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Mediation in Intertribal Land Disputes: Consequences in Eyumojock Sub-Division

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Abstract: This study examines the concept of mediation and its relevance to inter-tribal land disputes in Eyumojock Sub-Division. It is situated within a context where land remains a vital resource for livelihood, identity, and communal survival, yet disputes over ownership, access, and boundaries have increasingly generated tension among neighbouring communities. The research problem lies in the persistence of such conflicts despite the existence of customary norms and formal legal mechanisms, suggesting that current dispute-resolution approaches are either inadequate or insufficiently harmonized. The main objective of the study is to assess how mediation, particularly within customary and community-based frameworks, can contribute to the peaceful resolution of inter-tribal land disputes in Eyumojock. Methodologically, the study adopts a doctrinal and qualitative approach, relying on library research, relevant legal materials, and analysis of customary practices and secondary sources on land conflict resolution. The study finds that mediation remains a culturally acceptable, flexible, and cost-effective means of resolving land disputes, especially where it is guided by respected traditional authorities and grounded in local norms of fairness and reconciliation. It further reveals that many conflicts escalate because of weak documentation of land boundaries, competing historical claims, and limited cooperation between customary and formal institutions. The study concludes that mediation is a practical and socially sustainable mechanism for addressing inter-tribal land disputes in Eyumojock, provided it is strengthened and integrated with formal land governance structures. It recommends the documentation of customary boundaries, capacity-building for traditional mediators, and closer collaboration between state officials and community leaders to promote lasting peace and prevent future conflicts.

Keywords: mediation; intertribal; land; disputes; intertribal land disputes

1. Introduction

Inter-tribal land disputes have long constituted a significant source of conflict in many communities, particularly in regions where customary land tenure systems prevail and boundaries between tribal territories remain ill-defined. These disputes often stem from competing claims over agricultural land, grazing areas, water resources, or sacred sites, and can escalate into sustained violence that undermines social cohesion, economic development, and political stability. Traditional adjudicatory mechanisms, including formal court systems, frequently prove inadequate in resolving such conflicts due to their rigid procedures, expensive costs, and limited sensitivity to customary norms and indigenous knowledge systems. Mediation emerges as a vital alternative dispute resolution mechanism in addressing inter-tribal land conflicts, offering a flexible, participatory, and culturally responsive approach that prioritizes mutual understanding and consensual outcomes[1]. Unlike adversarial litigation, mediation facilitates dialogue between conflicting tribes through the assistance of a neutral third party who guides negotiations without imposing decisions. This process allows parties to articulate their interests, recognize shared concerns, and collaboratively develop solutions that respect customary land rights while addressing contemporary needs. In the context of inter-tribal disputes, mediation holds particular significance because it preserves relationships between communities, maintains social harmony, and generates sustainable agreements grounded in local customs and collective legitimacy. The concept of mediation in inter-tribal land disputes thus represents not merely a technical mechanism for conflict resolution, but a transformative approach that integrates indigenous conflict management practices with modern dispute resolution principles to foster peacebuilding and sustainable land governance.

Eyumojock Sub-Division, like many communities in Cameroon's Southwest Region, has experienced recurring intertribal land disputes arising from competing claims over ownership, use, and control of land. Land in this setting is not merely an economic resource; it is also deeply tied to identity, ancestry, settlement history, and community survival. As populations grow and land becomes increasingly scarce, boundaries that were once understood through oral tradition and customary practice have become sources of tension. These conflicts are often intensified by differences in historical narratives, overlapping customary claims, weak documentation of land boundaries, and the limited effectiveness of formal dispute-resolution mechanisms at the local level.

In response to these conflicts, mediation has remained an important traditional and community-based approach to dispute resolution. Mediation allows neutral and respected persons, often traditional rulers, elders, or local leaders, to bring disputing parties together in order to encourage dialogue, reconciliation, and mutually acceptable settlement. Unlike court litigation, which can deepen hostility and take a long time to resolve, mediation is generally faster, less expensive, and more culturally acceptable to many rural communities. In Eyumojock Sub-Division, it plays a significant role in preserving social harmony and preventing disputes from escalating into prolonged hostility or violence.

However, despite its usefulness, mediation does not always fully resolve the underlying causes of intertribal land disputes. In some cases, agreements are not properly documented, parties later contest settlement terms, or the same conflicts reappear because the root issue of boundary uncertainty remains unresolved. The consequences of these disputes are often serious and wide-ranging. They may lead to mistrust among neighbouring communities, breakdown of peaceful coexistence, disruption of farming activities, loss of livelihoods, displacement, and in some cases destruction of

[1] AUC-ECA-AfDB Consortium. (2010). *Framework and Guidelines on Land Policy in Africa, Addis Ababa*, ECA.

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property or physical confrontation. Such consequences show that intertribal land disputes are not only legal issues but also social and developmental problems.

It is against this background that this article examines mediation in intertribal land disputes and their consequences in Eyumojock Sub-Division. The study seeks to understand how mediation functions in practice, the extent to which it helps resolve conflict, and the broader effects of unresolved land disputes on community life.

2. Overview of the Concept of Mediation in Intertribal Disputes

The concept of mediation received legislative recognition in Cameroon for the first time in the ratified OHADA Treaty. The treaty gives the Commissioner appointed to resolve the dispute, power to determine the process for settling the dispute which may include mediating the dispute, conducting a fact-finding exercise and making recommendations to the parties which may be in the form of an advisory arbitration award.[1]

2.1 Meaning of Mediation

Mediation is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques.[2] The process can take any of the two forms: Court referred or Private mediation. Court referred mediation applies to cases pending in Court and which the Court would refer for mediation. In private mediation, however, qualified mediators offer their services on a private, fee-for-service basis to the Court, to members of the public, to members of the commercial sector and also to the governmental sector to resolve disputes through mediation. Private mediation can be used in connection with disputes pending in Court and pre-litigation disputes.[3]

In all forms of the mediation process, the mediator remains impartial, independent, detached and objective and their personal preferences or perceptions do not have any bearing on the dispute resolution process and only plays a facilitative and evaluative role[4]. During the mediation, the parties retain the right to decide for themselves whether or not to settle a dispute and, if so, the terms of the settlement. Even though the mediator facilitates their communications and negotiations, the parties always retain control over the outcome of the dispute.[5]

The mediation process usually starts by referral of a dispute to the mediator by the community leadership.[6] It may also be referred directly by one or both parties, but in cases involving customary land, the mediator ought to inform the community leadership and receive permission to attempt to resolve the dispute by mediation.[7] This is important because if mediation fails, the dispute would then go before the relevant community dispute resolution forum for adjudication, and therefore they should have prior knowledge that a dispute exists.[8]

The privacy, confidentiality and non-disclosure of agreements are part of the communicative signals that help build confidence in the mediation approach. Moreover, any statement made or information furnished by either of the parties, and any document produced or prepared for/during mediation is inadmissible and non-discoverable in

[1] Morgan, Brigg and Roland, Bleiker (eds). (2011). *Mediating across Difference: Oceanic and Asian Approaches in Conflict Resolution*. Honolulu: University of Hawaii Press, 24.

[2] Engel, Antonia. (2007). *Negotiation and Mediation Techniques for Natural Resource Management*. Trainers Guide. Rome: FAO, 45.

[3] Gumede, Nathi. (2020). *Capacity Development in Conflict Resolution through Mediation to help Resolve conflicts and disputes affecting customary land tenure in Eswatini.* Final Project Report, 12.

[4] Larbi, Wordsworth Odame and Maria Paola Rizzo. (2019). *Improving Governance of Tenure: Technology as the Enabler*. Paper prepared for presentation at the 2019 World Bank Conference on Land and Poverty, March 25-29, Washington D.C, 20

[5] *Ibid*

[6] Susskind, Lawrence, Mieke, van der Wansem, & Armand, Ciccarelli. (2000). *Mediating Land Use Disputes: Pros and cons*. Cambridge, MA: Lincoln Institute of Land Policy, 12

[7] *Ibid*

[8] AUC-ECA-AfDB Consortium. (2010). *Framework and Guidelines on Land Policy in Africa,* Addis Ababa, ECA, 34

any proceeding[1]. Any concession or admission made during mediation cannot be used in any proceeding.[2] Further, any information given by a party to the mediator during mediation process is not disclosed to the other party, unless specifically permitted by the first party. No record of what transpired during mediation is prepared.

The mediator cannot be called upon to testify in any proceeding or to disclose to the court as to what transpired during the mediation. The settlement reached in a case that is referred for mediation during the course of litigation is required to be reduced to writing, signed by the concerned parties and filed in Court for the passing of an appropriate order. A settlement reached at a pre-litigation stage is a contract, which is binding and enforceable between the parties. In the event of failure to settle the dispute, the report of the mediator does not mention the reason for the failure. The report will only say "not settled".[3]

If the mediation is successful a documentary record of the settlement agreement must be prepared.[4] If requested by the parties, the mediator can assist with the drafting of the agreement. However, it is often best that the parties write it themselves, which helps to reinforce and sustain the agreement, but this is not always practical.[5]

There are a number of characteristics that define the mediation approach.

2.2 Types of Mediation in Intertribal Land Disputes

Mediation in intertribal land disputes is not a monolithic process but encompasses various types that differ in formality, institutional affiliation, mediator identity, procedural structure, and legal recognition. Understanding these is essential for critically evaluating their appropriateness, effectiveness, and implications for resolving land conflicts in contexts like Eyumojock Sub-Division where customary law, traditional authority, and statutory legal frameworks intersect. This discussion critically examines the principal types of mediation employed in intertribal land disputes, analyzing their characteristics, advantages, limitations, and contextual suitability.

2.2.1 Traditional/Customary Mediation

Traditional or customary mediation represents the most prevalent and historically entrenched form of mediation in intertribal land disputes across Africa, including Cameroon's South-West Region. This type of mediation is conducted by traditional authorities such as chiefs, village heads, sacred kings, council of elders, family heads, or other customary leaders who derive their authority from indigenous governance structures rather than state appointment. In Eyumojock Sub-Division, traditional mediation typically involves the Chiefs, "Mgbe"/"Ekpe" Society, divisional chiefs, quarter heads, or respected elders who possess deep knowledge of customary land tenure systems, ancestral claims, oral histories, and traditional boundary markers.

The defining characteristic of traditional mediation is its grounding in indigenous knowledge systems, cultural norms, and community values. Mediators in this context apply customary law, recognize spiritual and cultural significance of land, incorporate traditional dispute resolution rituals, and employ culturally appropriate communication styles and procedures. The process often takes place in traditional meeting halls, sacred spaces, or community gathering places rather than formal institutional settings. Local values such as deliberation, collective cooperation, coexistence,

[1] Garcia, R. (2021). ADR and land conflicts in Latin America. Latin *American Journal of Legal Studies, 12*(3), 204-226:215

[2] Friedman, M. (2018). The morality of capitalism: a political economy perspective on John Rawls' theory of justice. *Journal of Business Ethics*, 149(3), 2018, pp. 725-738:730

[3] Ajayi, Adeyinka Theresa & Buhari, Lateef Oluwafemi. (2014). Methods of Conflict Resolution in African Traditional Society'. *African Research Review: An International Multidisciplinary Journal, Ethiopia, 8*(2), Serial No. 33, 79-91:87.

[4] COWI. (2018). *Guidelines for Land Dispute Mediation. Technical Assistance Support in Sustainable Land Administration and Management*, 13

[5] *Ibid*

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and community harmony serve as foundational principles guiding the mediation process.

Traditional mediation offers significant advantages for resolving intertribal land disputes. Its cultural competence ensures that indigenous knowledge systems, oral traditions, and customary practices receive proper recognition and validation. The authority of traditional mediators derives from community acceptance and respect, lending legitimacy to the process that enhances compliance with agreements[1]. The informal nature reduces costs and barriers to access, making justice available to rural populations who cannot afford formal litigation. Traditional mediation also preserves and reinforces customary law systems that might otherwise erode under pressure from formal legal systems.[2]

However, traditional meditation faces critical challenges that warrant scrutiny. The lack of standardized procedural guidelines complicates implementation and reduces effectiveness. Quality and fairness vary significantly depending on the competence, integrity, and bias of individual mediators. [3] Traditional power structures may marginalize vulnerable groups including women, youth, and minority families whose interests may be overlooked in patriarchal customary systems. The informal nature means agreements may lack formal enforceability, relying instead on social pressure and moral obligation. Additionally, traditional mediation may struggle with complex disputes involving multiple tribes, large land areas, or conflicting claims that exceed the capacity of local customary institutions.[4]

2.2.2 Community-Based Mediation

Community-based mediation represents a hybrid form that emerges from within communities but operates with greater structure and inclusivity than purely traditional mediation. This type involves mediators selected from the community who may include traditional leaders, religious figures, respected community members, women's group leaders, youth representatives, local government officials, or civil society organization representatives acting collectively as intermediaries. In intertribal land disputes, community-based mediation often involves representatives from all conflicting tribes to ensure balanced representation and mutual trust.[5]

The distinguishing feature of community-based mediation is its participatory and inclusive nature. The process engages the broader community beyond immediate disputing parties, creating ownership and support for resolution outcomes. Multiple stakeholders participate as mediators, witnesses, or observers, lending legitimacy and ensuring that agreements reflect community norms and expectations. This inclusivity is particularly valuable in intertribal disputes where trust between groups is fragile and where resolution requires broad community buy-in to prevent future conflicts.[6]

Community-based mediation successfully balances cultural sensitivity with procedural fairness. By involving diverse community representatives, the process reduces the risk of bias that might characterize mediation conducted by a single traditional authority. The presence of women's representatives, youth leaders, and members from all conflicting tribes ensures that multiple perspectives receive consideration. This diversity enhances the legitimacy and durability of agreements, as all community segments feel represented in the process.[7]

The effectiveness of community-based mediation depends on enthusiastic community engagement,

[1] Yin, R.K. (n.d.). *Case study research: design and methods.* 5th ed. Thousand Oaks, SAGE Publications, *67*

[2] Williams, K. (2023). The role of ADR in conflict resolution in emerging economies. *Global Journal of Legal Studies*, *31*(2), 245-273:270

[3] *Ibid*

[4] Wehrmann, B. (2017). The dynamics of land tenure and conflict in Sub-Saharan Africa. Berlin, German Federal Ministry for Economic Cooperation and Development.

[5] Wamala, D. (2020). Fostering peaceful coexistence through community-based land mediation in Uganda. Kampala, Uganda Land Trust.

[6] *Ibid*

[7] Verplanke, J. and McCall, M. (2010). *Boundary demarcation and land conflicts: the role of participatory mapping in Tanzania*. Enschede, University of Twente Press, 60

transparency, and inclusivity throughout the process. When these elements are present, the process achieves sustainable outcomes that address underlying interests and preserve community relationships. However, challenges include potential for community pressures to influence outcomes, difficulty coordinating multiple mediators with different perspectives, and the time-intensive nature of inclusive processes that may delay resolution.[1]

2.2.3 Court-Annexed Mediation

Court-annexed mediation represents a formal type of mediation integrated within the judicial system, where courts refer land disputes to mediation before or during litigation proceedings. This type operates under statutory frameworks, procedural rules, and judicial supervision, distinguishing it from informal traditional or community-based mediation. In Cameroon, court-annexed mediation has been increasingly recognized as part of alternative dispute resolution reforms aimed at reducing court caseloads, expediting dispute resolution, and providing more accessible justice mechanisms[2].

Court-annexed mediation in intertribal land disputes typically involves court-appointed or certified mediators who may be lawyers, retired judges, professional mediators, or trained legal professionals operating within court facilities or designated mediation centers[3]. The process follows formal procedural guidelines, maintains official records, and produces agreements that carry legal enforceability equivalent to court judgments when properly ratified. Parties may voluntarily participate or be mandated by courts to attempt mediation before proceeding with full litigation.[4]

The primary advantage of court-annexed mediation is its combination of mediation's flexibility with formal legal recognition and enforceability. Agreements reached through court-annexed mediation carry the weight of court orders, providing stronger enforcement mechanisms than informal mediation agreements [5] . The process operates under judicial supervision, ensuring procedural fairness, adherence to legal standards, and protection of parties' rights. Court-annexed mediation also provides access to professional mediators with legal training and mediation expertise, potentially enhancing the quality and fairness of the process.[6]

However, court-annexed mediation faces significant limitations in resolving intertribal land disputes in rural contexts like Eyumojock. The formal nature may alienate rural communities unfamiliar with legal procedures and uncomfortable with court environments. The involvement of lawyers and legal professionals increases costs, potentially excluding economically disadvantaged parties. [7] The process may lack cultural sensitivity, with mediators lacking understanding of customary law, traditional practices, and indigenous knowledge systems essential for resolving intertribal land disputes. Additionally, court-annexed mediation may still be perceived as part of the formal legal system that rural community's distrust or view as inaccessible.

2.2.4 Facilitative Mediation

Facilitative mediation represents a specific approach within mediation types where the mediator acts primarily as a process facilitator rather than content expert or evaluator. In this type, the mediator focuses on managing communication, structuring dialogue, helping parties identify interests, generating options, and reaching voluntary agreements without providing opinions on legal merits or suggesting specific solutions. The

[1] *Ibid*

[2] UN Women. (2017). Seminar report - Gender-responsive alternative dispute resolution. Asia-Pacific: UN Women. Available at: https://asiapacific.unwomen.org (Accessed: 15 November 2025).

[3] Atangana, J.A. (2018). *Land Law and Customary Tenure in Cameroon*. Yaoundé: CLEPublishing, 67

[4] Ngwa, A.N. (2019). *Alternative Dispute Resolution in Cameroon: Theory and Practice*. Buea: University of Buea Press, 78

[5] *Ibid*

[6] Atangana, J.A. (2018). *Op.cit*

[7] Fombad, C.M. (2020). *Land Disputes and Resolution Mechanisms in Central Africa*. Cape Town: UCT Press, 67

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mediator's role is to guide the process while parties retain full control over substantive decisions.[1]

In intertribal land disputes, facilitative mediation emphasizes creating safe spaces for dialogue, ensuring all parties have opportunity to express their perspectives, helping parties understand each other's underlying interests, and facilitating collaborative problem-solving. The mediator employs techniques such as reframing statements, asking open-ended questions, paraphrasing to confirm understanding, and helping parties evaluate options without imposing opinions.[2]

The strength of facilitative mediation lies in its commitment to party autonomy and self-determination. Parties control the outcome rather than receiving mediator recommendations, which enhances satisfaction and compliance with agreements [3]. The process encourages creative solutions that address underlying interests rather than merely legal positions, particularly valuable in intertribal disputes where interests extend beyond title to include cultural significance, ancestral connections, and practical needs.[4]

However, facilitative mediation requires parties with relatively equal bargaining power and capacity to negotiate effectively. In intertribal land disputes where power imbalances exist between tribes, wealthier families, or gender groups, facilitative mediation may produce agreements that favor stronger parties[5]. The approach also requires skilled mediators with advanced communication and process management abilities, which may be scarce in rural contexts.[6]

2.2.5 Evaluative Mediation

Evaluative mediation represents an approach where the mediator provides assessments of legal merits, predicts likely court outcomes, and suggests specific settlement options based on legal standards and professional expertise. [7] Unlike facilitative mediation, the evaluator mediation role includes providing substantive opinions on the strengths and weaknesses of each party's case, potentially influencing parties' decisions about settlement.[8]

In intertribal land disputes, evaluative mediation may involve mediators with legal training who assess documentary evidence, apply statutory and customary law principles, and provide opinions on likely judicial outcomes. This approach may be particularly relevant when disputes involve complex legal questions about land title, overlapping claims, or conflicts between customary and statutory law.

The advantage of evaluative mediation is that it provides parties with realistic assessments of their legal positions, potentially encouraging settlement when litigation would be unfavorable. Parties receive professional guidance on legal merits, which may be particularly valuable for those unfamiliar with legal systems or uncertain about their claims. The approach may be more efficient than purely facilitative mediation when parties need guidance on legal realities.

However, evaluative mediation significantly reduces party autonomy, as mediator opinions may unduly influence settlements. The approach may inadequately address non-legal interests such as cultural significance, ancestral connections, or relationship preservation that are crucial in intertribal disputes[9]. Evaluative mediation may also privilege formal legal standards over customary practices, potentially undermining the recognition of indigenous land rights. Furthermore, mediators providing legal opinions may inadvertently practice

[1] Akwe Ngole Ray Junior, D. (2025). An Assessment of the Role the Land Consultative Board in the Resolution of Land Disputes in Cameroon. *Studies in Law and Justice, 4*(6), 49–59:50

[2] *Ibid*

[3] Fombad, C.M. (2019). Alternative Dispute Resolution in African Land Law. *Journal of African Law, 63*(2), 245–267:260

[4] *Ibid*

[5] Konings, P. (2011). Settling border conflicts in Africa peacefully: lessons learned from the Bakassi dispute between Cameroon and Nigeria. *Land, Law and Politics in Africa.* Leiden: Brill, 191–210:202

[6] *Ibid*

[7] Ngoh, V.J. (2020). Customary Mediation Mechanisms in Cameroonian Land Conflicts. *African Journal of Legal Studies, 13*(3), 312–334:320

[8] *Ibid*

[9] Enowmbi, E.B. (2018). The Effectiveness of Traditional Mediation in Rural Land Disputes in Cameroon. *Cameroonian Journal of Law*, *7*(1), 45–62:60

law without proper representation of both parties, raising ethical concerns.[1]

2.2.6 Transformative Mediation

Transformative mediation represents a distinct approach focused on empowering parties and fostering mutual recognition rather than simply reaching settlement agreements. In this type, the mediator's primary goal is to support parties in transforming their relationship through enhanced decision-making capacity (empowerment) and increased understanding of each other's perspectives (recognition). Settlement is viewed as a potential byproduct of transformation rather than the primary objective.

In intertribal land disputes, transformative mediation emphasizes helping parties from conflicting tribes develop stronger capacity to make informed decisions, understand each other's perspectives, histories, and concerns, and recognize shared humanity despite historical conflicts. The process may involve extended dialogue, storytelling, acknowledgment of past harms, and building mutual understanding that addresses root causes of conflict rather than merely surface-level disputes.

The strength of transformative mediation is its focus on long-term relationship transformation rather than immediate settlement. In intertribal disputes where parties must continue coexisting after resolution, addressing underlying relationship dynamics and historical grievances may produce more durable peace than agreements that merely resolve immediate boundary questions [2]. This approach aligns with African traditional justice principles emphasizing restoration, healing, and community harmony over individual victory.[3]

However, transformative mediation is time-intensive and may not satisfy parties seeking quick resolution of urgent land disputes affecting agricultural cycles and livelihoods. The approach requires highly skilled mediators trained in transformative methodology, which may be scarce in rural Cameroonian contexts. Additionally, some parties may prefer more directive approaches that provide clearer guidance on settlement options.[4]

2.3 Characteristics of Mediation as an Alternative Dispute Resolution Mechanism

Mediation stands as one of the most prominent and widely practiced forms of Alternative Dispute Resolution (ADR), distinguished by a constellation of characteristics that renders it uniquely suitable for resolving diverse conflicts ranging from commercial disputes to intertribal land conflicts. [5] These characteristics define mediation's nature, structure, and philosophy, differentiating it from adjudication, arbitration, and other dispute resolution mechanisms. This critical discussion examines the essential characteristics of mediation, analyzing their significance, implications, interrelationships, and critical limitations in practice.[6]

2.3.1 Voluntary Party-Driven Process

Even where the court has referred the case for the mediation or if mediation is required under a contract or a statute, the decision to settle and the terms of settlement always rest with the involved parties[7]. This right of self-determination ensures that the outcome is acceptable to them.[8] Because the parties have ultimate control over the outcome any party may withdraw from the mediation

[1] Tambe, A.N. (2021). Integrating Customary and Statutory Mediation in Land Conflict Resolution. *International Journal of Law in Context*, *17*(4), 478–495:479

[2] *Ibid*

[3] Atangana, J.M. (2019). Land Consultative Boards and ADR in Cameroon. *African Human Rights Law Journal, 19*(2), 401–423:420

[4] Nacchwa Mei, M. (2017). *An Assessment in the Effectiveness of Mediation in Settling Land Disputes: Case Study in Apac District.* B.A. thesis. Uganda: Uganda Christian University, Unpublished, 98

[5] Okoro, C.E. (2020). *Mediation as an Effective Aid for Resolving Land Disputes in Cameroon.* LLM dissertation. South Africa: University of Pretoria, 67

[6] *Ibid*

[7] FAO. (2021). *Applying mediation in customary land tenure disputes. Lessons from Eswatini*. Rome, 30

[8] Fisher, R., Ury, W.L. and Patton, B. (2011). *Getting to yes: negotiating agreement without giving in*. 2nd ed. New York, Penguin Books, 34

proceedings at any stage before its termination and without assigning any reason.[1]

The voluntary character of mediation represents its foundational principle and most distinguishing feature. Parties enter mediation voluntarily and retain the right to withdraw at any point during the process without penalty [2]. Unless specifically mandated by agreement or court order, participants can abandon mediation after the first meeting if continuation does not meet their interests. Even when parties have agreed to submit a dispute to mediation, they remain free to abandon the process at any time for any reason or no reason.[3] This voluntary nature profoundly shapes mediation's dynamics and outcomes. Parties' willingness to participate signals genuine commitment to resolution, enhancing the likelihood of successful outcomes. The ability to withdraw protects parties from coercion, ensuring that any agreement reached reflects genuine consent rather than forced submission. Research demonstrates that parties who actively resolve their own conflicts through voluntary participation demonstrate dramatically elevated compliance rates.[4]

However, the voluntary character presents critical limitations. When one party lacks genuine commitment or uses mediation strategically to delay litigation, the process may prove ineffective. Court-mandated mediation, increasingly common in many jurisdictions, creates tension with voluntariness principles, though parties typically retain right to withdraw from actual agreement.[5] In contexts like intertribal land disputes where power imbalances exist, the voluntary nature may inadequately protect vulnerable parties who face implicit coercion from dominant groups despite formal freedom to withdraw.[6]

2.3.2 Party Autonomy and Self-Determination

Mediation embodies profound commitment to party autonomy, granting disputants total command over process and decision-making. Parties possess complete decision-making power and veto authority over each provision of any mediated agreement.[7] Nothing can be imposed forcibly on anyone, and the mediator cannot make decisions for parties. This self-determining characteristic distinguishes mediation fundamentally from adjudication, where judges impose binding decisions regardless of parties' preferences.[8]

The autonomy characteristic empowers parties to control outcomes, craft creative solutions addressing their specific interests, and maintain dignity throughout the process. Parties decide how mediation should be conducted, what issues to address, what information to disclose, and what solutions to pursue. This control enhances satisfaction with outcomes and increases compliance, as parties have voluntarily committed to agreements rather than receiving imposed judgments.[9]

Party autonomy assumes relatively equal bargaining power between parties, which may not exist in many disputes. In intertribal land conflicts where wealthier families, dominant tribes, or male representatives hold significantly greater power than marginalized groups, women, or youth, unfettered autonomy may produce agreements favoring stronger parties. The characteristic also

[1] CFS-FAO. (2012). *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Rome*: FAO, 4p.

[2] Tchouanguep, M. (2018). *Alternative Dispute Resolution in Land Matters: The Cameroonian Experience*. LLM dissertation. Cape Town: University of Cape Town, 78.

[3] Food and Agriculture Organization (FAO). (2021). Voluntary Guidelines on the Responsible Governance of Tenure: Cameroon Country Report. Rome: FAO, 70

[4] Kinsmen Advocates. (2025). Business Dispute Resolution in Cameroon: 7 Critical Actions You Should Take. Available at: https://kinsmenadvocates.com/business-law/business-dispute-resolution-cameroon 33 (Accessed: 8 January 2026).

[5] Cameroon News Agency (2021) Land Disputes Represent More Than 80% of Court Cases in Cameroon. Available at: https://www.facebook.com/CAMEROONNEWSAGENCY/posts/land-disputes-represent-more-than-80-of-court-cases-in-cameroon (Accessed: 5 April 2026).

[6] *Ibid*

[7] Lincoln Institute of Land Policy. (2017). Integrating Mediation in Land Use Decision Making. Available at: https://www.lincolninst.edu/publications/articles/integrating-mediation-land-use-decision-making/ (Accessed: 8 January 2026).

[8] *Ibid*

[9] Singh, T. and Mbatha, M. (2022). Land reform and ADR in South Africa. *South African Law Journal, 139*(2), 195-220:215.

requires parties with sufficient capacity, knowledge, and resources to negotiate effectively, potentially excluding those lacking legal literacy or negotiation skills.[1]

2.3.3 Confidentiality

Mediation is confidential to the extent parties desire and agree, whether through statute, contract, rules of evidence, or privilege. Mediation discussions and all materials developed for mediation are not admissible in any subsequent court or contested proceedings, except for a finalized and signed mediated agreement. Sessions are held in private and are not reported, protecting sensitive information from public disclosure.[2]

Confidentiality serves multiple critical functions in mediation. It creates safe spaces for open dialogue, allowing parties to express concerns, acknowledge interests, and explore settlement options without fear that communications will be used against them in future litigation. This protection encourages honest communication and genuine compromise impossible in adversarial litigation where every statement becomes potentially damaging evidence[3]. Confidentiality also protects parties' reputations, particularly important in community disputes where public exposure of conflicts affects social standing, marriage prospects, and economic relationships.[4]

However, confidentiality presents significant criticisms. The lack of public scrutiny may enable unfair outcomes, particularly when power imbalances exist. Confidential processes cannot establish public precedents contributing to legal development or informing similar disputes. [5] In cases involving public interest, systematic abuses, or violations of fundamental rights, confidentiality may shield problematic conduct from appropriate oversight. [6] The characteristic also limits accountability, as mediators' conduct and process quality remain hidden from public review.

