legal issue, but also involves technological ethics and value orientation. At present, some enterprises excessively pursue efficiency and accuracy in the development and application of algorithms while neglecting considerations of fairness. Through in-depth analysis of the causes, types, and governance paths of algorithmic discrimination, this study aims to promote the deep integration of institutional development and ethical norms, and to facilitate the healthy development of the artificial intelligence industry.

## 2. Diversified Scenarios of Employment Discrimination Caused by Data Algorithms

The popularization of algorithms is often regarded as a tool to eliminate information barriers and promote social equality, yet its actual effect constitutes a paradox: while granting unprecedented opportunities to some groups, it also entrenches the marginal status of others, such as Black individuals who have long been subjected to racial discrimination, and women who are continuously subjected to implicit discrimination in certain countries and regions. The core crux of algorithmic discrimination lies not in technology but in society. It is not an accidental error of code, but an inevitable continuation of systemic and structural injustice in the real world within the digital domain. When algorithms are embedded within existing social frameworks, they often do not eliminate discrimination but digitally encode

existing developmental disparities, making them more concealed, efficient, and difficult to correct. Algorithms are not inherently the crystallization of intelligence, but rather a collection of computational rules set by humans. When these rules remain at a crude and simplified early stage, their operational outcomes are highly prone to deviate from the track of fairness, and may even inadvertently amplify social biases. These biases often exist throughout the entire process and all stages of employment.

### 2.1 Manifestations of Discrimination in Job Screening

First, in the recruitment stage, various online recruitment platforms automatically classify, rate, rank, and make decisions on users based on personal data such as gender, age, household registration, health status, and work performance, selectively displaying certain recruitment information while concealing others. Algorithms may screen resumes based on sensitive characteristics such as gender, age, and race in historical data, resulting in the automatic exclusion of disadvantaged groups. According to a joint survey by Northeastern University and the University of Southern California in the United States, advertisements for supermarket cashier positions on Facebook were shown to 85% female audiences, while taxi company jobs were shown to approximately 75% Black audiences. This indicates that recruitment platforms "label" labor groups based on historical data, causing the recruitment information they receive to be limited. Women receive more recommendations for low-skill, low-pay jobs, while men receive more recommendations for high-skill, high-pay jobs.

Second, algorithmic technology invisibly differentiates the labor value of different groups. Studies have found that automated recruitment systems tend to select applicants with "masculine" characteristics when screening resumes, thereby limiting opportunities for female applicants and making it difficult for them to obtain equal employment opportunities as men (Chen Bolin, 2024).

Third, unfairness exists in video interview analysis. Some enterprises use AI to analyze job seekers in video interviews, and algorithms may have biases toward specific accents, appearances, or body language, affecting the fairness of scoring. For example, job seekers with regional accents may be judged by algorithms as having "poor communication skills," while in reality this

is merely a difference in language habits. Such judgments based on superficial characteristics are not directly related to the actual working ability of workers, yet may become grounds for elimination.

## 2.2 Manifestations of Discrimination in Compensation

Article 46 of the *Labor Law of the People's Republic of China* provides: "Wage distribution shall follow the principle of distribution according to work and implement equal pay for equal work." The implementation of the principle of equal pay for equal work helps eliminate employment discrimination and ensures that workers compete under equal conditions and receive fair remuneration. However, algorithmic discrimination is undermining this principle.

First, algorithms perpetuate historical wage discrimination. If training data contain historical wage discrimination information, algorithms may continue or even amplify such disparities, infringing upon workers' right to equal remuneration. Studies have found that algorithms commonly exhibit gender and racial wage bias in recruitment scenarios. In the Google algorithm discrimination case, when people search for keywords such as "African American," more crime-related information is displayed (Shulman, D. R., 2014). Another example is the "Apple Card," jointly launched by Apple and Goldman Sachs in 2019, which was exposed for its algorithm granting significantly lower credit limits to female users than to male users (with a difference of up to 20 times), even when spouses filed taxes jointly and had similar credit records (Telford, T., 2019/2025). Scholars from Carnegie Mellon University found that Google recommends jobs with annual salaries above \$200,000 to men six times more frequently than to women. Moreover, studies indicate that recruitment algorithms exhibit bias against women, persons with disabilities, and certain ethnic groups when screening resumes, thereby limiting their opportunities to engage in high-income occupations (Engler, A., 2012). Such differences in recommendation directly lead to inequality between men and women in access to high-paying job opportunities.

Second, platform algorithms impose implicit penalties on specific groups. In the ride-hailing gig economy sector in China, female drivers, due to childcare responsibilities, tend to accept orders during off-peak hours (Didi reports show that the

number of orders taken by female drivers declines after 4 p.m.). Ride-hailing platform algorithms prioritize dispatching orders to drivers active during peak hours through a "travel score" mechanism, linking "continuous order-taking" with "reputation value." If women suspend order-taking due to childcare responsibilities, they face dual penalties of reduced income and lower dispatch priority. Such seemingly neutral algorithmic rules in fact constitute systemic discrimination against women who bear greater family responsibilities.

## 2.3 Manifestations of Discrimination in Occupational Stratification

An important cause of algorithmic discrimination lies in the subjective factors of developers and users themselves; fundamentally, it is the shaping of technology by human subjective will. Algorithms are not objective truths generated out of nothing, but extensions of human cognition and will. Every choice in the design process deeply imprints the subjective traces of their creators. As individuals within society, developers' cognitive frameworks, life experiences, and professional backgrounds all contain inherent limitations, and they are by no means completely rational from a "God's-eye view." Secondly, if the data relied upon during the testing phase of algorithms contain biases, such biases are often fully inherited by the system, becoming one of the initial causes of algorithmic discrimination. These forms of discrimination are specifically manifested in occupational stratification as the solidification of career development pathways. Algorithmic discrimination not only affects workers' opportunities for entry into employment, but also affects their career development. When algorithms determine, based on historical data, that certain groups are "unsuitable" for specific positions or promotion opportunities, these groups are systematically excluded from development pathways. For example, algorithms may infer from historical promotion data that female employees have a lower probability of promotion, and thus automatically filter out qualified female candidates when recommending promotion opportunities. Such recurring discrimination intensifies occupational segregation and exacerbates social inequality. This inequality not only harms individuals' career development, but may also have negative impacts on social harmony and stability. At present, large-scale artificial intelligence systems

are almost exclusively developed by a small number of technology companies and a limited number of elite university laboratories. In the West, personnel in these laboratories often share several fixed characteristics: wealthy, male, and white. Data show that in 2023 only 5.6% of Google employees were Black (Google, 2023), and in 2022, women accounted for 25.8% of technical staff at Facebook, while Black employees accounted for 4.9% (Williams, M., 2022). When certain groups are long restricted to lower-level positions due to algorithmic discrimination and are unable to obtain fair development opportunities, social stratification will intensify, and social conflicts will escalate accordingly. Algorithmic discrimination has become a new factor exacerbating social inequality in the digital era.

### 3. Limitations in Current Governance

#### 3.1 *The Identification of Employment Discrimination Lacks Clear Standards*

In China's current legal system, there is no law that explicitly defines and regulates "algorithmic discrimination" as an independent type of unlawful conduct. Machine learning decision-making is playing an increasingly important role in employment matching, yet China has not developed legislation addressing its role in employment discrimination. This means that although Article 12 of the *Labor Law* prohibits employment discrimination based on ethnicity, race, gender, and religious belief, and the *Employment Promotion Law* has expanded prohibited grounds of discrimination to include disability and carriers of infectious diseases, these provisions were all formulated prior to the algorithmic era. Their regulatory focus is on subjective discriminatory conduct by humans, rather than discriminatory outcomes of automated algorithmic decision-making. The lag in legislation makes it difficult to effectively regulate the risks of employment discrimination arising from technological applications.

#### 3.2 *Ineffective Exercise of Regulatory Powers by Public Authorities*

First, current legal provisions in China regarding the protection of workers' equal employment rights are relatively general and abstract. Many provisions are declaratory, authorizing, or foundational in nature, lacking clear mandatory norms and corresponding punitive clauses. Although the law imposes certain obligations on employers, the relevant provisions often fail to

specify the content of these obligations, do not clearly define the legal liabilities for breach, and lack supervisory mechanisms for monitoring employer compliance. In the context of the widespread application of algorithmic technology in labor management, how to effectively supervise employers' use of algorithms in employment processes has become an important issue requiring urgent attention (Zhang Linhan, 2024).

Second, there is overlap in departmental responsibilities. Multiple government departments, such as cyberspace administration authorities and industry and information technology authorities, all bear corresponding responsibilities. However, the situation of "fragmented governance by different departments" has led to the fragmentation of algorithm governance. In comprehensive regulation, phenomena such as "multiple departments competing to regulate certain fields while regulatory gaps appear in others" have emerged. Moreover, regulatory authorities lack professional knowledge of algorithmic technology, making it difficult to effectively review and supervise complex algorithms. Technical barriers hinder regulatory bodies from penetrating the technological facade to identify discriminatory mechanisms.

#### 3.3 *The Opacity of Algorithmic Technology*

The "black box" nature of algorithms, namely the concealment of their internal logic and the unknowability of their decision-making processes, constitutes a major legal challenge to the protection of workers' right to equal employment. In practice, employers rely on these opaque algorithmic outputs to make employment decisions with legal consequences. However, neither the workers affected by such decisions nor the employers who use them can fully understand the specific basis of algorithmic determinations. This state of "bidirectional opacity" renders discriminatory algorithmic decisions akin to a "black box" that cannot be opened. The discriminatory logic within is difficult to deconstruct and prove, ultimately creating an insurmountable "evidentiary gap" between workers and algorithmic decision-making (Li An, 2021).

#### 3.4 *Difficulties Faced by Workers in Safeguarding Their Rights Due to Their Vulnerable Position*

First, the concealed application of algorithms and the opacity of their technical architecture

constitute the first barrier faced by workers after experiencing discrimination. The technological asymmetry between workers and employers forms an even stronger second barrier. This cognitive gap constructed by technology causes the algorithmic “black box” to become, to a certain extent, an artificially constructed “technical black box,” making it particularly difficult for workers to produce evidence (Liu Shuhan, 2024). In addition, there are few low-threshold channels for remedies. While a small number of cases may be resolved through negotiation, most cases involving emerging technologies such as artificial intelligence cannot be addressed through existing rights-protection mechanisms. This results in excessively high costs of judicial relief, making individual rights protection difficult and costly, and leaving workers trapped in a predicament of “lack of available remedies.”

Second, workers have become a “digitally disadvantaged group” under the large-scale application of generative artificial intelligence. The concept of “data-based alienation,” proposed by Italian scholar Daniele Ruggiu, provides a theoretical framework for understanding the vulnerable position of workers. First, the alienation of workers from their own data. Data generated by workers in the production process are used by platforms to optimize labor control—such as dispatch logic, performance evaluation, and monitoring mechanisms—which in turn reinforce control over workers. Second, the alienation of workers from themselves. Through data control, platforms continuously compress workers’ autonomous space, resulting in a “reduction of autonomy in the workplace.” This disadvantage exacerbates the severity of unfair treatment. Existing regulatory approaches have failed to effectively respond to such structural inequality, leading to an imbalance between technological innovation and the protection of workers’ rights and interests.

#### **4. Remedies for Workers After Discrimination Caused by DeepSeek Algorithms**

##### *4.1 Clarifying the Criteria for Identifying Algorithmic Discrimination*

The goal of algorithmic justice is to achieve social fairness in the field of labor employment, but this process cannot ignore the improvement in management efficiency brought about by the application of algorithms. The EU *Artificial Intelligence Act* has been widely criticized for

“over-advanced regulation,” and the root cause lies in how to find a dynamic balance between promoting technological innovation and safeguarding workers’ rights and interests (Zeng Xiong, Liang Zheng & Zhang Hui, 2022). To this end, this paper proposes referring to scenario theory and adopting a context-oriented differentiated assessment of the risk levels of algorithms in labor management. Based on the subject of algorithmic decision-making, application scenarios, and the degree of impact on workers’ rights and interests, two types of algorithmic forms should be applied differently, so as to achieve legal regulatory objectives consistent with the realities of labor employment. Specifically: first, for algorithmic applications that only involve internal management efficiency of enterprises and do not directly affect major rights and interests of workers (such as attendance statistics and workflow optimization), policy-neutral algorithms should be applied to ensure the efficiency and objectivity of algorithmic decision-making. Second, for algorithmic decisions involving recruitment, rating, dispatch, dismissal, and other matters that directly affect important rights such as the right to equal employment, the right to rest, and the right to health, policy-oriented algorithms should be applied. In algorithm design, distributive justice and relational justice should be comprehensively considered, anti-discrimination requirements should be embedded in all stages such as variable selection, weight setting, and result output, and necessary protection should be provided to vulnerable groups. The distinction between scenarios is not absolute. In practice, employers often outsource the development and optimization of algorithms to third-party suppliers, and the actual control over algorithmic decision-making may be dispersed among multiple entities. In such scenarios, judgment should not be based solely on the identity of the decision-making entity, but should focus on factors such as the types of workers’ rights involved and the scope of influence of decision outcomes. At present, China has not yet established a scenario-based classified governance approach in algorithm regulation and lacks institutional arrangements tailored to the particularities of labor management. This institutional gap not only constrains the positive role of algorithms in improving management efficiency, but also places workers in a passive position with no basis for rights protection when

facing algorithmic discrimination. Constructing an algorithm regulatory framework that fits employment scenarios helps to seek a balance between technological innovation and rights protection and prevents algorithms from amplifying the risks of employment discrimination (Mao Junxiang & Guo Min, 2026).

#### 4.2 Refining National Regulatory Measures

First, in terms of algorithm review, in order to effectively prevent employment risks caused by algorithms, the review mechanism should run through the entire process of algorithm design, deployment, and application, with a focus on ex ante prevention. At the level of internal governance, for decisions such as dismissal that have significant impacts on workers' rights and interests, a manual review channel must be established, with the human resources department of the employer exercising final decision-making authority and presetting error correction mechanisms, so as to safeguard the bottom line of rights while ensuring technological efficiency. At the level of external supervision, a multi-party collaborative review mechanism should be established. Labor inspection departments should take the lead, jointly involving industry trade unions and enterprise associations, and introducing experts and scholars from universities and research institutions to provide professional technical support, so as to ensure the professionalism and credibility of the review (Tian Silu & Zheng Chenyu, 2023). Enterprises must submit compliance reports before the launch of algorithms. Regulatory authorities should conduct regular spot checks by inputting sensitive variables such as gender and age to verify whether the algorithm's operational outcomes comply with the requirements of the right to equal employment. At the same time, enterprise compliance reports may serve as a basis for algorithm filing. By drawing on disclosure mechanisms in the field of consumer rights protection, lists of enterprises with non-compliant algorithms should be publicly disclosed to help workers avoid employment risks; and a stepped fine system should be implemented, determining penalty amounts based on the degree of infringement and the enterprise's profit level and making them public, so as to play a warning role within the industry. In setting review standards, the idea of risk-based classification governance should be adopted, and differentiated review should be conducted

according to the types of rights involved. For algorithm systems involving survival rights such as the right to rest and the right to health, strict review should be carried out throughout the entire process of data collection, variable screening, model construction, and result output; for algorithm systems involving the right to equal employment and the right to fair treatment, the focus should be on examining the correlation between input variables and output results to prevent discriminatory treatment; for relatively simple algorithms such as personnel attendance, the main task is to identify risks of differential treatment based on identity characteristics such as gender and ethnicity. To improve review efficiency, review institutions may issue self-assessment checklists, guiding enterprises in the form of questionnaires to conduct self-evaluation on key aspects such as data processing, sensitive indicators, and result variables, so as to identify and correct compliance deficiencies prior to formal submission, thereby reducing institutional costs (Zhang Xin, 2021).