2.3.4 Impartiality and Neutrality of the Mediator

The mediator maintains equal and balanced responsibility to assist each mediating party, cannot favor any party's interests over another, and should not favor particular results. Mediators are ethically obligated to acknowledge any substantive bias on major issues and ensure parties reach agreements voluntarily and informed, not due to coercion or intimidation. The mediator serves as a neutral third party without decision-making power.[7]

Impartiality and neutrality are essential for mediation's legitimacy and effectiveness. Parties must trust that the mediator will not favor one side, enabling open communication and genuine engagement. Neutral mediators create safe spaces where all perspectives receive equal consideration, fostering mutual understanding and collaborative problem-solving. The mediator's role is facilitating communication and process management rather than advocating for particular outcomes.[8]

2.3.5 The Active and Direct Participation of the Disputing Parties

Although mediators, lawyers, and other participants involved have active roles in mediation, it is the involved parties who explain the factual background of the dispute, identifying issues and underlying interests, generating options for agreement and making a final decision regarding settlement. [9] Mediation is fundamentally collaborative, encouraging disputant parties to work together to solve problems and reach

[1] *Ibid*.

[2] Shemdoe, R. and Kihamba, C. (2023). The political economy of land disputes in Tanzania. Journal of *Development Studies*, *19*(3), 67-88:79.

[3] Schomerus, M. and Rigterink, A.S. (2021). Disputes and displacement: a critical review of land conflicts in Africa. *Journal of Peace Research*, *58*(4), 501-515:510

[4] *Ibid*

[5] Rashid, M. and Rahman, M. (2023). ADR practices in Bangladesh: lessons and challenges. *Bangladesh Law Review*, *27*(2), 145-168:150

[6] *Ibid*

[7] Peters, P. (2021). Land, conflict, and identity in Sub-Saharan Africa. *Journal of African Studies, 45*(2), 235-256.

[8] *Ibid*

[9] Susskind, Lawrence, Mieke, van der Wansem, & Armand, Ciccarelli. (2000). *Mediating Land Use Disputes: Pros and cons*. Cambridge, MA: Lincoln Institute of Land Policy, 20.

agreements they perceive as best. The process emphasizes joint problem-solving, mutual understanding, and cooperative development of solutions rather than adversarial positioning. Parties actively participate in the process, participating directly rather than having legal professionals conduct proceedings on their behalf.[1]

2.3.6 Flexibility and Informality

This means that it is not governed by the dictates of evidence and formal rules of procedure [2]. Nonetheless, it is not an extemporaneous or casual process but is structured with clearly identifiable stages towards the final resolution of a dispute.[3] Mediation is informal and relatively unstructured compared to court proceedings.[4] The process is not bound by the same rules that govern courts or tribunals, offering flexibility in procedure, timing, location, and format. Mediation takes place at times and locations agreed by parties, allowing combinations of joint and individual meetings, and avoiding formal "legal speak" or cross-examination.[5]

This informality and flexibility render mediation accessible to parties unfamiliar with legal procedures, reducing intimidation and barriers to participation.[6] The process adapts to parties' needs, cultural contexts, and dispute characteristics rather than requiring conformity to rigid procedural requirements. In intertribal land disputes, informality enables incorporation of customary practices, traditional boundary markers, oral histories, and cultural rituals that formal litigation would exclude.[7]

2.3.7 Future-Focused Orientation

Mediation is focused on resolving issues and addressing how parties can move forward rather than what has already happened and apportioning fault or blame. The process keeps parties focused on the future and their goal of resolving the dispute, keeping discussions oriented toward practical solutions rather than historical grievances.[8]

This future-focused orientation distinguishes mediation from litigation, which often emphasizes establishing past facts, proving wrongdoing, and determining liability. Future orientation enables parties to develop practical solutions addressing current needs and future relationships rather than dwelling on past harms[9]. In intertribal land disputes, this approach facilitates agreements supporting continued coexistence, agricultural planning, and community development rather than merely determining historical ownership.[10]

2.3.8 Creative and Practical Solutions

Mediation enables creative and practical remedies that may not be available through legal proceedings. The process allows parties to develop innovative solutions addressing underlying interests rather than merely legal rights, including shared use arrangements, phased adjustments, compensation packages combining multiple forms of restitution, or cooperative agreements.

This creative characteristic enables mediation to address complex disputes where rigid legal categories inadequately capture parties' needs. In intertribal land disputes, creative solutions may include shared access to water sources, protection of sacred sites, agricultural corridors, or conservation

[1] AfricaBib. (2010). Settling Border Conflicts in Africa Peacefully: Lessons from Bakassi Dispute. Available at: https://www.africabib.org/rec.php?RID=343764385 (Accessed: 8 May 2026).

[2] Fischer, G. (2007). Beyond the food crisis: conflict and resource scarcity in the 21" century. In: Anderson, M. ed. *Food security and sustainability in the developing world*. Cambridge, Polity Press, 45-67:60

[3] *Ibid*

[4] Fokwa, D.N. (2022). *Institutional Challenges in Mediating Land Disputes in Cameroon*. PhD thesis. London: University of London School of Oriental and African Studies, 6, 97

[5] Okoro, C.E. (2020). *Mediation as an Effective Aid for Resolving Land Disputes in Cameroon*. LLM dissertation. South Africa: University of Pretoria, 70

[6] Asa, M.O. (2020). *Comparative Analysis of Mediation in Land Disputes: Cameroon*, Kenya and Rwanda. LLM mini-dissertation. South Africa: University of Pretoria, 123

[7] *Ibid*

[8] Mbome, L. (2020). Legal Framework for Mediation in Cameroonian Land Disputes'', *African Journal of International and Comparative Law, 28*(3), 345–367:354

[9] *Ibid*

[10] *Ibid*

arrangements that litigation focused on exclusive ownership cannot produce.

However, creative solutions require parties with imagination, negotiation skills, and willingness to explore alternatives beyond conventional approaches. The characteristic also assumes mediators can facilitate creative thinking without imposing their own preferences, requiring advanced facilitation skills.

2.3.9 Prejudice to Other Processes

Mediation participation is without prejudice to participation in other processes. Parties' involvement in mediation does not prevent subsequent litigation, arbitration, or other dispute resolution if mediation fails. This characteristic preserves parties' rights while encouraging genuine mediation engagement[1].

This characteristic reduces barriers to mediation participation, as parties can attempt mediation without forfeiting other options. However, it may also enable parties to use mediation strategically for information gathering while preparing for litigation, undermining genuine commitment to resolution.[2]

2.3.10 It Is Assisted Negotiation Process Which Addresses Both the Factual and Legal Issues and the Underlying Causes of a Dispute

Thus, mediation is broadly focused on the facts, law, and underlying interests of the parties, such as personal, business/commercial, family, social and community interests[3]. The goal of mediation is to find a mutually acceptable solution that adequately and legitimately satisfies the needs, desires and interests of the parties.[4]

2.4 Mediation Distinguish from Related Concepts

Mediation is a consensual, interest-based process in which a neutral third party helps disputants communicate and negotiate their own settlement, while litigation is an adversarial, court-driven process in which a judge or jury imposes a binding outcome after formal procedures. The distinction matters because mediation emphasizes autonomy, confidentiality, flexibility, and relationship preservation, whereas litigation emphasizes legal rights, procedural formality, public accountability, and enforceability.

2.4.1 Mediation and Litigation

Mediation and litigation are often presented as alternatives, but they serve different purposes and operate on different logics. Litigation is appropriate where parties need a definitive legal ruling, urgent coercive relief, precedent, or public vindication of rights; mediation is better where the parties want a faster, less expensive, more private, and more cooperative solution. In mediation, the parties retain control over both the process and the result, while in litigation the control shifts to the court, and the outcome is determined by legal rules rather than by what the parties themselves consider workable.[5]

The main advantage of mediation over litigation is its efficiency. It usually takes less time, costs less, and creates less stress because it avoids many of the delays, technicalities, and expenses associated with court proceedings. It is also less adversarial, so it can preserve personal, commercial, family, or institutional relationships that litigation often damages. Another advantage is confidentiality: mediation is ordinarily private, whereas litigation is generally public, which may matter where reputational concerns, business secrets, or personal dignity are involved.[6]

However, mediation also has important weaknesses when compared with litigation. It does not guarantee settlement, and even when an agreement is reached, the process may lack the sense of finality that a judgment brings. Mediation also offers less

[1] Tchuente, P. (2023). Post-Conflict Land Dispute Mediation in Anglophone Cameroon. *Journal of Post-Conflict Justice*, *9*(2), 145–168:160

[2] *Ibid*

[3] Emanuel, P.N. and Ndimbwa, T. (2013). Land disputes and conflict resolution in Tanzania. Dar es Salaam, Mkuki na Nyota Publishers, 15.

[4] *Ibid.*

[5] Trueman, J. ediation in the World of Commercial Dispute Litigation: An Inside Look at the Challenges for Counsel, Mediators, and Insurance Claims Professionals.

[6] Robinson, P. An Empirical Study of Settlement Conference Nuts and Bolts.

discovery and fewer coercive tools, so a party with superior information or bargaining power may benefit more than the weaker side. In disputes involving serious rights violations, power imbalance, fraud, or the need for authoritative interpretation of law, litigation may be preferable because it provides structured evidence testing, appeal rights, and a binding order that can be enforced by the state.[1]

Litigation, for its part, has advantages that mediation cannot fully replicate. It provides a formal adjudication process with rules of evidence, legal representation, and the possibility of appeal, which can be crucial where a party wants legal certainty or a precedent-setting decision. It is also useful where one party refuses to cooperate, needs interim remedies, or where the dispute concerns public law, constitutional issues, or strongly contested legal rights. Its disadvantages are equally clear: it is usually slower, more expensive, more stressful, and more rigid than mediation.[2]

2.4.2 Mediation and Negotiation

Mediation and negotiation are closely related, but they are not the same. Negotiation is a direct communication between parties aimed at reaching agreement without necessarily involving a third person, whereas mediation introduces a neutral intermediary who structures the discussion, manages conflict, and helps the parties move beyond deadlock. Put differently, negotiation is the broader concept; mediation is a facilitated form of negotiation with a third-party presence.[3]

The key advantage of mediation over simple negotiation is that the mediator can reduce hostility and break impasses. Where emotions, mistrust, or unequal communication skills make direct talks ineffective, the mediator can reframe issues, manage emotions, and help each side understand the other's interests.[4] This makes mediation especially useful in disputes where the parties still have to interact after the conflict, such as business partnerships, workplace disputes, or family matters. Negotiation, however, is more flexible and informal because the parties control everything directly without a third person shaping the dialogue.[5]

Negotiation has the advantage of maximum autonomy. Since no mediator is involved, the parties can speak freely, bargain creatively, and settle matters quickly without paying facilitation fees or following a structured process. It may also be better where the parties trust each other, the issues are simple, or time is very limited. Its weakness is that it can fail easily when there is inequality of bargaining power, poor communication, or emotional tension, because nothing in the process ensures fairness or order.[6]

Mediation improves on these problems by adding structure, neutrality, and procedural discipline, but that improvement comes at a cost. The mediator may slow the process, and because the mediator does not impose a result, the parties may still walk away without agreement. In other words, mediation is stronger than ordinary negotiation at overcoming conflict, but weaker than negotiation in pure spontaneity and direct control. For that reason, mediation is best understood as a hybrid process: it preserves the voluntary character of negotiation while adding facilitation and balance.

2.4.3 Mediation and Arbitration

Mediation and arbitration are both forms of alternative dispute resolution, but they differ sharply in function. Mediation is non-adjudicatory: the mediator helps the parties reach their own settlement, but does not decide the dispute. Arbitration is adjudicatory: the arbitrator hears the case, evaluates the evidence, and renders a binding

[1] Concluding a Successful Settlement Conference: It Ain't Over Till It's Over.

[2] Baker, T. Sizing Up Settlement: How Much Do the Merits of a Dispute Really Matter?

[3] Fisher, R., Ury, W., and Patton, B. Getting to Yes: Negotiating Agreement Without Giving In

[4] Mnookin, R. H., Peppet, S. R., and Tulumello, A. S. Beyond Winning: Negotiating to Create Value in Deals and Disputes

[5] Susskind, L., McKearnan, S., and Thomas-Larmer, J. (eds.). *The Consensus Building Handbook*.

[6] Trueman, J. "Mediation in the World of Commercial Dispute Litigation" for negotiation dynamics inside mediation.

award, often functioning in a way that resembles a private court.[1]

The chief advantage of mediation over arbitration is that it preserves party autonomy. The parties themselves decide whether to settle and on what terms, so the outcome can be more creative and commercially or personally tailored than an arbitral award. Mediation is also generally less formal, less expensive, and less confrontational than arbitration, which makes it attractive where preserving relationships or confidentiality matters. Because the parties craft their own settlement, they may also be more willing to comply voluntarily with the agreement than with an imposed award.[2]

Arbitration, however, offers strengths that mediation does not. It produces a binding decision even where one side refuses to compromise, so it is useful when settlement is unlikely or when the dispute requires final determination. It also gives parties a private but adjudicative process, often with specialist decision-makers who have expertise in the relevant field. Its disadvantages are that it can become expensive, formal, and time-consuming, sometimes resembling litigation in cost while offering fewer appeal opportunities.[3]

Mediation's disadvantage, by contrast, is that it cannot compel a result. If the parties remain entrenched, the process ends without resolution, and the dispute may then proceed to arbitration or litigation. This makes mediation excellent for consensual settlement but limited where one party needs a conclusive determination. Arbitration is therefore better where finality is the priority, while mediation is better where flexibility, preservation of relationships, and self-determined outcomes matter most.[4]

2.4.4 Mediation and Conciliation

Mediation and conciliation are often treated as similar because both involve a neutral third party helping disputing parties avoid litigation, but they are not the same in style or intensity. In mediation, the neutral person mainly facilitates communication, helps parties identify interests, and supports them in reaching their own agreement.[5] In conciliation, the neutral is usually more interventionist and may actively suggest terms, offer opinions on strengths and weaknesses, and push the parties toward compromise[6]. This difference matters because mediation preserves greater party autonomy, while conciliation is often more directive and can feel closer to an assisted settlement conference.[7]

The main advantage of mediation over conciliation is that it gives parties more control over both process and outcome. Because the mediator does not usually judge the merits of the dispute, the atmosphere can feel less hostile and more creative, which is especially helpful where the parties must maintain a relationship afterward.[8] Mediation also tends to protect confidentiality and reduces the risk that one side will feel publicly "defeated" by a third party's opinion. In family, community, and commercial disputes, this can make agreement more durable because it is generated by the parties themselves rather than imposed through expert pressure.[9]

The disadvantage of mediation is that its neutrality can sometimes make it too weak for disputes where one side needs strong reality-checking or where bargaining power is uneven. A mediator who avoids expressing views may fail to break deadlock, especially when one party has unrealistic legal

[1] Bressler article. Settlement Conferences Versus Mediation: A Primer for…

[2] Doraisamy, P. Review of Contemporary Issues in Mediation: Volume 8 (includes mediation–arbitration themes).

[3] Smith, D. N. A Warmer Way of Disputing: Mediation and Conciliatio, useful for distinguishing mediation from arbitration in ADR systems.

[4] Blain, N., Goodman, J., and Loewenberg, J. J. "Mediation, Conciliation and Arbitration: An International Comparison of Australia, Great Britain and the United States."

[5] Smith, D. N. (1978). A Warmer Way of Disputing: Mediation and Conciliation. *American Journal of Comparative Law, 26*(suppl 1), 205–216:209.

[6] *Ibid*

[7] Blain, N., Goodman, J., and Loewenberg, J. J. (1987).Mediation, Conciliation and Arbitration: An International Comparison of Australia, Great Britain and the United States." *International Labour Review,* 126(2), 179–198:197.

[8] Ferreira, G. (2004). The Commission for Conciliation, Mediation and Arbitration: Its Effectiveness in Dispute Resolution in Labour Relations." *Politeia* 23(2), 73–85:78

[9] *Ibid*

expectations or uses delay tactics. Because the mediator generally does not advise on likely court outcomes, mediation may also take longer if the parties are far apart on the merits. If mediation fails, the parties may still have to spend time and money moving to a more formal process.[1]

Conciliation, by contrast, has the advantage of being more focused and reality-based. Since the conciliator may evaluate the dispute and recommend compromise, the process can help parties quickly understand the likely consequences of refusing to settle. That can be especially useful in cases where legal rights are central and where a neutral opinion helps narrow the gap between positions. Conciliation may therefore be more effective than mediation in late-stage disputes or in matters where the parties want a more authoritative push toward settlement.[2]

Its weakness is that the same intervention that makes conciliation effective can also make it less fair-feeling. A conciliator's greater involvement may pressure the weaker party into accepting a settlement that is expedient but not fully satisfying. It may also reduce the sense of ownership that makes mediated settlements durable. In addition, when the conciliator gives opinions or assesses claims, parties may become defensive, turning the process into a semi-adversarial exchange rather than a cooperative one.[3]

2.4.5 Mediation and Collaboration

Mediation and collaboration are related but different because collaboration is not always a formal dispute resolution process in the same way mediation is. Mediation is typically a structured intervention by a neutral third person who helps the parties negotiate[4]. Collaboration, especially in a legal or organizational sense, is a broader cooperative method in which the parties themselves work jointly, often with professionals, to solve a problem without necessarily relying on a single neutral mediator. In collaborative law contexts, for example, lawyers and parties commit to solving the dispute through cooperative negotiation rather than litigation.[5]

A major advantage of mediation over collaboration is structure. Mediation provides a clear framework, a neutral facilitator, and a controlled process for moving from positions to interests.[6] That is useful where communication has broken down, because the mediator can manage emotion, keep the discussion focused, and prevent escalation. Mediation also helps where the parties lack the skill or trust to negotiate directly, because the mediator can shuttle between them and reduce confrontation.[7]

The disadvantage of mediation is that it may still leave the parties feeling somewhat passive, since the neutral manages the process and may constrain the dialogue to what is feasible in settlement terms. In highly cooperative disputes, that structure may be unnecessary and even limit fuller exploration of shared goals. Mediation can also feel artificial if the dispute requires ongoing teamwork rather than a single settlement event. For that reason, collaborative approaches may sometimes better fit disputes involving long-term relationships, repeated interaction, or shared projects.[8]

Collaboration's strength is that it encourages joint ownership of the solution. Because the parties work together rather than presenting arguments to a third person, collaboration can build trust, preserve relationships, and generate more customized outcomes. It is often well suited to business

[1] (1963). The United States Federal Mediation and Conciliation Service: Catalyst to Collective Bargaining. *International Labour Review*, *88*(5), 476–489

[2] Rahim, M. A., and Katz, J. P. Managing Conflict Through Mediation and Conciliation.

[3] Mediation, Conciliation and Arbitration: An International Comparison is also a useful comparative book/article source on the relationship among the three processes.

[4] Folger, J. P., and Bush, R. A. The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition.

[5] *Ibid*

[6] Susskind, L., McKearnan, S., and Thomas-Larmer, J. (eds.). The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement.

[7] Bush, R. A. B., and Folger, J. P. The Promise of Mediation; collaboration appears as a central mediation dynamic.

[8] Wheeler, M. The Mediation Handbook / mediation practice works emphasizing collaborative problem solving.

partnerships, family planning, workplace issues, or other contexts where the real problem is not just the legal dispute but the future relationship. Collaborative methods can also be more creative than mediation because they are not always limited by a formal settlement session.[1]

But collaboration has significant weaknesses. It depends heavily on goodwill, communication skills, and a willingness to cooperate, so it can fail quickly where mistrust is high or where one party dominates the relationship. It may also be inefficient because it lacks the built-in direction of mediation, and it can drift without a firm deadline or neutral management. In adversarial or emotionally charged disputes, collaboration may be too optimistic and may allow stronger parties to shape outcomes unevenly.

2.4.6 Mediation and Case Assessment

Mediation and case assessment are fundamentally different in purpose. Mediation aims to help the parties negotiate a settlement. Case assessment is more evaluative: a neutral assessor reviews the facts, evidence, and legal issues and gives an opinion on the likely strengths, weaknesses, or value of the case. Mediation focuses on communication and compromise, while case assessment focuses on analysis, prediction, and sometimes advice about settlement range or litigation risk.[2]

The advantage of mediation over case assessment is that it is more adaptable to human interests beyond legal rights. A mediated outcome can include apologies, future commitments, payment structures, confidentiality clauses, or relationship-saving terms that a bare case assessment would not generate. Mediation also gives parties a sense that their real concerns have been heard, not just their legal claims. This can be crucial where the dispute includes emotional, relational, or reputational issues that a technical assessment cannot fully address.

The drawback is that mediation may not be enough when parties need a firm appraisal of the dispute. If both sides have exaggerated beliefs about their chances, a mediator who avoids giving views may struggle to move them. That is where case assessment becomes valuable. It can provide a sober estimate of likely outcomes, reveal litigation risks, and encourage rational settlement by comparing the cost of continued conflict with the probable result.[3]

Case assessment's main advantage is clarity. It is especially useful in legally complex disputes, where parties need a professional perspective to understand whether their claim is strong, weak, or uncertain[4]. It can save time by narrowing issues quickly and can prevent wasted litigation on hopeless positions. In some settings, case assessment also improves settlement quality because parties negotiate with a more realistic view of what a court may do.[5]

However, case assessment has serious limitations. Because it is evaluative, it can reduce party ownership of the result and may feel judgmental or coercive. A party who hears a negative assessment may become defensive rather than cooperative. The process also risks oversimplifying disputes that involve more than legal merits, since a claim may be weak in law but still capable of settlement because of business, emotional, or practical considerations. In addition, an assessor's opinion can harden positions if parties treat it as a verdict rather than a tool for negotiation.[6]

2.4.7 Mediation Settlement Conferences

Mediation settlement conferences are structured settlement meetings, usually more formal than ordinary mediation, and often tied to litigation or court-connected dispute resolution. They are

[1] Kressel, K., and Pruitt, D. G. (eds.). Mediation Research / works on collaborative negotiation in mediation.

[2] Wissler, R. L., and Rack, R. W. Jr. (2004). Assessing Mediator Performance: The Usefulness of Participant Questionnaires." *Dispute Resolution Journa*l, 56-89:87

[3] Robinson, P. An Empirical Study of Settlement Conference Nuts and Bolts. Harvard Negotiation Law Review (empirical case assessment in court-connected processes).

[4] Trueman, J. Mediation in the World of Commercial Dispute Litigation: An Inside Look at the Challenges for Counsel, Mediators, and Insurance Claims Professionals.

[5] Baker, T. Sizing Up Settlement: How Much Do the Merits of a Dispute Really Matter?.

[6] Bahr, S. J. An Evaluation of Court Mediation." Sage article on court mediation assessment.

designed to bring the parties together, sometimes with lawyers and a neutral facilitator, to explore settlement before trial. The process may resemble mediation, but it often occurs under tighter procedural expectations and may be integrated into the court timetable.[1]

The advantage of a mediation settlement conference is efficiency. Because the conference usually happens when the case is already framed by pleadings, disclosures, or pre-trial preparation, the parties often have better information and a clearer sense of the issues. That can make settlement more realistic and reduce wasted trial preparation. The setting also creates pressure to negotiate seriously, which may overcome stalemate in a way that informal discussions cannot.[2]

Another advantage is that these conferences can combine legal evaluation with settlement facilitation. Parties often benefit from hearing how an experienced neutral or judge might view the strengths and weaknesses of the case. That reality check can be decisive, especially near trial when litigation costs are already high. For many disputes, a settlement conference is the last and best chance to avoid the expense, uncertainty, and delay of judgment.[3]

The disadvantages are that settlement conferences can be too closely tied to the litigation mindset. Because the case may already be hardening into positions, the process can become less creative and more tactical than early mediation. Parties may attend only because they feel compelled by the court or by litigation pressure, not because they genuinely want compromise. That can reduce openness and sincerity.[4]

A further weakness is that a mediation settlement conference may blur the line between facilitation and pressure. If the neutral is too evaluative, a weaker party may feel pushed into a compromise that reflects risk avoidance rather than true agreement. Also, because the conference is often scheduled late, it may save trial time but fail to save the emotional and financial costs already spent. In other words, it can still be useful, but it is often a last-resort settlement tool rather than the most constructive one.

3. Overview of the Concept on Intertribal Land Disputes

Intertribal disputes represent one of the most complex and socially significant forms of conflict in Africa, particularly in countries like Cameroon where diverse ethnic groups coexist within colonial-imposed boundaries while maintaining distinct cultural identities, customary legal systems, and territorial claims. These disputes, often centered on land, resources, chieftaincy, or historical grievances, threaten social cohesion, impede development, and challenge state governance mechanisms. This critical discussion examines the concept of intertribal disputes, analyzing their definition, characteristics, underlying causes, manifestations, legal dimensions, and implications, with specific reference to Eyumojock Sub-Division in Cameroon's South-West Region where such disputes have historically shaped community relationships and development trajectories.

3.1 Conceptual Definition of Intertribal Land Disputes

Intertribal land disputes refer to conflicts arising between distinct ethnic groups, clans, or tribes over competing claims to land resources, territory, political authority, cultural recognition, or historical grievances. These disputes emerge from tensions between groups that maintain separate cultural identities, customary practices, kinship structures, and often territorial associations. The term "tribe" itself is contested in academic discourse, with some scholars preferring "ethnic group," "ethnicity," or "community" due to the term's colonial associations and implications of primitiveness. However, in

[1] Wissler, R. Court-Connected Settlement Procedures: Mediation and Judicial Settlement Conferences.

[2] (2002). Concluding a Successful Settlement Conference: It Ain't Over Till It's Over." *Court Review*.

[3] Baker, T. Sizing Up Settlement: How Much Do the Merits of a Dispute Really Matter?.

[4] Bressler article, "Settlement Conferences Versus Mediation: A Primer for…"

African legal and policy contexts, "intertribal" remains widely used to describe conflicts between distinct ethnic communities.[1]

Intertribal disputes differ from intra-tribal conflicts, which occur within a single ethnic group or clan. While intra-tribal disputes may involve family quarrels, chieftaincy succession battles, or individual property disagreements, intertribal disputes implicate collective identities, group solidarity, and often ancestral claims that extend beyond individual interests to encompass entire communities. This collective dimension transforms intertribal disputes into matters of group survival, identity preservation, and intergenerational justice, making them more intractable and emotionally charged than individual disputes.[2]

In the legal context of Cameroon, intertribal disputes often involve questions of customary land tenure, where multiple ethnic groups claim rights to the same territory based on ancestral occupation, historical migration patterns, traditional boundary markers, oral histories, and customary allocation practices. These disputes operate within Cameroon's hybrid legal system, which recognizes both statutory laws derived from colonial traditions and customary law rooted in indigenous practices, creating complex jurisdictional and normative challenges.

3.2 Characteristics of Intertribal Disputes

Intertribal disputes possess distinctive characteristics that differentiate them from other forms of conflict and complicate their resolution. First, these disputes are inherently collective, implicating entire ethnic groups rather than merely individual parties. The identity of each disputing party extends beyond individuals to encompass families, clans, lineages, and entire tribal communities. This collective dimension means that disputes affect group members who may not have directly participated in the original conflict, creating intergenerational obligations and grievances.[3]

Second, intertribal disputes typically involve deep historical roots spanning generations, sometimes centuries. Claims often rest on ancestral occupation, historical migration patterns, traditional boundary markers established by forebears, and oral histories transmitted through generations. This historical depth makes disputes emotionally charged, as they connect to collective memories, identity formation, and ancestral heritage that transcend immediate practical concerns.[4]

Third, intertribal disputes frequently involve multiple overlapping claims based on different criteria. One group may claim land based on ancestral occupation spanning generations, another based on recent purchase with informal documentation, yet another based on customary allocation by traditional rulers, and another based on long-term use without formal title. These overlapping claims create complexity that binary legal judgments cannot adequately address, as multiple groups may possess legitimate interests under different normative frameworks.[5]

Fourth, intertribal disputes are deeply embedded in cultural and symbolic meanings. Land is not merely an economic resource but encompasses ancestral heritage, cultural identity, spiritual connection, and group survival. Specific locations may hold sacred significance, contain burial grounds of ancestors, serve as sites of historical events, or represent symbols of group identity. This cultural dimension means that disputes involve non-pecuniary interests that formal legal systems often fail to recognize or adequately protect.

Fifth, intertribal disputes in rural contexts like Eyumojock Sub-Division often involve Power imbalances between groups, with some tribes possessing greater political influence, economic resources, population size, or traditional authority than others. These power imbalances affect dispute

[1] *Ibid.*

[2] Ministry of Justice Cameroon (2023) Alternative Dispute Resolution Centre – Official Website. Available at: https://www.mjustice.gov.cm (Accessed: 8 May 2026).

[3] *Ibid*

[4] *Ibid*

[5] Cameroonian Law Journal Online. (2024). Land Dispute Resolution Mechanisms in Cameroon. Available at: https://cameroonlawjournal.com/land-disputes (Accessed: 4 June 2026).

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dynamics, negotiation capacity, access to formal legal systems, and potential outcomes, potentially producing agreements favoring dominant groups.[1]

3.3 Underlying Causes of Intertribal Land Disputes

The causes of intertribal disputes are multifaceted, involving historical, economic, political, cultural, and institutional dimensions that interact complexly to generate conflict. Understanding these causes is essential for developing effective resolution mechanisms.

3.3.1 Population Pressure and Resource Scarcity

Increasing population density in rural area like Eyumojock places pressure on available land resources, intensifying competition between ethnic groups for agricultural land, grazing areas, water sources, and forest resources. As populations grow and land becomes scarcer, previously uncontentious boundaries may become disputed, and traditional arrangements accommodating multiple groups may become inadequate. This demographic pressure is particularly acute in Cameroon's South-West Region, where agricultural expansion, population growth, and limited alternative livelihoods increase competition for land.[2]

3.3.2 Colonial Legacy and Arbitrary Boundaries

Colonial administrations imposed arbitrary boundaries that often-divided ethnic groups across administrative units, combined distinct groups within single territories, or allocated land to particular groups without adequate consultation or recognition of existing claims. In Cameroon, German colonial administration and subsequent British and French mandate administrations created territorial arrangements that ignored pre-existing customary land rights and inter-ethnic relationships. These colonial impositions created the foundation for subsequent intertribal disputes, as post-independence states inherited territorial arrangements that failed to reflect historical realities or indigenous land tenure systems.

3.3.3 Economic Interests and Development Pressures

Commercial agriculture, logging, mining, infrastructure development, and land grabbing by external investors intensify intertribal disputes by increasing land value and creating incentives for groups to assert claims. In Southwest Cameroon, rural communities claiming ownership based on customary tenure have contested large-scale land deals, claiming illegality and inadequate consultation. External economic interests may exploit existing intertribal tensions, support particular groups, or create new conflicts by disrupting traditional land use patterns.[3]

3.3.4 Competing Legal Systems and Normative Conflicts

Cameroon's hybrid legal system, recognizing both statutory and customary law, creates normative conflicts in intertribal land disputes. Statutory law emphasizes formal documentation, registered titles, and written evidence, while customary law prioritizes oral histories, ancestral occupation, traditional boundary markers, and community recognition. When multiple ethnic groups invoke different legal systems to support their claims, disputes become intractable as parties operate under incompatible normative frameworks. The lack of clear hierarchy or coordination between statutory and customary systems exacerbates these conflicts.[4]

3.3.5 Chieftaincy and Political Authority

Disputes over traditional authority, chieftaincy succession, and recognition of traditional rulers often become intertribal conflicts when multiple

[1] Mwakaje, G. (2022). Implementation challenges of land laws in Tanzania: a rural perspective. *Rural Development Review, 29*(1), 76-89:78

[2] *Ibid*

[3] Justice Africa (2023) Conflict Resolution and Mediation Programs in Central Africa. Available at: https://www.justicafrica.org/programs/cameroon (Accessed: 4 June 2026).

[4] *Ibid*

groups claim authority over the same territory or when chieftaincy disputes implicate ethnic identities. In Eyumojock, chieftaincy succession battles are documented as old stories, with the Kembong Village exemplifying rotatory and hereditary chieftaincy stools as actors in decentralization policy implementation. These chieftaincy disputes often intersect with land disputes, as traditional rulers control customary land allocation and possess authority over inter-ethnic relations.[1]

3.3.6 Weak Institutional Capacity and Governance Gaps

Inadequate state capacity to manage land disputes, weak enforcement of land laws, corruption, and lack of accessible dispute resolution mechanisms create vacuums that allow intertribal disputes to persist or escalate.[2] In rural Cameroon, formal courts are often inaccessible, expensive, and culturally insensitive, leaving communities dependent on traditional mechanisms that may lack capacity for complex disputes or be perceived as biased.[3]

3.3.7 Historical Grievances and Intergenerational Conflict

Past conflicts, perceived injustices, historical marginalization, and intergenerational transmission of grievances create durable tensions that fuel intertribal disputes. Communities remember past conflicts, land dispossession, violence, or discrimination, and these memories inform current attitudes and claims. Historical grievances may remain dormant until triggered by specific incidents, resource competition, or political manipulation.

3.4 Manifestations of Intertribal Land Disputes in Eyumojock Sub-Division

Eyumojock Sub-Division, located in the Manyu Division of Cameroon's South-West Region, exemplifies the complexity of intertribal disputes in rural Cameroon. Eyumojock is a commune remarkable for its ethnic diversity in clans like the Bawan Clan, Ntemoh Clan, and villages like Ebinsi, Ayuk'aba, Bakwele, Afap, Ogomoko, Kembong, Ossing, Mpot, Ewele, with other indigenous groups maintaining distinct cultural identities while sharing territorial spaces that become sites of contested claims. The Sub-Division's location in the rainforest region, with fertile agricultural land and valuable natural resources, intensifies competition and dispute potential.[4]

Land disputes in Eyumojock typically involve boundary disagreements between communities, conflicting claims to agricultural land, disputes over access to water sources, conflicts regarding forest resources, and disagreements about traditional authority over territory. These disputes often involve multiple families or clans from different ethnic groups, with claims based on ancestral occupation, customary allocation, purchase, long-term use, or historical migration patterns.[5]

The Bawan people, as indigenous inhabitants of much of the Central Ejagham, often assert ancestral claims to land based on historical occupation and traditional authority. Other groups, including descendants of migrants, settlers, or communities displaced from other areas, may assert claims based on purchase, long-term residence, or customary allocation by traditional rulers. These competing claims create disputes that implicate group identities, ancestral heritage, and economic survival.

The crisis in Cameroon's Anglophone regions, including the South-West, has added complexity to intertribal disputes. Armed separatist activity, government military operations, and civil unrest

[1] *Ibid*

[2] Saudi Journals (n.d.) The Resolution of Disputes Relating to Lands in Cameroon. Available at: https://saudijournals.com/media/articles/SIJLCJ_812_317-325.pdf (Accessed: 1 June 2026).

[3] *Ibid*

[4] United Nations Development Programme (UNDP). (2022). *Access to Justice and Land Conflict Resolution in Cameroon*. Yaoundé: UNDP Cameroon.

[5] *Ibid*

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have disrupted traditional dispute resolution mechanisms, displaced populations, created new population movements, and heightened ethnic sensitivities. The crisis has turned long-standing land conflicts into part of broader armed violence, with Mbororo Fulani herders and farmers experiencing targeted violence in the North-West region, and similar dynamics potentially affecting the South-West. This political context makes intertribal dispute resolution more urgent yet more difficult, as disputes become entangled with broader political conflicts.[1]

3.5 Types of Intertribal Land Disputes in Eyumojock Sub-Division

Intertribal land disputes represent a heterogeneous category of conflicts that cannot be understood through a single analytical framework. These disputes manifest in diverse forms, each characterized by distinct causes, claim bases, involved parties, and resolution challenges. [2] Understanding the typology of intertribal land disputes is essential for developing appropriate resolution mechanisms, as different types require different approaches, involve different stakeholders, and implicate different legal and cultural dimensions. This discussion examines the principal types of intertribal land disputes, analyzing their characteristics, underlying dynamics, legal implications, and resolution challenges, with reference to contexts such as Eyumojock Sub-Division in Cameroon's South-West Region where such disputes have historically shaped community relationships.[3]

3.5.1 Boundary Disputes

Boundary disputes represent the most common and widespread type of intertribal land conflict, occurring when two ethnic groups disagree about the precise location or extent of territorial boundaries separating their respective territories.[4] These disputes arise from ambiguous or poorly defined traditional boundary markers, conflicting interpretations of oral histories describing boundaries, disputes about the meaning of natural features serving as boundaries (such as rivers, trees, stones, or hills), and changes in boundary markers due to natural processes, human activity, or deliberate manipulation.[5]

In Eyumojock Sub-Division, boundary disputes between the Taboh villages and Ayukaba typically involve disagreements about where one clan territory ends and another's begins, often centered on specific landmarks that one group claims lie within their territory while another contest. These disputes may involve agricultural land, grazing areas, forest resources, or water sources located near traditional boundaries. The complexity of boundary disputes stems from the fact that traditional boundary markers often lack precise geometric definition, relying instead on natural features that may shift, disappear, or be interpreted differently by different groups.[6]

Boundary disputes are particularly difficult to resolve because they often involve symbolic as well as practical dimensions. Boundary lines represent not merely territorial divisions but also group identity, sovereignty, and historical claims. Communities may resist boundary adjustments that appear to diminish their territory, even when practical benefits might result from compromise. The collective dimension of boundary disputes means that individual negotiations cannot resolve conflicts; entire communities must be engaged, and agreements must receive community approval.

3.5.2 Ownership Claim Disputes

Ownership claims disputes occur when multiple ethnic groups assert exclusive ownership rights to the same territory, each group claiming that the land belongs to them based on ancestral occupation, historical migration patterns, traditional allocation,

[1] *Ibid*

[2] International Fund for Agricultural Development (IFAD) Rural Land Tenure and Conflict Mediation in Cameroon: Assessment Report. Rome: IFAD, 2019.

[3] *Ibid*

[4] World Bank. (2020). *Land Governance Assessment Framework: Cameroon Country Report*. Washington, DC: World Bank Group, 56.

[5] *Ibid.*

[6] *Ibid.*

purchase, or long-term use. Unlike boundary disputes where parties acknowledge shared territorial division but disagree about location, ownership disputes involve competing claims to exclusive ownership that cannot be simultaneously satisfied.

In Eyumojock subdivision, ownership claim of forest land between the Akwen and Ndepaya villages over 50 to 100ha of forest/farm land which was resolved in 1991 flared up again in 2023 and till date there have been no solution to resolve the issue. In intertribal contexts, ownership claims typically rest on different bases. One group may claim ancestral occupation spanning generations or centuries, asserting that their forebears were the first inhabitants and therefore possess inherent ownership rights. Another group may claim purchase from traditional rulers, asserting that legitimate transactions transferred ownership rights. Yet another may claim long-term use and cultivation, asserting that extended occupation created ownership rights under customary law.[1]

3.5.3 Resource Exploitation Disputes

Resource exploitation disputes occur when ethnic groups compete for control over valuable natural resources within contested territories, including timber, minerals, oil, water, fertile agricultural land, or wildlife. These disputes are often intensified by commercial interests, external investors, or government concessions that increase resource value and create incentives for asserting claims. Resource exploitation disputes frequently involve not merely intertribal conflicts but also conflicts between communities and external actors including corporations, government agencies, or migrant workers.[2]

In Cameroon's South-West Region, resource exploitation disputes may involve logging companies extracting timber from forests claimed by multiple ethnic groups, mining operations on land with competing ownership claims, agricultural concessions requiring land acquisition from communities with disputed boundaries, or water resource development affecting multiple communities' access. In Eyumojock, disputes may involve forest resources for timber extraction, agricultural land for cash crop farming, or water sources for irrigation, for example the Takamanda National Park villages claim, Ekok indigenes and Ekpor indigenes.

Resource exploitation disputes are particularly damaging because they often involve irreversible environmental destruction, substantial economic value creating incentives for conflict escalation, external actors exploiting intertribal tensions for commercial advantage, and displacement of communities from resource-rich areas. The commercial dimension transforms disputes from traditional territorial conflicts into high-stakes economic contests where parties may resort to violence, political manipulation, or legal strategies aimed at securing resource control.

3.5.4 Chieftaincy and Authority Disputes

Chieftaincy and authority disputes occur when intertribal conflicts center on traditional political authority rather than territorial ownership alone. These disputes involve questions about which ethnic group's traditional rulers possess authority over contested territory, disputes about chieftaincy succession that implicate ethnic identities, conflicts about recognition of traditional rulers by the state or other communities, and disputes about the scope of traditional authority over inter-ethnic relations. In many African contexts, traditional rulers control customary land allocation, possess authority over inter-ethnic relations, and serve as primary dispute resolution mechanisms, making chieftaincy disputes particularly significant for land conflicts.

In Eyumojock, chieftaincy succession battles are documented as historical stories, with the Kembong Village exemplifying rotatory and hereditary chieftaincy stools as actors in decentralization policy

[1] *Ibid.*

[2] Cameroonian Ministry of State Property and Land Tenure. (2021). *Annual Report on Land Disputes and Resolution Mechanisms in Cameroon.* Yaoundé: Government Printer.

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implementation. These chieftaincy disputes often intersect with land disputes, as traditional rulers control land allocation and possess authority that affects inter-tribal relationships. When multiple groups claim authority over the same territory, or when chieftaincy succession disputes implicate ethnic identities, land conflicts become entangled with political authority questions.

Chieftaincy and authority disputes are particularly intractable because they implicate fundamental questions about traditional governance, ethnic identity, and political recognition. Communities may resist authority arrangements that appear to diminish their traditional status, political influence, or cultural identity. The symbolic dimension of chieftaincy means that disputes involve honor, prestige, and historical recognition beyond practical land allocation.[1]

3.5.5 Migration and Settlement Disputes

Migration and settlement disputes occur when ethnic groups dispute land occupied by migrants, settlers, or displaced populations who have relocated from elsewhere. These disputes involve tensions between indigenous communities and migrant populations, conflicts about land taken for official resettlement programs, disputes about recent migrants coming independently for economic opportunity, and conflicts arising from population movements due to conflict, displacement, or environmental changes. Migration and settlement disputes reflect demographic changes that alter traditional population distributions and create competing claims to territory.

In Eyumojock Sub-Division, migration and settlement disputes may involve descendants of migrants who settled in their territory generations ago, communities displaced from other areas who relocated to Eyumojock, migrant farmers seeking agricultural land, or pastoral communities seeking grazing areas. An example is the Ekok, Biajua and Danare corridor which not only affects Eyumojock but also affects Nigeria-Cameroon boundary. These disputes often involve questions about legitimate settlement, duration of residence, customary allocation versus unauthorized occupation, and rights of migrants versus indigenous communities.

3.5.6 Land Grabbing and External Acquisition Disputes

Land grabbing and external acquisition disputes occur when ethnic communities dispute land deals, concessions, or acquisitions involving external actors including corporations, government agencies, wealthy individuals, or foreign investors. These disputes involve communities claiming ownership based on customary tenure contesting land deals as illegal, claiming inadequate consultation, asserting that sales violated customary procedures, or contesting environmental impacts. Land grabbing disputes often involve multiple ethnic communities united against external actors, transforming intertribal dynamics into inter-community versus external actor conflicts.

In Southwest Cameroon, rural communities claiming ownership based on customary tenure contested Herakles' land deal, claiming it was illegal and inadequate consultation occurred. Similar disputes occur across Africa, with external investors acquiring land through state concessions that ignore customary rights, wealthy individuals purchasing land without proper authorization, or government agencies allocating land to projects without community consent.

In Eyumojock, land grabbing disputes may involve external agricultural companies acquiring forest land claimed by multiple ethnic groups, wealthy individuals purchasing land without proper customary authorization, government development projects requiring land acquisition from communities with disputed boundaries, or foreign investors acquiring territory through state concessions ignoring customary rights. These disputes often unite previously conflicting groups against common external threats, temporarily resolving intertribal tensions while creating new

[1] *Ibid*

conflicts with external actors. An example is the Ekok market land.

3.5.7 Sacred and Cultural Site Disputes

Sacred and cultural site disputes occur when ethnic groups contest territory containing sacred sites, burial grounds, ceremonial locations, or culturally significant landmarks. These disputes involve questions about access to sacred sites, control over burial grounds, rights to perform ceremonies at specific locations, or protection of culturally significant trees, mountains, rivers, or other natural features. Sacred site disputes are particularly emotionally charged because they implicate spiritual beliefs, ancestral connections, and cultural identity that transcend practical land considerations.

In intertribal contexts, sacred site disputes may involve multiple groups claiming ancestral connections to the same sacred location, disputes about which group has authority to manage sacred sites, conflicts about access restrictions imposed by one group affecting another's religious practices, or disputes about development affecting sacred locations. These disputes often resist resolution through standard negotiation because sacred sites may be non-negotiable for claiming communities, with spiritual significance making compromise impossible.

In Eyumojock Sub-Division, sacred site disputes may involve burial grounds of ancestors from multiple ethnic groups, ceremonial locations with significance to multiple communities, sacred forests or groves claimed by different groups, or natural features like mountains, rivers, or trees with spiritual significance. These disputes require resolution approaches that acknowledge spiritual dimensions, potentially including joint management arrangements, shared access protocols, or protection agreements respecting multiple groups' religious needs. Some examples include; the Kembong area disputes when youths try to plant cocoa in groves elders say are forbidden and thus use taboo and fines, the old oath-taking grounds near customs yard in Ekok where council wants to expand market, traditional council says no.

4. Consequences of Intertribal Land Disputes in Eyumojock Sub-Division

Inter-tribal land disputes in Eyumojock Sub-Division of Manyu Division, South-West Region of Cameroon, have generated profound consequences that extend far beyond the immediate parties involved in the conflicts. These consequences permeate social, economic, political, cultural, and psychological dimensions of community life, creating conditions that undermine sustainable development, human security, and social cohesion.[1] Intertribal Land disputes in Eyumojock Subdivision have negative effects on individual house-holds as well as on the nation's economy. They increase costs, slow down investment, can result in the loss of property for a conflict party and reduce tax income (land tax, trade/commercial tax) for the state or municipality.[2] The lower the transparency in land markets, the less equal is information being disseminated, and the weaker constitutive and regulatory institutions are, the more likely it is that land conflicts occur. People therefore need to spend a lot of time and money on searching for information and monitoring agreements/contracts. This means that land conflicts are associated with high transaction and agency costs or vice versa, that (relatively) high transaction and agency costs indicate a high probability of land conflicts.[3]

4.1 Massive Displacement and Loss of Human Lives

One of the most devastating consequences of inter-tribal land disputes in Eyumojock Sub-Division is the massive displacement of communities and the loss of human lives. When land conflicts escalate to violence, entire villages are forced to abandon their homes, farms, and ancestral lands, becoming internally displaced persons within their own

[1] Akwe Ngole Ray Junior, D. (2025), *Op.cit.*
[2] *Ibid.*
[3] Fonchingong, C. (2017). *Rural Land Conflicts and Mediation Practices in Cameroon*. Chester: University Press, 33

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territory. [1] The displacement is not merely temporary but often becomes protracted, with families unable to return to their lands for years or even decades due to ongoing hostilities and security concerns.[2]

The human cost of these conflicts is measured in deaths, injuries, and trauma that leaves deep psychological scars on surviving community members. While specific casualty figures for Eyumojock may not be systematically documented due to the informal nature of many conflicts and limited media access, the pattern observed in similar inter-tribal conflicts across Cameroon demonstrates the severity of human loss.[3]

In Eyumojock specifically, the 67 villages in the sub-division have been under siege since October 2020, reflecting how land disputes can escalate into widespread security crises that affect entire communities.[4] The siege condition forces residents to live in constant fear, unable to access their farms, engage in normal economic activities, or send children to school. Families flee to neighboring communities, overcrowding receiving villages and creating secondary conflicts over already scarce resources. The displacement creates a cycle of vulnerability where displaced persons lose their livelihoods, become dependent on humanitarian assistance, and face discrimination in host communities that resent their presence and competition for resources.[5]

The loss of human lives extends beyond direct combat deaths to include deaths from preventable diseases, malnutrition, and lack of medical care that result from displacement and the breakdown of health services.[6] Pregnant women, young children, elderly persons, and persons with disabilities face disproportionate risks during displacement, with mortality rates often significantly higher than in the general population. The psychological trauma from witnessing violence, losing family members, and experiencing forced displacement creates long-term mental health burdens that affect individuals and communities for generations.

4.2 Destruction of Property and Infrastructure

Inter-tribal land disputes in Eyumojock Sub-Division result in widespread destruction of property and infrastructure that undermines economic development and community wellbeing for years. The destruction encompasses homes, farms, livestock, agricultural equipment, community buildings, schools, health facilities, religious centers, and marketplaces. [7] This destruction is often intentional and systematic, with communities destroying property belonging to rival tribes to prevent their return and to exact revenge for perceived wrongs.[8]

The agricultural sector in Eyumojock bears the brunt of property destruction, as farms constitute the primary asset and livelihood source for the majority of the population. When land disputes erupt, farmers' crops are destroyed, food stores are burned, and farm equipment is looted or destroyed [9] . This agricultural destruction has cascading effects on food security, as families lose not only current harvests but also seed stocks needed for future planting seasons. The loss of perennial crops such as cocoa, coffee, oil palm, and rubber is particularly devastating, as these crops take years to mature and represent long-term investments that are immediately rendered worthless.[10]

Livestock killings and thefts further compound the economic losses, as cattle, goats, sheep, and poultry represent significant capital investments and sources of protein for farming families. In many inter-tribal conflicts across Cameroon, entire herds are killed or stolen, destroying the wealth accumulation of families and communities that have invested generations in building livestock

[1] *Ibid.*
[2] Interview conducted on the 15/5/2026.
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] Tamfu, R.N. *Customary Law and Modern Justice in Cameroon.* Buea: Sapes Books, 2018, p.67
[8] *Ibid.*
[9] Ndjozeu, J. (2019), *op.cit.*
[10] *Ibid.*

operations. The loss of livestock also eliminates draught power for farming, reducing agricultural productivity even after families return to their lands.[1]

Health facilities suffer similar destruction, eliminating access to basic healthcare services and forcing communities to travel long distances to access medical care. The destruction of health infrastructure during conflicts has been linked to increased maternal and child mortality rates, untreated diseases, and the spread of preventable illnesses[2]. In Eyumojock, where healthcare access is already limited due to the rural location and the ongoing Anglophone crisis's impact on health worker availability, the destruction of health facilities creates life-threatening conditions for vulnerable populations.

Markets, trading centers, and commercial infrastructure are also targeted, destroying the economic networks that connect rural communities to regional and national economies. Shop owners lose their inventories and capital, traders lose their merchandise, and market networks collapse as traders avoid conflict zones. This commercial destruction reduces economic opportunities, increases prices for essential goods due to reduced supply, and creates unemployment as businesses close.

4.3 Severe Economic Disruption and Loss of Livelihoods

The economic consequences of inter-tribal land disputes in Eyumojock Sub-Division are profound and long-lasting, affecting not only the immediate parties to conflicts but entire local and regional economies. Land disputes create economic uncertainty that discourages investment, disrupts agricultural production cycles, eliminates market access, and destroys livelihoods that communities have depended upon for generations.[3]

The forest resources in Eyumojock, which contribute significantly to household livelihoods through timber harvesting, non-timber forest products, and hunting, become inaccessible when land disputes create security concerns. A study conducted in Eyumojock Sub-Division documented the contribution of forest resources to adjacent communities' livelihoods, highlighting how dependent local households are on forest-based income and subsistence. When conflicts make forest areas unsafe for harvesting, families lose critical sources of protein, medicinal plants, construction materials, and cash income from selling forest products.[4]

Investment in Eyumojock Sub-Division effectively freezes when land disputes create uncertainty about property rights and security. External investors, including agricultural companies, forestry operations, and infrastructure developers, avoid areas where property rights are disputed and where violence is recurrent.[5] This investment freeze prevents the economic development projects that could lift communities out of poverty, creating a poverty trap from which recovery is extremely difficult.[6] The Manyu sub divisional officer's urging of Eyumojock Council to prioritize reconstruction of abandoned projects reflects the economic stagnation caused by ongoing conflicts.[7]

4.4 Social Fragmentation and Erosion of Community Cohesion

Perhaps the most insidious consequence of inter-tribal land disputes in Eyumojock Sub-Division is the social fragmentation and erosion of community cohesion that undermines the social fabric holding communities together. Land disputes transform neighbors into enemies, friends into adversaries, and communities into isolated enclaves that view each other with suspicion, hatred, and fear. This social fragmentation persists long after conflicts are

[1] Konings, P. and Nyamnoh, A. (2011), *Op.cit.*
[2] *Ibid.*
[3] Tabe-Ogbok, M. *Customary Land Tenure and Conflict Resolution in Cameroon*. London: Routledge, 2017, p.54.
[4] *Ibid.*
[5] Atsa, E. *Mediation and Arbitration in Cameroonian Law.* Douala: Edition Creation. 2021, p.17
[6] *Ibid*
[7] United Nations Development Programme (UNDP) (2022) *Access to Justice and Land Conflict Resolution in Cameroon*. Yaoundé: UNDP Cameroon, p.10.

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technically resolved, as the psychological wounds and intergenerational grievances continue to divide communities.

The trust that enables communities to cooperate on common projects, share resources, and maintain social support networks is destroyed by land conflicts. When communities that have coexisted for generations suddenly become enemies over land disputes, the social capital that enabled economic development, conflict prevention, and mutual assistance evaporates. Families that previously intermarried, celebrated together, and participated in joint community activities now avoid each other, creating social isolation that affects mental health and community wellbeing.

The breakdown of traditional authority structures and customary governance systems is a critical aspect of social fragmentation. Traditional chiefs and Mgbe elders, who traditionally mediated disputes and maintained social order, often lose legitimacy when they are perceived as taking sides in land conflicts or when they fail to prevent violence. This erosion of traditional authority creates governance vacuums that leave communities without legitimate mechanisms for resolving disputes, making future conflicts more likely. In Eyumojock, where traditional authorities play crucial roles in land allocation and dispute resolution, the weakening of these institutions has particularly severe consequences for social order.[1]

4.5 Environmental Degradation and Loss of Natural Resource Base

Inter-tribal land disputes in Eyumojock Sub-Division have severe environmental consequences that threaten the long-term sustainability of the region's natural resource base. The Ekam Forest Reserve, which covers approximately 10,000 hectares and is one of the largest remaining forest blocks in the South-West Region, faces particular threats from conflicts that disrupt conservation efforts and enable illegal resource exploitation.[2]

When land disputes create security vacuums and displace communities, illegal logging, poaching, and encroachment into protected areas increase dramatically. Displaced persons who lose their agricultural lands may turn to illegal logging as a survival strategy, while armed groups exploit the lack of security to engage in illegal resource extraction. The environmental degradation from these activities is often irreversible, as old-growth forests take centuries to regenerate and the biodiversity losses are permanent.[3]

The destruction of agricultural lands and the abandonment of farmlands during conflicts lead to environmental degradation through uncontrolled bush burning, soil erosion, and loss of soil fertility. When farmers abandon their lands, fields that were previously maintained through sustainable agricultural practices become overgrown, and when they are later cleared for repeated burning, the soil loses nutrients and organic matter. This degradation reduces the land's productive capacity, making it less able to support future agricultural activities and increasing the likelihood of future land conflicts as communities compete for the remaining productive land.[4]

Water resources suffer degradation from conflicts as well. The destruction of infrastructure, including water systems and irrigation facilities, eliminates access to clean water for communities and agricultural activities. Deforestation from illegal logging and land clearing affects watershed functions, reducing water quality and quantity, and increasing the risk of flooding and drought. The loss of riparian vegetation and the pollution of waterways from agricultural chemicals and waste disposal further degrade water resources, affecting both human consumption and aquatic ecosystems.[5]

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[1] *Ibid.*

[2] *Ibid.*

[3] Cameroonian Ministry of State Property and Land Tenure (2021) Annual Report on Land Disputes and Resolution Mechanisms in Cameroon. Yaoundé: Government Printer, p.10.

[4] *Ibid.*

[5] International Fund for Agricultural Development (IFAD). (2019). *Rural Land Tenure and Conflict Mediation in Cameroon*: Assessment Report. Rome: IFAD, 56.

4.6 Psychological Trauma and Intergenerational Transmission of Violence

The psychological consequences of inter-tribal land disputes in Eyumojock Sub-Division are profound and often overlooked, yet they affect individuals, families, and communities in ways that perpetuate cycles of violence across generations. The trauma from witnessing violence, losing family members, experiencing forced displacement, and living in constant fear creates psychological wounds that affect mental health, social functioning, and the capacity for peaceful coexistence.[1]

Individual trauma manifests in various psychological disorders including post-traumatic stress disorder (PTSD), depression, anxiety, and substance abuse. Survivors of violence, including those who witnessed killings, sexual violence, and other atrocities, experience flashbacks, nightmares, and intrusive memories that interfere with daily functioning. The constant state of hyperarousal and hypervigilance that characterizes PTSD affects individuals' ability to work, maintain relationships, and make decisions, reducing their economic productivity and social integration.[2]

Children are particularly vulnerable to psychological trauma from land conflicts, as they are still developing cognitively and emotionally. Children who experience displacement, witness violence, or lose family members face developmental delays, learning difficulties, and behavioral problems that affect their educational outcomes and future prospects. The trauma experienced during childhood can affect brain development, permanently altering stress responses and emotional regulation, making affected children more vulnerable to mental health problems and more likely to engage in violence in adulthood.[3]

4.7 Political Instability and Threats to National Security

Inter-tribal land disputes in Eyumojock Sub-Division have significant political consequences that extend far beyond local communities, threatening regional stability and national security in Cameroon. The political instability generated by land disputes creates conditions that armed separatist groups exploit for recruitment, undermines government legitimacy, and diverts resources from development priorities to security and conflict management.[4]

The ongoing Anglophone crisis in Cameroon's North-West and South-West Regions has created a volatile security environment that inter-tribal land disputes exacerbate and complicate. Eyumojock Sub-Division, located in Manyu Division of the South-West Region, experiences the compounded effects of both the separatist conflict and traditional land disputes, creating a security crisis that is significantly more severe than either conflict operating independently. The 67 villages under siege since October 2020 illustrate how land disputes can escalate into widespread security crises that require military intervention and create humanitarian emergencies.[5]

Armed separatist groups exploit inter-tribal land disputes for recruitment and operational purposes, using the grievances generated by land conflicts to justify their separatist agenda and attract new members. Young people who have lost their lands, livelihoods, and family members to land disputes are particularly vulnerable to recruitment by armed groups that promise justice, revenge, and economic

[1] *Ibid*

[2] Lincoln Institute of Land Policy. (2017). Integrating Mediation in Land Use Decision Making. Available at: https://www.lincolninst.edu/publications/articles/integrating-mediation-land-use-decision-making/ (Accessed: 8 April 2026).