Second, in terms of algorithm accountability, the state needs to clearly establish an algorithm accountability system and define responsibility mechanisms, so that individual workers can identify the responsible party when safeguarding their rights. The algorithm accountability system should allocate responsibility for the social impacts of algorithms and urge algorithm developers, designers, deployers, and users to fulfill their responsibilities through responsibility clarification, responsibility requirements, and accountability mechanisms. Since, under the current level of technology and legal framework, artificial intelligence does not yet have the capacity to bear civil liability, the principles of product liability may be applied by analogy to impose joint liability on the developers and operators of algorithms. This means that if defects in algorithmic products cause damage, both developers and operators should bear corresponding legal responsibility, so as to protect workers' rights and interests. As employers are the beneficiaries of algorithms, they must bear responsibility for algorithmic discrimination (Yang Yunxia & Xie Min, 2025). However, in algorithm-driven recruitment practices, employers and algorithmic orientation are not necessarily aligned, and employers often outsource the development and optimization of algorithm systems to third-party suppliers. These suppliers develop algorithm models, train data,

and continuously adjust models, playing a substantive role in shaping the models. Therefore, responsibility should not be imposed solely on employers; suppliers should also be included within the scope of accountability, and required to undertake obligations of explanation, proof, and corresponding legal duties, so as to ensure fairness in the allocation of responsibility and protect the rights and interests of job seekers (He Chao & Yu Yifan, 2025).

#### 4.3 Improving Industry Self-Regulation Schemes

For example, generative AI such as DeepSeek has developed rapidly in China. The algorithmic quasi-rights behind it have not been fully recognized by law, yet possess functions similar to rights. Algorithmic quasi-rights are not explicitly stipulated in written law, rely on morality, industry norms, or case recognition, lack compulsory enforceability, need to be realized through negotiation, public opinion, and other means, and may evolve into statutory rights with technological development or consensus. In response to the ambiguity of algorithmic quasi-rights, the industry needs to carry out self-regulation through the following measures.

First, in terms of industry standards, enterprises should transparently disclose the core algorithmic indicators that affect workers' rights and interests, and present them through user-friendly and understandable visual interfaces, so as to ensure that workers clearly know when and how their rights are infringed. The disclosed content should include two aspects: "data collection" disclosure and "algorithm application" disclosure (Luo Yichen & Zhou Xinheng, 2025). "Explanations that have clear technical pathways and can accurately measure correctness and precision should be called 'hard explanations'; in contrast, explanations that are only presented through graphics and textual descriptions that are difficult to quantify and evaluate in detail should be called 'soft explanations' (Su Yu, 2024)." The core difference between DeepSeek and other artificial intelligence models lies in open source and the transparency of the chain of thought: the chain of thought makes the decision-making process traceable and provides a basis for all parties to assess reasonableness; open source supports comprehensive algorithm testing to ensure fairness and safety, allows the review of data compliance to avoid privacy risks, and facilitates continuous tracking by regulatory authorities.

More importantly, open source encourages technical peers and users to participate in supervision, helping to identify problems in a timely manner and reduce compliance risks (Wang Wenxuan & Wang Dan, 2025). Algorithm developers should introduce algorithm explanation procedures to enable the public to understand the operation process of algorithms, thereby enhancing public trust in algorithmic decision-making. Given that workers' understanding of algorithms varies, enterprises should also use intuitive visualization forms such as charts and provide real-time feedback to help workers identify risks of infringement (Su Yu, 2024).

Second, in terms of industry norms, relevant industries should establish governance standards for algorithmic discrimination, with industry associations taking the lead in formulating standards, playing a bridging role between the government and enterprises, reducing administrative regulatory costs, and helping enterprises avoid algorithmic risks (Li Chang'an, Sun Yuyi & Han Weipeng, 2024). It is necessary to proceed from both industry self-discipline and government guidance: on the one hand, strengthening the ethical self-discipline of practitioners and establishing industry norms; on the other hand, the government should define ethical standards, strengthen supervision and review, and promote the implementation of systems, guided by the maintenance of social fairness and justice and the protection of workers' rights and interests. It is necessary to draw on the internal audit experience of foreign enterprises such as Google to establish a localized algorithm governance framework and balance technological innovation and rights protection. International experience shows that enterprise internal audit mechanisms can effectively reduce algorithmic discrimination: large technology companies such as Google and Microsoft have issued internal solutions to address algorithmic discrimination, and some companies have introduced AI recruitment audits similar to traditional recruitment fairness audits to examine whether recruitment decisions made using AI are discriminatory (Yang, J., Minjae, I., Choi, S., et al., 2021). Domestic enterprises such as Tencent, Alibaba, and Baidu have all established internal technology ethics committees (Li Chang'an, Sun Yuyi & Han Weipeng, 2024). At the same time, certification marks may be issued to enterprises with compliant algorithms, accompanied by

policy incentives such as tax reductions and priority in government procurement; through a dual mechanism of “credit rewards and penalties + economic leverage,” enterprises are guided to internalize algorithmic fairness as a core competitiveness, thereby promoting the transformation of compliance into competitive advantage. This ensures a dynamic balance between the advancement of AI technology and the protection of workers’ rights.

#### *4.4 Strengthening Workers’ Capacity for Rights Protection and Safeguards*

First, efforts should be made to broaden the channels for remedies in algorithmic discrimination cases. In response to the current predicament of limited low-threshold remedy channels and excessively high costs of judicial relief, diversified dispute resolution mechanisms may be explored: giving full play to the proactive supervisory functions of labor inspection departments, encouraging trade unions to participate in mediation, and supporting industry self-regulatory organizations to play a role in resolving disputes at an early stage; at the same time, drawing on the model of public interest litigation, trade unions or consumer organizations may be allowed to initiate representative litigation for widespread algorithmic discrimination, thereby reducing individual rights protection costs. In addition, to address the difficulty of proof for workers, rules of reversal of the burden of proof may be introduced in algorithmic discrimination cases, requiring employers or algorithm developers to prove that their algorithmic decisions do not involve discriminatory treatment. On this basis, data literacy should be improved and deep participation in intelligent employment should be promoted. Data literacy includes understanding the operational logic of algorithms, awareness of personal data rights, and a sense of active participation in intelligent employment environments. Only with such literacy can workers shift from passively accepting algorithmic management to actively participating in algorithm supervision, effectively identifying and preventing potential risks of algorithmic discrimination. To address the technical threshold of algorithmic management, workers, in their career development, should actively utilize abundant digital resources, a wide range of digital tools, and digital platforms, carry out exploration, master basic skills such as operating smart

terminals and viewing and exporting data, and regularly participate in special digital capability training organized by trade unions or human resources and social security departments (for example, the series of training on improving teachers’ digital literacy organized by the Teacher Development Center of Dalian University of Technology), so as to narrow the knowledge gap with technological development. Workers should independently master digital learning skills and actively integrate into the current intelligent employment environment (Gan Tian & Ma Liang, 2024).

### **5. Conclusion**

Against the backdrop of the rapid development of artificial intelligence technologies, algorithmic discrimination poses a significant threat to workers’ employment opportunities and equal treatment. As the core of artificial intelligence, algorithms, and the biases in their decision-making processes, not only affect the rights and interests of individual workers, but also pose challenges to fairness and justice in society as a whole. After defining algorithms and explaining their regulability, this paper reflects on several traditional approaches to algorithm regulation, clarifies that anti-algorithmic discrimination should place greater emphasis on the protection of vulnerable groups, and highlights the need to consider the relationship between identity factors and the protection of vulnerable groups. This issue should not be viewed in isolation; rather, algorithms should be regulated in connection with different scenarios and contexts. This paper points out that algorithmic discrimination should be analyzed from multiple dimensions, with in-depth examination of the potential unfair treatment it may cause to specific groups, thereby promoting a comprehensive understanding of algorithmic discrimination. In addition, by comparing the laws, regulations, and governance measures on algorithmic discrimination in different countries, and combining them with China’s actual conditions, more targeted improvements to legal regulation can be made.

Therefore, in the face of algorithmic discrimination, the existing legal framework needs to be further improved to ensure that workers’ right to equal employment is not infringed. This not only requires strict legal regulation of the design and application of algorithms, but also requires strengthening supervision over the processes of data collection and processing to prevent the formation and

dissemination of data bias. At the same time, society should advocate algorithmic transparency and fairness, and encourage algorithm developers and users to take measures to eliminate bias in algorithms, so as to ensure the fairness and reasonableness of algorithmic decision-making. Through multi-dimensional efforts in law, technology, and ethics, the impact of algorithmic discrimination on workers' employment can be gradually mitigated and even eliminated, thereby achieving a more fair and inclusive social environment.

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# Employee Protection During Corporate Rescue Under Insolvency Procedures Under OHADA Law: The Case of Cameroon

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## Abstract

Corporate rescue under insolvency procedures is an important mechanism aimed at saving financially distressed companies while preserving economic activity. Under the OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, which applies in Member States such as Cameroon, the law provides measures intended to restructure companies and protect stakeholders, including employees. In principle, these procedures seek to maintain employment and ensure that workers' rights are safeguarded while the company undergoes reorganization. Despite these legal provisions, the protection of employees during corporate rescue remains problematic in practice. Workers often face delays in wage payments, job insecurity, and limited participation in insolvency proceedings. The gap between the legal framework and its practical enforcement raises concerns about whether the existing OHADA rules adequately guarantee effective employee protection in Cameroon. The main research objective of this study is to examine the extent to which the OHADA insolvency regime effectively protects employees during corporate rescue procedures in Cameroon. The study is guided by the null hypothesis that the OHADA legal framework provides adequate and effective protection for employees during corporate rescue proceedings. Methodologically, the research adopts a doctrinal legal approach based on the analysis of statutes, case law, and relevant academic literature relating to OHADA insolvency law and labour protection. The study also considers practical experiences within the Cameroonian context. The findings suggest that although the OHADA framework formally recognizes employee interests, significant challenges persist in implementation, particularly regarding wage guarantees, job security, and enforcement mechanisms. The study recommends strengthening institutional enforcement and introducing clearer mechanisms for prioritizing employee claims during corporate rescue proceedings in Cameroon.

**Keywords:** OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, corporate rescue, employee protection and insolvency procedures

development because they generate wealth, create employment, and facilitate economic growth. However, companies operate in a dynamic economic environment and may experience financial distress due to internal or external factors such as poor management, market competition, economic crises, or structural changes in the business environment. When such difficulties arise, they may threaten the survival of the enterprise and the interests of various stakeholders, including creditors, shareholders, and employees. In this context, insolvency law provides mechanisms aimed not only at settling debts but also at rescuing viable companies in order to preserve economic activity and employment.<sup>1</sup>

As economic entities, companies may experience periods of prosperity as well as periods of financial distress. Financial difficulties may arise from several internal or external factors. Internal factors may include poor corporate governance, inefficient management practices, inadequate financial planning, or conflicts among shareholders and managers. External factors, on the other hand, may include economic recessions, increased competition, fluctuations in currency values, technological changes, and globalization pressures that affect the competitiveness of enterprises. When these difficulties are not properly managed, they may escalate and threaten the survival of the company, eventually leading to insolvency or liquidation.<sup>2</sup>

Corporate insolvency has far-reaching economic and social consequences because the failure of a company does not only affect the shareholders or the management of the enterprise but also impacts other stakeholders such as creditors, employees, suppliers, and the broader community. Among these stakeholders, employees are particularly vulnerable because their livelihood depends largely on the survival and operational continuity of the enterprise. When companies face financial distress, employees may suffer from delayed wages, reduced working conditions, or termination of employment contracts. Consequently, modern insolvency laws increasingly emphasize

corporate rescue mechanisms aimed at preserving viable businesses and protecting employment.<sup>3</sup>

Within the African business legal framework, the harmonization of business law is carried out by OHADA. This organization was established through the OHADA Treaty with the objective of creating a unified legal system capable of promoting economic development, investment, and legal certainty in business transactions across member states.<sup>4</sup> One of the important instruments adopted under this framework is the OHADA Uniform Act on Collective Proceedings for the Wiping Off of Debts, which regulates insolvency procedures within member states, including Cameroon.

The OHADA insolvency regime establishes several mechanisms designed to address corporate financial distress and prevent the premature liquidation of viable businesses. These mechanisms include preventive procedures such as conciliation and preventive settlement, as well as judicial procedures such as reorganization and liquidation of assets. The primary objective of these mechanisms is to facilitate the recovery of financially distressed companies while ensuring the settlement of liabilities owed to creditors. Corporate rescue procedures are therefore considered an essential component of modern insolvency law because they aim to maintain business operations, preserve jobs, and reduce the negative economic consequences associated with business failure.

The fundamental objective of these insolvency procedures is not only to ensure the equitable settlement of creditors' claims but also to preserve viable companies and maintain economic activity. Corporate rescue procedures aim to reorganize financially distressed companies in order to restore their economic viability and allow them to continue operating as going concerns. By enabling companies to recover from temporary financial difficulties, these mechanisms contribute to the protection of employment, the preservation of productive

<sup>1</sup> World Bank. (2012). *Doing business 2012: Doing business in a more transparent world*. World Bank, 89.

<sup>2</sup> Jeantin, M. (1999). *Entreprises en difficulté*. Paris: LGDJ, 21.

<sup>3</sup> Keay, A., & Walton, P. (2008). *Insolvency law: Corporate and personal* (2nd ed.). Bristol: Jordan Publishing, 14.

<sup>4</sup> Organisation for the Harmonization of Business Law in Africa (OHADA). (2015). *Uniform Act on Collective Proceedings for the Wiping Off of Debts*.

capacity, and the stability of national economies.<sup>1</sup> Despite the existence of these legal mechanisms, the protection of employees during corporate rescue proceedings remains a significant concern. Employees constitute one of the most vulnerable stakeholders when a company faces financial distress because their livelihoods depend directly on the continuity of the enterprise. In many cases, insolvency proceedings may result in wage delays, job insecurity, or termination of employment contracts. Although the OHADA legal framework recognizes certain employee rights, the extent to which these protections are effectively implemented in practice remains subject to debate.<sup>2</sup>

In the context of Cameroon, the issue of employee protection during corporate rescue is particularly important given the role of companies as major sources of employment and economic stability. While the OHADA legal framework seeks to balance the interests of creditors, debtors, and other stakeholders, questions remain regarding whether the current insolvency regime sufficiently safeguards employee rights during corporate restructuring and rescue procedures. Consequently, examining employee protection within corporate rescue mechanisms under OHADA law is essential for assessing the effectiveness of the legal framework and identifying possible reforms that could strengthen the protection of workers in situations of corporate financial distress.

To examine the issue of employee protection during corporate rescue under OHADA law in Cameroon, this study is structured into four main parts. Part I provides the general introduction and situates the legal issues surrounding employee protection within the context of corporate insolvency. Part II examines the insolvency procedures for corporate rescue under OHADA law, focusing on both preventive and judicial mechanisms and analyzing their implications for employees. Part III explores the practical and institutional challenges that hinder employees from effectively benefiting from these protections, with particular emphasis on the Cameroonian context. Part IV concludes the

study by presenting key findings and offering recommendations aimed at strengthening employee protection during corporate rescue and enhancing the effectiveness of OHADA insolvency procedures.

## 2. Insolvency Procedures for Corporate Rescue

In OHADA law, prevention-detection results exclusively from the provisions of the OHADA Uniform Act relating to the law of commercial companies and economic interest groups (UACCEIG). In this legal order, prevention-detection is essentially centred on alerting the auditor and alerting partners. Overall, the doctrine has unanimously adhered to this prevention policy by placing greater emphasis on information here synonymous with detection. It must be early<sup>3</sup> and spontaneous but not judicial. It is therefore a question, through the prevention-detection system, of attacking the source of the difficulties without waiting for their manifestations. Detection is a guarantee for better prevention. It must serve as a benchmark<sup>4</sup>, it must be a preliminary step to preventing the cessation of payments, in that it makes it possible to take stock of the difficulties.<sup>5</sup>

The effectiveness of prevention-detection systems in avoiding cessation of payments remains questionable despite their intended purpose of identifying financial difficulties at an early stage. In practice, these systems have produced disappointing results due to several structural weaknesses. One major limitation is that, although detection agents may identify difficulties within an enterprise, the system does not provide clear or effective solutions for addressing those problems. Additionally, there are significant challenges in assessing and applying the trigger criteria that determine when intervention should occur. Furthermore, the legal techniques that constitute these prevention mechanisms have limited scope and practical impact. These shortcomings collectively weaken the prevention-detection framework, reducing its attractiveness and ultimately leading to its overall ineffectiveness in preventing corporate financial distress.

The legislator has arranged the formal conditions

<sup>1</sup> Finch, V., & Milman, D. (2017). *Corporate insolvency law: Perspectives and principles* (3rd ed.). Cambridge: Cambridge University Press, 31.

<sup>2</sup> Allott, A. (1960). *Essays in African law*. London: Butterworths, 3.

<sup>3</sup> Perochon, F. *Entreprises en difficulté* (10e éd.). L.G.D.J., 45.

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

<sup>5</sup> Sortais, J. P. (2010). *Entreprises en difficultés: Les mécanismes d'alerte et de conciliation*. L.G.D.J., 17.

of the preventive settlement in a rather restrictive manner by conferring all rights on the debtor alone. The debtor and he alone is authorized to file the application initiating proceedings and to draw up the offer of preventive composition. The preventive arrangement is based on a contractual mechanism. The preventive arrangement under OHADA law is designed as a purely voluntary process, at least, in its triggering phase. This is evident under the provisions of article 5, UACP which provides that, “the competent court is seized by request of the debtor...” It is therefore it is up to the debtor and him alone to request the opening of the preventive settlement. The president does not may neither take legal action nor be seized by the public prosecutor, by a creditor, by a shareholder, or by the auditor; what is not without risk for the success of the procedure. Because, if the exclusion in particular of creditors appears well-founded, that of the public prosecutor and the president of the competent court appears more questionable, given the general interest represented by the survival or disappearance of commercial exploitation.

### 3. Challenges for Employee Protection Under Corporate Rescue

As already noted, when mention is made of companies in difficulties, it implies that the business has ceased to function in a harmonious manner. The enterprise is sick and there is either a breakdown in its activities or risk of discontinuity in its operations.<sup>1</sup> The OHADA law set out to save the life of the enterprise and jobs<sup>2</sup>, ensure the payment of creditors including workers and sanctioned faulty traders.<sup>3</sup> When an enterprise is in difficulties, not only the owners are interested in it redress but also all those who have relations of whatever nature with the company. Employees are often affected by measures adopted to redress or reorganize the enterprise. Such is the case if the enterprise can no longer carry out its activities normally or can do so by resorting to certain internal measures of reorganization such as partial liquidation and economic transformation with consequential

dismissal of some personnel.

In any case, the rights of the employees, especially financial rights affected by measures taken to redress or save their employer in difficulties need to be protected. These are all financial claims that the worker may have against the employer. They range from wages and accessories to wages due to the worker based on the contract of employment and services rendered. They also extend to claims for damages an any other financial compensation to which the worker is entitled. However, the OHADA Uniform Act Organizing Collective Proceedings has made a headway towards protecting the financial rights of workers, but the protection still has loopholes, either inherent in OHADA law itself or in national laws to which the OHADA lawmaker makes reference.

Employees have so many rights to be protected; some are individual and others collective. For the rights to be protected, OHADA lawmaker guarantees the payment of workers affected by crisis, at least for wages due, once collective proceedings are initiated.<sup>4</sup> This is justified by the alimony nature of wages and the fact that wages constitute the only means of subsistence for the worker. Nevertheless, the specificity of insolvency proceedings is such that paying wages at all cost may create injustice or aggravate the situation of the enterprise. The principle is therefore, that the protection of employment that maintaining jobs and payment of wages should be guaranteed during insolvency proceedings to rescue the employers though at times with respect to certain amounts and if necessary, termination of contract of employment payment of workers is also protected.<sup>5</sup>

#### 3.1 The Legal Protection of Employment During Restructuring of Companies in Difficulties

Protection of employment during restructuring is guaranteed through maintaining of jobs. The maintenance of jobs has a triple importance; to the employer, employer and the public authorities. To the employer, there is need to avoid paying pre-notification and dismissal

<sup>1</sup> Jeantin, M. (1995). *Droit commercial: Instruments de paiement et de crédit, entreprises en difficulté* (4e éd.). Dalloz, 267.

<sup>2</sup> Article 1 of the UACP.

<sup>3</sup> Sawadogo, F. M. (2002). OHADA: Droit des entreprises en difficultés (Collection Droit uniforme africain). Bruylant, 4.

<sup>4</sup> Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

<sup>5</sup> *Ibid.*

indemnities and to operate with unqualified staffs when the company regains it rails. To the employee, he needs to preserve his employment and only source of subsistence. To public authorities, maintaining of employment avoids over congestion of the labour market, as it is the social policy of the state to ensure that citizens are gainfully employed and ensure that those who employed maintain the employment.<sup>1</sup> This spirit of the state is adopted by the UACP as it insists on the safeguard of the company and also imposes on the company facing difficulties under restructuring to maintain on going contracts. The Uniform Act provides that, the cessation of payments ordered by a court decision shall not be a reason for cancellation of a contract and any rescissory clause for such a reason shall be deemed unwritten, except in the case of contracts concluded with regards to the person of the debtor and those expressly provided for by the law of each contracting state.<sup>2</sup>

The execution of on-going contracts includes employment contracts. However, it is not always essential to maintain employment contract during economic difficulties. In the face of difficulties, the company may have hitches maintaining the employment contracts in their initial clauses. This is because the employees themselves may seek to terminate their contracts and because execution of the contracts in their initial clauses may be an obstacle to the redress of the company.<sup>3</sup> For this reason, employers in difficult situations adopts various techniques to do so. Where these techniques prove futile or cannot retain all the workers, there is bound to dismiss on economic grounds. This, where the employees do not seek to terminate their contracts, the company can maintain their jobs by employing two traditional techniques notably modification of contract of employment and suspension of contracts of employments. However, there is an exception to this rule of maintaining of jobs where the only possible solution is dismissal on economic ground.<sup>4</sup>

### 3.2 Modification of Employment Contracts During Restructuring Process

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

<sup>2</sup> Section 107 UACP.

<sup>3</sup> Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

Generally, the presence of economic, financial difficulties and other challenges encountered during the functioning of an enterprise have revealed the necessity in ensuring that the business enterprise is protected and secured with the aim of fostering private sector job creation and firm growth. The failure to strike a balance between the conflicting interest of the employers and the workers, especially during the occurrence of emerging challenges thereby protecting private sector employment in Cameroon can have adverse consequences not only on the workers and their families but also on the employer, the entire enterprise and as well as the state. Cameroonian Labour Legislation takes into consideration this socio-economic concern during its enactment.

Consequently, the reforms brought about by Law No. 92/007 of 14 August 1992 on the Labour Code of Cameroon, the legislator has reinforced the safeguard of the enterprise and workers therein through regulated actions. This has also been taken into contemplation by the OHADA legislator. As a matter of fact, the OHADA insolvency law sets out to save the life of the enterprise and its workers through legal remedy which aimed at avoiding cessation in its activities during the occurrence of emerging challenges.<sup>5</sup>

The interest of the employer in the private sector of Cameroon on the one will as such, include anything that can enable the latter to protect and safeguard his business or enterprise and to protect and sustain its activity. That is, anything that can ensure the continuity and prosperity of the enterprise and enable the employer to make profit out of his investment. The protection of an enterprise as a center of production and as an economic unit whose survival is of general interest is, especially to the workers therein is therefore, very vital as a public economic policy.

In the private sector, an enterprise in difficulty or an enterprise that is experiencing challenge is one confronted with one or more problems which put to question the continuity of its activity and the stakes of workers' rights. Difficulties imply that the enterprise has ceased to function in a

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

<sup>5</sup> *Ibid.*

harmonious manner. In other words, the enterprise is “sick”, there is either a breakdown in its continuous activities or risk of discontinuity in its operation. It may not necessarily be facing financial difficulties. In this case, the problems of the enterprise should be solved because its “illness” puts at stake several interests, including that of the employer and the employees. Solutions sought always depend on the gravity or the nature of the problem the enterprise is facing or the objective to be attained.

### 3.3 Suspension of Contract of Employment During Restructuring

One of the measures adopted during legal redress may be suspension of some contracts of employment. The practice of suspension of contract of employment in Cameroon is employer friendly. The employer is free to suspend the contract of his employee for obvious reasons provided that the procedure for this suspension as contemplated in section 30 of the 1992 Labour Code is respected. Such suspension must meet certain conditions failing which it is null and void<sup>1</sup>. Sections 30(3) of the labour code provide such conditions. In this light, section 30(3) of the labour code is to the effect that:

*Suspension of the worker from work shall be null and void unless the following conditions are met simultaneously:*

- That it shall be for a maximum period of eight working days as from the time the penalty is inflicted;
- That the worker shall be notified in writing of the suspension and the reasons thereof; and
- That the labour inspector of the area shall be informed of the suspension within forty-eight hours.

Economic and financial difficulties have revealed the necessity in ensuring that the business enterprise is protected and secured with the aim of fostering private sector job creation and firm growth. The failure to protect contract of employment can have adverse consequences not only on the workers and their families but also on

the employer,<sup>2</sup> and the entire enterprise. The Cameroonian labour legislation took into consideration this socio-economic concern during its enactment.

It is one of the temporal solutions that could be adopted to ensure stability of employment if an enterprise is facing economic or financial difficulties. An employer who finds itself in a temporary difficult economic situation may, instead of dismissing its employees, lay them off temporarily.<sup>3</sup> The workers are then placed in the situation of redundancy.<sup>4</sup> In this case, it will propose their lay-off in the composition agreement. Suspension must be for a specified period. The Cameroonian labour code provides in its section 32 that: “a contract of employment shall be suspended during a period of lay-off not exceeding six months”. Suspension conserves the jobs of workers concerned for a maximum period of six months and reduces the financial burden of the enterprise, if there are no provisions of collective agreements more favourable to the worker. Provisions that are more favourable may be found in the contract of employment, though the law insists on collective agreements. As such, the employer may opt to prolong the duration of suspension to maintain its workers at its disposal while maintaining the totality of their wages. However, this may only be envisaged if the suspension of contract was for reasons other than economic crises.<sup>5</sup> Where no such possibilities are envisaged, the employer under collective proceedings is bound to pay to the workers affected a pre-determined indemnity of suspension, whose amount diminishes progressively from the first month to the sixth month.

Where lay-off is adopted as a means of redress, it preserves the workers’ employment for its duration. This period which is usually referred to as the period of redundancy is agreed upon by the parties to a contract of employment. Under Cameroonian Law, it can go far as long as six months. If after this period the situation of the enterprise is not re-established and consequently

<sup>1</sup> See Section 30 (3) of the labour code.

<sup>2</sup> International Labour Organization. (2006). *The employment relationship: Report V(1), International Labour Conference, 95th Session*. International Labour Organization.

<sup>3</sup> Lockton D. J. (1999). *Employment law*, 3<sup>rd</sup> Edition. London: Macmillan, 243.

<sup>4</sup> Honeyball S. (2008). *Honeyball and Bowers’ Textbook on Employment Law*, 10<sup>th</sup> Edition. Oxford University Press, 201.

<sup>5</sup> Kelese, N.G. (2015). The Protection of Employment under OHADA Insolvency Law. A Critical Study in the light of Cameroonian Employment Law. *Revue Africain de parlementarisme ET de Democratie*, 3(10), 261.

that workers will not resume work, they will be dismissed. The position is same under the OHADA Law where suspension was adopted as a means of redress. The Uniform Act provides that where the receiver is authorized by the official receiver to effect dismissals, it will be done “without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment”.<sup>1</sup>

Nevertheless, if after the six months of suspension of contract the employer still wants to preserve his workers, he may extend the period of suspension. The consequence here is that he will have to reinstate their wages. This is not easily conceivable since it will be an additional burden on the enterprise under redress. In any case, if the workers cannot resume work and there is no possibility of prolonging the suspension of their contracts, they must be dismissed. However, the dismissal may as well be beneficial to the enterprise as it can relieve the enterprise from financial burden and give room for future recruitment matching the resources of the enterprise. Dismissal on economic grounds usually goes through a defined procedure.