[3] *Ibid*.

[4] Research Key (n.d.) An Appraisal of the Traditional Methods of Resolving Land Disputes in Cameroon. Available at: https://www.researchkey.net/an-appraisal-of-the-traditional-methods-of-resolving-land-disputes-in-cameroon/ (Accessed: 8 May 2026).

[5] *Ibid*

opportunities. [1] The Manyu SDO's urging of Eyumojock populations to denounce atrocities perpetrated by separatist fighters and embrace peace reflects the interconnected nature of land conflicts and separatist violence. When land disputes create grievances that separatist groups can exploit, the conflicts become more intractable and more difficult to resolve through traditional mediation mechanisms.[2]

The threat to national security from inter-tribal land disputes in Eyumojock extends beyond Cameroon's borders, as conflicts can spill over into neighboring Nigeria and create regional instability. The Manyu Division shares a border with Nigeria, and conflicts that generate displacement, refugee flows, and armed group movements can affect regional security dynamics. The cross-border nature of many ethnic groups in the region, including communities that extend across the Cameroon-Nigeria border, means that conflicts in Eyumojock can have transnational implications that require regional cooperation to address.[3].

4.8 Weakening of the Rule of Law and Erosion of Legal Institutions

Inter-tribal land disputes in Eyumojock Sub-Division have profoundly weakened the rule of law and eroded confidence in legal institutions, creating a culture of impunity that perpetuates violence and undermines the entire justice system. When communities perceive that formal legal mechanisms cannot resolve land disputes fairly, efficiently, or affordably, they increasingly resort to self-help measures, vigilante justice, and extra-legal violence, further eroding the legitimacy of state institutions.[4]

The dual legal system in Cameroon, which operates both customary and statutory land tenure frameworks, creates fundamental confusion about which legal framework governs inter-tribal land disputes. This legal ambiguity allows parties to selectively invoke customary or statutory law based on which favors their position, undermining consistent application of legal principles and creating uncertainty about the enforceability of judgments. In Eyumojock, where traditional authorities and state-appointed officials both claim jurisdiction over land matters, the competing legal authorities create parallel justice systems that conflict with each other and confuse communities about their rights and obligations.

The Land Consultative Board (LCB), created to mediate claims between statutory and customary tenure systems and resolve land disputes, suffers from fundamental institutional weaknesses that undermine its effectiveness as a legal institution[5]. The Board lacks binding authority, meaning its recommendations can be ignored by either party without consequence. Its institutional capacity remains weak due to inadequate funding, insufficient trained personnel, and poor integration into the broader justice framework. [6] When the LCB's mediation recommendations are routinely ignored, communities lose confidence in the entire formal dispute resolution system, viewing it as ineffective and irrelevant to their needs.[7]

The backlog of land cases in formal courts further erodes confidence in legal institutions. Land disputes represent more than 80% of court cases in Cameroon, creating overwhelming caseloads that delay justice for years or even decades. In Eyumojock, where communities cannot afford to travel to distant courts or pay for legal representation, these delays are particularly devastating. Families may wait generations for court decisions on land disputes, during which time they live in constant insecurity, unable to invest in their

[1] AfricaBib. (2010). Settling Border Conflicts in Africa Peacefully: Lessons from Bakassi Dispute. Available at: https://www.africabib.org/rec.php?RID=343764385 (Accessed: 8 May 2026).

[2] *Ibid.*

[3] *Ibid.*

[4] Ministry of Justice Cameroon. (2023). Alternative Dispute Resolution Centre – Official Website. Available at: https://www.mjustice.gov.cm (Accessed: 10 January 2026).

[5] Akwe Ngole Ray Junior, D. (2025). An Assessment of the Role the Land Consultative Board in the Resolution of Land Disputes in Cameroon'', *Studies in Law and Justice, 4*(6), 49–59:50

[6] *Ibid.*

[7] *Ibid.*

lands or plan for the future. The perception that justice is unavailable through formal channels encourages communities to take matters into their own hands, perpetuating cycles of violence.

5. Conclusion

The stages in mediation for settling inter-tribal land disputes in Cameroon follow a theoretically sound framework that emphasizes preparation, dialogue, problem-solving, agreement, and implementation. However, the practical effectiveness of each stage is compromised by structural weaknesses including non-binding outcomes, corruption within traditional authority systems, institutional fragility of formal mediation mechanisms, the unresolved tension between customary and statutory legal systems, systematic exclusion of vulnerable groups, and inadequate security protocols for violent conflicts.

6. Recommendations

Against the background of this article, the researcher makes and propose the following as recommendations:

- **Strengthen customary mediation structures**

Traditional authorities, elders, and community leaders should be strengthened and formally supported as first-line mediators in intertribal land disputes. In Eyumojock Sub-Division, many land conflicts are rooted in customary history, oral boundary memory, and ancestral claims, so mediation works best when it is led by persons who understand local traditions and enjoy community trust. Strengthening these structures would require training mediators in dialogue management, conflict sensitivity, record keeping, and fair hearing techniques. It would also mean giving customary institutions clearer recognition in local land governance so that their decisions are respected and followed up. When mediation is left informal or unsupported, agreements may be ignored, poorly enforced, or later contested. A stronger customary mediation system would therefore help reduce tension, promote quicker settlements, and preserve peace among neighbouring communities.

- **Document land boundaries and mediation outcomes**

There is a strong need to properly document customary land boundaries, settlement histories, and the outcomes of mediation sessions. One of the major causes of intertribal land disputes is uncertainty over where one community's land ends and another's begins. Oral history is important, but when it is not backed by written records, sketches, maps, or signed settlement agreements, disputes tend to recur. Communities in Eyumojock should therefore work with traditional rulers, local councils, and land officials to record boundary descriptions, ancestral claims, and agreed resolutions in a clear and accessible format. Mediation outcomes should not end with verbal promises alone; they should be written, signed by the parties, and kept in a secure local record. This would reduce future misunderstandings, discourage false claims, and provide evidence whenever the same issue resurfaces. Proper documentation would also make mediation more credible and durable.

- **Improve cooperation between customary and state institutions**

A closer working relationship should be established between customary authorities and state land administration bodies. In many cases, intertribal land disputes persist because customary mediation and formal legal processes operate separately, and sometimes even contradict one another. In Eyumojock Sub-Division, this gap can make settlement weak, especially when one party refuses to accept a customary decision or later seeks a statutory remedy. A coordinated framework would allow chiefs, elders, council authorities, and land officers to share information, verify claims, and support settlements that are both culturally legitimate and legally stable. Such cooperation would also make it easier to prevent disputes before they escalate into violence. When customary and state institutions work together, mediation becomes more effective, land governance becomes clearer,

and communities are more likely to trust the dispute-resolution process.

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The Right to Human Dignity in the Age of Artificial Intelligence: Addressing Emerging Forms of Algorithmic Discrimination Under International Human Rights Law

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Abstract: The rapid development and deployment of artificial intelligence (AI) has transformed decision-making in employment, healthcare, education, finance, policing and public administration. While AI offers opportunities for efficiency and innovation, its reliance on algorithms and large datasets has created emerging forms of algorithmic discrimination that may undermine equality, autonomy and human dignity. This study examines the right to human dignity in the age of AI, focusing on addressing algorithmic discrimination under international human rights law. It considers discrimination arising from biased datasets, discriminatory proxies, automated profiling and opaque decision-making. Using a doctrinal legal research methodology, the study analyses relevant international and regional human rights instruments, scholarly literature and emerging AI governance frameworks. It finds that principles of equality, non-discrimination, human dignity, transparency, accountability and effective remedies provide a foundation for addressing algorithmic discrimination, but require progressive interpretation and stronger implementation. The study further finds that algorithmic discrimination may undermine dignity by reducing individuals to data profiles, statistical classifications or automated scores, while limiting their ability to understand and challenge decisions affecting their rights. It recommends stronger international standards, mandatory human-rights and algorithmic impact assessments, transparency and explainability, meaningful human oversight, effective remedies and stronger African regional standards on AI. The study concludes that AI development must remain human-centred and rights-respecting, ensuring that technological advancement does not compromise the inherent dignity and equal worth of every human being.

Keywords: artificial intelligence; algorithm; algorithmic discrimination; human dignity; international human rights law; non-discrimination

1. Introduction

Artificial intelligence (AI) has become one of the most transformative technologies of the twenty-first century, increasingly influencing decisions in employment, healthcare, banking, policing, migration, education and social welfare. Although algorithmic systems promise efficiency, accuracy and objectivity, they can also reproduce or amplify existing social inequalities. Algorithmic discrimination may arise from biased training data, historical inequalities, discriminatory proxies, flawed system design or feedback loops, even where there is no explicit intention to discriminate. [1] Consequently, AI-driven decision-making presents an emerging challenge to the protection of fundamental human rights. At the center of this challenge is the right to human dignity, a foundational principle of international human rights law. The Universal Declaration of Human Rights (UDHR) recognizes the inherent dignity and equal and inalienable rights of all members of the human family and affirms that all human beings are born free and equal in dignity and rights.[2] Human dignity therefore encompasses the inherent worth, autonomy and equal status of every person. When individuals are subjected to consequential decisions generated by opaque algorithms that they cannot adequately understand, challenge or correct, discriminatory outcomes may undermine not only equality but also their dignity as autonomous and equal members of society.

Algorithmic discrimination can manifest through racial and ethnic profiling, gender bias, disability discrimination, socioeconomic exclusion and discriminatory treatment of migrants and other vulnerable groups. Research has demonstrated, for example, that automated systems can reproduce historical patterns of discrimination and that some facial-recognition technologies have exhibited significant disparities in accuracy across demographic groups. [3] These developments demonstrate that discriminatory outcomes may become embedded within technological systems rather than arising solely from deliberate human prejudice. As Barocas and Selbst observe, data-driven decision-making can produce discriminatory effects even where decision-makers lack an intention to discriminate.[4]

The human rights implications are substantial because AI increasingly operates in areas directly affecting fundamental rights. Automated employment decisions may affect equality and the right to work; predictive policing may interfere with privacy and liberty; algorithmic credit assessments may influence access to economic opportunities; and automated migration systems may affect the rights of migrants and asylum seekers. The Human Rights Council has consequently emphasized the importance of ensuring that technological development, including artificial intelligence, remains consistent with human rights obligations.[5] Algorithmic discrimination must therefore be understood not merely as a technological or ethical problem but as an emerging international human rights concern.

Existing international human rights law provides an important normative foundation for addressing these challenges. The International Covenant on Civil and Political Rights (ICCPR) protects privacy, equality and non-discrimination, while article 26 establishes the right to equal protection of the law without discrimination. [6] The International Covenant on Economic, Social and Cultural Rights

[1] Solon Barocas and Andrew D Selbst, 'Big Data's Disparate Impact' (2016) 104 *California Law Review* 671; Inioluwa Deborah Raji and others, 'Closing the AI Accountability Gap: Defining an End-to-End Framework for Internal Algorithmic Auditing' (2020) 3 *FAT* 33.

[2] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), arts. 1–2.

[3] Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. *Proceedings of Machine Learning Research, 81*, 1.

[4] Barocas, S., & Selbst, A. D. (2016). Big data's disparate impact. *California Law Review, 104*, 671.

[5] Human Rights Council. (2024, June 28). *The right to privacy in the digital age* (UN Doc A/HRC/RES/56/5).

[6] *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, arts. 17 and 26. Entered into force March 23, 1976.

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(ICESCR) similarly prohibits discrimination in the enjoyment of the rights recognized therein. [1] Regional instruments, including the European Convention on Human Rights, American Convention on Human Rights and African Charter on Human and Peoples' Rights, reinforce these guarantees. [2] Although these instruments predate contemporary AI technologies, their principles are sufficiently broad to apply to technologically mediated forms of discrimination.

A further difficulty is the opacity of algorithmic decision-making. Machine-learning systems can operate through complex processes that are difficult for affected individuals and regulators to understand. This "black box" problem may prevent individuals from knowing why an adverse decision was made and may complicate efforts to establish discrimination or identify the responsible actor. [3] The fragmentation of responsibility among developers, data providers, technology companies, public authorities and users further creates an algorithmic accountability gap. [4] Effective human rights protection therefore requires mechanisms capable of ensuring transparency, meaningful human oversight and access to effective remedies. The issue is particularly important for developing countries and African states, where AI adoption may progress more rapidly than regulatory and institutional capacity. The African human rights framework, with its strong emphasis on dignity, equality and non-discrimination, provides an important foundation for developing a distinctly human-rights-centered approach to AI governance.[5] African states should therefore not merely replicate regulatory approaches developed elsewhere but should contribute to the development of governance models responsive to their own technological, socio-economic and institutional realities.

Although existing scholarship has extensively examined AI ethics, privacy, data protection, surveillance and algorithmic bias, a significant doctrinal gap remains concerning the relationship between algorithmic discrimination and human dignity under international human rights law. This article addresses that gap by examining algorithmic discrimination as not merely a technical defect but as a potential infringement of the inherent dignity and equal worth of the human person. This article further argues that AI governance must ultimately be measured by its capacity to preserve human dignity, equality and fundamental rights. It examines the principal forms of algorithmic discrimination, analyses their compatibility with international and regional human rights standards, evaluates the accountability challenges created by automated decision-making and considers the responsibilities of states and private actors.

Ultimately, it proposes a human-dignity-centered framework for AI governance, founded upon equality, non-discrimination, transparency, meaningful human oversight, accountability and effective remedy. The central proposition is that technological progress must remain subordinate to the fundamental principle that artificial intelligence should serve humanity without diminishing the dignity and equal worth of the human person.

2. Lexical and Conceptual Clarification

This section clarifies the principal concepts underpinning the study, namely right, human dignity, artificial intelligence, algorithm, algorithmic discrimination, and international

[1] *International Covenant on Economic, Social and Cultural Rights*. (1966, December 16). 993 UNTS 3, art. 2(2). Entered into force January 3, 1976.

[2] *Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)*, arts. 8 and 14; *American Convention on Human Rights*. (1969, November 22). 1144 UNTS 123, arts. 1(1) and 24. Entered into force July 1, 1978; *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, arts. 2 and 5. Entered into force October 21, 1986.

[3] Burrell, J. (2016). How the machine "thinks": Understanding opacity in machine learning algorithms. *Big Data & Society, 3*, 1; Pasquale, F. (2015). *The black box society: The secret algorithms that control money and information*. Harvard University Press.

[4] Raji, I. D., et al. (2020). Closing the AI accountability gap: Defining an end-to-end framework for internal algorithmic auditing. *FAT, 3*, 33.

[5] *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217. Entered into force October 21, 1986; African Union. (2022). *Data policy framework*. African Union.

human rights law. Each concept is examined from its etymological origin and lexical meaning before considering its contemporary legal or technical significance and relevance to the present study.

2.1 Right

The concept of right is fundamental to determining the entitlements protected in this study and therefore requires brief lexical and conceptual clarification.

Lexically, the word right is derived from the Old English *riht*, meaning "just", "proper", "correct" or "fair". It is historically associated with the idea of straightness, correctness and conformity to an accepted standard. Its meaning subsequently developed to encompass notions of justice, entitlement and what is legally or morally owed to a person.[1]

Conceptually, in legal discourse, a right denotes a legally or morally recognized entitlement, claim, liberty or interest belonging to an individual or group. Hohfeld's classical analysis demonstrates that legal rights may assume different forms, including claims, liberties, powers and immunities.[2] Within this study, *right* refers principally to an entitlement protected by international human rights law, particularly rights relating to equality, non-discrimination, privacy, autonomy and human dignity. The Universal Declaration of Human Rights (UDHR) recognizes the inherent dignity and equal and inalienable rights of all members of the human family. [3] The concept is particularly relevant because algorithmic discrimination may interfere with rights such as equality, non-discrimination, privacy, employment, education and access to essential services. The study therefore examines whether AI-driven decision-making respects or undermines legally protected human entitlements.

2.2 Human Dignity

The concept of human dignity provides the normative foundation for examining how algorithmic discrimination may affect the inherent worth of individuals.

The word dignity derives from the Latin *dignitas*, meaning "worthiness", "merit", "esteem" or "honour", and is associated with *dignus*, meaning "worthy" or "fitting". Historically, *dignitas* could signify elevated social standing or honour. Its modern human rights meaning has developed towards the idea of intrinsic worth possessed equally by every human being.[4]

From a conceptual lens, human dignity denotes the inherent worth and equal status of every human person. The UDHR recognizes the inherent dignity of all members of the human family and declares that all human beings are born free and equal in dignity and rights.[5] Kant's influential philosophy further associates dignity with intrinsic human worth and the principle that persons should never be treated merely as means to an end.[6]

In this present study, human dignity constitutes the central normative value against which the use of artificial intelligence is assessed. Algorithmic discrimination may undermine dignity where individuals are stereotyped, categorized, excluded or subjected to consequential decisions without adequate regard for their inherent worth and equal status. The study therefore treats dignity as requiring AI systems and their human operators to respect individuals as autonomous and equal rights-bearing persons.

2.3 Artificial Intelligence

Artificial intelligence is central to this study because it constitutes the technological context within which algorithmic discrimination may occur.

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[1] Oxford English Dictionary. (n.d.). Right, adj and n. In *OED Online*. Oxford University Press.

[2] Hohfeld, W. N. (1913). Some fundamental legal conceptions as applied in judicial reasoning. *Yale Law Journal, 23*, 16.

[3] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), preamble.

[4] McCrudden, C. (2008). Human dignity and judicial interpretation of human rights. *European Journal of International Law, 19*, 655.

[5] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), art. 1.

[6] Kant, I. (1997). *Groundwork of the metaphysics of morals* (M. Gregor, Trans.). Cambridge University Press.

The expression artificial intelligence combines *artificial*, derived from Latin *artificialis*, associated with something produced through human skill or craftsmanship, and *intelligence*, derived from Latin *intelligentia* and *intelligere*, meaning to understand, comprehend or discern. Lexically, the expression therefore conveys the idea of human-made or artificially produced capacity for intellectual activity.[1]

Contemporary artificial intelligence refers to computational systems capable of performing functions associated with human intelligence, including learning, reasoning, prediction, classification, recognition and decision-making. The OECD defines an AI system as a machine-based system that generates outputs such as predictions, content, recommendations or decisions capable of influencing physical or virtual environments.[2]

For this study, artificial intelligence refers to computational systems capable of processing information and generating predictions, classifications, recommendations or decisions capable of affecting the rights, opportunities or welfare of individuals. Its relevance lies in the increasing use of AI in consequential areas such as recruitment, credit assessment, policing, healthcare, education and public administration. The study consequently examines how the deployment of AI in such contexts may affect human dignity and the enjoyment of internationally protected rights.

2.4 Algorithm

The concept of an algorithm is essential because it represents the computational mechanism through which data are processed and outputs are generated.

The word algorithm derives ultimately from the name of the ninth-century Persian mathematician Muhammad ibn Musa al-Khwarizmi. His Latinized name, *Algoritmi*, became associated with methods of calculation and eventually developed into the modern term "algorithm".[3] The term subsequently evolved from numerical calculation to the broader idea of a systematic procedure for solving a problem or accomplishing a task.

In computer science, an algorithm is generally understood as a structured set of instructions or rules for processing inputs and producing a specified output.[4] An algorithm should nevertheless be distinguished from AI: not every algorithm constitutes artificial intelligence, although AI systems depend upon algorithms.

For purposes of this study, an algorithm refers to a structured computational procedure through which data or other inputs are processed to generate an output, prediction, classification, recommendation or decision.

The concept is relevant because the design, training, data inputs and operation of algorithms may reproduce existing social inequalities or generate new forms of unequal treatment. The algorithm is therefore examined as a potential mechanism through which discrimination can become technologically embedded.

2.5 Algorithmic Discrimination

Algorithmic discrimination constitutes the central problem examined in this research and connects technological processes with the principle of equality and non-discrimination.

Lexically, the expression algorithmic discrimination combines *algorithmic*, relating to an algorithm, and *discrimination*, which derives from the Latin *discriminare*, meaning "to distinguish", "separate" or "divide". Although discrimination originally carried a neutral meaning of distinction, its contemporary legal usage generally denotes

[1] Russell, S., & Norvig, P. (2021). *Artificial intelligence: A modern approach* (4th ed.). Pearson.

[2] OECD. (2019). *Recommendation of the Council on Artificial Intelligence* (OECD/LEGAL/0449; adopted May 22, 2019; amended 2024).

[3] Campbell-Kelly, M., et al. (2003). *The history of mathematical tables: From Sumer to spreadsheets*. Oxford University Press.

[4] Cormen, T. H., et al. (2022). *Introduction to algorithms* (4th ed.). MIT Press.

unjustified differential treatment, exclusion, restriction or disadvantage.[1]

Algorithmic discrimination occurs where an algorithm or AI system produces unjustified differential treatment, exclusion or disadvantage. It may be direct or indirect, intentional or unintentional, and may arise from biased datasets, historical inequalities, proxy variables, system design or deployment.[2]

Barocas and Selbst demonstrate that data-driven systems can generate discriminatory effects even where decision-makers do not intentionally discriminate.[3] Buolamwini and Gebru similarly identified significant demographic disparities in certain commercial facial-analysis systems.[4]

For this study, algorithmic discrimination means unjustified direct or indirect differential treatment, exclusion, restriction or disadvantage produced or facilitated by an algorithm or AI system, particularly where such outcomes impair the equal enjoyment of human rights.

This is the central phenomenon investigated by the article. The study examines whether discriminatory algorithmic outcomes constitute violations of equality and non-discrimination and, more broadly, whether they undermine the inherent dignity of affected persons. It consequently moves beyond viewing algorithmic bias as merely a technical defect and examines it as a potential international human rights concern.

2.6 International Human Rights Law

International human rights law provides the principal legal framework through which the human rights implications of algorithmic discrimination are assessed.

The expression international human rights law consists of four interconnected terms. *International* derives from *inter* ("between" or "among") and *national*; *human* derives from the Latin *humanus*, meaning relating to human beings; *right* carries associations with justice, propriety and entitlement; and *law* derives from Old English *lagu*, referring to an established rule. Collectively, the expression conveys the idea of rules operating beyond the national sphere for the protection of human entitlements.

International human rights law constitutes the body of international legal norms designed to protect the inherent rights and freedoms of individuals and groups and to establish corresponding obligations upon states. Its foundations include the UDHR, international human rights treaties, customary international law and regional human rights instruments.

The International Covenant on Civil and Political Rights protects equality and non-discrimination, including through article 26, while the International Covenant on Economic, Social and Cultural Rights prohibits discrimination in the enjoyment of the rights recognized therein.[5] Regional instruments, including the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights, provide additional safeguards.[6]

For purposes of this study, international human rights law refers to the body of international and regional legal norms through which the

[1] Oxford English Dictionary. (n.d.). Discrimination, n. In *OED Online*. Oxford University Press.

[2] Raji, I. D., et al. (2020). Closing the AI accountability gap: Defining an end-to-end framework for internal algorithmic auditing. *FAT, 3*, 33.

[3] Barocas, S., & Selbst, A. D. (2016). Big data's disparate impact. *California Law Review, 104*, 671.

[4] Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. *Proceedings of Machine Learning Research, 81*, 1.

[5] *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, arts. 2 and 26. Entered into force March 23, 1976; *International Covenant on Economic, Social and Cultural Rights*. (1966, December 16). 993 UNTS 3, art. 2(2). Entered into force January 3, 1976.

[6] *Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)*, arts. 8 and 14; *American Convention on Human Rights*. (1969, November 22). 1144 UNTS 123, arts. 1(1) and 24. Entered into force July 18, 1978; *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, arts. 2 and 5. Entered into force October 21, 1986.

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development, deployment and consequences of AI and algorithmic decision-making are assessed against human dignity, equality, non-discrimination and other fundamental rights.

Its relevance is therefore direct: IHRL provides the normative and legal standards against which discriminatory AI practices can be evaluated. The present study consequently investigates whether existing international human rights norms are sufficiently capable of regulating AI-related discrimination and protecting individuals from technologically mediated violations of their dignity and fundamental rights.

The six concepts are closely interconnected. A right constitutes the legally protected entitlement; human dignity supplies its foundational value; artificial intelligence represents the technological environment; an algorithm provides the computational mechanism; algorithmic discrimination identifies the potential harmful consequence; and international human rights law provides the legal framework through which such harm is evaluated. Accordingly, the present study does not treat algorithmic discrimination merely as a technological or computational problem. Rather, it examines it as a contemporary manifestation of unequal treatment capable of affecting the inherent dignity and fundamental rights of individuals. The concepts collectively provide the analytical foundation for determining whether, and to what extent, international human rights law can effectively address discriminatory outcomes produced by artificial intelligence.

3. Problem Statement

The rapid deployment of artificial intelligence (AI) across different sectors has created new forms of discrimination that may threaten human dignity and fundamental rights. In employment, Amazon's experimental recruitment algorithm was reported to disadvantage women because it learned from historically male-dominated recruitment data.[1] In healthcare, an algorithm used to allocate medical resources was found to underestimate the healthcare needs of Black patients.[2] In criminal justice, the COMPAS risk-assessment system raised concerns about racial disparities in predicting recidivism.[3] Similarly, facial-recognition technologies have demonstrated significant differences in accuracy across demographic groups, particularly affecting darker-skinned women.[4]

These examples demonstrate that algorithms presented as objective and neutral may reproduce existing social inequalities or generate discriminatory outcomes. Such outcomes can affect access to employment, healthcare, liberty, education, finance and public services, thereby implicating equality, non-discrimination and human dignity.

Although international human rights law protects these fundamental values, most existing instruments predate contemporary AI and do not expressly regulate algorithmic decision-making. The central problem is therefore whether existing international human rights law is sufficiently equipped to prevent and remedy algorithmic discrimination while protecting the inherent dignity and equal rights of affected individuals.

4. Theoretical Framework

This study is anchored principally in Human Dignity Theory, supported by Equality and Non-Discrimination Theory and the Human Rights-Based Approach. These perspectives provide complementary lenses for examining whether algorithmic decision-making can produce discriminatory outcomes that undermine the dignity and fundamental rights of individuals.

4.1 Human Dignity Theory

Although human dignity has ancient philosophical origins, its modern philosophical formulation is

[1] Dastin, J. (2018, October 10). Amazon scraps secret AI recruiting tool that showed bias against women. *Reuters*.

[2] Obermeyer, Z., et al. (2019). Dissecting racial bias in an algorithm used to manage the health of populations. *Science, 366*, 447.

[3] Angwin, J., et al. (2016, May 23). Machine bias. *ProPublica*.

[4] Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. *Proceedings of Machine Learning Research, 81*, 1.

most strongly associated with Immanuel Kant (1785), particularly his *Groundwork of the Metaphysics of Morals*. Kant distinguished between things possessing a price and persons possessing dignity, arguing that rational human beings must always be treated as ends in themselves and never merely as means.[1]

The concept subsequently developed from a philosophical principle into a central normative principle of modern human rights law. Its importance is reflected in the Universal Declaration of Human Rights (1948), which begins by recognizing the 'inherent dignity' of all members of the human family.[2]

Human Dignity Theory provides the principal theoretical foundation of this research. AI systems may reduce individuals to data points, risk scores, behavioral profiles or statistical categories. Where such classifications determine access to employment, healthcare, education, credit or public services without adequate regard for individual circumstances, the individual's autonomy and inherent worth may be compromised. The theory therefore enables this study to examine whether algorithmic discrimination constitutes not merely unequal treatment but a deeper interference with the intrinsic worth, autonomy and equal status of human beings.

4.2 Equality and Non-Discrimination Theory

Unlike Kant's Human Dignity Theory, Equality and Non-Discrimination Theory does not have a single universally recognized founder. Its intellectual foundations can be traced to classical theories of equality, particularly Aristotle's conception of distributive and corrective justice in the fourth century BC, which distinguished between treating equals equally and unequals proportionately.[3]

In modern constitutional and human rights discourse, the theory was significantly developed through the work of scholars such as Ronald Dworkin (1977), particularly his conception of equality as a fundamental political right.[4] Contemporary anti-discrimination scholarship has further developed distinctions between direct and indirect discrimination, formal and substantive equality, and equality of treatment and opportunity.

The theory is directly relevant because algorithmic systems may produce discriminatory outcomes even where they do not expressly use protected characteristics. Variables such as geographical location, purchasing behavior, employment history or educational background may function as proxies for race, sex, disability or socioeconomic status.

The theory therefore provides the analytical basis for determining whether apparently neutral AI systems produce direct or indirect discrimination, and whether differential outcomes can be objectively and reasonably justified under international human rights standards.

4.3 Human Rights-Based Approach

The Human Rights-Based Approach (HRBA) does not have a single individual founder in the same manner as a philosophical theory. Rather, it developed progressively within the United Nations system during the 1990s and early 2000s, particularly through the integration of human rights principles into development policies and programming. Its institutional consolidation followed the 1997 UN reform program, while the United Nations Development Group's *Common Understanding on Human Rights-Based Approaches to Development Cooperation* in 2003 provided an important framework for its application.[5]

The approach is grounded in the principle that development, governance and institutional

[1] Kant, I. (1997). *Groundwork of the metaphysics of morals* (M. Gregor, Trans.). Cambridge University Press. (Original work published 1785)

[2] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), preamble and art. 1.

[3] Aristotle. (2000). *Nicomachean ethics* (R. Crisp, Trans.; V.3–5). Cambridge University Press. (Original work written ca. 350 BC)

[4] Dworkin, R. (1977). *Taking rights seriously*. Harvard University Press.

[5] United Nations Development Group. (2003). *The human rights based approach to development cooperation: Towards a common understanding among UN agencies*.

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decision-making should be directed towards the realization of internationally recognized human rights and guided by principles including universality, participation, accountability, equality and non-discrimination. The HRBA is particularly relevant to AI because technological development should not be assessed solely according to efficiency, innovation or economic utility. AI systems must also be designed, deployed and governed in ways that respect human rights.[1]

Applied to algorithmic discrimination, the HRBA requires attention to transparency, accountability, participation, non-discrimination, human oversight and effective remedies. It consequently assists this study in determining what obligations should be imposed upon states and other relevant actors to prevent and remedy discriminatory AI outcomes.

Taken together, these theories enable the study to move beyond the technical question of whether an algorithm is accurate and examine the more fundamental legal question of whether AI-driven decision-making respects the equal dignity, autonomy and fundamental rights of every human being.

5. Methodology

This study adopts a qualitative doctrinal legal research methodology, complemented by a critical and analytical approach. The methodology is appropriate because the research examines international legal norms, principles, jurisprudence and scholarly literature concerning human dignity, equality, non-discrimination and artificial intelligence.

5.1 Research Approach

The study employs a doctrinal approach to identify, interpret and synthesize relevant legal rules and principles. Doctrinal legal research principally investigates legal doctrines, concepts, principles, cases and other authoritative legal materials.[2] The approach enables the study to determine the existing legal position concerning the protection of human dignity and equality in the context of algorithmic discrimination. The research also adopts a critical analytical approach to examine whether existing international human rights standards are sufficiently capable of addressing discriminatory outcomes generated by AI.

5.2 Sources of Data

The study relies primarily on primary and secondary legal materials. Primary sources include international human rights treaties, declarations, resolutions, regional human rights instruments, judicial and quasi-judicial decisions, and relevant international standards on AI.

Secondary sources comprise scholarly books, peer-reviewed journal articles, institutional reports, policy documents and authoritative academic commentary on AI, algorithmic discrimination, human dignity and human rights. The UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) is particularly relevant because it expressly places human dignity and human rights at the centre of AI governance and emphasizes fairness, transparency, accountability and human oversight.[3]

5.3 Method of Analysis

The materials collected are subjected to legal interpretation, content analysis and critical analysis. Relevant international legal provisions and jurisprudence are examined to establish the scope of protection afforded to dignity, equality and non-discrimination. Documented examples of algorithmic discrimination in employment, healthcare, criminal justice and facial recognition are then used to demonstrate the practical implications of the legal problem.

The study consequently moves from identification of the applicable law, through interpretation and

[1] McCrudden, C. (2008). Human dignity and judicial interpretation of human rights. *European Journal of International Law, 19*, 655.

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

[3] UNESCO. (2021). *Recommendation on the ethics of artificial intelligence* (adopted November 23, 2021).

critical evaluation, to assessment of its adequacy in addressing AI-related discrimination.

5.4 Scope and Limitations

The study focuses specifically on algorithmic discrimination and its implications for human dignity under international human rights law. It does not undertake a technical examination of machine-learning architecture, programming or algorithmic engineering. National and regional examples are considered principally to illustrate the practical manifestation of the problem and to inform the broader international human rights analysis.

5.5 Justification of the Methodology

The methodology is appropriate because the central question is fundamentally legal: whether existing international human rights law adequately protects human dignity against discriminatory outcomes produced by AI systems. A doctrinal methodology permits systematic examination of existing legal standards, while the critical analytical component enables the study to identify gaps and limitations within those standards.

The methodology also permits the study to engage with emerging international AI governance frameworks. For example, UNESCO's 2021 Recommendation adopts a human-rights-centred approach and emphasises that AI governance should incorporate human dignity, fairness, transparency, accountability and human oversight.[1]

6. Literature Review

The literature on artificial intelligence and human rights has expanded considerably, particularly around algorithmic bias, discrimination, dignity, transparency and accountability. However, the literature remains fragmented between technological, ethical and legal perspectives. The following ten materials are particularly relevant to the present study because, collectively, they provide the foundation for examining algorithmic discrimination specifically through the lens of human dignity and international human rights law.

Barocas and Selbst provide one of the foundational legal analyses of how data-driven systems can generate discriminatory outcomes. They demonstrate that apparently neutral data-processing practices may produce disparate impacts because of historical inequalities embedded in datasets, the selection of variables and the structure of decision-making systems. Their work is particularly important because it challenges the assumption that discrimination requires intentional human bias.

The major contribution of this work to the present study lies in demonstrating the structural nature of algorithmic discrimination. However, its primary focus is on discrimination and legal doctrine rather than the human dignity implications of algorithmic decision-making under international human rights law. The present study builds upon this gap by connecting discriminatory algorithmic outcomes with dignity and broader international human rights obligations.[2]

Joy Buolamwini and Timnit Gebru, 'Gender Shades' (201 8) Buolamwini and Gebru provide important empirical evidence of discriminatory performance in commercial facial-analysis technologies. Their study revealed significant differences in classification accuracy across gender and skin-tone groups, with particularly poor performance for darker-skinned women.[3]

The importance of this study to the present research is that it demonstrates that algorithmic discrimination is not merely theoretical. It can be empirically observed in technologies capable of affecting people's identity, privacy and participation in society. Nevertheless, the study is primarily technical and empirical. It does not comprehensively examine the implications of these disparities under international human rights law or

[1] *Ibid.*

[2] Barocas, S., & Selbst, A. D. (2016). Big data's disparate impact. *California Law Review, 104*, 671.

[3] Buolamwini, J., & Gebru, T. (2018). Gender shades: Intersectional accuracy disparities in commercial gender classification. *Proceedings of Machine Learning Research, 81*, 1.

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analyze them through the broader concept of human dignity.

Obermeyer and his co-authors examine racial bias in a healthcare algorithm used to allocate healthcare resources. The study found that the algorithm underestimated the health needs of Black patients because it relied on healthcare expenditure as a proxy for healthcare need.[1]

This contribution is particularly relevant because it demonstrates how seemingly neutral variables can function as proxies for protected characteristics, thereby producing discriminatory outcomes. The study provides strong evidence of the human consequences of algorithmic bias. Its limitation for the present research is that it primarily approaches the issue from a medical and algorithmic perspective rather than examining the consequences through the normative framework of international human rights and human dignity.

Angwin and others examined the COMPAS criminal justice risk-assessment system and reported racial disparities in predictions of recidivism.[2] The work became influential in discussions concerning algorithmic transparency, fairness and the use of automated systems in criminal justice.

Its relevance to the present study lies in demonstrating that algorithmic decision-making can affect fundamental interests such as liberty and equal treatment. However, the work is principally concerned with criminal justice and algorithmic fairness. The present study adopts a broader international human rights perspective by examining how such discriminatory systems may implicate dignity, equality and non-discrimination across multiple sectors.

Borgesius provides a recent and particularly important examination of discrimination generated by AI and algorithmic decision-making. His analysis considers how existing anti-discrimination law can address algorithmic discrimination and identifies weaknesses in the application and enforcement of existing legal frameworks.[3]

The work is highly relevant because it demonstrates that existing discrimination law can address many forms of algorithmic discrimination, particularly through the concept of indirect discrimination, but also identifies significant limitations. Its principal focus, however, is European anti-discrimination law. The present study extends the inquiry by focusing specifically on international human rights law and the right to human dignity, thereby providing a broader normative and international dimension.

Teo provides one of the most directly relevant theoretical contributions to the present study. She identifies four understandings of human dignity in the AI context: non- instrumentalization of the human person, protection of vulnerable persons, recognition of inherent self-worth and autonomy, and protection of humanity as a whole.[4]

This work is particularly valuable because it demonstrates that human dignity can address AI-related challenges that may not fit neatly within individual rights such as privacy or non-discrimination. Nevertheless, its emphasis is broader than algorithmic discrimination specifically. The present study builds upon Teo's analysis by applying dignity more directly to discriminatory algorithmic outcomes and situating the analysis within international human rights law.

The UNESCO, Recommendation on the Ethics of Artificial Intelligence (2021)-although not a conventional academic article, constitutes an important normative contribution to the literature on AI and human rights. It places human rights and fundamental freedoms, human dignity, fairness, transparency, accountability and human oversight at the center of AI governance.[5]

[1] Obermeyer, Z., et al. (2019). Dissecting racial bias in an algorithm used to manage the health of populations. *Science, 366*, 447.

[2] Angwin, J., et al. (2016, May 23). Machine bias. *ProPublica*.

[3] Zuiderveen Borgesius, F. J. (2025). *Discrimination, artificial intelligence, and algorithmic decision-making*. Council of Europe.

[4] Teo, S. A. (2023). Human dignity and AI: Mapping the contours and utility of human dignity in addressing challenges presented by AI. *Law, Innovation and Technology, 15*, 223.

[5] UNESCO. (2021). *Recommendation on the ethics of artificial intelligence* (adopted November 23, 2021).

Its significance for the present study is substantial because it demonstrates growing international recognition that AI must remain consistent with human rights principles. Nevertheless, the Recommendation is a soft-law instrument and does not, by itself, establish a comprehensive binding international regime specifically addressing algorithmic discrimination. This creates an important question for the present research concerning the adequacy and enforceability of existing international human rights mechanisms.

The Council of Europe, Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (2024) represents an important development in international AI governance. It adopts a human-rights-centered framework and expressly connects AI governance with human dignity, individual autonomy, equality and non-discrimination.[1]

The Convention is particularly relevant because it demonstrates a movement from voluntary ethical principles towards legally binding international regulation. However, questions remain concerning its global reach, implementation and capacity to address the rapidly evolving forms of algorithmic discrimination generated by AI systems operating across jurisdictions. The present study therefore considers whether developments such as the Framework Convention are sufficient to close existing gaps in international human rights protection.

The reviewed literature establishes that algorithmic discrimination is a real and demonstrable phenomenon affecting areas such as employment, healthcare, criminal justice and biometric identification. It also demonstrates that AI can threaten autonomy, equality, privacy and human dignity. However, the literature remains divided into three principal strands: technical studies examining algorithmic bias; legal scholarship examining discrimination and regulation; and philosophical scholarship examining human dignity and AI.

The principal gap identified by this study is the insufficient integration of these three strands within a single international human rights analysis. Existing scholarship has not sufficiently examined how algorithmic discrimination specifically affects the right to human dignity, nor has it adequately interrogated whether existing international human rights law provides effective mechanisms for preventing, addressing and remedying such discrimination.

This study therefore seeks to fill the gap by placing human dignity at the center of the legal analysis of algorithmic discrimination, while examining equality, non-discrimination, autonomy, accountability and effective remedies within the broader framework of international human rights law.

7. Legal Framework

The legal framework of this study is examined at two principal levels: the international and regional African levels. The international framework establishes universal standards relating to human dignity, equality, non-discrimination, privacy and socio-economic rights, while the African regional framework gives these principles regional legal expression. Because most foundational human rights instruments predate contemporary artificial intelligence, the analysis also considers emerging AI-specific international standards to determine how established human rights norms can be applied to algorithmic decision-making.

7.1 International Legal Framework

The international legal framework provides the foundational normative basis for examining whether algorithmic decision-making is compatible with human dignity and fundamental rights. It consists principally of universal human rights

[1] Council of Europe. (2024). *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (adopted May 17, 2024; opened for signature September 5, 2024).

instruments, supplemented by emerging international standards specifically addressing artificial intelligence.

7.1.1 Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights (UDHR), adopted in 1948, constitutes the foundational international instrument for the protection of human dignity and equality. Article 1 provides that all human beings are born free and equal in dignity and rights, while article 2 guarantees the enjoyment of the rights and freedoms proclaimed in the Declaration without distinction based on grounds including race, colour, sex, language, religion, national or social origin, property, birth or other status.[1] These provisions are directly relevant to algorithmic discrimination because an AI system that systematically disadvantages individuals or groups on the basis of protected characteristics may undermine the principles of equal dignity and non-discrimination. The UDHR therefore provides the normative starting point for examining whether technological decision-making respects the equal worth of every human being.

7.1.2 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, transforms several of the UDHR's principles into binding treaty obligations for States Parties. Article 2(1) requires States to respect and ensure the rights recognized in the Covenant without distinction, while article 17 protects individuals against arbitrary or unlawful interference with their privacy, family, home or correspondence.[2] Of particular importance is article 26, which guarantees equality before the law and equal protection of the law and prohibits discrimination.[3] These provisions are relevant where AI is deployed in policing, surveillance, immigration, employment or public administration. For example, an algorithmic profiling system that disproportionately targets a racial or ethnic group may raise concerns under both the non-discrimination guarantee in article 26 and the privacy protection in article 17.

7.1.3 International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, is particularly relevant to algorithmic systems used in areas affecting socio-economic rights. Article 2(2) prohibits discrimination in the enjoyment of Covenant rights, while article 3 guarantees equal rights of men and women in the enjoyment of those rights.[4] The Covenant further protects the right to work under article 6, the right to health under article 12, and the right to education under article 13.[5] These provisions are significant where AI systems are used in recruitment, healthcare allocation, educational admission or social protection.

An algorithm that systematically excludes or disadvantages a particular group in accessing these services may therefore implicate both substantive rights and the principle of non-discrimination.

7.1.4 Convention on the Elimination of All Forms of Discrimination Against Women, 1979

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, provides a specialized framework for addressing gender-based discrimination. Article 1 defines discrimination against women, while article 2 requires States Parties to pursue policies aimed at eliminating discrimination against women.[6] Article 11 specifically requires States to eliminate

[1] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), arts. 1–2.

[2] *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, arts. 2(1) and 17. Entered into force March 23, 1976.

[3] *Ibid*.

[4] *International Covenant on Economic, Social and Cultural Rights*. (1966, December 16). 993 UNTS 3, arts. 2(2) and 3. Entered into force January 3, 1976.

[5] *Ibid* art 26.

[6] *Convention on the Elimination of All Forms of Discrimination against Women*. (1979, December 18). 1249 UNTS 13, arts. 1–2. Entered into force September 3, 1981.

discrimination against women in employment.[1] These provisions are relevant to AI systems used in recruitment, promotion and employment evaluation, particularly where historical datasets reproduce gender inequalities. Algorithmic decision-making may appear facially neutral while nevertheless reproducing patterns of discrimination embedded within historical data.

7.1.5 Convention on the Rights of Persons with Disabilities, 2006

The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, further strengthens the international framework against discriminatory technological practices. Article 5 guarantees equality and non-discrimination, while article 9 addresses accessibility and article 22 protects privacy.[2] Article 27 recognizes the right of persons with disabilities to work on an equal basis with others.[3] These provisions are relevant to AI-based recruitment systems, automated healthcare technologies, facial-recognition systems and other technologies that may fail to accommodate persons with disabilities. Where technological systems systematically exclude persons with disabilities or produce adverse outcomes because of disability-related characteristics, the issue extends beyond technological inefficiency to one of legally significant discrimination.

7.1.6 UNESCO Recommendation on the Ethics of Artificial Intelligence, 2021

The UNESCO Recommendation on the Ethics of Artificial Intelligence, adopted in 2021, represents one of the most significant international normative developments specifically addressing AI. It places human rights and fundamental freedoms, human dignity, equality, fairness, transparency, accountability and human oversight at the center of AI governance.[4] The Recommendation recognizes that AI systems may reproduce and reinforce existing biases and inequalities, thereby generating discrimination and exclusion. Its provisions on fairness and non-discrimination require measures to prevent AI systems from producing discriminatory outcomes, while its provisions on transparency and explainability recognize the importance of enabling individuals to understand and challenge decisions affecting them.[5] Its emphasis on responsibility and accountability is also relevant where discriminatory outcomes arise from complex AI systems involving multiple actors.[6]

Although the Recommendation is a soft-law instrument, it provides important evidence of an emerging international consensus that AI development and deployment should remain consistent with human rights and human dignity.

7.2 Regional African Human Rights Framework

The African regional framework provides an important second level of analysis because the African Charter on Human and Peoples' Rights expressly protects both human dignity and non-discrimination. This makes the African system particularly relevant to a study concerned with the relationship between algorithmic discrimination and human dignity.

7.2.1 African Charter on Human and Peoples' Rights, 1981

The African Charter on Human and Peoples' Rights, adopted in 1981, constitutes the principal regional human rights instrument. Article 2 prohibits discrimination in the enjoyment of the rights and freedoms recognized in the Charter, while article 3(1) guarantees equality before the law and article 3(2) guarantees equal protection of the law.[7] Most importantly for this study, article 5 protects the right

[1] *Ibid* art 11.
[2] *Convention on the Rights of Persons with Disabilities*. (2006, December 13). 2515 UNTS 3, arts. 5, 9 and 22. Entered into force May 3, 2008.
[3] *Ibid* art 27.
[4] UNESCO. (2021). *Recommendation on the ethics of artificial intelligence* (adopted November 23, 2021), paras. 13, 16.
[5] *Ibid* paras 28, 37–39.
[6] *Ibid* paras 41–42.
[7] *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, arts. 2–3. Entered into force October 21, 1986.

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to respect for the dignity inherent in every human being and prohibits exploitation, degradation and treatment incompatible with human dignity.[1] The combination of articles 2, 3 and 5 provides a particularly strong normative foundation for examining algorithmic discrimination in Africa because discriminatory AI outcomes can potentially be conceptualized simultaneously as unequal treatment and an affront to the inherent dignity of affected individuals.

7.2.2 African Regional Standards on Equality and Non-Discrimination

The African human rights system has progressively developed standards concerning equality and non-discrimination through the interpretative work of the African Commission and other regional mechanisms. These standards are relevant to algorithmic discrimination because discriminatory outcomes do not necessarily arise from explicit classifications. An apparently neutral algorithm may indirectly disadvantage a particular racial, ethnic, gender, socioeconomic or other group through the use of variables that operate as proxies for protected characteristics. The African human rights framework therefore provides a basis for considering both direct and indirect forms of discrimination generated through technological decision-making.

7.2.3 African Commission on Human and Peoples' Rights

The jurisprudence and interpretative practice of the African Commission on Human and Peoples' Rights provide an important mechanism for understanding the scope of rights protected under the African Charter. Although the Commission has not yet developed an extensive body of jurisprudence specifically addressing AI-generated discrimination, its interpretation of dignity, equality and non-discrimination provides principles that can potentially be applied to emerging technological forms of rights interference. This jurisprudential gap is itself significant because the rapid deployment of automated systems creates new circumstances in which established human rights principles must be interpreted and applied.

7.2.4 African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights provides an additional judicial mechanism for interpreting and enforcing rights contained in the African Charter and other applicable human rights instruments. Its jurisprudence concerning equality, dignity, fair treatment and effective protection of rights can contribute to the development of principles applicable to algorithmic decision-making. However, the relative absence of cases directly concerning artificial intelligence demonstrates that the African human rights system remains at an early stage of addressing technology-specific discrimination. This reinforces the need for doctrinal development capable of applying existing human rights protections to emerging AI-related harms.

7.3 Comparative Regional Development: Council of Europe

Although the Council of Europe does not form part of the African regional human rights system, its Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, adopted in 2024, constitutes an important comparative development. The Convention seeks to ensure that activities involving AI are consistent with human rights, democracy and the rule of law.[2] It expressly addresses human dignity and individual autonomy, equality and non-discrimination, privacy and data protection, transparency and oversight, accountability and responsibility.[3] It is particularly significant because

[1] *Ibid* art 5.

[2] Council of Europe. (2024). *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (CETS No. 225; adopted May 17, 2024; opened for signature September 5, 2024).

[3] *Ibid* arts 7–11.

it moves beyond general ethical principles towards a legally binding international treaty specifically addressing AI and human rights. The Convention also provides for procedural safeguards and remedies for individuals affected by AI systems.[1] Its development therefore provides a useful comparative benchmark against which the adequacy of existing international and African human rights frameworks can be assessed.

8. An Overview of Human Dignity in the Age of Artificial Intelligence

Human dignity constitutes a foundational value of international human rights law, reflecting the inherent worth and equal status of every human being. The *Universal Declaration of Human Rights* (1948) recognizes in article 1 that all human beings are born free and equal in dignity and rights.[2] Similarly, the *International Covenant on Civil and Political Rights* (1966) affirms in its preamble the recognition of the inherent dignity of the human person, while article 10 requires persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity.[3] At the African regional level, article 5 of the African Charter on Human and Peoples' Rights (1981) expressly protects the dignity inherent in every human being.[4] These provisions establish dignity as a fundamental principle underlying rights such as equality, non-discrimination, privacy and autonomy.

The emergence of artificial intelligence (AI) presents new challenges to the preservation of human dignity because AI systems increasingly participate in decisions affecting significant aspects of human life, including employment, healthcare, education, policing, credit and access to public services. Individuals may consequently be reduced to data profiles, algorithmic scores or statistical classifications, potentially diminishing their autonomy and agency. This concern is heightened where AI systems operate opaquely, making it difficult for individuals to understand or challenge decisions affecting them. Contemporary scholarship consequently argues that AI should be assessed not merely according to its technical efficiency but also according to its impact on human autonomy, status and inherent worth.[5]

The dignity implications become particularly significant where AI systems produce algorithmic discrimination. Apparently neutral algorithms may reproduce historical inequalities contained within datasets or generate discriminatory outcomes through proxy variables. Such outcomes may undermine not only equality but also the individual's recognition as a person deserving of equal concern and respect. UNESCO's *Recommendation on the Ethics of Artificial Intelligence* (2021) therefore places human dignity, human rights, fairness, non-discrimination, transparency, explainability and human oversight at the centre of AI governance.[6] The protection of dignity in the AI age consequently requires that technological systems remain subject to meaningful human control and that individuals are not reduced to objects of automated classification or decision-making.

Human dignity thus provides a broader normative lens through which the impact of AI can be assessed. It requires attention not only to whether an algorithm produces discriminatory outcomes, but also to whether it respects human autonomy, agency, equality, individuality and inherent worth. The central challenge is therefore to ensure that technological advancement remains human-centered and that AI serves human beings rather than transforming individuals into mere data points within automated systems. This understanding

[1] *Ibid* arts 14–16.

[2] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), art. 1.

[3] *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, preamble and art. 10. Entered into force March 23, 1976.

[4] *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, art. 5. Entered into force October 21, 1986.

[5] Teo, S. A. (2023). Human dignity and AI: Mapping the contours and utility of human dignity in addressing challenges presented by AI. *Law, Innovation and Technology*, *15*, 223.

[6] UNESCO. (2021). *Recommendation on the ethics of artificial intelligence* (adopted November 23, 2021), paras. 13–16, 28, 37 42.

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provides an essential foundation for examining how algorithmic discrimination may constitute a broader threat to human dignity under international human rights law.

9. Addressing Emerging Forms of Algorithmic Discrimination Under International Human Rights Law

Artificial intelligence is increasingly used in employment, healthcare, education, policing, finance and public administration, creating new risks of discrimination through biased datasets, automated profiling, discriminatory proxies and opaque decision-making. Although existing international human rights law protects equality, non-discrimination and human dignity, the unique nature of algorithmic decision-making requires these principles to be adapted to emerging technological realities. Articles 2(1) and 26 of the ICCPR 1966, article 2(2) of the ICESCR 1966, article 1 of the UDHR 1948 and article 5 of the African Charter 1981 provide important foundations for addressing such discrimination.[1]

Addressing algorithmic discrimination requires impact assessments, transparency, explainability, human oversight, accountability and effective remedies. High-risk AI systems should be assessed and regularly audited for discriminatory effects, while affected individuals should be able to understand and challenge significant automated decisions. UNESCO's 2021 Recommendation emphasizes fairness, non-discrimination, transparency and human oversight, while the Council of Europe Framework Convention provides further safeguards concerning accountability and remedies.[2] The ultimate objective should be to ensure that AI advances rather than undermines human dignity and equality. International human rights law must therefore move beyond responding to discrimination after it occurs and develop a preventive, human-rights-centered approach throughout the AI lifecycle.

10. Summary of Findings

The study finds that artificial intelligence presents both opportunities and significant risks to human dignity and equality. Although AI can improve efficiency and decision-making, its reliance on large datasets and automated processes can reproduce existing biases and generate new forms of discrimination.

First, the study finds that algorithmic discrimination can occur in different forms, including biased datasets, discriminatory proxies, automated profiling and opaque decision-making. Such discrimination may affect access to employment, healthcare, education, finance, policing and other essential services.

Second, the study establishes that human dignity provides an important normative foundation for addressing algorithmic discrimination. When individuals are reduced to data profiles, scores or automated classifications without meaningful human consideration, their autonomy, agency and equal worth may be undermined.

Third, the study finds that existing international human rights law is applicable to algorithmic discrimination, particularly through the principles of equality and non-discrimination contained in the UDHR, ICCPR and ICESCR, as well as the protection of dignity under the African Charter. However, these existing frameworks require clearer interpretation and implementation in relation to AI.

Fourth, the study identifies transparency, explainability, human oversight and accountability

[1] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), art. 1; *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, arts. 2(1) and 26. Entered into force March 23, 1976; *International Covenant on Economic, Social and Cultural Rights*. (1966, December 16). 993 UNTS 3, art. 2(2). Entered into force January 3, 1976; *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, art. 5. Entered into force October 21, 1986.

[2] UNESCO. (2021). *Recommendation on the ethics of artificial intelligence* (adopted November 23, 2021), paras. 13–16, 28 and 37–42; Council of Europe. (2024). *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (CETS No. 225; opened for signature September 5, 2024), arts. 9 and 14–16.

as essential safeguards. Individuals affected by significant algorithmic decisions should be able to understand, challenge and obtain human review of those decisions.

Finally, the study finds that addressing algorithmic discrimination requires a preventive rather than purely reactive approach. Human-rights impact assessments, regular algorithmic audits, effective remedies, inclusive datasets and stronger international and regional standards are necessary to ensure that AI develops in a manner consistent with human dignity, equality and non-discrimination.

11. Conclusion

Artificial intelligence is transforming modern society and creating new opportunities for human development, but its increasing role in decision-making also presents serious implications for human dignity and equality. This study has demonstrated that algorithmic systems, although often presented as objective and neutral, may reproduce existing social inequalities through biased datasets, discriminatory proxies, profiling and opaque automated decisions. Such outcomes can affect individuals in critical areas including employment, healthcare, education, policing and access to essential services.

The study further establishes that human dignity provides a fundamental normative basis for responding to algorithmic discrimination. The reduction of individuals to data profiles or algorithmic scores, particularly without transparency, human participation or meaningful avenues of challenge, may undermine autonomy, agency and equal human worth. The principles of equality and non-discrimination embodied in the UDHR, ICCPR and ICESCR, together with the express protection of dignity under the African Charter on Human and Peoples' Rights, provide an important foundation for addressing these challenges.[1]

However, existing international human rights standards must be progressively interpreted and strengthened to respond effectively to the distinctive risks posed by AI. The study therefore emphasizes the importance of algorithmic impact assessments, transparency, explainability, meaningful human oversight, accountability and effective remedies. International and regional human rights institutions must ensure that technological innovation does not create accountability gaps or permit discriminatory decisions to escape scrutiny merely because they are produced by automated systems.

Ultimately, the future of artificial intelligence should not be measured solely by its efficiency, accuracy or technological sophistication, but also by its ability to respect and advance human rights. The central imperative is to ensure that AI remains human-centered, rights-respecting and dignity-preserving. International human rights law must therefore evolve alongside technological development, ensuring that algorithms serve humanity rather than transform human beings into mere objects of automated classification. In this way, technological progress can coexist with the fundamental principle that every human being possesses inherent dignity and is entitled to equal protection and respect.

12. Recommendations

The foregoing analysis demonstrates that algorithmic discrimination is not merely a technological problem but a significant human rights concern. The following five recommendations are therefore proposed:

[1] *Universal Declaration of Human Rights*. (1948, December 10). UNGA Res 217 A(III), art. 1; *International Covenant on Civil and Political Rights*. (1966, December 16). 999 UNTS 171, arts. 2 and 26. Entered into force March 23, 1976; *International Covenant on Economic, Social and Cultural Rights*. (1966, December 16). 993 UNTS 3, art. 2(2). Entered into force January 3, 1976; *African Charter on Human and Peoples' Rights*. (1981, June 27). 1520 UNTS 217, art. 5. Entered into force October 21, 1986.

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12.1 Strengthen International Human Rights Standards on AI

International human rights bodies should clarify how human dignity, equality and non-discrimination apply to direct, indirect and systemic algorithmic discrimination. These and more are very important and if these measures are taken or put together, it will greatly help.

12.2 Make Human Rights and Algorithmic Impact Assessments Mandatory

States and organizations should conduct human-rights and algorithmic impact assessments before deploying high-risk AI and undertake regular audits, particularly in employment, healthcare, education, policing and social protection.[1]

12.3 Guarantee Transparency, Explainability and Human Oversight

Individuals should know when AI substantially influences decisions affecting their rights and should receive meaningful explanations. Humans should retain the power to review, modify or overturn significant automated decisions.[2]

12.4 Establish Clear Accountability and Effective Remedies

AI developers, deployers and institutions should remain accountable for discriminatory outcomes. Affected individuals should have access to human review, complaints mechanisms and effective judicial or administrative remedies.[3]

12.5 Develop Stronger African Human Rights Standards on AI

African human rights institutions should progressively apply articles 2, 3 and 5 of the African Charter to technological discrimination and develop regional guidance on AI, human dignity, equality and non-discrimination.

The way forward is a transition from a reactive to a preventive human-rights-centered framework, ensuring that dignity, equality, transparency, accountability and human oversight remain central throughout the AI lifecycle. AI should ultimately serve humanity rather than reduce human beings to data, scores or automated classifications.