#### 3.4 Dismissal on Economic Grounds as an Exception to the Continuity of Employment Contracts

One instance of dismissal is usually dismissal for economic reasons or dismissal on economic grounds. Dismissal on economic grounds is the object of section 40 of the Labour Code. In the wordings of section 40(2) of the Cameroonian Labour Code, dismissal on economic grounds is any dismissal effected by the employer for one or more reasons not inherent in the person of the worker and resulting from an abolition or transformation of posts or an amendment to the contract of employment consequent on economic difficulties, technological changes or internal reorganization and during the occurrence of challenges.<sup>2</sup>

In principle, dismissal on economic grounds cannot be effected unless abortive attempts have been made to save the enterprise and by

extension the workers’ employments.<sup>3</sup> Dismissals for economic reasons may be individual or collective. Usually, collective dismissals trigger procedural requirements such as, consultation of workers’ representatives and notification of public authorities.<sup>4</sup> There are various hypotheses of dismissals and guidelines laid down by the law-maker to control the procedure of dismissal for economic reasons.

Termination of contract of employment on economic grounds occurs at least in three situations. First, it may arise from refusal by workers of any substantial modification of their contracts of employment. Being a contract of successive performance and may go on for several years, an employment contract hardly remains unchanged.<sup>5</sup> Conditions of work initially agreed may vary with time as in a situation where the company is facing difficulties thus, necessitating modification in some clauses of the contract. Modification of contract therefore, designates an alteration to its initial clauses; a change in one or more respects, which introduces new elements into the contract, but leaves the general purpose unaltered. It generally occurs when the parties agree to “alter a contractual provision or to include additional obligations, while leaving intact the overall nature of the original agreement”.<sup>6</sup> Where the workers refuse the modification, they would be dismissed and their dues paid.

Second, the termination may be initiated directly as a measure of legal redress of a company in crises. In principle, there is the obligation to maintain jobs when the company is facing difficulties. Thus, the possibility of initiating dismissal as a measure of redress is accepted only when the post of the employee is suppressed or no longer exist, for example, where the company is changing its activity. In brief, the dismissals should be urgent and indispensable.<sup>7</sup> The dismissal must be authorised by the official the receiver.

Third, dismissal may occur because of the

<sup>1</sup> Section 110 of UACP.

<sup>2</sup> Section 40(2) of the Cameroonian Labour Code.

<sup>3</sup> Kelese, N.G., (op. cit).

<sup>4</sup> Muller, A. (2012). Labour law reforms at the crossroads of ILO standards and OECD and World Bank indexes: A global review of regulation on collective redundancies. *Comparative Labor Law & Policy Journal*, 6.

<sup>5</sup> Kenfack P. E. (1994). La modification du contrat de travail au Cameroun (étude critique de l’article 42 al. 2 du Code de Travail). *Revue Juridique Africaine*, 199.

<sup>6</sup> *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461.

<sup>7</sup> UACP, s. 110.

inability of the company to re-establish its normal activities after six months of suspensions of contract of employment. Where suspension of contracts of employment was adopted as a means of redress, the enterprise has the right to dismiss after six months, if the company cannot regain its rails. In any of the above cases, the employees need to be paid their dues as prescribed by the law. In this perspective, the Uniform Act provides that where the receiver is authorised by the official receiver to effect dismissals, it will be done “without prejudice to the right to a notice and to compensation relating to the termination of the contract of employment”.<sup>1</sup>

Despite the obligation on the employer to search for alternative measures to dismissal in order to conserve valuable workers during economic difficulties, dismissal may not be avoided in certain situations, especially when it becomes urgent or indispensable.<sup>2</sup> It is also possible that workers in the may refuse proposals to amend their contracts of employment as a means of redressing the situation of the enterprise.<sup>3</sup> In addition, it may be impossible for workers to resume work after the period of suspension of their contracts of employment.<sup>4</sup>

This negotiation phase constitutes the search for alternative measures that would avoid dismissal of workers in time of challenges. Such measures notably include the reduction of the hours of work, routine work, part time work, lay-off, reduction of various allowances and benefits and even wage cuts. Therefore, if the parties are able to reach an accord, a report signed by the parties specifies the measures retained and the duration of their validity, for they must be temporal.<sup>5</sup> However, if a worker in time of challenges or difficulties refuses the proposed measures, he/she is dismissed with payment of indemnity if the conditions are fulfilled. If no accord is reached, the actual procedure for dismissal on economic grounds is opened with the establishment of the list of Workers to be dismissed.

Dismissal for economic reasons must be authorised by the official receiver. Before seeking the authorisation of the official receiver, the receiver must establish the order of dismissals in accordance with the applicable labour law.<sup>6</sup> The uniform act has given guidelines on how the list of workers to be dismissed should be established. It states that: “Dismissal of workers with the least professional aptitudes for the jobs maintained shall be proposed first and, in the case of equality of professional aptitudes, the least senior workers in the company, seniority being calculated according to the applicable law provisions”.<sup>7</sup>

This aimed at avoiding arbitrariness in the choice of those to be dismissed in the face of the employer’s economic difficulties. Technically, it ensures that the enterprise is left with highly qualified and experienced workers capable of redressing its situation.

### 3.5 Guarantee of Payments During Restructuring

The employee’s wage is his only means of subsistence and that is why Labouré legislation always accords a particular attention to its payment. Thus, in struggling to save the life of a business or company, this most important right of the worker should not be tempered with. It is necessary to distinguish between payment of wages during preventive settlement and during legal redress as the two may present distinct measures of restructuring or rescue of difficulties in a company.

### 3.6 Payment of Workers’ Wages During Preventive Settlements

When the employer is facing difficulties there is always the tendency to effect partial payment or to unilaterally deduct wages thereby accumulating the arrears of same. The continuation of its activities after commencement of insolvency proceedings creates new wages claims.<sup>8</sup> However, the principle is always that the workers should be paid the totality of their wages. Any deduction in wages should be made under circumstances provided by the law<sup>9</sup> and

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

<sup>2</sup> Muller, A. (op. cit) p. 6.

<sup>3</sup> Kelese, N. G. (2016). The protection of employees’ financial rights under OHADA insolvency law. *Revue de la recherche juridique*, 1411–1432.

<sup>4</sup> Ayuk Nkongho, M., & Ndukongs Nforkwe, M., op cit at p. 19.

<sup>5</sup> *Ibid.*

<sup>6</sup> Article 110(3), UACP.

<sup>7</sup> *Ibid*, article 110(3).

<sup>8</sup> Kem Chekem, B. M. (2004). *Entreprises en difficulté et droit des salariés dans la zone OHADA: Le cas du Cameroun* (Mémoire de DEA). Université de Dschang, 10.

<sup>9</sup> Section 74 Cameroonian Labour Code.

when it is adopted in the composition agreement as a preventive measure. Hence, arrears of wages accumulated in disregard of the above exceptions may be claimed during preventive settlement. This right to claim arrears of wages during preventive settlement has as corollary the non-suspension of individual lawsuits for the claim of wages. Thus, the principle that the decision granting the application for preventive settlement suspends individual lawsuits does not apply to wages.

Under OHADA insolvency law, the decision authorising preventive settlement “suspends or prohibits all individual lawsuits for the payment of debts indicated by the debtor and contracted prior to the said decision... with the exception of creditors due wages”.<sup>1</sup> Thus, the workers have the right to initiate lawsuits to recover wages that have become due for immediate payment and have not been paid. This position adopted by the regional lawmaker is obviously in appreciation of the fact that the employee’s wages is his only means of subsistence<sup>2</sup> and the worker through his work has contributed in the growth and conservation of the employer’s wealth. The debtor seeking preventive settlement is bound to make known his situation with respect to wages. As such, in the petition for preventive settlement, the debtor employer is bound to include a document showing “the number of workers and the number of wages and wage costs”.<sup>3</sup> This document will enable the president of the competent court to take a decision with respect to the payment of wages. The court cannot ratify the preventive composition agreement if the deadlines given for the payment of creditors due wages exceed one year.<sup>4</sup> This means that even if the deadlines which go beyond one year are proposed with the consent of workers, the court still reserves the right to reject them. In addition, creditors due wages can neither grant any write-off nor accept any deadline that they themselves have not granted. All these restrictions are to enable the workers recover their arrears of remuneration within the shortest time possible.

The uniform act is silent as far as payment of workers is concerned during conciliation.

Nonetheless, it recognizes the situation of workers by stating that the application for conciliation must contain amongst others, “a document indicating the number of workers declared and registered on the date of the request”.<sup>5</sup> The major shortcoming of this provision is that it insists on workers declared and registered. This implies that an unscrupulous employer who fails to declare and register its workers with the competent bodies (social insurance fund for example), exposes them to risk as they are not protected during reconciliation procedure. However, the protection of workers can be deduced generally from the fact that the procedure is a very brief one. It is a procedure that must not go beyond three months even though the legislator provides for its extension which cannot be more than one month.<sup>6</sup> It is closely controlled by the president of the court with jurisdiction who granted the request for conciliation. For that reason, the conciliator must regularly render account to him on the progress of the procedure as well as formulate observations where necessary. The conciliator must also inform him of potential or actual cessation of payment without delay.<sup>7</sup> This could be a great relief to an employee whose wages claim is in peril.

An important issue about conciliation which may be beneficial to employees is the fact that unlike in ordinary conciliation where the conciliator only proposes solutions, the decision of a conciliator in OHADA collective proceedings is really binding on the parties. As such, an employee who was involved in the conciliation may request that the decision of the conciliator be deposited with a notary public or request for an exequatur from the court with jurisdiction or competent authority. With the exequatur, the court with jurisdiction or competent authority can appose an executory formula on the conciliation decision.<sup>8</sup> This will enable such an employee to recover his or her wages with ease.

### 3.7 Payment of Wages During Legal Redress

<sup>1</sup> Section 9 UACP.

<sup>2</sup> Afong A. (2012). *The Prevention of Company Insolvency under the OHADA Uniform Act*. Bamenda, Gospel Press, 93.

<sup>3</sup> Section 6(4) UACP.

<sup>4</sup> *Ibid*, section 15(2).

<sup>5</sup> *Ibid*, section 5(2).

<sup>6</sup> *Ibid*, section 5(3).

<sup>7</sup> *Ibid*, section 5(6).

<sup>8</sup> *Ibid*, section 5(10).

Legal redress is a form of administration<sup>1</sup> or proceedings aimed at safeguarding an enterprise and at wiping off its debts through composition with creditors. It consists of taking measures to restore the economic and financial health of a business, with a view to its continued survival. Several mechanisms are adopted to ensure payment of wages during legal redress by the uniform act, while others are drawn from ordinary law and practice.

Like in preventive settlement, a debtor seeking for legal redress must reveal his situation with respect to wages. In his declaration of cessation of payments, he is bound to show “the number of workers and the amount of wages and wage costs”. Since the court reserves the right to request information from or hear institutions representing the staff before taking any decision concerning employees, he must also give “the names and addresses of staff representatives”.<sup>2</sup> This ensures that decisions affecting workers’ wages are not taken without their consent or opinion. This right of workers is reinforced by the fact that where creditors request the official receiver to appoint assignees (controllers) to assist in legal redress of the employer, one of such must be representing the staff.<sup>3</sup> The assignee representing the personnel is proposed for nomination by the production committee or staff representatives where the number of workers is more than ten. Where the committed or staff representative does not exist, the official receiver requests the workers to elect a representative amongst them. If the number of workers is not up to ten, the official receiver appoints one of them to represent the personnel.<sup>4</sup> In any case, only one employee can be appointed and the appointment is mandatory. The active presence of workers during legal redress is, therefore, a guarantee towards protection of their rights especially the right to remuneration or payment of wages. In addition, the concept of highly preferred wages, which applies to the non-attachable portion of wages, has been given particular attention by the uniform act.<sup>5</sup> Highly preferred wages constitute the part of wages that is not subject to attachment

and extends to indemnities relating to termination of contract and damages which should be paid to the employee for wrongful termination of contract. This supported by section 177 of the uniform act organising simplified recovery procedure and measures of execution.<sup>6</sup> Where there is no money, he may pay them himself, or even cause a third party to pay. Whoever pays subrogates the creditors of highly preferred wages when funds are available.<sup>7</sup>

Where the enterprise is a small one and it requests for simplified procedure of legal redress as governed by the uniform act,<sup>8</sup> it is bound to pay wages. It must indicate the number of workers, wages and costs and the names of staff representatives as required by section 26(6) and (7) of the uniform act. Furthermore, successive employers during legal redress have joint and several obligations towards creditors, if the modification in the legal status of the employer results in the transfer of the enterprise. This is not the case where a management lease has been adopted as a means of redress of the employer in difficulties.<sup>9</sup>

The proprietor of the business remains solely indebted to the workers. Even though not specified by the uniform act, wages claims will be settled in priority from any payments made for enjoyment of the business by the lease manager. As regulated by the OHADA uniform act on general commercial law (UAGCL) in a normal management lease, that is, where the latter is not resorted to as a means of redress but just as a means of business management, the owner of the business is jointly and severally liable for the debts of the lease manager arising from his operation between the day of the lease management contract and the day of its registration in the Trade and Personal Property Credit Register.<sup>10</sup>

It is important to mention that during legal redress, there is always the obligation to maintain

<sup>1</sup> Martor B., *et al.* Business Law in Africa: OHADA and the Harmonization Process, op. cit., p. 154.

<sup>2</sup> Section 26 UACP.

<sup>3</sup> *Ibid*, section 48.

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

<sup>5</sup> *Ibid*, section 95.

<sup>6</sup> Adopted at Libreville on 10 April 1998.

<sup>7</sup> Section 96 UACP.

<sup>8</sup> *Ibid*, section 145.

<sup>9</sup> *Ibid*, section 117.

<sup>10</sup> Section 145 UAGCL.

jobs and consequently payment of wages.<sup>1</sup> Thus, if transfer of the enterprise is envisaged as a means of redress, the transfer of the enterprise entails transfer of debts owed workers by the former employer. This implies that workers can claim debts owed them by their former employer directly from their new boss. The French Cour de Cassation has even held that the successive employers are jointly and severally liability for the arrears of wages owed to workers. However, the transferee who pays the debts owed workers by the transferor has the right to ask for contribution from the latter.<sup>2</sup> This right which was justified by the doctrine of unjust enrichment<sup>3</sup> has been consecrated by statute in France. The OHADA legislator does not provide for this remedy though it offers a double protection to the workers. The obligation of the new employer to pay the arrears of wages owed workers by the former employer is, however, lifted if legal redress or liquidation of the former employer was declared before the transfer; if it was declared posterior to the transfer, the obligation subsists. The new employer is also emancipated from the obligation if the transfer took place without a contract. This is not the case where partial transfer of assets of the employer is adopted as a means of redress.

#### 4. Conclusion and Recommendations

From the foregoing analysis, it is evident that the protection of employees during corporate rescue under the OHADA insolvency framework remains an essential but complex aspect of collective proceedings. The OHADA Uniform Act Organizing Collective Proceedings seeks to

strike a delicate balance between two competing interests: on the one hand, the need to preserve enterprises facing financial distress, and on the other hand, the necessity of safeguarding the rights and welfare of employees whose livelihoods depends on such enterprises. In principle, the law recognizes the social and economic importance of maintaining employment and guaranteeing the payment of workers' wages during restructuring. This is reflected in provisions that emphasize the continuation of ongoing contracts, including employment contracts, and the special protection granted to workers' wage claims through mechanisms such as highly preferred wages and the possibility of pursuing individual actions for wage recovery during preventive settlement.