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[1] UNESCO (n 2), paras. 26–28.

[2] UNESCO (n 2), paras. 37–39 and 41–42.

[3] Council of Europe (n 2), arts. 14–16.

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An Exploration of the Current Situation of Foreign-Related Intellectual Property Talent Cultivation in China from the Perspective of Building a Strong Intellectual Property Country

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Abstract: Under the background of building a strong intellectual property country and continuously promoting high-level opening-up, the supply of foreign-related intellectual property talents in China has failed to keep pace with the speed of economic development and the growth rate of related disputes. The high-level positioning of talents as "international-oriented, interdisciplinary, and application-oriented" coexists with restrictive factors such as regional differences and lagging faculty development. It is difficult to achieve effective cultivation relying only on individual universities or university-enterprise cooperation. It is suggested that a multi-subject collaborative education system should be improved from four aspects: "top-level design, teaching reform, practical training, and feedback optimization". A government-led foreign-related intellectual property alliance should be established to ensure from top to bottom that talent cultivation goals meet national strategies and regional needs. Universities as the main force and university-enterprise collaboration can effectively solve the connection between theoretical education and practical work. Establishing foreign-related industrial intellectual property institutes led by industry associations can effectively alleviate the pressure on universities in talent cultivation and strengthen students' practical abilities. In addition, special attention should be paid to the challenges of legal foreign language ability and the cultivation of specialized talents in central and western regions.

Keywords: intellectual property power; foreign-related intellectual property talents; intellectual property alliance; development of central and western regions

1. Introduction of the Problem

The deepening advancement of the "Belt and Road" Initiative has made economic and trade exchanges between China and countries along the route increasingly frequent, while also bringing challenges such as differences in legal application and conflicts in cultural values. Since the establishment of the Intellectual Property Court of the Supreme People's Court in 2019, it has accepted 2,546 foreign-related cases involving parties, accounting for 10.3%, with an average annual growth rate of 18.7%. (Han, X., 2026) In 2021, the Central Committee of the Communist Party of China and the State Council jointly issued the Outline for Building a Strong Intellectual Property Country (2021-2035), which established the action goal of coordinating the promotion of a strong intellectual property country with Chinese characteristics and a world-class level. China's determination to continue high-level opening-up and build an open world economy has remained firm. (Wang, W., 2025) In 2025, China's total import and export volume of intellectual property royalties reached 382.87 billion yuan, an increase of 7.4% year-on-year, while exports increased by 23.1% year-on-year. (Wang, J., 2026)

However, under the rapid development trend of foreign-related intellectual property economy and the continuous increase in foreign-related intellectual property disputes, the supply of foreign-related intellectual property talents has shown a relatively weak trend. During the "14th Five-Year Plan" period, the number of intellectual property talents trained in China exceeded expectations. The number of practicing patent agents exceeded 40,000, the number of intellectual property professionals above the intermediate level exceeded 20,000, and a total of more than 87,000 people passed the patent agent qualification examination. However, during the same period, fewer than one thousand foreign-related lawyers were trained. (Yang, L., 2026,) China has both the economic foundation for cultivating foreign-related intellectual property talents and an increasingly growing practical demand. Why does the supply of foreign-related intellectual property talents still lack sufficient momentum, and where does the root of the problem lie? The Decision of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively and Promoting Chinese-style Modernization, reviewed and adopted at the Third Plenary Session of the 20th Central Committee of the Communist Party of China, clearly proposes to "strengthen foreign-related legal governance and establish a working mechanism that integrates foreign-related legislation, law enforcement, justice, law-abiding practices, legal services, and legal talent cultivation." Accelerating the cultivation of foreign-related intellectual property talents has become a key task in promoting the construction of China into a strong intellectual property country. (Zheng, L., 2025)

In recent years, taking advantage of this opportunity, some Chinese universities have gradually begun experiments in cultivating foreign-related intellectual property talents. Several questions urgently need to be answered and addressed. What are foreign-related intellectual property talents, and what are the training objectives and principles? How can the structural contradiction between supply and demand be resolved to maintain coordination between talent supply and industrial demand? How can the practical problem of asynchronous talent cultivation caused by the imbalance between eastern and western development in China be solved, so as to achieve overall coordinated development among different regions? Professor Ma Yide innovatively proposed that foreign-related intellectual property talents are interdisciplinary talents with "innovative cognitive ability, industrial strategic thinking, and a global governance perspective". Compared with general foreign-related legal talents, foreign-related intellectual property talents require stronger integration of legal, technical, and practical knowledge. Their work often involves international patent disputes, cross-border licensing, and overseas intellectual property compliance. (Li, Y., 2025) Member Zhao Wen pointed out the root cause

of the difficulty in forming the "peak and plateau" pattern of intellectual property talents. (Li, Y., 2024) Other scholars have also provided many valuable responses from different perspectives, but a systematic discussion has not yet been formed. This article starts from the deconstruction of the connotation of foreign-related intellectual property talents, first clarifies the positioning of foreign-related intellectual property talents, and then explores the negative factors currently restricting the cultivation of such talents. It further attempts to promote and improve the four-in-one talent cultivation system involving the government, universities, enterprises, and industry associations from four aspects: top-level design, teaching reform, practical training, and feedback optimization. Finally, it proposes action ideas and policy suggestions focusing on the common issue of strengthening legal foreign language ability and the special issue of cultivating specialized talents in central and western regions.

2. Analysis of the Difficulties in Cultivating Foreign-Related Intellectual Property Talents

2.1 Structural Defects Exist in University Discipline Cultivation Systems, and International Teaching Construction Lags Behind

The talent cultivation framework of domestic law and intellectual property-related majors has long been established based on traditional domestic law teaching systems, and there are systematic shortcomings in the arrangement of international courses. The curriculum design of most universities' intellectual property programs focuses on domestic legal norms such as patent law, trademark law, and copyright law. Systematic courses covering the rules of the World Intellectual Property Organization, international intellectual property conventions, and cross-border intellectual property dispute resolution mechanisms are relatively limited, and a complete international curriculum system has not yet been formed. Foreign-related courses offered by some institutions are mostly elective modules, with a low proportion of class hours and fragmented course content. They lack systematic analysis and in-depth interpretation of the international rule system, making it difficult for students to establish a complete understanding of international intellectual property legal governance. Essentially, the speed of updating teaching content lags behind changes in global intellectual property governance, and it cannot meet the needs of foreign-related intellectual property governance in emerging fields such as the digital economy, artificial intelligence, and cross-border e-commerce. Current university textbooks and regular teaching content mainly focus on traditional industrial property rights and copyright protection rules, while new foreign-related legal issues such as cross-border data intellectual property protection, ownership determination of artificial intelligence-generated content, resolution of cross-border standard essential patent disputes, and responses to intellectual property barriers in digital trade receive relatively limited attention. The knowledge system therefore shows obvious lagging characteristics. Students have relatively limited exposure to foreign-related legal scenarios during university study and lack sufficient understanding of international judicial practices, differences in the application of extraterritorial laws, and the construction of cross-border compliance systems.

In other words, the rigid teaching model has resulted in a serious separation between theory and foreign-related practical work. Foreign-related intellectual property teaching in domestic universities mainly focuses on classroom theoretical instruction, lacking regular practical teaching activities such as international simulated arbitration, cross-border case discussions, foreign-related law firm training, and international academic exchanges. Conventional teaching emphasizes the explanation and memorization of legal provisions while neglecting the application logic of international legal rules and methods for resolving conflicts across different legal jurisdictions. This results in a common problem among students: they understand theoretical rules but lack practical operational abilities. Graduates find it difficult to directly engage in frontline work

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such as handling foreign-related intellectual property disputes, overseas patent layout, and cross-border compliance review. The lack of interdisciplinary cultivation mechanisms has also resulted in a single knowledge structure among talents. Foreign-related intellectual property practice combines multiple attributes of law, technology, economy and trade, and foreign languages, requiring practitioners to master knowledge from fields such as law, science and engineering, international trade, and cross-cultural communication. At present, domestic university talent cultivation mostly adopts a single-discipline division model. Law students lack knowledge backgrounds in mechanical engineering, electronics, computer science, and other technical fields, making it difficult for them to accurately identify technical dispute focuses in foreign-related patents in high-tech fields. Students from science and engineering backgrounds have not received systematic legal training and lack the ability to apply international legal rules and handle disputes. The disciplinary barriers restricting the cultivation of interdisciplinary talents have remained unresolved for a long time.

2.2 Imbalanced Talent Competence Structure and Significant Shortcomings in Comprehensive Adaptability

Insufficient foreign language application ability and cross-cultural communication ability are common weaknesses among foreign-related intellectual property talents. Current university foreign language teaching in law generally has problems such as limited content, insufficient class hours, and separation from practical work. Teaching focuses mainly on legal English vocabulary and basic text reading, while lacking practical training in international courtroom debates, foreign-related document writing, and cross-jurisdictional business communication. Most graduates can only complete basic foreign language literature reading and cannot skillfully use foreign languages to participate in international arbitration hearings, cross-border negotiations, and foreign-related legal consultations. Foreign-related intellectual property talents with minor language abilities are particularly scarce, making it difficult to cover diversified foreign-related business scenarios in countries along the Belt and Road. At the same time, talents generally lack cross-cultural awareness and have insufficient understanding of differences in legal traditions, judicial practices, and business cultures among different countries. When handling cross-border intellectual property disputes, they are likely to encounter problems such as inaccurate rule application and communication barriers.

International rule application and dispute resolution abilities are significantly insufficient. The global intellectual property governance system contains differences among multiple legal systems. The intellectual property legislation and judicial practices of major economies such as Europe, the United States, Japan, and South Korea differ considerably from China's domestic legal system. In addition, the handling of international intellectual property disputes integrates multiple normative foundations, including legal rules, technical standards, and international trade rules. Talents cultivated domestically are generally familiar with local judicial reasoning but lack systematic knowledge of extraterritorial intellectual property substantive rules and procedural rules. They have an unclear understanding of the practical procedures of WTO intellectual property dispute settlement, the adjudication rules of international arbitration institutions, and cross-border intellectual property judicial assistance mechanisms. When dealing with complex foreign-related cases such as high-value patent licensing disputes, cross-border infringement litigation, and standard essential patent negotiations, their abilities in rule adaptation and risk management are insufficient.

The overall ability of foreign-related compliance and risk assessment in emerging fields remains weak. The development of the digital economy has generated a large number of new types of cross-border intellectual property disputes. Intellectual property disputes in emerging fields are characterized by rapid technological changes,

unclear rules, and complex boundaries of disputes. The current talent cultivation system has not established specialized ability training modules for emerging fields. Most practitioners lack mature experience in handling new issues such as cross-border artificial intelligence intellectual property protection, cross-border short video copyright disputes, intellectual property ownership of digital collectibles, and cross-border data intellectual property compliance. They find it difficult to help enterprises effectively avoid overseas intellectual property barriers and compliance risks, and cannot meet the intellectual property protection needs of enterprises entering overseas markets in emerging fields. The imbalance is not limited to practical ability alone. Incomplete knowledge structures may directly affect the ability to handle foreign-related disputes and compliance matters, and further restrict long-term professional development.

2.3 Incomplete Industry Cultivation and Support Mechanisms and Insufficient Motivation for Continuous Talent Development

The lack of regular on-the-job cultivation systems has resulted in delayed ability improvement among practitioners. Foreign-related intellectual property legal rules, international economic and trade policies, and extraterritorial judicial practices are continuously updated, while new types of disputes in emerging fields continue to appear, requiring practitioners to constantly update their knowledge systems. At present, a systematic and regular on-the-job training mechanism has not yet been established at the domestic industry level. Internal training conducted by law firms, enterprise legal departments, and intellectual property service institutions mainly consists of scattered business exchanges, lacking systematic training on international new regulations, typical cross-border cases, and compliance requirements in emerging fields. The speed of knowledge updating among in-service talents cannot keep pace with industry changes. Many practitioners rely on established experience to conduct their work for a long time, resulting in slow improvement of professional abilities.

Insufficient practical training platforms and resources restrict the improvement of practical abilities. Foreign-related intellectual property practice has characteristics such as special scenarios, complex procedures, and strong cross-border features, making it highly dependent on practical training environments and operational resources. At present, regular cooperation mechanisms between domestic universities and foreign-related law firms, international arbitration institutions, and overseas intellectual property service platforms are not sufficiently developed. Students have difficulty obtaining opportunities to practice real cross-border cases during university study, while simulated training often simplifies procedures and cannot reproduce the complex situations of international dispute resolution. Meanwhile, cross-border joint cultivation, overseas internship, and exchange programs have limited coverage and relatively high participation requirements, leaving most students without sufficient channels for international practical experience. In addition, incomplete industry incentive and support mechanisms have intensified talent loss. Foreign-related intellectual property business requires a long learning period, high professional difficulty, and considerable work pressure, requiring practitioners to make long-term investment and commitment. However, the current industry salary system, career development channels, and support mechanisms are not yet fully developed. The workload and salary returns of grassroots foreign-related intellectual property service personnel are not well matched. High-level talents lack sufficient support in career advancement, professional recognition, and access to international exchange resources. As a result, many professional talents shift to areas with relatively lower barriers, such as ordinary civil and commercial legal services and enterprise compliance, leading to a low retention rate of industry talents and further increasing the shortage of high-level talents.

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2.4 Insufficient Cross-Departmental Governance Coordination and an Incomplete Overall Talent Cultivation System

The cultivation of foreign-related intellectual property talents involves multiple departments responsible for education, justice, intellectual property, commerce, and foreign-related legal governance. It requires multiple parties to cooperate and establish a cultivation system. At present, the work of different departments remains relatively independent, and a regular coordination mechanism has not yet been established. Problems exist in terms of scattered resources, inconsistent standards, and poor connection. The discipline construction and talent cultivation plans of education departments have not fully matched the practical needs of the intellectual property industry and enterprises' overseas compliance needs. The professional training, qualification recognition, and ability evaluation systems of industry authorities have not been effectively integrated into university teaching. The collaborative cultivation mechanism among universities, practical institutions, and industry authorities remains largely formal.

The lack of cross-departmental information sharing and demand transmission mechanisms has resulted in deviations in cultivation orientation. Data on foreign-related disputes, industry talent demands, and compliance risks in emerging fields held by different competent departments have not been effectively circulated. Universities cannot accurately capture the latest changes in industry talent demands and practical difficulties. Adjustments to talent cultivation plans therefore show delays, making it difficult to optimize teaching content and cultivation directions according to industry weaknesses. At the same time, the professional qualification evaluation, industry standards, and position requirements for foreign-related intellectual property talents have not yet been fully unified. The evaluation of talent cultivation quality lacks an authoritative and unified reference system, which is unfavorable for the construction of a standardized and professional talent team. Insufficient integration of foreign-related legal resources restricts the improvement of cultivation quality. International academic exchanges, cross-border practical training platforms, extraterritorial legal research resources, and high-level foreign-related faculty resources face problems of insufficient supply and uneven distribution. High-quality resources are mostly concentrated in key political and legal universities and universities in major cities, while local universities lack resources. Significant regional differences therefore exist in the quality of talent cultivation. The lack of overall resource integration and sharing mechanisms prevents high-quality education resources from achieving broader access, and a nationwide standardized and high-quality foreign-related intellectual property talent cultivation system has not yet been formed.

3. Improvement of the Foreign-Related Intellectual Property Talent Cultivation System

The basic positioning of foreign-related intellectual property talents is "international-oriented, interdisciplinary, and application-oriented". It is of great significance and also highly difficult for universities to independently complete this talent cultivation task. Even university-enterprise collaborative cultivation is difficult to fully achieve this goal. Therefore, it is necessary to coordinate various parties and establish a phased and progressive cultivation model for foreign-related intellectual property talents. (Zhao, L., & Jiang, H., 2025) A "foreign-related intellectual property alliance" led by the government can determine the direction and objectives of talent cultivation from top to bottom, ensuring that they meet national strategies and regional needs. Cooperation between universities and enterprises in talent cultivation can effectively solve the "one-to-one" connection problem between theoretical education and practical education. A "foreign-related industrial intellectual property institute" can effectively solve the "one-to-many" efficiency problem in the connection between universities and enterprises, and timely reflect market demands and university

talent supply, playing a "traffic light" function. Based on this, this article proposes that, on the basis of the traditional single-university model and university-enterprise collaborative model, the four-in-one talent cultivation system involving "government, universities, enterprises, and industry associations" should be comprehensively promoted and improved from four aspects: "top-level design, teaching reform, practical training, and feedback optimization".

3.1 Establishing a Foreign-Related Intellectual Property Alliance with Multi-Party Participation

Top-level design is the foundation for effectively carrying out the cultivation of foreign-related intellectual property talents. A foreign-related intellectual property alliance should include multiple participants such as the government, universities, enterprises, and industry associations. At the government level, although the responsibility for talent cultivation belongs to the education departments, the China National Intellectual Property Administration, as the external window responsible for coordinating foreign-related intellectual property affairs, has natural advantages in understanding the characteristics and trends of foreign-related intellectual property development. In simple terms, the Ministry of Education understands how to cultivate talents, while the China National Intellectual Property Administration knows what kinds of talents need to be cultivated. More specifically, the foreign-related intellectual property alliance is a ship sailing overseas, the China National Intellectual Property Administration is the bow of the ship, and the Ministry of Education is the body of the ship. How many people can be carried and how they are carried are determined by the body of the ship, but where these people will go in the future is determined by the bow of the ship. Therefore, when education departments formulate cultivation plans, it is necessary for the China National Intellectual Property Administration to provide "directional" opinions, and to work together with foreign affairs departments, judicial departments, industry associations, and other multiple parties to connect with the actual needs of different regions and related industries, as well as the development level of universities in different areas, and formulate differentiated foreign-related intellectual property talent cultivation plans and professional standards. The basic principles, including cultivation objectives, knowledge structures, ability requirements, curriculum systems, and practical standards, should be clarified. At the same time, universities and university-enterprise collaborative cultivation should be provided with space for independent exploration.

Regarding the imbalance of regional cultivation resources, the systematic concept of "mutual support between the east and the west" should be incorporated. The intellectual property alliance should coordinate cultivation resources nationwide, promote cooperation and exchanges between high-quality universities in eastern regions and universities in western regions, and facilitate the flow of talent cultivation technologies, management experience, and capital from eastern universities to the central and western regions. The central and western regions should rely on deeper opening-up toward the west under the framework of the "Belt and Road" Initiative, further explore market demands in countries along western routes, transform them into their own advantages, and then provide feedback to eastern regions.

In addition, the intellectual property alliance itself serves as a channel for breaking communication barriers between foreign-related intellectual property industries. Industry associations should collect and organize talent supply and demand data from various industries and promptly report the current situation of talent cultivation to the Ministry of Education. After consulting the China National Intellectual Property Administration, the Ministry of Education should dynamically adjust cultivation plans. This can improve the timeliness and adaptability of talent cultivation in overall direction and ensure that talent cultivation work matches national strategies and the needs of the times. Government departments should focus on

coordination and standard setting, universities on teaching, enterprises on practical support, and industry associations on resource connection. Regular information sharing and evaluation can help maintain long-term cooperation.

3.2 Promoting Teaching Model Reform Led by Universities and Supported by University-Enterprise Collaboration

Universities are the primary positions for cultivating foreign-related intellectual property talents. Enterprises are the "touchstone" for testing the quality of foreign-related intellectual property talents. In theory, talent cultivation with universities and enterprises in equal positions would produce better results. However, as profit-oriented entities, enterprises naturally pursue higher economic benefits. This does not fully conform to, and may even conflict with, China's fundamental educational principle of "fostering virtue through education". Foreign-related intellectual property talents must always adhere to the principle that national interests and the interests of the people are above all else. Therefore, teaching model reform still needs to maintain universities as the main body, deeply integrate university-enterprise collaboration, and promote a three-in-one cultivation structure consisting of the "foundation + professional" curriculum system, the "internal cultivation + external introduction" faculty system, and the "domestic + overseas" internship base system. (Zhang, H., & Hou, Y., 2022)

In terms of interdisciplinary curriculum design, under the principles established by the Ministry of Education, universities should rely on enterprises to provide overseas business practice data, cases, and platforms, presenting current difficulties and future needs. Universities should supplement and expand the teaching and research of national laws based on enterprise needs and regional development requirements, and emphasize country-specific practical orientations. (Zhang, Z., 2025) Differentiated interdisciplinary course modules should be established, and modular and cutting-edge courses should be developed based on university characteristics, such as courses like "Transportation Foreign Language" and "Railway Intellectual Property" offered by Jiao Tong University. For courses with insufficient enrollment, "micro-majors" and small-credit courses can be established. Throughout the entire process, ideological and political education should also be deeply integrated. The proportion of ideological and political education courses in cultivation plans should be increased, the exemplary role of Party members should be utilized, and students should regularly participate in group activities and visits to historical sites. Exploration should be conducted through both theoretical and practical approaches to strengthen students' sense of national belonging and national identity, avoiding formalistic curriculum arrangements. In terms of the application of new technologies, digitalization should be used to empower the innovative development of traditional teaching models. Digital tools and methods such as AI-assisted legal provision retrieval, digital case analysis, and simulated international negotiations should be introduced into course teaching. (Liu, Z., 2026) Combined with cutting-edge issues in foreign-related intellectual property practice provided by enterprises, teaching content should be updated, allowing students to gain timely access to the latest industry developments and enhance their international perspectives. In terms of joint construction and sharing of faculty resources, universities and enterprises should attempt to implement a dual-mentor system. External practical mentors should mainly consist of enterprise legal personnel, supplemented by lawyers, judges, arbitrators, and other foreign-related practitioners. External practical mentors are mainly responsible for guiding practical skills and explaining practical rules. The forms can include special lectures, simulated confrontations, and practical guidance. Enterprises and universities can attempt to promote the rotation training of legal personnel and university teachers, fundamentally improving the practical abilities of university teachers and creating

a compound teaching team that combines theoretical foundations with practical experience.

3.3 Constructing a Practical Training Model Led by Industry Associations

The model of strengthening the practical abilities of foreign-related intellectual property talents through university-enterprise collaboration is a commonly used approach, but enterprises that can regularly provide practical mentors are limited in number. In addition, these enterprises are mostly concentrated in eastern regions. As a result, universities in eastern regions can enjoy a "one-to-many" model, while most universities in central and western regions may face the dilemma of "many-to-one" or even the absence of "one". Therefore, it is particularly important for industry associations to take the lead in establishing a "foreign-related industrial intellectual property institute", providing long-term centralized training for a group of intellectual property teachers from universities and regularly inviting practical professionals to conduct practical teaching. In addition, current cultivation models for foreign-related intellectual property talents in universities are mostly "micro-majors" and "pilot classes", with limited training scale. The establishment of an industrial intellectual property institute can rely on existing provincial-level intellectual property institutes and utilize their existing facilities and other conditions. On this basis, the cultivation process of foreign-related intellectual property talents can be divided into two steps. The first step is for universities to provide systematic theoretical learning for foreign-related intellectual property talents. The second step is that, for universities which have established cooperation with enterprises, students should be supported in entering enterprises or foreign-related institutions provided by enterprises in advance for practical training. For universities that have not established cooperation with enterprises, joint cultivation should be carried out by the "foreign-related intellectual property institute". After entering the industrial institute, students should receive arrangements from the institute for practical mentors to conduct foreign-related intellectual property practice and accumulate practical work experience. Specifically, students can regularly take different roles, such as lawyers, judges, arbitrators, and parties involved in disputes, and conduct negotiations according to international models. After a period of simulated experience, the industrial intellectual property institute should organize unified assessments to evaluate differences between students' practical abilities and theoretical abilities. Based on these characteristics, students should then be recommended for internships in different positions at enterprises, judicial departments, and other foreign-related institutions. This model is more suitable for universities in central and western regions. It can reduce internship pressure on graduating students and decrease the burden of talent cultivation on universities. The participation of industry associations in the talent cultivation process can also provide better access to student cultivation quality data and accurately compare evaluation results with social demands, allowing timely adjustments. Therefore, industry associations should also establish a "talent reservoir" for foreign-related intellectual property talents to fill periodic gaps between talent supply and social demand and reduce possible adjustment difficulties.

3.4 Establishing a Communication Mechanism Integrating the Government, Universities, Enterprises, and Industry Associations

There is a certain time gap between talent supply and social demand. Whether cultivated students meet the development needs of the foreign-related intellectual property industry, whether the talent cultivation model needs optimization, and how it should be optimized require the establishment of a systematic talent evaluation mechanism. Professional knowledge, practical abilities, professional qualities, and other aspects should be included as evaluation indicators. Universities are responsible for assessing professional knowledge and theoretical abilities, enterprises are responsible for evaluating practical abilities and professional

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qualities, and industry associations are responsible for evaluating the matching degree between talent supply and social demand. Through comprehensive evaluation from multiple dimensions, the quality of talent cultivation can better reflect the actual needs of employers. Ultimately, these evaluation data should be uniformly reported to departments such as the China National Intellectual Property Administration and the Ministry of Education, with the government leading the adjustment of the next round of overall plans. In addition, the effect of multi-party participation in optimizing talent cultivation should also be reflected in breaking institutional barriers. Efforts should be made to promote mutual recognition and connection between foreign-related intellectual property talent cultivation standards and foreign-related legal professional qualification certification and patent agent qualification. Core requirements in professional qualification certification should be integrated into talent cultivation curricula and evaluation standards, reducing unnecessary and non-professional examination pressure on students. While optimizing university cultivation standards, real-time connection should be achieved to the greatest extent possible, promoting transparency and openness of employer selection standards and reducing barriers between talent cultivation and employment.

4. Two Key Issues in the Process of Cultivating Foreign-Related Intellectual Property Talents

Legal foreign language ability is a basic ability for foreign-related intellectual property talents to carry out their work. It is a key issue in both eastern and central and western regions, and an effective path must be explored. The central and western regions are important areas for the "Belt and Road" Initiative and have an urgent demand for talents. However, due to limitations in location and resources, local universities find it difficult to systematically cultivate foreign-related intellectual property talents. Promoting specialized talent cultivation in central and western regions is also beneficial for supporting talent cultivation in eastern regions and achieving coordinated regional development.

4.1 Progressively Strengthening Legal Foreign Language Ability

Legal foreign language mainly refers to legal English. Therefore, this article takes legal English as the specific object of discussion. The learning of other languages can refer to the same approach. For minor languages with insufficient enrollment numbers, "micro-majors" and small-credit courses can be promoted within universities, or even joint cultivation across universities can be carried out. Legal English is professional and differs greatly from English used in daily life. Regarding the cultivation of legal English, a phased and progressive curriculum system should be established, ranging from basic legal English to the application of spoken foreign-related legal practice, forming an integrated cultivation model of "teaching, learning, training, and practice". (Bao, H., 2026)

At the initial stage, courses such as legal English vocabulary, legal English grammar, and basic legal text reading and comprehension should be offered. The purpose is to enable students to master basic language knowledge required in foreign-related legal work and understand basic texts such as English legal provisions and judicial documents. During this period, digital technology should be used to improve the online learning platform covering the entire process of legal English learning, providing students with abundant English legal cases, texts, and video resources, allowing students to learn anytime and anywhere. The intermediate stage should focus on improving students' professional application abilities in legal English. Courses such as English legal document writing, interpretation and translation in foreign-related legal negotiations, and legal English literature retrieval should be offered. Combined with specific foreign-related legal scenarios, these courses should train students' practical application skills in legal English. Students should be able to write legal documents such as lawyer letters and arbitration

applications in English, and conduct simple foreign-related legal negotiations and translation work. The later stage should focus on practical training in legal English. Based on foreign-related legal practice cases, training activities such as simulated international arbitration, bilingual debates in foreign-related trials, and bilingual handling of cross-border legal disputes should be carried out, allowing students to use legal English to solve practical problems in authentic legal contexts.

4.2 Differentiated Cultivation of Specialized Talents in Central and Western Regions

Resources in central and western regions are relatively limited, and directly copying the models of eastern regions cannot fully solve local problems. The cultivation of foreign-related intellectual property talents must closely follow regional development needs. The primary task is for the central and local governments to jointly establish special talent cultivation funds to support universities in central and western regions in carrying out teaching reform and faculty training and building integrated practical platforms. High-quality universities in eastern regions and universities in central and western regions should be encouraged to establish counterpart cooperation relationships, promoting resource sharing and teaching assistance, making up for the shortcomings of teaching resources in central and western universities, and supplementing the talent cultivation experience of eastern universities. Based on regional realities, universities in central and western regions can experiment with the cultivation objective of "regional-oriented" talents rather than "international-oriented" talents. The scope of foreign-related practice can first be defined as certain countries along the "Belt and Road", focusing efforts on cultivating regional foreign-related intellectual property talents who can provide legal, trade rule, and economic and trade practice support for these countries. The target scope can be narrowed to improve the quality of talent cultivation. Teaching of country-specific laws should focus on neighboring countries such as those in Central Asia and South Asia that have close economic and trade relations with western regions. Students should become familiar with important legal systems of neighboring countries, including civil and commercial law, economic law, and international trade law, and master legal rules and practical skills for economic and trade cooperation with neighboring countries.