However, despite these legal safeguards, the practical protection of employees under OHADA insolvency proceedings remains imperfect. The restructuring process often results in measures such as modification of employment contracts, suspension of employment, or dismissal on economic grounds, which may adversely affect workers. While these measures are intended to facilitate the survival of the enterprise, they frequently expose employees to uncertainty, loss of income, or eventual termination of employment. Furthermore, certain gaps in the OHADA framework and the reliance on national labour laws create inconsistencies in the level of protection afforded to employees. For instance, the law's silence on some aspects of wage protection during conciliation, the vulnerability of undeclared workers, and the financial

<sup>1</sup> Kelese Nshom, G. (2015). The protection of employment under OHADA insolvency law: A critical study in the light of Cameroonian employment law. *Revue africaine de parlementarisme et de démocratie*, 3(10), 255–279.

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

<sup>3</sup> Unjust enrichment had its development from French law known in French as "*Enrichissement sans cause*" which is based on equity as an independent ground of imposing obligations. This is often expressed base on the observation that, it is indeed by nature fair, that nobody should be made richer through loss to another. Unjust enrichment could be defined as, the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected. Also, a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense. Generally, there are three requirements for any claim that is based on unjust enrichment: first, that the defendant has been enriched by the receipt of a benefit; second, that he has been enriched at the plaintiff's expense; and thirdly, that it would be unjust to allow him to retain that benefit.

limitations of enterprises undergoing restructuring may weaken the effective enforcement of employees' rights.

Consequently, although OHADA insolvency law demonstrates a clear intention to protect employees while promoting corporate rescue, the existing mechanisms require further strengthening to ensure that workers do not bear a disproportionate burden of the enterprise's financial distress. Effective protection of employees during corporate rescue is not only a matter of social justice but also a prerequisite for sustainable economic development and industrial stability.

**Establishment of a Wage Guarantee Fund.** One major challenge faced by employees during corporate rescue is the uncertainty surrounding the payment of wages and other employment-related claims when the employer lacks sufficient financial resources. To address this issue, OHADA member states should establish a wage guarantee fund similar to those existing in several jurisdictions. Such a fund would ensure that workers receive their outstanding wages, indemnities, and other employment benefits when the employer becomes insolvent. This mechanism would provide immediate financial relief to workers and prevent situations where employees suffer severe economic hardship due to the employer's financial difficulties.

**Strengthening the Legal Protection of Employment Contracts during Restructuring.** Although the OHADA Uniform Act emphasizes the continuation of ongoing contracts, greater safeguards should be introduced to prevent unnecessary termination of employment during restructuring. The law should impose stricter conditions before dismissal on economic grounds can be authorized, including mandatory attempts at alternative measures such as redeployment, reduction of working hours, retraining programs, or temporary wage adjustments. By reinforcing these safeguards, the law would better align corporate rescue objectives with the protection of workers' employment and social stability.

**Improved Protection for Undeclared or Informal Workers.** Another significant weakness in the current system is the limited protection available to workers who have not been formally declared or registered by their employers. Since the OHADA framework often requires documentation of employees in official records, undeclared workers risk being excluded from

protection during insolvency proceedings. To remedy this situation, legal reforms should allow such workers to prove their employment relationship through alternative evidence, such as witness testimony, payment records, or other documentation. This would prevent unscrupulous employers from evading their obligations and ensure that all workers receive fair treatment during corporate rescue.

**Enhancing the Participation of Workers and Their Representatives in Insolvency Proceedings.** Employees are among the most affected stakeholders when an enterprise faces financial difficulties, yet their participation in insolvency proceedings remains relatively limited. OHADA law should strengthen the role of workers' representatives in restructuring processes by granting them greater access to information about the financial situation of the enterprise and the proposed rescue measures. Additionally, workers' representatives should be actively involved in negotiations relating to restructuring plans, employment adjustments, and payment of wage arrears. Increased participation would promote transparency, fairness, and more balanced decision-making in corporate rescue procedures.

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# Pathways to Safeguarding Women’s Rights Under the Patriarchal Ideology in Impoverished Areas: A Discourse on Substantive Equality Versus Equality of Opportunity

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## Abstract

Patriarchal ideology, as a deep-rooted social and cultural phenomenon in contiguous poverty-stricken areas, remote rural areas with low economic development and weak public service capacity in China (hereinafter referred to as “impoverished areas”), has become a core obstacle to the realization of women’s political rights, leading to a more severe gender imbalance in the political power structure of these regions compared with other areas. Formal equality of opportunity in the legal sense has failed to effectively break the practical predicament of women’s political marginalization in impoverished areas. Taking the women’s political quota system as the research core, this paper focuses on the theoretical controversy between substantive equality and equality of opportunity, specifically analyzes how patriarchal ideology restricts women’s political participation in impoverished areas through family role binding, resource allocation bias and social cognitive stereotypes, combs the global status quo of gender imbalance in the political power system and the supporting role of global quota system research for this paper’s argument, analyzes the realistic characteristics and special dilemmas of women’s political rights protection under the dual constraints of poverty and patriarchal ideology, and explores the practical value of the quota system in safeguarding women’s political rights in impoverished areas. Based on the experience of the European Union in improving the quota system mechanism, the paper puts forward specific and operable targeted paths for optimizing the women’s political rights protection system in impoverished areas. The study holds that in the context where patriarchal ideology in impoverished areas cannot be fundamentally changed in the short term, the quota system, as a practical carrier of substantive equality, is an essential and feasible means to correct systemic gender discrimination and guarantee women’s equal participation in politics. Only through localized institutional design, strict implementation mechanisms and multi-dimensional supporting measures can we promote the transformation of women’s political participation in impoverished areas from formal equality to substantive equality, and truly realize the effective safeguarding of women’s political rights.

**Keywords:** impoverished areas, patriarchal ideology, women’s political rights, substantive equality, equality of opportunity, quota system

## 1. Introduction

It is a universal social fact that the makers of social rules are often the greatest beneficiaries of them. However, from a global perspective, there is a serious gender imbalance in the power structures that formulate these rules, and this imbalance is even more prominent in contiguous poverty-stricken areas, remote rural areas with low economic development and weak public service capacity in China (hereinafter referred to as “impoverished areas”), where patriarchal ideology is deeply rooted. Women account for half of the world’s population, and in impoverished regions, they bear the dual pressure of material poverty and gender inequality, yet their voice in political decision-making is extremely weak. In the high-level decision-making bodies of impoverished areas, women are far outnumbered by men in terms of representation and influence, and the patriarchal ideology that values men over women has made this political inequality a “taken-for-granted” social phenomenon, failing to receive the necessary attention and correction.

Patriarchal ideology exerts a concrete restrictive effect on women’s political participation in impoverished areas through three core paths: First, family role binding takes women’s main energy for housework, child-rearing and elderly care as the core of family responsibilities, and the social cognition of “men in charge of external affairs and women in charge of internal affairs” makes women lack sufficient time and energy to participate in political learning and political activities. Second, resource allocation bias is reflected in the priority of educational resources, social communication resources and political training resources to men in impoverished areas, which leads to the low political literacy and participation ability of women in these areas. Third, social cognitive stereotypes label women as “lack of political decision-making ability” and “only suitable for trivial affairs”, which makes women face invisible resistance in the process of participating in political elections and taking up political positions.

Historical records and legal documents show that, with few exceptions, women around the world lacked independent legal personality for thousands of years (Beard, M., 1987). Patriarchy has evolved from a private family practice to a norm of public law over the long course of history (Lerner, G., 1986), making women subordinate to male heads of households in family life such as

marriage, property and inheritance, and depriving them of the right to participate in public spheres such as education, employment and especially politics. This historical injustice is further amplified in impoverished areas: the backward economic and social development has solidified the traditional patriarchal division of labor and gender values, and the lack of educational resources and social mobility channels has made it more difficult for women in these areas to break through the shackles of gender discrimination and participate in political activities. In such regions, the concept of “male political culture” is more ingrained, and women’s political rights are not only restricted by institutional factors but also bound by deep-seated traditional ideas, resulting in a more severe form of political marginalization.

Since the establishment and popularization of the human rights concept, women around the world have launched a long and arduous struggle for the right to participate in governance, and achieved remarkable progress. Over the past two centuries, democratic ideals based on freedom and equality have spread globally, becoming the value foundation of the political systems of various countries, and protective measures for women’s political participation have emerged one after another, among which the formulation of women’s parliamentary quota is regarded as an important institutional measure. Global academic research and practical exploration on the quota system have formed a rich theoretical portfolio for this paper’s argument: a large number of cross-national comparative studies have confirmed that the quota system is an effective tool to break the structural barriers of women’s political participation in regions with deep-rooted patriarchal ideology; the practice of more than 100 countries and regions that have implemented the quota system has provided empirical support for the applicability of the quota system in impoverished areas; the research on the optimization of the quota system mechanism has pointed out the direction for the localized design of the quota system in impoverished areas of China.

It is undeniable that the evaluation of any institutional measure cannot be separated from its specific temporal and social context. In the current socio-political environment where the consciousness of gender equality has not yet been fully formed, especially in impoverished areas where patriarchal ideology is prevalent and the

foundation of gender equality is extremely weak, the quota system, as an effective measure to guarantee women's right to political participation, is the most viable means to realize women's political rights. This paper holds a clear supportive position on the women's political quota system in impoverished areas from the beginning: the formal equality of opportunity that "treats everyone the same" can only maintain the status quo of gender inequality in political participation in impoverished areas under the dual constraints of poverty and patriarchal ideology; only the substantive equality of outcome that "gives targeted support to disadvantaged groups" through the quota system can effectively correct systemic gender discrimination and help women in impoverished areas obtain equal political participation rights. Answering this question is the key to exploring the path of safeguarding women's political rights under the patriarchal ideology in impoverished areas.

## 2. Theoretical Controversies over Women's Political Quota Systems in the Context of Impoverished Areas

The women's political quota system has become a mainstream policy tool for the international community to promote women's political participation and achieve gender equality, and it is also regarded as a potential institutional solution to the problem of women's political marginalization in impoverished areas. However, since its implementation, this system has triggered extensive academic debates at home and abroad. Scholars' attitudes towards this system are mainly divided into two opposing camps: opposition and support. In the specific context of impoverished areas where patriarchal ideology is deep-rooted and economic development is backward, these theoretical controversies show more distinctive characteristics, and the core of the debate is whether the quota system is suitable for the reality of women's rights protection in impoverished areas and whether it can effectively break the dual constraints of poverty and gender discrimination.

### 2.1 Arguments Against the Women's Political Quota System

Scholars who oppose the women's political quota system put forward a series of critical views based on the principles of equality and democracy, and these views are also echoed in

the discussion of women's rights protection in impoverished areas. Their main arguments are as follows:

First, the quota system violates the principle of equality and undermines the legal norm of equality of opportunity. These scholars divide "equality" into two dimensions: equality of opportunity and equality of outcome. Equality of opportunity means that everyone has an equal chance to make free choices in political participation, while equality of outcome requires that individuals achieve the same final representation in political decision-making (Kanbur, R., 2021). They hold that modern constitutions generally only require the realization of equality of opportunity, especially in liberal countries that advocate "fair competition", and the law only needs to provide fair competition conditions, without being responsible for the specific results of competition (Roemer, J. E., & Trannoy, A., 2015). In the context of impoverished areas, opponents believe that the quota system tailored for women's political participation gives women preferential election conditions, which breaks the principle of equal opportunity for all citizens to participate in politics, and is a blatant violation of the principle of formal equality. Even in impoverished areas with serious gender inequality, the solution should be to improve the equality of opportunity for women's political participation, such as popularizing education and eliminating institutional barriers, rather than artificially intervening in the outcome of political participation through the quota system.

Second, the quota system damages the democratic principle and infringes on the democratic rights of voters. Parliamentary elections are a process in which voters select their representatives through democratic voting, and the core of this process is the principle of popular sovereignty. The imposition of the quota system mandates a specific gender composition of political representatives, which is regarded by opponents as an infringement on the voters' right to independently choose their representatives, and it "undermines the idea that government can adequately represent the people" (Hassim, S., 2010). In impoverished areas with relatively backward democratic construction, opponents argue that the implementation of the quota system will further weaken the authenticity of democratic elections, make the election of political representatives a "formality" that meets

the gender quota, and is not conducive to the cultivation and development of democratic consciousness in these areas.

Third, the increase in the number of female representatives does not necessarily mean the solution to women's practical problems, especially in impoverished areas. Opponents hold that the quota system only elevates the number of women in political and governance positions in theory, creating an illusion of gender parity, but in reality, many women who enter political decision-making bodies in impoverished areas are influenced by the deep-rooted patriarchal ideology, and tend to follow the male-dominated political discourse and discuss issues of concern to men with male legislators, rather than speaking for the practical rights and interests of women in impoverished areas (Zhang, Y. H., 2009). They believe that the gender inequality in political participation in impoverished areas is a product of social and economic development, and with the improvement of the economic level of impoverished areas and the popularization of gender equality concepts, the prejudices against women and the low level of women's political participation will naturally disappear, and there is no need for legal intervention through the quota system.

Fourth, the quota system may lead to more forms of discrimination and intensify gender contradictions in impoverished areas. On the one hand, the quota system is regarded as a form of "reverse discrimination" against men. Based on the principle of equality, the law should not discriminate against the right to political representation based on gender, race or nationality. The preferential treatment given to women in the allocation of representative quotas is a kind of "discrimination" against the male majority, ignoring the legitimate interests of men (Dahlerup, D., 2005). In impoverished areas where the patriarchal concept is deeply rooted, this "reverse discrimination" is more likely to arouse male resentment and intensify gender conflicts in the local area. On the other hand, the quota system is also regarded as an indirect discrimination against women. Treating women as a vulnerable group in political participation and giving them special care will make many women in impoverished areas be regarded as "elected because of gender rather than ability", which is a form of "charity" in politics, and is not conducive to the cultivation of women's political

confidence and political competence (Li, X. G., 2009). Scholars point out that the quota system is only a temporary social guidance measure, and the real improvement of women's political status in impoverished areas cannot be achieved through artificial institutional design alone, but needs the internal improvement of women's own quality and the natural evolution of social concepts (Praud, J., 2012).

## *2.2 Arguments in Favor of the Women's Political Quota System*

This paper stands in the camp of supporting the women's political quota system, and holds that the system is an essential means to realize substantive gender equality, and its practical value is more prominent in impoverished areas where women's political rights are seriously damaged by patriarchal ideology. The supporting viewpoints are mainly concentrated in the following three aspects:

First, the quota system symbolizes the shift from equality of opportunity to substantive equality, which is the key to breaking the gender inequality in political participation in impoverished areas. The realization of genuine gender equality in politics cannot be achieved by merely granting women the same legal political rights as men, especially in impoverished areas where the dual constraints of poverty and patriarchal ideology make women face insurmountable practical obstacles in exercising their political rights even if they have formal equality of opportunity. Measures aimed at achieving equality of opportunity often lack enforceability and are difficult to implement in impoverished areas, resulting in unclear policy effects and failure to fundamentally change the status quo of women's political marginalization (Kantola, J., 2009). Traditional gender inequality has a profound historical basis, and gender balance will not be automatically achieved with social progress, especially in impoverished areas where the social structure is relatively solid and the traditional concept is difficult to change. Emphasizing the so-called "fairness of opportunity" under the existing patriarchal culture in impoverished areas will only perpetuate the unfair status quo of women's political participation. To change this situation, it is imperative to implement synthetic interventions such as the quota system to correct the historical and realistic gender disparities (Xu, Y., 2008). The quota system, as a corrective strategy, is the most reliable way to transform the

status of women's political participation in impoverished areas and realize gender equality in public policy.

Second, the quota system is in line with the essence of democratic principles and can better reflect the inclusive nature of democracy in impoverished areas. The concept of democracy is not only reflected in the equal right of men and women to participate in the electoral process, but also in their equal participation in legislation and policy-making, and in the equal reflection of the interests and demands of all social groups, including women in impoverished areas. Modern democracy is essentially the sharing of power and interests among all social classes and groups. When women, who account for half of the population, are absent from the political decision-making of impoverished areas, it means that the interests and demands of half of the population are not effectively represented, which is a serious defect of democratic politics. Taking active measures such as the quota system to increase the number of female representatives in impoverished areas is not a violation of democracy, but a maintenance and improvement of the democratic system, which can make the political power structure of impoverished areas more inclusive and representative.

Third, the quota system is a necessary care and differential treatment for women as a disadvantaged group, which is in line with the requirement of substantive equality for respecting human nature. Women are latecomers to the political field, and in impoverished areas where patriarchal ideology is deep-rooted, it is even more difficult for them to enter the political power structure through their own efforts. In the current environment of advocating gender equality in political participation, the political participation of women in impoverished areas must rely on the biased quota policy. Achieving gender equality in the political field does not mean "one-size-fits-all" equal treatment, but also requires differential treatment of rights that respects the natural and social differences between men and women (Lin, J. J., 2007). Respecting the physiological differences between men and women, considering the social disparities caused by patriarchal ideology in impoverished areas, and narrowing and compensating for the gender inequality in the political field of these areas are the fundamental motives and footholds of the differential treatment of women's political rights. Only by

providing differential treatment and implementing biased policy protection for women's political participation in impoverished areas can this largest disadvantaged group be truly integrated into public political life, unleash their political energy, and realize the substantive equality of political rights.

### *2.3 Summary of Theoretical Controversies*

In summary, the criticism and doubt of the women's political quota system are mainly focused on its alleged violation of the principles of formal equality and democracy, its failure to solve the practical problems of gender equality in political participation, and its potential to create new gender discrimination and conflicts. These controversies are more prominent in the context of impoverished areas, and opponents are more worried that the implementation of the quota system in these areas will not only fail to protect women's political rights, but also intensify local gender contradictions and hinder the process of local social development.

The supporting viewpoints of the quota system (and the core stance of this paper) hold that the system is a necessary measure to realize substantive equality, which is in line with the essence of democratic principles. For impoverished areas where women's political rights are seriously damaged by patriarchal ideology, the quota system is a powerful adjustment tool to correct the gender inequality caused by historical and social reasons. Treating women as a socially disadvantaged group and giving them special care is not a violation of the principle of equality, but a reflection of factual and substantive equality. In the short and medium term, as long as the patriarchal ideology in impoverished areas has not been fundamentally changed and the gender equality consciousness has not been fully formed, the quota system, as a temporary active intervention measure, still has irreplaceable practical value in the protection of women's political rights in these areas.

### **3. Gender Imbalance in the Political Power System: A Global Perspective with Special Reference to Impoverished Areas**

In most countries and regions around the world, although the number of women holding ministerial positions has increased to a certain extent, the gender imbalance in the political power system is still a prominent social problem, and this problem is more serious in impoverished

areas where patriarchal ideology is deep-rooted. The distribution of female political representatives in functional departments shows obvious stereotypical clustering characteristics, and this clustering is more extreme in impoverished areas, which further reinforces the traditional gender role cognition and exacerbates the social stereotype of women's political competence.

### *3.1 Stereotypical Clustering of Female Political Representatives in Functional Departments*

In the global political power system, female ministers are mainly assigned to departments related to the "private sphere" such as health, social welfare, family and culture, while they rarely hold leadership positions in departments related to the "public sphere" such as defense, foreign affairs and budgeting (see Table 1). The latter have always been dominated by men, holding a core position in the formulation of national economic and foreign policies, and are the key departments reflecting the core political power of a country or region, which are regarded as the "image" departments of a country or region (European Parliament, 2024). In impoverished areas, this stereotypical clustering of female political representatives is more obvious: female political participants are almost only assigned to the most marginal functional departments with weak decision-making power, such as family planning, women's and children's work, and social assistance, and they are completely excluded from the core political decision-making departments such as local economic development, financial budgeting and public security management. This distribution characteristic of female political representatives in functional departments not only reflects the reinforcement and stereotyping of women's social gender roles in the political field, but also further exacerbates the social stereotype that "women are not suitable for core political work", making it more difficult for women to break through the gender ceiling in political participation.

It is important to note that this stereotypical clustering of female political representatives is not a defect of the quota system itself, but a result of the stereotypical prejudices that still exist in the implementation of the quota system, and these prejudices are more prominent in impoverished areas. The patriarchal ideology in impoverished areas makes the local society have a deep-rooted cognition of "men are in charge of

the outside and women are in charge of the inside", and this cognition is also fully reflected in the political field. When evaluating the level of realization of women's equal political rights in a region, especially in an impoverished area, we cannot merely judge by the change in the number of female political representatives, but must analyze the specific departments led by female representatives and the actual political power they hold. A simple increase in the number of female representatives in marginal departments cannot mean the realization of women's equal political rights, but only a "cosmetic" change in the political power structure.

### *3.2 The "Gender Power Score" Method: A Scientific Evaluation of Women's Political Participation*

In response to the problem of the one-sidedness of evaluating women's political participation only by the number of female representatives, Diana, a scholar from the University of Southern California, designed a "Gender Power Score" method, which comprehensively integrates various theoretical viewpoints and provides a more scientific and fair evaluation standard for the situation of women holding leadership positions in government departments (Krook, M. L., & O'Brien, D. Z., 2012). This method comprehensively analyzes three core elements: the number of female ministers, the gender characteristics of departments, and the prestige of departments, and makes a quantitative and qualitative evaluation of women's political power status.

Specifically, the "Gender Power Score" method first classifies government departments into three types according to their connection with gender roles: masculine departments, feminine departments and neutral departments. Masculine departments mainly refer to departments related to the public sphere with core political power, such as agriculture, defense, foreign affairs, finance and technology; feminine departments mainly refer to departments related to the private sphere and closely linked to traditional female characteristics and experiences, such as education, children's affairs, culture and social welfare; neutral departments refer to departments that do not explicitly distinguish between public and private spheres, such as environmental protection, sports, justice and tourism. Secondly, the method classifies departments into three levels of prestige according to media attention, policy control power and resource availability: high-prestige

departments (defense, foreign affairs, finance, interior), mid-prestige departments (agriculture, education, planning, etc., which control important financial resources) and low-prestige departments (culture, sports, tourism, etc., which lack resource control power). Although this classification is not completely precise, it is generally in line with the social cognition of the hierarchy of government departments around the world.

Applying the “Gender Power Score” method to the evaluation of women’s political participation in impoverished areas, we can find that the “Gender Power Score” of women in these areas is extremely low: most female political representatives are assigned to feminine and low-prestige government departments, and almost no women enter masculine and high-prestige core departments. Even if some impoverished areas have implemented the women’s political quota system and increased the number of female political representatives, the low “Gender Power Score” still makes it difficult to truly achieve gender equality in political rights. As Caroline Flint, the former European Minister, vividly described, this kind of political participation of women only in marginal departments is a form of “window-dressing” in politics, which is merely for show and has no substantive significance for the realization of women’s political rights (Krook, M. L., & O’Brien, D. Z., 2012).

### *3.3 The Positive Significance of Women’s Political Participation in Impoverished Areas Despite the “Window-Dressing” Phenomenon*

Although many countries and regions, especially impoverished areas, use female political representatives to “decorate the political facade”, and the distribution of departments where women serve is highly uneven, it cannot be denied that the presence of women in the political field of impoverished areas has important positive significance. First of all, the participation of women in the political field of impoverished areas at least proves with practical facts that women are capable of holding high-level leadership positions, which is a powerful blow to the patriarchal ideology that “women are not suitable for politics” in these areas. Secondly, in the process of participating in political activities, women in impoverished areas can accumulate valuable political experience, improve their political literacy and political competence, and lay a solid foundation for their further entry into

core political departments in the future. Thirdly, the participation of women in the political field can enhance the activity of women’s political participation in impoverished areas, make the local society gradually adapt to the existence of women in the political power structure, and make it increasingly difficult to exclude women from political positions, thus gradually changing people’s attitudes and views on women’s participation in decision-making and leadership in impoverished areas.

In fact, many female national leaders in the world have previously held leadership positions in so-called “feminine” and “low-prestige” departments such as education, employment, women’s and children’s rights protection, and environmental protection, such as German Chancellor Angela Merkel and British Prime Minister Theresa May. Their political experience shows that the accumulation of experience in marginal departments is an important stage for women to enter core political departments. For impoverished areas, with the gradual deepening of gender equality consciousness, the continuous improvement of women’s own political competence, and the gradual optimization of the quota system, women will inevitably appear in more and more so-called “masculine” and “high-prestige” core political departments, and the “window-dressing” phenomenon of women’s political participation will be gradually broken.

### **4. The Quota System: An Important Safeguard for Women’s Equal Political Participation in Impoverished Areas**

In the context of the deep-rooted patriarchal ideology and the severe gender imbalance in the political power system in impoverished areas, the women’s political quota system is not only an effective tool for adjusting gender equality in global political participation, but also an important institutional safeguard for realizing women’s equal political participation in impoverished areas. The quota system, as a practical carrier of substantive equality, has important theoretical and practical value for breaking the dual constraints of poverty and gender discrimination and safeguarding women’s political rights in impoverished areas.

#### *4.1 The Quota System Supports the Realization of Substantive Gender Equality in the Political System of Impoverished Areas*

The right to vote and stand for election, as the fundamental political right of citizens, is mainly

regulated by the principle of equality of opportunity in the legal sense, but this does not mean that substantive equality is completely inapplicable to the protection of political rights, especially in the political rights protection of women in impoverished areas. Political rights and socio-economic rights are both important components of human rights, and although they belong to different rights systems and have different connotations, their fundamental purpose is the same: to ensure human dignity and the realization of popular sovereignty (Beetham, D., 2017). Therefore, equality of opportunity and substantive equality have different emphases in different rights systems, and they are not antithetical to each other. On the contrary, they are two aspects of the principle of equality, which together constitute the complete principle of equality. It is a wrong understanding to hold that political rights should strictly abide by absolute formal equality while socio-economic rights should follow absolute substantive equality. This understanding creates a false opposition between formal equality and substantive equality, and ignores the practical differences in the realization of rights by different social groups in different contexts.

The applicability of substantive equality to political rights has always been a hot topic in academic circles, and the core of the controversy is the degree of state intervention in the political field. In liberal countries, the state plays the role of a “night watchman” and rarely intervenes in the political field, because political rights are directly related to the source of state power. However, in the era of welfare states, the state has not only entered the economic and social fields, but also carried out necessary interventions in the political field. These countries realize the equality of various rights of citizens through state intervention, that is, they dissolve the inequality caused by formal equality through the model of substantive equality (Beetham, D., 2017). For impoverished areas, the state’s necessary intervention in the political field through the quota system is an essential means to realize the substantive equality of women’s political rights. Women in impoverished areas are still in a serious disadvantaged position in the exercise of political rights due to the dual constraints of poverty and patriarchal ideology. Legally stipulating the proportion of women’s political representation in impoverished areas is to meet the requirements of social fairness: women, who

account for half of the population in impoverished areas, should have the right to participate in local political decision-making in proportion to their population size.

The means of the quota system has a reasonable connection with the goal of realizing substantive equality of women’s political rights in impoverished areas. By legally ensuring the proportion of female political representatives in impoverished areas, the quota system aims to achieve a relative equality between men and women in political participation in these areas, reduce the unequal status of women in political rights caused by historical, cultural and economic reasons, and finally realize the substantive equality of women’s political rights. In the context where the patriarchal ideology in impoverished areas cannot be fundamentally changed in the short term, the formal equality of opportunity alone cannot solve the practical problem of women’s political marginalization. Only by combining formal equality of opportunity with substantive equality of outcome through the quota system can we truly break the shackles of gender discrimination and realize the equal political participation of women in impoverished areas.

#### *4.2 The Quota System Facilitates the Implementation of Representative Theory in Impoverished Areas*

With the expansion of social scale and the increase of population, the direct democracy of ancient Greece has become unfeasible, and representative democracy under the framework of indirect democracy has become the main form of democratic politics in modern society, which is also the main form of democratic construction in impoverished areas. The representative system of modern countries mainly refers to the system established after the bourgeois revolution, which is quite different from the representative system under the autocratic regime of “royal sovereignty” in the feudal era. The core of the modern representative system is the representative theory, which mainly studies the relationship between representatives and voters, and focuses on the role of representatives in the representative system, that is, whether representatives should completely obey the will of voters or exercise their powers independently according to their own judgment. Based on the independence of representatives, representative theory can be divided into two types: imperative mandate and free mandate (Urbinati, N., & Warren, M. E., 2008).

The imperative mandate holds that representatives are elected by voters and are accountable to voters. They must act in accordance with the will of voters and represent the interests of voters, and cannot exercise their powers based on their own judgment and self-interest. The free mandate holds that representatives have an independent legal status once they are elected by voters, and they can exercise their powers based on their own wisdom and conscience, without being bound by the specific will of voters (Urbinati, N., & Warren, M. E., 2008). The women's political quota system is based on the imperative mandate of representative theory, which holds that an individual's will and interests cannot be fully represented by others, and only individuals with the same identity and experience can best represent their own interests. The concept of the imperative mandate originates from Rousseau's thought, who believed that "the general will does not admit of representation" (Rousseau, J.-J., 1762). Under the premise of the representative system, the imperative mandate emphasizes that to realize the effective representation of interests, the representation should be as direct as possible, and people with homogeneity can best represent the interests of voters. This homogeneity is mainly reflected in two aspects: one is the regional homogeneity, that is, representatives should be from the same region as voters; the other is the identity homogeneity, that is, representatives should belong to the same profession, class or social group as voters. Whether it is regional homogeneity or identity homogeneity, it highlights the consistency of interests between representatives and voters.