Specifically, courses such as cross-border economic and trade practice, legal application in central and western free trade zones, and "Belt and Road" legal practice can be offered as micro-major courses. Further exploration of specialized fields can be conducted to accumulate practical experience for the later cultivation of international-oriented talents. Regarding the shortage of university faculty and resources, the main approaches should still include university-enterprise collaboration and joint establishment of foreign-related industrial intellectual property institutes by universities. Universities in central and western regions can rely on the Intellectual Property Institute of Jiangxi Province and the Intellectual Property Institute of Southwest University of Political Science and Law as foundations. Both are provincial-level intellectual property institutes and have relatively strong local policy support. Another approach is talent introduction and cross-regional exchanges. However, universities in central and western regions have relatively weaker attractiveness to talents, so the effect may not be ideal. Multiple universities can jointly provide preferential conditions and hire foreign-related intellectual property experts from neighboring Southeast Asian countries as part-time teachers to conduct specialized teaching and practical guidance. After that, local judicial institutions, foreign-related enterprises, and law firms can be jointly involved in establishing practical teaching bases. Combined with practical content such as cross-border economic and trade activities in western regions and free trade zone construction, targeted teaching and practical training can be carried out and tested through practice in these institutions. (Liu, Q., & Zhao, X., 2025)

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5. Conclusion

Foreign-related intellectual property talents are positioned as "international-oriented, interdisciplinary, and application-oriented" talents. The cultivation objectives are to provide intellectual support for national strategies, regional development, and industry demands. The cultivation principle is to implement the fundamental task of "fostering virtue through education", strengthen the national standpoint and people-oriented standpoint. The cultivation content is to integrate traditional intellectual property knowledge with the foundations of science and engineering technology applications, strengthen practical confrontation abilities through multi-party participation, and improve the quality and efficiency of practical work through digital technology. The construction of a new talent cultivation system requires simultaneous promotion from four aspects: "top-level design, teaching reform, practical training, and feedback optimization". Establishing an "intellectual property alliance" requires cooperation among multiple parties, including the government, universities, enterprises, and industry associations. It should strengthen the "directional" role of the China National Intellectual Property Administration, maintain the leading role of education departments, and give full play to the "traffic light" functions of enterprises and industry associations. Promoting teaching reform led by universities and supported by university-enterprise collaboration should at least include three aspects: interdisciplinary curriculum design, application of new technologies, and joint construction and sharing of faculty resources. Building "foreign-related industrial intellectual property institutes" led by industry associations can utilize existing provincial-level intellectual property institute facilities, cooperate with multiple universities to conduct practical training, and carry out social demand forecasting to establish a talent reservoir and alleviate periodic contradictions. A feedback optimization mechanism involving multiple parties requires each party to perform its own responsibilities, complete horizontal and vertical communication, and smooth various links. Throughout the entire process of talent cultivation, special attention should also be paid to the common issue of legal foreign language ability. The abilities of foreign-related intellectual property talents should be strengthened progressively and systematically. For central and western regions, talent cultivation should closely follow regional development needs and explore specialized cultivation paths. The scope of the term "international-oriented" can be interpreted in a more limited way, focusing cultivation directions on certain countries along the Belt and Road and offering practical courses with regional characteristics. For courses with insufficient enrollment numbers, "micro-majors" can be offered throughout universities, or cross-university joint cultivation can be conducted with the support of the intellectual property alliance. This can improve the targeted delivery of talents while reducing the pressure of talent cultivation on universities in central and western regions.

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An Investigation into the Protection of Investor Rights of Tsingtao Brewery During the German Occupation Period (1903-1914)

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Abstract: In 1903, British and German merchants jointly funded the establishment of the Germania Brewery. In accordance with the British law, the Hong Kong Companies Ordinance, they registered the Anglo-German Brewing Company in Hong Kong and then set up a branch in Qingdao. This corporate organizational model, together with the colonial legal environment, jointly constituted the institutional foundation for the protection of investor rights of Tsingtao Brewery. At that time, multiple associations in Qingdao possessed independent property and thus sought to obtain legal capacity. During the German occupation period, the colonial authorities adopted relatively lenient institutional arrangements for foreign companies in terms of real estate acquisition, equity organization, and commercial operation, which enabled the confirmation of enterprise property rights and the operation of enterprises in a relatively stable commercial environment. Relevant studies show that the output of the brewery increased from about 300 tons in the initial stage to more than 1,000 tons, and its sales scope gradually expanded to coastal markets such as Shanghai and Tianjin. After Japan occupied Qingdao in 1914, the original legal order was interrupted, and the equity, dividends and asset control rights of Tsingtao Brewery investors subsequently entered the post-war declaration and liquidation procedures. During the Weimar Republic period, the German side continued to provide relief for relevant rights and interests through mechanisms such as stock and dividend registration and loss declaration, but the original property rights were difficult to restore to their original state. Based on this, this paper investigates the choice of applicable law, institutional operation and post-war liquidation logic of the protection of investor rights of Tsingtao Brewery during the German occupation period, and reveals the operational boundary and historical limits of foreign-related investment protection in the colonial context.

Keywords: property rights system; investor rights protection; applicable law

1. Research Background and Problem Formulation

1.1 Research Background

The signing of the Convention of Lease of Kiaochow in 1898 established Germany's colonial rule over Qingdao and provided an institutional foundation for its commercial investment in the Kiaochow Leased Territory. Driven by colonial governance goals, Germany gradually built an institutional system covering ports, railways, customs and commercial laws, making Qingdao an important trade hub facing the Far East and forming a relatively stable business environment.

Against this background, the Anglo-German Brewing Company, jointly funded by German and British merchants in 1903, founded a brewery in Qingdao, becoming a typical case of German industrial investment in China. The company registered in accordance with the Hong Kong Companies Ordinance, reflecting the legal choice of investors to reduce transaction costs and strengthen property rights protection. At the same time, relying on colonial legislation and local commercial law, Germany established a commercial legal protection system applicable to the Kiaochow Leased Territory. Through norms such as the Commercial Regulations of the Kiaochow Leased Territory, the German Civil Code, and the German Commercial Code, it provided institutional protection for investors' rights and interests such as property rights, equity and profit distribution.

However, after the outbreak of World War I in 1914, Japan sent troops to occupy Qingdao, and German colonial rule collapsed accordingly. The original legal system was interrupted, and the protection of the rights and interests of investors of Tsingtao Brewery fell into a dilemma. A series of complex post-war disputes emerged around issues such as asset takeover, equity disposal and loss compensation, involving the application of applicable law and the game of interests of multiple parties. Although the German side later provided relief through compensation and diplomatic channels, the overall effect was limited.

Thus, the case of Tsingtao Brewery presents a complete historical context from institutional construction, rights protection to order disintegration and post-war handling, providing an important sample for investigating the legal logic of foreign investor rights protection in the colonial context.

1.2 Problem Formulation

The protection of investor rights of Tsingtao Brewery during the German occupation period is not an abstract issue of "foreign investment protection", but a specific legal history issue unfolding between colonial legal system, joint-stock company system and war impact. In 1903, Tsingtao Brewery was established in the form of a Sino-British joint venture joint-stock company, and completed company registration with the help of the Hong Kong Companies Ordinance in the British concession. This choice reflects the institutional rationality of investors in transnational capital organization, and also shows that its right structure was built on a specific applicable law arrangement from the very beginning.

During the German occupation period, the Qingdao colonial authorities did not regard Qingdao as an ordinary commercial port, but built a commercial legal framework serving the colonial economic order through special colonial regulations, German local commercial law, and the flexible application of foreign capital real estate acquisition rules. It was within this framework that the property rights, equity and usufruct rights of Tsingtao Brewery investors obtained relatively stable institutional confirmation and were transformed into actual benefits in operation. This system was not a direct transplantation of a single legal source, but the result of selective integration of German law, special colonial laws and British-related commercial rules under the framework of colonial rule. Among them, the determination of applicable law is not only related to the issue of law application, but also reflects the institutional logic oriented to safeguarding the investment interests of the suzerain. At the same time, this legal mechanism

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showed a distinct practical orientation in operation: through the coordinated operation of administrative power, judicial adjudication and commercial rules, it realized the effective protection of investors' rights and interests.

However, after Japan occupied Qingdao in 1914, the existing legal order quickly collapsed. The post-war handling of issues such as asset takeover, equity disposal and loss compensation further exposed the structural limitations of this system under political impact. Investors' rights and interests shifted from "substantive protection" to "liquidation relief". Around 1920, the German government required the stocks and dividends of the Anglo-German Brewing Company to be declared through bank intermediaries and national liquidation agencies, indicating that the original property rights could no longer be directly restored, but could only be transformed into loss claims through post-war declaration procedures.

Based on this, this paper intends to answer three key questions: First, how was the applicable law for the protection of investor rights of Tsingtao Brewery selected and applied during the German occupation period? Second, how did this system play a specific role in company establishment, property right acquisition and operating income? Third, after the war and sovereignty change, why did investors' rights and interests shift to declaration, liquidation and compensation procedures, and what kind of boundaries and limitations did this system show in history? By sorting out these issues, this paper attempts to reveal the real operation logic of foreign investment rights protection in the colonial context.

2. The Selection and Application of Applicable Law for the Protection of Investor Rights of Tsingtao Brewery During the German Occupation Period

2.1 The Power Logic and Institutional Foundation of Applicable Law Selection in the Colonial Context

The selection of applicable law for the protection of investor rights of Tsingtao Brewery during the German occupation period was not simply a legal technical issue, but an institutional arrangement based on the dual goals of colonial rule and capital protection. Tsingtao Brewery was founded in 1903, and its early capital structure itself was transnational: jointly funded by merchants from Britain, Germany and other countries, registered in Hong Kong in accordance with the Hong Kong Companies Ordinance, and then set up a branch in Qingdao. This choice shows that investors had already conducted legal system comparison at the company establishment stage, trying to use a rule framework more suitable for stock raising, capital dispersion and overseas operation to reduce transaction costs and enhance the stability of property rights.

From the perspective of the legal structure of Qingdao colonial rule, the German authorities did not regard Qingdao as an ordinary commercial port, but built a set of commercial order specially serving the management of the protected area through special colonial regulations. Colonial regulations such as the Commercial Regulations of the Kiaochow Leased Territory and the Company Law of the Kiaochow Leased Territory constituted the direct normative basis for foreign investors to conduct business activities in Qingdao. At the same time, Germany's local German Civil Code and German Commercial Code played a supplementary role in corporate organization, contract performance, equity relations, commercial liability and other aspects. The resulting system was not a single legal source system, but a hierarchical

structure with colonial regulations first and local commercial law supporting, whose core function was to provide predictable and enforceable legal protection for German capital and its cooperative capital.

Behind this choice of applicable law, it essentially reflects the shaping of commercial law by colonial power. Qingdao was not a neutral market space, but was transformed into an investment field with a strong institutional orientation under German control, and also an oriental window to show the comprehensive national strength of the Weimar Republic.

The colonial authorities' control over land acquisition, enterprise registration, production and operation and judicial jurisdiction made the application of law highly consistent with political rule. For typical foreign-related enterprises such as Tsingtao Brewery, the determination of applicable law first served the long-term safety and effectiveness of German investors' property rights, and then the maintenance of general commercial order to reduce transaction costs. Therefore, the choice of applicable law in this period did not reflect the legal coordination between equal subjects, but was closer to a rule configuration with colonial exclusivity.

2.2 The Legal Mechanism of Applicable Law Application and the Realization of Investors' Rights

At the specific application level, the applicable law was first implemented as the confirmation of property right boundaries. As a production entity composed of capital, land, plant and equipment, the land use, plant possession and ownership of production equipment of Tsingtao Brewery all needed to be clearly defined under the framework of colonial regulations and German commercial law. The German colonial authorities provided corresponding conveniences in site selection, cadastral registration, import of equipment and raw material licenses, which enabled investors to transform the originally scattered production factors into relatively stable legal rights and interests. In other words, the applicable law not only defines "who owns", but also determines "how to possess, how to use, and how to dispose".

In terms of contract and equity relations, the organizational structure of Tsingtao Brewery reflected the typical characteristics of a joint-stock company. Investment agreements, share subscription arrangements, share capital payment, share transfer and profit distribution all need to be interpreted and implemented in accordance with the company's articles of association and relevant rules of British law, German civil law and commercial law. The early archives of Germania Brewery show that it had a large number of shareholders, and the board of directors and management also showed the participation of multinational merchants; while the role played by the Deutsch-Asiatische Bank in underwriting, financing and fund clearing shows that financial institutions have become important intermediaries for the operation of applicable law (Qingdao Archives, 1988). For investors, legal protection is not limited to post-dispute resolution, more importantly, it continuously provides calculable income expectations in the process of capital raising and operation.

At the dispute resolution level, colonial courts and relevant administrative institutions constituted an important pivot for the implementation of applicable law. Disputes between investors, or between investors and the colonial authorities, were usually adjudicated in accordance with colonial regulations and German local law, supplemented by administrative enforcement power to ensure the implementation of judgments. This mechanism of coordination between legislation, judicature and administration made the protection of the rights and interests of Tsingtao Brewery investors have strong certainty and enforceability, and also made the applicable law no longer just abstract legal provisions, but an institutional tool that can directly affect the operation of enterprises. However, the effective operation of this mechanism is based on the premise of the stable existence of German colonial rule. Once the political order (such as war) changes

drastically, its legal protection function will also be quickly weakened.

2.3 The Hierarchical Structure and Internal Tension of the Applicable Law System

Table 1.

Comparison Project	German Domestic/Colonial Law	Hong Kong Companies Ordinance	Impact on Tsingtao Beer
par value of stock	≥1000 marks	No high limit	forced to register in Hong Kong
Registration Period	An average of 14 months	Approximately 3 weeks	Significantly reduce setup costs
Foreign capital land acquisition	Requires special permission	Free and convenient	Obtain exemption from the colonial authorities
Capital Threshold	100,000 marks	HKD 5,000	Suitable for small-scale international fundraising

Overall, the applicable law system for the protection of investor rights of Tsingtao Brewery during the German occupation period showed a relatively clear hierarchical structure: special colonial law took precedence, German law provided institutional support, British commercial practices were absorbed, and Chinese local commercial customs were basically excluded from the core application. Such an arrangement improved the predictability of rules and facilitated capital operation under colonial rule, but its institutional goal was not to equally protect all market subjects, but to give priority to serving German capital and the commercial interests under its control. It was recorded in the German archives of the brewery: the beer company could complete cadastral registration without government permission. Because Article 2 of Part 7 of the General Prussian State Law (the provision that foreign legal persons need government permission to purchase real estate), combined with Article 1 of the Imperial Territory Real Estate Decree and Article 19 of the Consular Jurisdiction Law, only applies to subjects under the jurisdiction of German private law. However, this clause is essentially of public security management nature and should be classified as public law. I (the Governor of the Kiaochow Department of Justice) have no intention of changing the current system by issuing decrees, so as not to hinder foreign capital from participating in industrial investment in the protected area. It has been found that other protected areas (such as Samoa) also do not require foreign companies to obtain government permission to purchase land. In view of the proposed beer company choosing to register as a British company on the grounds that German company law has drawbacks, I (the Governor of the Kiaochow Department of Justice) must point out: German company law is actually not suitable for the business environment of the coastal areas of East Asia. The German Commercial Code requires a minimum share capital of 100,000 marks for joint-stock companies (with a stock face value of 1,000 marks), while the Hong Kong Companies Ordinance allows a registered capital of 5,000 Hong Kong dollars. This institutional difference directly led Tsingtao Brewery to adopt the British capital model (the actual capital was 440,000 Mexican Silver Dollars) (German Federal Archives, 1903).

From a positive perspective, this applicable law system provided a relatively stable legal environment for the early development of Tsingtao Brewery, enabling the enterprise to complete financing, construction and expansion with relatively clear property right expectations; from a limitation perspective, it had obvious exclusivity and dependence, that is, its effectiveness relied on the colonial regime itself. The Kiaochow Governor's Office never stopped mutual trust with the German local Ministry of Justice, requesting to change the relevant provisions of the German Civil Code on investment in the colony, so as to reduce transaction costs and help improve the efficiency of enterprise operation. This phenomenon caused double damage to interests: the use of British law weakened

the authority of the German national interest legal system and culture in the colony. Second, the interests of colonial governance were also damaged: German law was out of touch with colonial reality, leading to the inability of local law to be effectively implemented overseas.

The deeper problem is that it reflects the dilemma of German colonial rule at that time: (1) Insufficient legal adaptability. The rigid German local legal system was difficult to adapt to the economic needs of overseas colonies. (2) Crisis of cultural identity: the use of other countries' laws in the colony was regarded as an impact on German nationalism. (3) Anxiety about the legitimacy of Germany's eastern colonization: it implied that Britain's actual influence in East Asia had threatened the discourse power of German colonial rule.

This is essentially a debate within the colonial empire about how to balance the instrumentality of law and ideology, reflecting the contradictory mentality of Germany in colonial expansion, which had to maintain the nationalist narrative but had to compromise with the realistic economy.

Once the war broke out and the rule changed, the original legal order would quickly become invalid, and investors' rights and interests would face the problem of redefinition and redistribution. That is why the case of Tsingtao Brewery does not show an abstract and neutral sample of commercial rule of law, but a set of investment protection mechanism based on colonial power, and its institutional tension precisely constitutes the root of the follow-up Weimar Republic government's post-war handling of entrepreneurs damaged by the war.

3. The Institutional Operation and Post-War Liquidation of the Protection of Investor Rights of Tsingtao Brewery During the German Occupation Period

3.1 The Realization of Investors' Rights Under the Colonial Legal System and Joint-Stock Company Structure

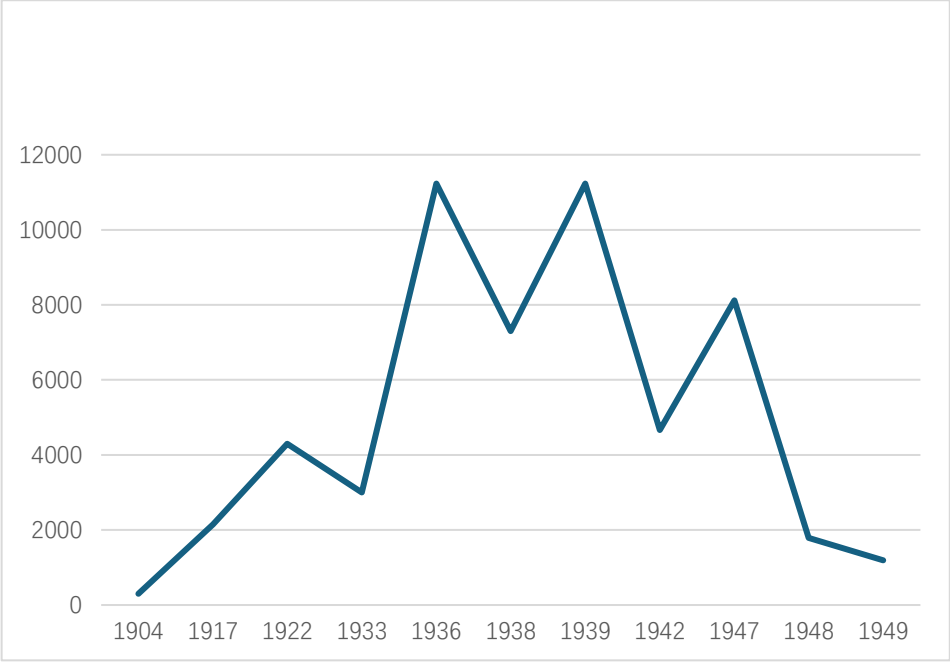


Figure 1. Tsingtao Brewery Annual Output Table before the Founding of the People's Republic of China (Corporate Culture Center of Tsingtao Brewery Co., Ltd., 2003; National Committee of the Chinese People's Political Consultative Conference Cultural and Historical Data Research Committee, 1982; Qingdao Archives, 1947; Shandong Provincial Local History Compilation Committee, 1993; South Manchuria Railway Co., Ltd., Economic Research Department, 1936; South Manchuria Railway Co., Ltd., North China Office Research

Office Industry Department, 1938; The Supervision Committee of Factories of the Administrative Court Shandong Qingdao Enemy and Puppet Industry Processing Bureau, 1947; Tianjin Japanese Chamber of Commerce, 1939; Tsingtao Brewery Factory, 1993; Tsingtao Brewery Museum, 2010)

The protection of investor rights of Tsingtao Brewery during the German occupation period was first reflected in the prudent choice of legal form at the company establishment stage. This choice is not only related to whether the enterprise can be established, but also directly determines the institutional basis of investors' equity, scope of liability and income distribution mechanism. In 1903, the German merchant Hans Christian August, together with British, German, American and French merchants, jointly invested 400,000 Mexican Silver Dollars, divided into 4,000 shares at 100 yuan per share, and registered the Anglo-German Brewing Company in Hong Kong in accordance with the Hong Kong Companies Ordinance, and then established the Germania Brewery Qingdao Joint-stock Company in Qingdao. The Anglo-German Brewing Company was established in the form of a joint-stock company, adopting the method of dividing capital into shares and paying in installments, which not only reduced the risk of a single investor, but also made the equity transferable, thus forming a typical modern capital organizational structure. Why register as a British company under the Hong Kong Ordinance? It is recorded in an archive: Tsingtao Brewery chose to register as a British-style joint-stock company in accordance with the Hong Kong Companies Ordinance because German law had strict restrictions on the issuance of stocks with a face value of less than 1,000 marks, and foreign companies did not need government permission to purchase land in the protected area, and German company law was not suitable for the coastal business environment of East Asia. Second, German-funded enterprises (such as Carlowitz & Co.) used such [Hong Kong Registration Ordinance, the 1903 Hong Kong Companies Registration Amendment Act, which allowed foreign businessmen to register in the form of "Ordinance"] to circumvent the restrictions of Article 22 of the German Civil Code on overseas companies. Only in this way can the transaction cost of enterprise property rights be reduced (Qingdao Archives, 2005a). Therefore, German company law has inadaptations to stock face value, the application of overseas companies and the East Asian business environment, so the adoption of the Hong Kong Companies Ordinance has obvious institutional convenience. This raises a new question: Do foreign joint-stock companies need government approval to purchase real estate in the protected area? The answer is yes. The Real Estate Acquisition Regulations promulgated by the German colonial government in 1900 stipulated that foreign enterprises needed the approval of the Governor's Office to purchase real estate in the concession, which was in sharp contrast to the British land system in Hong Kong.

From the perspective of law and economics, the core significance of this enterprise institutional arrangement is that investors' rights and interests were "institutionally embedded" at the company establishment stage. Shareholders' rights no longer rely on individual contracts, but are confirmed through the company's articles of association, equity structure and registered legal system, making them stable and predictable.

This is essentially different from the partnership enterprises under traditional commercial customs. Further, the protection of investor rights of Tsingtao Brewery also relied on the practical application of the colonial legal system to the rules of property right acquisition. The archival materials you provided have made it clear: when dealing with the issue of foreign companies' acquisition of real estate, the colonial authorities did not strictly enforce the restrictions on foreign legal persons' land purchase in local law, but adopted a lenient interpretation, enabling the enterprise to successfully complete land registration and plant construction. This practice is legal interpretation in form, but

essentially constitutes an institutional opening to foreign investment.

The availability of property rights played a key role in this, which is the premise of all investment rights protection. Without the legal possession of land, plant and equipment, the equity itself would lose the object of real attachment. Therefore, the protection of investor rights of Tsingtao Brewery is not the result of a single legal provision, but is reflected in the linkage of three aspects: company establishment (equity confirmation), land acquisition (realization of property rights), and production and operation (income generation).

In addition, at the operation and income level, Tsingtao Brewery achieved relatively stable development during the German occupation period. Relevant studies show that its output increased from about 300 tons in the initial stage to more than 1,000 tons (Tsingtao Brewery Co., Ltd., 1998), and its sales scope gradually expanded from Qingdao local to coastal markets such as Shanghai and Tianjin. This fact shows that the protection of investors' rights and interests is not only reflected in the formal confirmation of property rights, but also transformed into effective and stable operating income through the cooperation of the company system, market environment and colonial governance structure. It can be seen that the protection of investors' rights and interests during the German occupation period is essentially a comprehensive institutional arrangement based on the company system, supported by the colonial legal system, and realized through market operation.

However, it should be pointed out that this kind of protection is not "universally applicable", but obviously serves colonial capital. Chinese local subjects did not have the same institutional status.

3.2 The Interruption of Investor Rights Protection Caused by the Outbreak of War and the Fall of Qingdao

The investor rights protection system formed during the German occupation period was essentially attached to the colonial ruling power, so it had obvious structural vulnerability. After the outbreak of World War I in 1914, Japan sent troops to occupy Qingdao, the original legal order quickly disintegrated, the factory was taken over by the Japanese side during the war, and was acquired and reorganized into its Qingdao Workshop by Dai Nippon Brewery Co., Ltd. in 1916.

From the perspective of law and economics, this major change can be defined as: the overall interruption of the investor rights system caused by sovereignty change. This "interruption" has three meanings: First, the disappearance of the basis for the realization of rights. The colonial courts, administrative systems and legal norms on which the original rights and interests relied no longer existed, leading to the lack of enforcement mechanism for rights. Second, the separation of the object of rights. The enterprise assets and operation control rights were taken over by the occupation authorities, and the connection between investors and the enterprise entity was cut off. Third, the change of the nature of rights. The originally organizational and dominant equity was transformed into a "to-be-confirmed interest claim". After the war, it was not "restoring equity", but procedures such as "stock declaration" and "dividend registration" appeared. The equity and asset control rights, which originally had the characteristics of real right and organization, lost the basis of direct dominance under the occupation state, and instead needed to be confirmed through post-declaration and liquidation procedures. Therefore, this period cannot be simply understood as the enterprise being taken over by Japan, but should be clearly stated as: investors' rights and interests shifted from "directly realizable state" to "to-be-liquidated state". It changed the realization way and legal form of investors' rights and interests.

3.3 Post-War Declaration, Liquidation and Relief for Investors' Losses

After the collapse of the German legal system, the German side did not completely abandon the maintenance of the investment rights and interests of Tsingtao Brewery, but reorganized the original

rights and interests through the declaration and liquidation system.

According to German archives, around 1920, the German government established a relatively systematic declaration mechanism: on the one hand, it required the stocks of the Anglo-German Brewing Company to be declared to designated institutions through bank intermediaries (Qingdao Archives, n.d.); on the other hand, the payable dividends must be registered with the national liquidation agency; at the same time, it clearly stipulated that the losses caused by overdue declaration or incomplete materials shall be borne by the obligee himself (Qingdao Archives, 2005b). This institutional arrangement has important legal significance: (1) The "creditorization transformation" of right form. The rights originally belonging to the equity category were transformed into: the right of claim to the liquidation agency, and the compensatory claim to the state after the war. In other words, shareholders are no longer the main body of corporate governance, but loss declarants. (2) The proceduralization of rights confirmation. Before the war: rights were automatically realized through the company system. After the war: rights must be "re-recognized" through the declaration procedure. This change marks the shift of rights from "operation within the system" to "reconstruction outside the system". (3) The administration and politicization of the handling mechanism. Archives show that the relevant handling involved the cooperation between the financial department, the liquidation agency and the special committee (East Asia Observer, 1920; "Letter to the Naval Leadership," n.d.). This shows that the post-war handling was not led by judicial adjudication, but the result of administrative coordination and diplomatic game. In other words, the "legal basis" at this stage was not stable, but highly dependent on national political and diplomatic power. (4) The limitation of relief effect. From the results, this liquidation mechanism did not restore the original rights and interests of the investors of Germania Brewery, mainly including that the enterprise control right had been permanently transferred, the equity could not be restored to its original state, and the compensation was incomplete. Therefore, an important conclusion can be drawn: post-war liquidation is not a right restoration mechanism, but a loss distribution mechanism.

After the collapse of the colonial legal order, the German side did not abandon the claim for the relevant rights and interests of Tsingtao Brewery, but transformed the original investment rights into recoverable legal claims through the declaration and liquidation mechanism. According to the relevant announcement on May 12, 1920, the stocks of the Anglo-German Brewing Company must be declared to the designated institutions through bank intermediaries, and the payable dividends as of January 10, 1920 must be registered with the Berlin National Liquidation Office (Qingdao Archives, 2005b). At the same time, the materials clearly stipulated that if the declaration information is incomplete or submitted overdue, the relevant losses shall be borne by the obligee (legal person) himself [Applying the provisions of the association law in the Civil Code (which has been repealed by Article 3 of the Protected Area Law and Article 31 of the Consular Jurisdiction Law). There are multiple associations in the protected area with independent assets].

This institutional arrangement shows that the post-war protection of investors' rights and interests has changed from "directly dominating the company's assets" to "confirming losses and requesting compensation through administrative procedures". In other words, the original equity and usufruct rights no longer exist in the form of substantive rights after the war, but were reconstructed into creditor-type claims. This transformation not only reflects the realistic status of the defeated country in the international order, but also reflects the procedural characteristics of the post-war property right handling mechanism.

In addition, relevant archives also show that the German financial department, liquidation agency and arbitration committee checked and coordinated the stocks, dividends and related losses through correspondence, and tried to contact relevant parties

to supplement factual materials. This shows that the post-war handling did not mainly rely on judicial adjudication, but was promoted through administrative and diplomatic channels, and its result largely depended on the international political pattern and the game of all parties. In May 1920, shortly after the entry into force of the Treaty of Versailles (signed in June 1919), Germany was forced to handle the liquidation of overseas assets. At this time, Qingdao had been occupied by Japan (which replaced Germany in 1914), but Germany was still handling the post-war affairs of enterprises in the former protected area at the legal level. The special declaration situation of the liquidation procedure at this time shows that most shareholders were scattered in Germany and overseas, and the specific situations included: (1) Information reception obstacles: some shareholders had not learned of the aforementioned announcement. Other shareholders tried to declare, but were told that they would not be accepted without the registered equity certificates (some of the certificates are still stored in Shanghai, or deposited in the Dutch Consulate General, or kept by private individuals). (2) Difficulties in dividend declaration: most shareholders could not declare the final dividend of the brewing company, especially the information of the last dividend was unknown, and the liquidation procedure of Qingdao Anglo-German Brewing Co., Ltd. was still pending (as mentioned in the previous letter). (3) Risks of temporary declaration: the current declaration requirements may lead to shareholders declaring based on rumors, the key reason is that they have not received the official notice of the liquidation procedure (the announcement in *East Asia Observer* did not reach all interested parties).