Emphasizing the proportion of female political representatives in impoverished areas is in line with the identity homogeneity principle of the imperative mandate. Female representatives in impoverished areas share the same gender identity and similar life experiences with local women, and they can better understand the practical difficulties and interest demands of local women under the dual constraints of poverty and patriarchal ideology. A male representative, even if he is from the same impoverished area, is difficult to truly understand the gender-based unfair treatment suffered by local women, and this gender difference is difficult to bridge through subjective efforts. For example, male representatives can hardly fully understand the practical problems

such as the lack of educational resources for girls, the gender discrimination in employment, and the infringement of women's property rights in impoverished areas, nor can they put forward targeted solutions from the perspective of women's interests. Female representatives, on the other hand, can more accurately capture the practical demands of local women and put forward corresponding policy proposals, thus realizing the effective representation of women's interests in impoverished areas.

It is true that there are some criticisms of the quota system in practice: some women who enter the political decision-making bodies of impoverished areas do not necessarily represent the interests of local women, but are more willing to discuss male-dominated issues with male legislators. However, this shortcoming is not due to the quota system itself, but to the deep-rooted patriarchal ideology in impoverished areas and the widespread social bias against women's rights. When the number of female representatives in the political decision-making bodies of impoverished areas does not reach a critical scale, even if the quota system ensures the presence of a small number of female representatives, these female representatives are easily marginalized in the male-dominated political power structure, and the policy proposals related to women's interests they put forward are also difficult to receive fair attention and adoption (Ryan, M. K., Haslam, S. A., & Kulich, C., 2010). At the same time, the current quota system in impoverished areas has not yet fundamentally changed the situation where women are more likely to occupy unstable and marginal leadership positions than men, and it only addresses the superficial phenomenon of women's political participation, but does not touch the underlying causes of gender inequality in the political field of impoverished areas (Ryan, M. K., Haslam, S. A., & Kulich, C., 2010). Therefore, the current women's political quota system in impoverished areas still needs to be reformed and improved, and the scale of female political representatives and the actual political power they hold need to be further expanded to better realize the effective representation of women's interests in impoverished areas.

##### **5. Refining the Mechanism of the Women's Quota System: Experience from the European Union and Enlightenment for Impoverished Areas**

The effective implementation of the women's

political quota system is not only a matter of formulating a simple numerical target, but also requires a complete and refined institutional mechanism as a guarantee. The European Union has accumulated rich experience in the practice of promoting gender equality and improving the women's quota system mechanism, and these experiences provide important enlightenment for the refinement of the women's quota system mechanism in impoverished areas under the patriarchal ideology. Exploring the path of optimizing the quota system mechanism in combination with the actual situation of impoverished areas is the key to giving full play to the role of the quota system in safeguarding women's political rights in these areas.

### *5.1 The Experience of the European Union in Refining the Women's Quota System Mechanism*

The European Union has always been at the forefront of the international community in promoting gender equality and implementing the women's political quota system, and it has also found a series of institutional inadequacies in the practice process. The European Union's Gender Action Plan I (2010-2015) (GAP I) clearly pointed out the current deficiencies in the EU's gender equality institutions and systems: the scope of gender equality policies is too narrow, the gender-responsive budgeting is lacking, the EU delegations have insufficient understanding of the gender equality framework, the EU leadership lacks sufficient commitment to gender equality, and there is a lack of institutional structures and incentive mechanisms that can effectively support and motivate the staff to implement gender equality policies (European Parliament Think Tank, 2018). In response to these problems, the European Parliament put forward a series of reform suggestions in its resolution of October 8, 2015, including increasing the responsibility of the management layer for promoting gender equality, improving the gender equality training system for staff, and establishing a sound gender-responsive budgeting mechanism, so as to effectively rectify the deficiencies in the implementation of the quota system and the gender equality policy (European Parliament Think Tank., 2018).

The International Institute for Democracy and Electoral Assistance (IDEA) defined three core characteristics of effective and meaningful quota implementation in its 2013 publication *Atlas of Electoral Gender Quotas*, which provide an important theoretical basis for the refinement of

the quota system mechanism in various countries and regions (EIGE, 2015). First, the quota system needs to define specific and measurable numerical targets. Vague numerical targets will make the implementation of the quota system lack operability, and it is difficult to form an effective constraint on the relevant responsible subjects. Second, the quota system must be supported by well-designed quota rules, such as ranking rules or allocation tasks that are compatible with the local electoral system, ballot structure and list types. The design of quota rules must be combined with the actual local political system, and cannot be copied mechanically, otherwise it will lead to the disconnection between the quota system and the local political practice, and affect the implementation effect of the system. Third, it is essential to formulate effective sanctions for non-compliance to motivate political parties and political elites to implement the quota system. Possible sanctions include refusing to accept the party's candidate list, imposing financial penalties, and giving financial rewards to the parties that effectively implement the quota system, or a combination of these incentive and restrictive measures (EIGE, 2015). Only by combining clear numerical targets, scientific quota rules and strict sanction mechanisms can the quota system be effectively implemented and play its due role in promoting gender equality in political participation.

### *5.2 Enlightenment of the EU Experience for the Refinement of the Quota System Mechanism in Impoverished Areas*

The European Union's experience in refining the women's quota system mechanism and the core characteristics of effective quota implementation defined by IDEA provide important enlightenment for the construction of the women's quota system mechanism in impoverished areas under the patriarchal ideology. The refinement of the quota system mechanism in impoverished areas cannot copy the experience of developed countries or regions mechanically, but must combine the actual situation of impoverished areas, such as deep-rooted patriarchal ideology, backward economic development, and imperfect democratic political system, and carry out localized institutional design and mechanism construction. This paper puts forward two specific and operable implementation recommendations on the basis of the three core enlightenments, and the specific content is reflected in the following aspects:

First, formulate specific, measurable and phased numerical targets for the quota system in combination with the actual situation of impoverished areas. The numerical target of the quota system should not be set too high or too low: if the target is too high, it will be difficult to achieve due to the low level of women's political participation in impoverished areas, which will damage the authority of the system; if the target is too low, it will not be able to effectively change the status quo of women's political marginalization in impoverished areas, and the quota system will lose its practical significance. The numerical target of the quota system in impoverished areas should be phased: the initial stage (1-3 years) should focus on ensuring that the proportion of female representatives in village committees and township people's congresses in impoverished areas reaches no less than 30%, laying a foundation for the cultivation of women's political competence; the middle stage (4-6 years) should focus on expanding the proportion of female representatives in county-level people's congresses and government departments to no less than 35%, and gradually increasing the number of female cadres in mid-prestige departments such as education and agriculture; the long-term stage (7-10 years) should focus on increasing the proportion of female representatives in prefecture-level and above political power organs to more than 40%, and realizing the rational distribution of female cadres in core and high-prestige departments such as economic development and finance. At the same time, the numerical target of the quota system should be clearly defined in local laws and regulations, forming a rigid institutional constraint.

Second, design scientific and localized quota rules that are compatible with the political system and electoral practice of impoverished areas. The design of quota rules in impoverished areas should be based on the local actual electoral system and political operation mechanism, and focus on solving the practical problems faced by women's political participation in these areas. For example, in impoverished rural areas where the village committee election system is implemented, the quota rules can be designed as "fixed female candidates" or "female candidate priority election" to ensure the proportion of female members in the village committee; in impoverished urban areas, the quota rules can be combined with the people's congress election

system, and the proportion of female representatives in the people's congress at all levels can be clearly defined. At the same time, the quota rules should also include the training and selection mechanism of female political talents in impoverished areas, focusing on cultivating local female political talents who understand the local actual situation and are supported by local women, and solving the problem of the shortage of female political talents in impoverished areas.

Third, establish a sound implementation supervision and incentive and restraint mechanism for the quota system in impoverished areas. The key to the effective implementation of the quota system in impoverished areas is to establish a strict supervision and sanction mechanism for non-compliance. The local government should set up a special gender equality supervision agency to supervise the implementation of the quota system in the whole process, and regularly publish the implementation status of the quota system to the society to accept social supervision. For the units or individuals that fail to implement the quota system in accordance with the regulations, corresponding sanctions should be taken, such as invalidating the election results, canceling the relevant political performance evaluation qualifications, and imposing appropriate financial penalties. At the same time, incentive mechanisms should be established to give financial and policy rewards to the units and individuals that effectively implement the quota system and have outstanding performance in promoting women's political participation, so as to mobilize the enthusiasm of all parties to implement the quota system. In addition, it is also necessary to strengthen the publicity and education of the quota system and gender equality concepts in impoverished areas, change the local people's patriarchal cognition, and create a good social atmosphere for the implementation of the quota system.

Specific implementation recommendation 1: Build a "three-level training system" for female political talents in impoverished areas. Set up village-level basic training courses focusing on political literacy and election skills, township-level improvement training courses focusing on policy understanding and work ability, and county-level elite training courses focusing on decision-making thinking and leadership ability; compile localized training materials combined

with the actual political work of impoverished areas, and invite local outstanding female cadres to teach by example, with no less than 40 hours of training for female political talents every year.

Specific implementation recommendation 2: Establish a “gender equality assessment mechanism” linked to the performance of local government cadres in impoverished areas. Include the implementation of the women’s political quota system, the cultivation of female cadres and the protection of women’s political rights into the annual performance assessment indicators of local government cadres in impoverished areas, with a weight of no less than 15%; for cadres who have made outstanding contributions to promoting women’s political participation, give priority to promotion and evaluation, and for cadres who ignore the implementation of the quota system, implement one-vote veto for their performance assessment.

## 6. Conclusion

At present, most democratic countries and regions in the world have legally established the basic right of men and women to equal participation in politics, and women have the right to exercise their right to vote and stand for election in accordance with the law. However, a large number of statistics on women’s political participation show that gender inequality in the political field is still a widespread global problem, and this problem is more prominent in contiguous poverty-stricken areas, remote rural areas with low economic development and weak public service capacity in China, where patriarchal ideology is deep-rooted. In these areas, women are faced with the dual constraints of material poverty and gender discrimination, and their political rights are seriously damaged. Although some countries and regions have made remarkable progress in women’s political participation, impoverished areas are far behind this progress, and the gender imbalance in the political power structure is becoming increasingly serious. This phenomenon prompts us to think deeply: why is there such a big gap in the quality and extent of women’s political participation between different regions? The answer is that women’s political participation is a complex social problem involving economic, cultural, institutional and other multiple factors, and the realization of gender equality in politics requires not only formal equality of opportunity in the legal sense, but more importantly, substantive equality of outcome that meets the

actual situation of different regions.

Patriarchal ideology restricts women’s political participation in impoverished areas through concrete and realistic paths such as family role binding, resource allocation bias and social cognitive stereotypes, and this restrictive effect cannot be eliminated by the spontaneous development of society in the short term. The women’s political quota system is an important legislative measure to protect women’s right to participate in governance, improve women’s political status and correct systemic gender discrimination. It is also the most direct and effective means to promote women’s political participation in impoverished areas under the patriarchal ideology. Globally, ensuring women’s political rights and improving their status in the political field has become an irreversible development trend, and more and more countries and regions are adopting the quota system to promote women’s political participation. The global portfolio of quota system research, including cross-national comparative studies, national practice exploration and mechanism optimization research, has formed a solid theoretical and empirical support for the applicability of the quota system in impoverished areas of China. Although the implementation of the quota system in various countries and regions has encountered a series of problems, such as the stereotypical clustering of female political representatives, the marginalization of female representatives, and the “window-dressing” phenomenon of political participation, these problems are not due to the quota system itself, but to the imperfect implementation mechanism of the system and the deep-rooted traditional patriarchal ideology. These problems are more prominent in impoverished areas, but they do not negate the practical value of the quota system in safeguarding women’s political rights in these areas.

In the context where the patriarchal ideology in impoverished areas cannot be fundamentally changed in the short term, we cannot place our hope solely on the formal equality of opportunity and the spontaneous self-correction of gender discrimination attitudes. Instead, we should take the quota system as the core, continuously improve and optimize the institutional mechanism of the quota system, and adopt more robust protective measures to help improve the political status of women in impoverished areas.

The refinement of the quota system mechanism in impoverished areas must adhere to the principle of localization, combine the actual situation of these areas to formulate specific phased numerical targets, scientific localized quota rules and strict implementation mechanisms; at the same time, it is necessary to strengthen the publicity and education of gender equality concepts, popularize education for women in impoverished areas, cultivate local female political talents through the “three-level training system”, and establish a gender equality assessment mechanism linked to cadre performance to create a good social atmosphere for the realization of women’s political rights. Only in this way can we promote the transformation of women’s political participation in impoverished areas from formal equality to substantive equality, break the dual constraints of poverty and patriarchal ideology, and truly realize the effective safeguarding of women’s political rights in impoverished areas.

The protection of women’s political rights under the patriarchal ideology in impoverished areas is a long and arduous project, which cannot be achieved overnight. It needs the joint efforts of the state, society and individuals: the state needs to provide institutional and policy support, the society needs to create a good gender equality atmosphere, and individuals need to improve their own political literacy and political competence. With the continuous deepening of the global gender equality movement, the continuous improvement of the economic and social development level of impoverished areas, and the continuous optimization of the women’s political quota system mechanism, the patriarchal ideology in impoverished areas will be gradually weakened, and women’s political rights in these areas will be more effectively safeguarded. The realization of substantive gender equality in the political field of impoverished areas will not only promote the all-round development of women in these areas, but also inject new vitality into the economic and social development of impoverished areas, and promote the construction of a more fair, inclusive and harmonious social order.

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# Applicability of Differential Association Theory to Crime in Chinese Society: A Study Based on the Mong Kok Riot in Hong Kong and a Fatal School Bullying Episode in Hebei Province

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## Abstract

This article uses the Differential Association Theory to analyze the Mong kok riots in Hong Kong in 2016 and the murder of campus bullying in Handan City, Hebei Province in 2024. The purpose is to explore the applicability of the theory to Chinese society and its relationship with Chinese criminal law. According to this theory, criminal behavior is acquired through social interaction. This learning process is affected by the frequency, duration, time of occurrence and intensity of interaction between individuals and others. China's criminal justice policy considers the policy of tempering justice with mercy, which is in line with this concept. First-time offenders and minors are usually punished more lightly, which reflects their passive exposure to the definition of crime. On the other hand, repeat offenders are severely punished, which is consistent with their deep involvement in stable criminal networks. In terms of joint criminal responsibility, abetment can be regarded as actively establishing a relationship. The punishment for accomplices is lighter, which reflects their short contact time and low degree of participation. Case analysis shows that online communities and virtual intimate groups have become a new space for differentiated communication. However, the theory has limitations. It cannot explain why most people who are affected by the same environment do not commit crimes. It also ignores the structure of political opportunities, organizational silence and cultural background. The paper recommends establishing an assessment mechanism for the degree of differential association, with focused review of the source, duration, and coercive character of criminal definition acquisition in juvenile offender cases, thereby achieving differentiated criminal responsibility evaluation.

**Keywords:** Differential Association Theory, juvenile delinquency, Chinese criminal law

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## 1. Introduction

Edwin Sutherland systematically expounded the Differential Association Theory. The theory is regarded as the basic framework of criminology and aims to explain how individuals acquire

criminal behavior through continuous social interaction. Its core idea is simple but far-reaching: crime is acquired, not inherited. When the social influence around an individual tends to support illegality rather than law-abiding, the

possibility of an individual committing deviant behavior increases (Sutherland & Cressey, 1974).

The structure of this article is divided into several steps. First of all, explain and critically review the Differential Association Theory, and pay attention to the long-term debate around the theory. Subsequently, the analysis turned to two cases: the Mong kok riots in Hong Kong in 2016 and the fatal campus bullying incident in Handan City, Hebei Province in 2024. This paper adopts the comparative analysis method to examine the applicability of the Differential Association Theory in these two cases. The uniqueness of this analysis is that it directly applies the normative views of Chinese criminal law. This article discusses the policy of tempering justice with mercy and introduces the theory of common criminal responsibility. These legal frameworks are integrated into the analysis. In this way, this article goes beyond the pure sociological explanation and thinks about the significance of these theories to criminal policy and criminal control practice.

## 2. Theoretical Overview and Critical Evaluation

From the perspective of the Differential Association Theory, criminal behavior is acquired through interaction. This kind of learning occurs especially in close and influential groups, such as families and peers. The learning process includes two different parts: skills and motivation. Individuals not only learn how to commit crimes but also absorb and internalize the reasons that make criminal behavior seem reasonable (Sutherland & Cressey, 1974).

The key is the balance of contact. A person will come into contact with the attitude and reasons to support illegal acts. The more frequently this happens, the more likely it is to accept criminal behavior. There are four factors that affect learning results: frequency, duration, priority and intensity. Each factor will affect whether you will eventually acquire criminal behavior.

Here is a specific example. A teenager lives in a social environment, and his older friends not only regard drug trafficking as a normal behavior, but also actively teach him how to trade drugs. But his parents didn't explicitly object. It is this lack of opposition that increases the likelihood of his acceptance of criminal behavior. Over time, teenagers may begin to feel that drug trafficking is no big deal. This change may not be noticeable at first. But in some cases, this idea will become stronger and stronger. In the end, drug

trafficking can not only be accepted but even become indispensable.

Compared with the previous criminological view, this theory has some obvious advantages. One of its advantages is that it explains why living in a specific social environment does not automatically make people criminals. A person must participate in the symbolic exchange of supporting illegal values to lead to crime (Sutherland & Cressey, 1974). One of its advantages is that the theory regards the frequency, duration, priority and intensity of crime as measurable factors. This enables it to explain the social structure distribution of crime, and at least in theory, it also makes empirical testing possible. The third advantage of it is that the theory integrates normative conflict, differential social organization and the process of differential association into one unified framework. This integration enables the theory to explore both individual crime and group crime rates within an explanatory framework (Matsueda, 1988). The fourth advantage is that the theory lays the foundation for the theory of social learning. The latter revises the concept of differential association and elaborates on the mechanism behind specific forms of deviation (Akers, Krohn, Lanza Kaduce & Radosevich, 1979). The fifth advantage is that it powerfully explains how criminal behavior is transmitted socially between individuals and groups (Warr, 2002).

However, there are still some problems with this theory. It cannot explain why some people take the path of crime while others do not, even if they come into contact with the same social circle. It does not explain the source of criminal values but only takes the problem of explanation a step back. The theory also cannot fully explain the criminal behavior that seems to occur without prior learning or symbolic interaction. These behaviors are spontaneous, impulsive or irrational. Another defect is related to the suspension of the crime. This theory cannot explain why some people later abandon these definitions and abide by legal norms after learning the definitions that are favorable to crime. The empirical test has always been difficult. One of the main reasons is that the core concept of too many definitions in favor of illegal behavior is difficult to accurately measure (Matsueda, 1988). The last question is that the theory is almost silent about the non-social factors in the causes of crime (Warr, 2002).

Personal choices and memories are completely ignored. The neuroanatomical basis and physiological basis of learning and memory have not been resolved (Barnes, Rocque & Posick, 2021).

In addition to being used to explain crime in criminology, differential association theory can also engage in dialogue with criminal law and judicial policies. The core of the policy of “leniency and strictness” in China’s criminal law is an institutional response to the subjective damage to differences in the process of differentiation. First-time offenders and minors are treated with leniency. This leniency is based on the understanding that their acquisition of the definition of crime is often accidental and reversible. On the other hand, repeat offenders and recidivists are severely punished. This severe punishment reflects a different reality. These people have been deeply involved in a stable criminal network. Their definition of crime is so highly internalized that it is difficult to correct it.

In the domain of joint criminal liability, the essence of instigation can be understood as the active manufacture of differential association. The instigator systematically transmits criminal definitions to the instigated party through both verbal and behavioral channels. Criminal organizations, for their part, constitute relatively closed systems of differential association. Within such structures, members acquire criminal techniques and subcultural orientations at high frequency and with considerable intensity. The mitigation of punishment for accomplices under criminal law can likewise be explained by reference to shorter contact duration, weaker intensity, and correspondingly shallower levels of acquisition. The introduction of this normative perspective furnishes the theoretical groundwork for criminal law evaluation in the case analyses that follow.

### 3. Case Analysis

#### 3.1 Case 1: *The Mong Kok Riot in Hong Kong*

In 2016, during the Lunar New Year holiday, a dispute broke out in Mong Kok over how to enforce rules against street vendors. Radical localists responded by calling for a “protection of stalls”. This call then turned into street violence. There were assaults on police officers and acts of arson as well. The police labeled the event an “organized riot”. More than one hundred people got hurt in the incident, and dozens were arrested (Legislative Council, 2016).

An application of Differential Association Theory to this case reveals several mechanisms at work. First, political communities and online platforms furnish the spatial conditions for differential association. They simultaneously reinforce criminal definitions that are anti-establishment and anti-authority in character. Hong Kong’s radical native groups and individual activists who support independence often use online media and blogs for political propaganda and online mobilization. Platforms such as Local News and Facebook have evolved into a space for ordinary netizens to publish articles and gradually gain the status of opinion leaders (Liu, 2017). These platforms and communities regularly publish political content. Through this continuous output, they encourage participants to regard violent resistance as a reasonable or even necessary behavior. This process has reshaped the definition of crime. Legitimacy no longer comes from the law itself but comes from people’s belief that it is legitimate to resist the unjust system.

Secondly, social media applications such as Telegram have become a channel for spreading criminal skills and Defense. In this way, they form the so-called virtual intimate groups. During the Mong Kok riots, Telegram was used as the main platform for organizing protests and sharing resistance skills. These platforms are not only used to issue emergency action instructions, but also to convey practical knowledge. This knowledge includes how to fight the police, set up roadblocks and use weapons. Telegram’s end-to-end encryption and read-and-burn functions create an atmosphere of digital brotherhood. Members get emotional support and verbal justification for violent behavior through continuous interaction. This coincides with the mechanism of virtual intimate peer groups proposed by the Differential Association Theory. Participants gain identity and emotional strengthening from collective actions. Therefore, the legitimacy of violent acts has been further strengthened.

But some things still can’t be explained by this theory. The theory can explain how violent behavior is acquired, but it cannot explain why some people in the same group choose not to participate. One of the participants described himself as follows: “My classmates gathered together and threw bricks, but I didn’t. I just stood there and watched... I was afraid of causing the death of others, and I was even more afraid of

leaving a criminal record” (Fang, 2017). Among the young people gathered in the same Telegram group, there was a clear difference between those who threw objects and those who did not. Differential Association Theory cannot explain why some people refuse to use them after learning the same violent techniques.

In addition, Wikipedia records show that after the police raised the red alert flag at 0:40 a.m. that night, the crowd increased from 300 to 900 in just seven minutes. Many of them were just passing by citizens who were buying fish balls. They had not learned throwing skills before but just imitated the behavior of others when they were very nervous. This model of acting on the spot without planning is beyond the scope that the theoretical gradual learning model can explain.

### 3.2 Case 2: *The “March 10” School Bullying Fatality in Handan City, Hebei Province*

On March 10, 2024, three 13-year-old seventh graders of Jiudian Middle School in Feixiang District, Handan City lured their classmates Wang to go to the vegetable greenhouse on the grounds of asking for money. After arriving, they beat Wang to death and buried his body (Yi, 2024). All three suspects are under 14 years old. The case sparked a nationwide discussion on the age of criminal responsibility and school violence.

An application of Differential Association Theory to this case illuminates several interconnected mechanisms. First, the perpetrators had long formed a small-circle group that operated according to a hierarchical structure of elder brothers and younger followers (Phoenix News, 2024). Within their daily lives, they accomplished internal socialization through beatings, bullying, and extortion. They also exchanged accounts of routine violent conduct through online platforms such as QQ groups. This process happens to reflect the combination of frequency, duration, priority and intensity emphasized by the theory. Interactions occur frequently, last for a long time, and begin in childhood (a small circle formed in the first year of junior high school). There is a deep emotional connection between them. In this small circle, bullying classmates is regarded as a test of group loyalty.

Secondly, violence is given positive meanings such as masculinity and gang loyalty. In this way, the definition of supporting crime has become the mainstream. This small circle will establish authority through beatings and maintain the

redefinition of brotherhood as a sign of masculinity and gang loyalty. Betraying one’s brother is considered shameful. Long-term bullying of students is not only rationalized but also given the value of identity. In addition, the behavior of the three suspects to bury the bodies shows that the criminal skills have become very specific and can be taught in small circles. This coincides with the skill learning part of the differential communication theory. Police records show that the division of tasks is clear: who is responsible for digging the first shoven soil, and who is responsible for filling it back. These technologies have become standard practices within the gang and have been passed down by word of mouth.

From the perspective of China’s criminal law norms, although the behavior of the three juvenile offenders in this case has caused very serious consequences, it is still necessary to consider the particularity of the differential relationship when assessing their criminal liability. Under the guidance of the policy of tempering justice with mercy, underage offenders are treated with leniency. This lenient treatment is based on the concept that the differential association of juvenile offenders is often characterized by passive and environmental pressure. The three suspects formed a bullying gang in the first year of junior high school. They came into contact with the definition of crime before they reached the age of criminal responsibility, and this contact process lasted for a long time and was very closed. The formation of their subjective harm is not based on free choice, but on the shaping effect of the environment. This passive learning is completely different from that of adult offenders actively seeking criminal contact, which should be reflected in the assessment of their criminal responsibility.

Further analysis from the perspective of common criminal responsibility, this case has a typical hierarchical structure of differential association, and there is a clear division of labor between the three suspects. This forms a relationship between incitement and being incited in real life. Through daily bullying, the main offender passed on the definition of the crime of solving the problem by violence to the other two. This is consistent with the view that agitators are regarded as active participants in differentiated interactions. The skill-based division of labor in the process of burying the body shows that the gang has

acquired some characteristics of a criminal organization and has formed a relatively closed differentiated communication system. It is worth noting that the provisions of the criminal law on the light sentence of accomplices can be understood in this case as reflecting that some members have been exposed to the definition of crime for a relatively short time and the degree of participation is relatively shallow. This differential treatment is not only in line with the principle of “crime, criminal responsibility and punishment should be proportional”, but also in line with the theory, that is, the frequency and intensity of contact will affect the degree of acquisition of behavior.

However, this theoretical framework still cannot explain certain phenomena. One of them is the school in mainland China. It is generally believed that schools should be places that strongly emphasize opposition to violence. However, in this case, teachers and parents have failed to notice the extortion behavior for a long time. They always put the admission rate above disciplinary supervision, resulting in silence within the school. The second phenomenon involves a cultural discourse, that is, family shame should not be publicized, and private affairs should be solved with money. This discourse provides an external buffer for the definition of violent behavior, and also strengthens the legitimacy within the group. After the incident, local rumors kept claiming that it was just children’s play and could be solved privately with money. This relabeling practice transforming extreme violence from public crime to family scandal (Yi, 2024), shows that the theory of differential association ignores the cultural background. It is this cultural background that makes the perpetrators believe that even if there is a problem, it can be solved privately. This feeling, in turn, strengthens the understanding of the legitimacy of violence in the small circle. The third phenomenon is that the theory cannot explain why most students in the same class did not participate in it. In a class of more than 40 students, only three students joined the campus bullying gang. Although most other students are aware of the violence, they do not imitate the perpetrators.

In a word, the Mong kok case and the Handan case jointly confirm the process described by the Differential Association Theory. This process includes the definition, acquisition and implementation of illegal interests. At the same

time, these two cases also exposed the same blind spot of the theory. When political opportunity structures, organizational silence or collectivist culture weaken the definition of extreme crime, the theory cannot explain why most people still choose not to act. These people are also influenced by the same factors.

#### 4. Conclusion

Combining theoretical analysis with case studies, the following insights can be drawn:

Community structures such as poverty, racial diversity and residential instability will weaken social control. These factors make it easier for individuals to be exposed to criminal traditions in an environment without regulation and to be involved in lawless subcultural groups (Taylor, 2001). People should pay close attention to the definition of extremist ideas in cyberspace. Critical thinking training in civic education needs to be strengthened. This kind of training can prevent individuals from being assimilated by extremist political subcultures.

People acquire criminal skills and motivations by interacting with derailment groups. This acquisition is especially obvious in places where institutional control is weak (Downes, Rock & McLaughlin, 2016). We must break the silent culture surrounding campus violence. An effective mandatory reporting and referral mechanism should be established for anti-bullying intervention. These measures will prevent differential associations from breeding in institutional loopholes.

The Differential Association Theory points out that intimate groups are the key places for criminal learning. However, the theory does not limit the forms that these groups can take (Downes, Rock & McLaughlin, 2016). We should go beyond the traditional definition of intimate groups and take into account the multiple influences of digital society, institutional structure and cultural background. Through this integration, researchers can build a more explanatory extended differential association model.

At the level of criminal justice, a mechanism for assessing the degree of correlation of differences should be established. For cases involving juvenile offenders, it is necessary to focus on examining the source, duration and mandatory characteristics of their criminal definition. Through differentiated treatment measures, the policy of “easing justice with benevolence” can

be concretely implemented. In joint crime cases, it is necessary to distinguish the roles of the abettor, the main offender and the accomplice in the differential association system. A graded criminal responsibility assessment system should be implemented. The system imposed heavier penalties on those who actively created criminal contacts and lighter penalties on those who were passively involved in criminal networks. At the same time, for repeat offenders and recidivists who have formed a stable criminal network, their differentiated interaction should be regarded as a foregone deal, and the law should severely punish them to block the intergenerational transmission of criminal subculture.

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