There are the following core problems in the current declaration of stocks and interest: (1) Defects in the declaration basis: it is impossible to provide a complete position list (because only some stocks have been sold, and the remaining unsold securities are marked as “to be settled”). The existing declaration is only applicable to shareholders applying for advance payment, otherwise it will lead to repeated labor for all interested parties. (2) Practical operation obstacles: considering the geographical distance between China and Germany and the difficulty of asset valuation caused by the sharp drop in silver price (the silver exchange rate fell by 60% in 1920), the declaration of German shareholders in China involving British enterprise stocks should be postponed as much as possible. (3) Impact of market fluctuations: high-quality securities have depreciated severely due to the sharp fluctuation of silver price (there is significant uncertainty in the current valuation), and the issuance of advance payments needs to be extremely prudent (it is recommended to use the London spot silver average price as the pricing benchmark). (4) Administrative optimization suggestions: postponing such declarations can greatly reduce the ineffective workload of regulatory authorities (it is estimated that administrative costs can be saved by about 80%). After consulting the professional opinion of Dr. Wallweck (Professor of Law at the University of Bamberg) (Qingdao Archives, 2005c), it is recommended to suspend all declaration procedures until a legal declaration benchmark is established. I have followed his advice and have not carried out any form of declaration so far. The basis is: the Sino-German Special Compensation Act (which is still in the legislative deliberation stage and has not been submitted to the Imperial Parliament for voting) will specifically regulate various compensation claims of German nationals in China (including comprehensive rights claims such as securities losses and property damage) (Posner, 2003).

Overall, although this liquidation mechanism formally provided a path for the continuation of rights for investors, it did not restore their original property right status. The operation control right of Tsingtao Brewery has been substantially transferred, and investors can only strive for partial interest compensation through declaration and negotiation to a certain extent, and their rights protection has been significantly weakened.

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3.4 The Effectiveness and Limits of Colonial Investment Protection

On the whole, the protection of investor rights of Tsingtao Brewery during the German occupation period showed the institutional characteristic of "effective but unsustainable". During the German occupation period, through the combination of the company system, property right rules and colonial legal system, investors' rights and interests were stably realized and transformed into continuous operating income, reflecting high institutional efficiency. However, after the war and sovereignty change, this protection system quickly collapsed, and investors' rights and interests were forced to enter the declaration and liquidation procedures, and their legal form, realization path and protection degree all changed fundamentally. Therefore, from the perspective of law and economics, the following summary can be made: the protection of investors' rights and interests during the German occupation period is essentially a "conditional legal protection mechanism attached to colonial rule". Its core limitations are that it is not independent (attached to the regime), not stable (vulnerable to war impact), and not universal (obvious exclusivity).

This historical experience shows that an investment protection mechanism divorced from the principles of sovereignty stability and legal equality is difficult to continue to play a role in institutional changes.

4. Historical Enlightenment

The century-long property right circulation of Tsingtao Brewery shows that the protection of investors' rights and interests is not a technical problem that exists independently of the political order, but is always embedded in a specific institutional environment. In 1903, Tsingtao Brewery was established in the form of an Anglo-German joint venture joint-stock company, and during the German occupation period, it realized property right confirmation and market expansion relying on the colonial legal system, company system and relatively stable commercial environment. Academic studies on the colonial governance of German-owned Qingdao, urban space construction and the development of the beer industry all point to the same conclusion: in an environment with clear property right boundaries, predictable law application and low transaction costs, capital is more likely to form long-term investment incentives, and enterprises are more likely to accumulate sustainable competitiveness.

However, after the war and occupation interrupted the original legal order in 1914, the equity, dividends and asset control rights of Tsingtao Brewery investors were not continued as they were, but were forced to enter the post-war declaration, liquidation and compensation procedures. Around 1920, the German side had incorporated the relevant stocks and payable dividends into the declaration and liquidation mechanism, and the original property right relationship was thus transformed into creditor-type loss claims that can be registered, calculated and recovered.

This shows that truly effective investment protection not only needs to clarify the right ownership in advance through clear applicable law, company law and commercial rules, but also needs to maintain the continuity of procedural justice, right relief and loss liquidation even under extreme situations such as war, occupation and regime change. Stable and efficient economic organizations need stable and effective property right protection systems. Legal protection of stable enterprise property rights creates incentives for efficient use of resources, and law, as the core tool for property right definition, its evolution quality directly determines the improvement space of resource allocation. In other words, the historical experience revealed by the case of Tsingtao Brewery is that the stability of investors' rights and interests ultimately depends on a rule of law order that can transcend specific power structures, and has neutrality, enforceability and anti-shock risk ability, rather than attachment to a single political force or colonial rule.

The current expansion of Tsingtao Brewery in the global market is exactly the latest example of the upgrading of the property right system from "territorial protection" to "international rule

docking", providing a typical sample for the interdisciplinary research of legal history and economic analysis.

Notes

(1) Survey on Supply and Demand of Industrial Products in Japan, Manchuria and China, Vol.1: The annual output was 200,000 cases, with 4 dozen (48 bottles) per case, equivalent to 56.16 liters. The conversion is: 200,000 × 56.16 ÷ 1,000 = 11,232 tons.

(2) List of Major Factories in North China: The maximum annual output was 130,000 cases, with 4 dozen (48 bottles) per case, equivalent to 56.16 liters, and 1.17 liters per bottle. The conversion is: 130,000 × 56.16 = 7,300,800 liters, 7,300,800 ÷ 1,000 = 7,300.800 tons.

(3) Economic Situation of North China (Revised Edition): The annual output was 200,000 cases, with 4 dozen (48 bottles) per case, equivalent to 56.16 liters. The conversion is: 200,000 × 56.16 ÷ 1,000 = 11,232 tons.

(4) According to the Total Business Volume Statement of Tsingtao Brewery Factory from February to May 1947, the business volume in February was 123,512,000.00 yuan, March was 225,753,200.00 yuan, April was 522,976,000.00 yuan, and May was 142,810,000.00 yuan, with a total of 1,015,051,200.00 yuan. Calculated based on the tax rate of 37,500 yuan per dozen of Tsingtao beer recorded in the first phase of 1947 Tax Schedule of Foreign Beer and Beverages, the output in February was about 2,530 tons, March was about 4,623 tons, April was about 10,710 tons, and May was about 2,925 tons. Calculation process: Business volume ÷ (Price per dozen of beer × 2) × 24 bottles × 0.64 (specification: 640 ml) ÷ 1,000 = the corresponding tonnage.

(5) Letter on Inspection of Empty Bottles Entering the Factory and Production and Sales Certificates: Number of dozen of beer × 12 bottles × 640 ml/bottle ÷ 1,000,000 (The density of beer is approximately the same as water, 1 cubic meter = 1,000,000 ml).

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From Private-Sphere Autonomy to Public Intervention: Paradigm Shifts and Institutional Restructuring in the Governance of Domestic Violence

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Abstract: The patterns of violence stemming from the alienation of traditional ethics and the imbalance in gender rights have transcended the boundaries of self-governance in the private sphere, posing a dual threat to citizens' fundamental rights and public order and urgently requiring intervention by public authorities. Although the current "Law on Combating Domestic Violence" establishes intervention mechanisms such as the admonition system and personal protection orders, its practical implementation still reveals structural contradictions, including the dominance of punitive interventions, the neglect of restorative measures, and gaps in institutional coordination. Therefore, efforts should begin by broadening the methods by which public authorities intervene in cases of domestic violence and enhancing the practical feasibility of such interventions. This will further refine the legal framework governing public intervention in domestic violence and, through the coordination of public and private law, achieve an organic unity between the value of family cohesion and the protection of modern rights.

Keywords: domestic violence; public authority; rationality; improvement

1. Introduction

Under the influence of traditional notions such as "family matters should not be aired in public" and "even the most impartial judge cannot resolve family disputes," the family is typically regarded as a private sphere. Family conflicts are often resolved through internal, self-governing mechanisms, while legal intervention is excluded (Li HX, 2020). Precisely because of this, some individuals "use the private sphere as an excuse, shielding themselves behind the 'halo' of personal privacy, to exclude the intervention of public authority, thereby allowing them to arbitrarily abuse their children and wives within the family" (Blumenfeld E & Mann S., 1980). With the evolution of human civilization, domestic

violence has transcended spatial boundaries to become a global social challenge (Xue NL., 2008). In March 2016, the Law on Combating Domestic Violence (CDVL) officially came into effect, reflecting the proactive stance of public authorities in addressing domestic violence.

2. The Legitimacy of State Intervention in Domestic Violence

Domestic violence is not merely a matter of individual misconduct but rather a product of sociocultural factors, psychological mechanisms, and legal gaps. The constraints imposed by the traditional concept of private autonomy, the long-standing entrenchment of gender power structures, the pathological nature of the desire for control manifested in violent behavior, and the need for equitable prioritization in the protection of rights collectively form the foundation for the legitimacy of state intervention in domestic violence.

2.1 The Alienation of Traditional Ethics and the Imbalance of Gender Power

In traditional Chinese culture, the "family" and the "nation" are closely intertwined—a concept known as "the family as the nation"—which reflects the fact that the expansion of political communities in ancient China was rooted in kinship ties. In ancient Chinese society, the family held a pivotal position. Mr. Liang Shuming once said: "From the moment of birth, people are and remain embedded in various relationships, and these relationships are, in essence, various forms of ethics" (Liang SM., 2011). Traditional ethics were primarily manifested in "differential" relationships based on kinship and status (Zhang JY., 2020). These "differential" family relationships, centered on "patriarchy" and "marital authority," granted the "head of the household" (typically the father or husband) excessive authority over family affairs, while neglecting the rights and interests of women and children.

"Domestic violence is a 'cancer' in society and a veritable social scourge, because it serves as a breeding ground for social violence" (Xu H., 2014). Although domestic violence mostly occurs within the family, if it becomes a widespread social trend, it will cause far-reaching harm to both families and society. It not only severely damages the physical and mental health of family members and erodes the foundations of family unity but also breaches the privacy of the family, posing a massive threat to social stability. In such cases, intervention by public authorities is not only a necessary means of legal redress but also an inevitable choice for safeguarding the overall interests of society.

2.2 The Pathologization of Control and the Entrenchment of Victims' Trauma

The persistence of domestic violence relies not only on cultural tolerance but is also deeply rooted in the complex psychological interactions between perpetrators and victims.

On the one hand, the family holds extraordinary significance for every Chinese person. Mr. Lin Yutang once said, "A family, together with friends, can form a fortress as strong as a wall of bronze and a barrier of iron, because of the mutual support among its members" (Lin YT., 2010). Prolonged domestic violence severely erodes the victim's emotional anchor, instilling a fear of the family and plunging the victim into a state of helplessness, which in turn leads to adaptive changes in the nervous system. These physiological changes, combined with psychological trauma, reinforce one another, trapping the victim in a "freeze response."

On the other hand, violent behavior can be learned through observation and imitation. Perpetrators of domestic violence often view violence as a tool to establish authority and alleviate anxiety. This pathological manifestation of a desire for control also causes violent behavior to gradually evolve from sporadic conflicts into a means of exerting power within the family. Living in such an environment of domestic violence for an extended period has a devastating impact on children's development. This not only leads to personality distortions but may also cause children to spread this pain to the wider community when they enter society, creating factors of instability and

undermining social harmony and stability (Liu YL., 2011).

When public authorities intervene in cases of domestic violence—whether by imposing penalties on perpetrators or taking supportive measures to intervene in a timely manner—they not only create a deterrent effect in society and demonstrate the law's zero tolerance for violent behavior, thereby preventing domestic violence, but also help families affected by domestic violence restore order and unity and assist victims in reclaiming their sense of self.

2.3 A Paradigm Shift from Private Autonomy to a Rights-Based Approach

Rawls's A Theory of Justice emphasizes that the realization of social justice does not rely solely on spontaneous constraints imposed by morality or custom; rather, it is even more crucial to establish institutional safeguards, particularly when it comes to protecting the rights of vulnerable groups. Although the legal tradition expressed in the saying "even the most upright judge cannot settle family disputes" reflects respect for autonomy within the private sphere of the family, its limitations have become increasingly apparent under contemporary human rights principles. When family autonomy becomes a refuge for perpetrators to evade legal responsibility, it not only severely undermines the fundamental rights of family members but also challenges the fairness and justice of society as a whole.

The United Nations Declaration on the Elimination of Violence against Women states that violence against women in the family is widespread and that all countries should adopt policies as soon as possible, using all appropriate means, to eliminate such violence. This not only demonstrates the international community's resolute stance against domestic violence but also provides a legitimate basis for governments to implement legal interventions. Therefore, the intervention of public authorities in cases of domestic violence is not only a moral imperative from the perspective of social equity but also a legal responsibility under the framework of international law.

3. An Examination of the Current Status of Government Intervention in Domestic Violence

From the first inclusion of provisions against domestic violence in the Law on Marriage and Family in 2001 to the formal implementation of the CDVL in 2016, China's legislation against domestic violence has not only increased significantly in volume but also shown a trend toward diversification in terms of the entities responsible for drafting the laws, as well as the methods and means of intervention. However, the actual effectiveness of these governance measures has been less than ideal.

3.1 Vague Definitions and Difficulties in Practical Determination

According to Article 2 of China's CDVL, domestic violence refers to acts of physical and mental abuse committed between family members, such as beating, binding, restricting personal freedom, and frequent verbal abuse. Although the law defines the scope of domestic violence through a list of specific acts, practical application still faces challenges in determining what constitutes domestic violence.

The term "frequent" as defined in the legislation lacks quantitative standards, leading to inconsistent determinations in practice. Some argue that if an incident consists only of occasional arguments or outbursts that do not cause obvious physical harm to the parties involved, it should not be classified as domestic violence in the legal sense [1]; others contend that as long as the violent act causes physical or mental harm to the parties involved, regardless of its frequency—even if it occurs only sporadically—it should be recognized as domestic violence (Song JN & Chen Y., 2024). At the same time, determining the severity of domestic violence presents a similar dilemma. The law does not further clarify what level of violence constitutes domestic violence. Some parties argue that

[1] (2021) Gan 0921 Min Chu No. 571 (Civil Judgment).

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"domestic violence should refer to continuous acts of violence over an extended period of time; occasional arguments or roughhousing between spouses cannot be classified as domestic violence" (Guangzhou Railway Transport Courtm, 2017), while some judges contend that "minor acts of violence, such as slapping or mutual shoving, should not be classified as domestic violence if they do not result in persistent physical or mental harm to the victim" (Liubei District People's Court of Liuzhou City, Guangxi Zhuang Autonomous Region, 2021). The lack of uniform standards for determination has directly led to discrepancies in judicial rulings, undermining the authority of the law and public trust in it.

3.2 Imbalance in Intervention Methods, Neglect of Healing-Oriented Interventions

Adam Smith's "rational economic man" hypothesis posits that people are rational and that every choice they make is based on a weighing of interests. Therefore, it is believed that domestic violence can be effectively prevented simply by punishing perpetrators to create a deterrent effect, thereby stopping and preventing their violent behavior. (Li CB, 2023) The domestic violence warning system and the personal safety protection order system established in China's CDVL are preventive measures designed to prevent the recurrence of domestic violence by exerting a legal deterrent effect on perpetrators. While these measures have, to a certain extent, exerted a short-term deterrent effect on perpetrators, domestic violence generally exhibits cyclical and repetitive characteristics. Under these circumstances, punitive interventions may temporarily suppress the behavior but cannot eradicate the root causes of domestic violence.

In contrast to punitive interventions, therapeutic interventions focus on the deep-rooted causes of the problem and the healing potential inherent in the law. (Yu XZ, 2014) Proponents of restorative interventions argue that we should not view perpetrators of domestic violence as "cold-blooded or even cruel monsters." (Gelles RJ, et al., 1996) Although Article 22 of China's "Law on the Prevention and Control of Domestic Violence" specifically mentions restorative prevention, this general provision fails to meet the needs of practical implementation. The severe inadequacy of provisions regarding such measures has rendered this article little more than a formality. First, regarding the responsible entities, organizations such as trade unions, the Communist Youth League, and the All-China Women's Federation lack a clear legal basis for providing psychological counseling and legal education to parties involved in domestic violence. Laws such as the Trade Union Law, the Constitution of the Communist Youth League of China, and the Law on the Protection of Women's Rights and Interests do not confer upon these organizations the responsibility to provide legal education and psychological counseling to victims of domestic violence; moreover, these organizations generally lack the necessary capacity for such counseling and education. Second, regarding the content, how should the phrase "when necessary" be defined in the context of providing psychological counseling "when necessary"? Furthermore, it remains to be seen whether legal education and psychological counseling provided "when necessary" can actually serve to curb and prevent domestic violence. All of this has led to difficulties in implementing these remedial measures in practice, leaving the relevant provisions vague and rarely enforced.

3.3 Lack of Cooperation Mechanisms and Difficulties in Implementing Mandatory Systems

Effective governance of domestic violence relies on coordinated action among public authorities; however, in practice, the division of responsibilities among departments is unclear, and the development of coordination mechanisms has lagged, resulting in weakened intervention effectiveness.

On the one hand, regarding the mandatory removal system, China's initial provisions on mandatory removal in cases of domestic violence appeared in the "Opinions on Several Issues Concerning the Lawful Handling of Acts by Guardians That

Infringe Upon the Rights and Interests of Minors" (OGIMR). Article 11 of the OGIMR explicitly states that public security organs may carry out mandatory removal of minors who have suffered domestic violence. Under the "CDVL," the authority responsible for enforcing compulsory removal was transferred from public security organs to civil affairs departments, with public security organs now bearing only the obligations to notify and assist with enforcement. This makes it difficult for them to proactively cooperate, which undoubtedly weakens the effectiveness and practicality of the compulsory removal system.

On the other hand, the warning system and the personal safety protection order system established by the "CDVL" face numerous practical operational challenges. First, the "CDVL" lacks clear legal provisions regarding the conditions for applying the domestic violence warning system. The law stipulates that the warning system applies to cases of "domestic violence of a relatively minor nature," but it fails to clearly define what constitutes "relatively minor." Relying solely on the "intuitive judgment" of relevant departments will inevitably lead to inconsistent standards of assessment. Second, the legal nature of the warning notice has not been clarified, and the burden of proof for personal safety protection orders is unreasonably structured. Regarding the legal nature of the warning notice, the CDVL provides no explicit definition; there is ongoing debate in both practice and theory regarding its legal status, which is also the primary reason why the implementation of warning notices has been less than ideal in reality.

4. Approaches to Improving the Institutional Framework for Government Intervention in Domestic Violence

Given the characteristics of domestic violence—including a significantly higher proportion of female victims compared to male victims, complex causes of violence, diverse forms of violent behavior, and the difficulty of intervention (Li XH, 2017) —institutional design must focus on innovating intervention concepts, diversifying intervention measures, and refining institutional frameworks to establish an effective intervention system for domestic violence, thereby achieving a balance between safeguarding the rights of family members and maintaining social order.

4.1 Revamping the Concept of Intervention: Combining Punishment and Healing

Only by combining punitive and therapeutic interventions—and, depending on the circumstances, either prioritizing punitive measures with therapeutic ones as a supplement or prioritizing therapeutic measures with punitive ones as a supplement—can we achieve a synergistic effect that represents the wise choice for resolving domestic violence issues.

In terms of specific intervention approaches, restorative interventions should serve as a complementary measure to punitive interventions. They must not only focus on protecting the rights and interests of victims but also prioritize the psychological counseling and behavioral rehabilitation of perpetrators, helping them reintegrate into society, return to their families, and repair family relationships fractured by domestic violence. This dual focus on both victims and perpetrators is not only a requirement of modern family governance but also an effective means of preventing and controlling domestic violence in the long term. Combining punishment with healing not only adheres to the principle of humanity in the governance of domestic violence but also addresses the requirements for the legitimacy and rationality of public authority intervention in private matters.

4.2 Improve Therapeutic Measures and Establish a System of Supporting Mechanisms

Given the general provisions regarding therapeutic interventions in China's current laws, institutional frameworks must further clarify the entities responsible for such interventions, the content of these interventions, and specific procedures, while establishing a systematic set of supporting

mechanisms to ensure their effective implementation.

First, the entities responsible for domestic violence rehabilitation and their specific duties should be clarified. The causes of domestic violence are diverse and "are often related to mental illness; if perpetrators do not receive timely intervention and treatment, this violence will continue." (Witty, n.d.) Addressing domestic violence requires coordinated efforts among multiple departments to form a collective force. Therefore, Article 22 of the "CDVL" should be amended to include health authorities, professional psychological intervention agencies, and social work organizations as entities responsible for domestic violence treatment. At the same time, the legal responsibilities of the aforementioned departments and the conditions for their intervention should be clearly defined to ensure that each entity actively fulfills its duties and effectively provides psychological treatment, social support, and family relationship restoration services to parties involved in domestic violence.

Second, regarding the content of domestic violence recovery, given the complex and diverse nature of its causes, a variety of measures—including psychotherapy, psychological counseling, educational correction, and social support—should be adopted. For example, to address the abuser's pathological psychological state, psychological therapy should be provided to help them recognize their own psychological issues and teach them how to interact with family members on an equal footing; to address the economic, physical, or emotional constraints faced by victims of domestic violence, social support should be provided through joint efforts by the All-China Women's Federation, public security departments, and other agencies to introduce social work service programs and organize and carry out anti-domestic violence initiatives within the community. The goal is to achieve the joint healing of both abusers and victims through a rich and diverse array of healing measures.

4.3 Refine Punitive Measures and Standardize Conditions and Procedures for Their Application

While clarifying restorative intervention measures, it is also necessary to further refine existing punitive intervention measures to enhance their practical applicability.

On the one hand, the legal nature and scope of application of warning letters must be clarified. Essentially, a warning letter constitutes a factual determination of domestic violence and may be used as evidence in cases such as divorce proceedings. Therefore, the legal nature of a warning notice should be characterized as an administrative factual act. Consequently, the law should also provide parties with certain avenues for redress—such as establishing a review system for warning notices—while referencing local legislation to clarify the conditions for their application.

On the other hand, it is necessary to reasonably determine the evidentiary standards and the burden of proof for personal safety protection orders. Admittedly, relevant documentation issued by public security organs—such as warning notices and police dispatch records—can serve as evidence that the victim faces an actual risk of domestic violence. (Xu WY., 2021) However, the departments and individuals capable of proving the actual existence of domestic violence are not limited to public security organs and responding police officers; they also include neighbors and other individuals present at the scene, including personnel from civil affairs departments, women's rights protection agencies, neighborhood committees, and similar organizations. If these individuals, departments, and organizations can provide relevant evidence and the court verifies it to be true, such evidence should also be accepted as grounds for determining the "existence of a real danger of domestic violence."

4.4 Optimize Coordination Mechanisms and Clarify Departmental Responsibilities

To address the current prominent issue of poor coordination among public authorities in China,

legislation should be enacted to clarify the specific responsibilities and coordination mechanisms of organizations such as public security, civil affairs, judicial, and health authorities, as well as the All-China Women's Federation, in the fight against domestic violence. When an incident of domestic violence occurs, public security authorities should intervene promptly to ensure the victim's personal safety. After initiating emergency protective measures—such as compulsory removal or personal protection orders—they should promptly notify civil affairs departments, health authorities, and social service agencies so that these entities can provide further therapeutic interventions to the parties involved in the domestic violence. After judicial authorities have adjudicated such cases, they should also refer cases to social service agencies for family relationship restoration services based on the outcome of the case. Establishing a "full-process intervention chain" not only enhances the effectiveness of interdepartmental coordination but also helps achieve a systematic approach to domestic violence governance.

5. Conclusion

Research on public authority intervention in the governance of domestic violence reveals that, in the context of contemporary human rights protection, the traditional model of private-sphere autonomy is no longer sufficient to address the patterns of violence stemming from deviations from family ethics. Domestic violence not only erodes family unity and equality among members but also threatens public order through the socialization of violence; therefore, public authority intervention is urgently needed to balance private rights and the public interest. Although the current "CDVL" has established an intervention framework—including a warning system and personal protection orders—structural contradictions in practice—such as the dominance of punitive interventions, the neglect of restorative measures, and gaps in institutional coordination—have undermined the effectiveness of governance. Therefore, efforts should be guided by the refinement and categorization of public authority intervention methods to broaden intervention channels and strengthen operational standards. Through the organic integration of punitive interventions and restorative measures, we can achieve a harmonious balance between the protection of family members' rights and the maintenance of public order.

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Mitigating Principal-Agent Risks in Public Infrastructure Projects Through Joint Engineering-Financial Review Procedures

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Abstract: Large-scale public-infrastructure projects feature multi-layered chained principal-agent relationships among government funders, owner-representative entities, general contractors and subcontractors. Opportunistic behavior induced by information asymmetry constitutes a core driver of project cost overruns and capital losses. Existing research over-relies on contractual incentive-constraint mechanisms while neglecting the governance value of joint engineering-financial review as a non-contractual procedural governance tool. Systematic empirical explanations for its micro-level mechanisms, necessary conditions for effectiveness and configurational boundaries remain absent, creating notable theoretical research gaps. Based on the Engineering-Financial Governance Nexus (EFGN) theory, this paper extends the multi-layer principal-agent analytical framework. Drawing on archived data from 21 large-scale public-infrastructure projects across Australia, North America and the European Union (single-project investment ≥ 500 million USD (Eisenhardt, K. M., 1989); public-funding share ≥ 30 %), this study integrates process-tracing, Necessary-Condition Analysis (NCA) and fsQCA configurational analysis to systematically de-risk-mitigation mechanisms and governance boundaries of joint-review procedures. The study shows that joint-review procedures suppress agent risks via three pathways: reconstruction of information symmetry, cross-validation of multi-dimensional evidence, and elevation of opportunity costs for opportunistic conduct. Substantive participation of financially qualified independent CPA personnel acts as the core necessary bottleneck condition for procedure effectiveness, with a bottleneck constraint effect of 0.812. Four equivalent effective configurations and two typical failure configurations are empirically identified, clarifying the core distinction between "paper-based institutionalization" and "substantive effectiveness" of procedures. This research improves the theoretical system for multi-layer principal-agent governance in public infrastructure and provides quantitative evidence and practical references for procedural-system optimization of U.S. federal infrastructure projects under the Bipartisan Infrastructure Law.

Keywords: large-scale public-infrastructure projects; multi-layer principal-agent risks; opportunistic behavior; joint engineering-financial review; Engineering-Financial Governance Nexus; Necessary-Condition Analysis (NCA); fsQCA

1. Introduction

1.1 Research Background

Public-infrastructure projects operate within a multi-layer principal-agent chain: government sponsor → owner-representative entity → general contractor → subcontractor. Stakeholders hold complex rights-and-obligation relationships. Project information tends to become distorted during hierarchical transmission, resulting in prominent information-asymmetry problems. Information barriers induce various forms of opportunistic behavior, including inflated quantity measurement, unreasonable escalation of engineering claims, and deliberate concealment of potential cost obligations. These directly generate hidden financial losses and waste public capital. U.S. federal infrastructure projects also suffer from multi-layer principal-agent relationships with salient opportunistic risks. Current regulatory instruments mostly depend on contractual reward-penalty constraints. Nevertheless, complete contract clauses do not guarantee risk control. Without reliable information-verification tools, it remains difficult to identify true stakeholder conduct, and opportunism cannot be effectively contained.

1.2 Literature Gaps

Existing literature confirms that information asymmetry and opportunistic behavior represent core drivers of cost runaway and capital loss in public infrastructure, and studies on contractual governance and risk control have accumulated (Reve, T., & Levitt, R. E., 1984). However, relevant research remains fragmented, lacking full-process multi-dimensional governance frameworks tailored for federal-infrastructure projects, with three prominent shortcomings:

1) **Single-dimensional governance perspective**: Scholarship emphasizes rigid governance instruments such as contractual incentives and breach penalties, ignoring the value of cross-functional joint review as soft procedural governance and excluding it from multi-layer principal-agent governance systems.
2) **Absence of mechanism research**: Available studies only verify loss-reduction outcomes of integrated engineering-financial governance without unpacking concrete micro-transmission pathways, leaving a "governance black box".
3) **Cognitive bias**: Prior literature assumes that institutional establishment equates to governance effectiveness and adopts linear net-effect thinking, ignoring configurational equifinality and contingency of governance. It cannot explain real-world divergent outcomes for identical institutional arrangements.

1.3 Research Questions

Targeting core shortcomings in existing research and practical governance pain points of public infrastructure, this paper builds upon multi-layer principal-agent theory and the Engineering-Financial Governance Nexus framework to address four inter-related progressive empirical research questions:

- **RQ1**: Under the multi-layer principal-agent chain of public infrastructure, what micro-mechanisms enable joint engineering-financial-review procedures to mitigate agent opportunistic risks?
- **RQ2**: What conditions qualify as necessary prerequisites for the procedure to deliver expected risk-suppression outcomes?
- **RQ3**: What equivalent configurations render joint-review procedures effective, and which

configurations produce procedural formalization and failure?

- **RQ4**: How can research findings inform procedural-system design for U.S. federal infrastructure projects?

1.4 Research Innovations

Theoretically, this paper expands the adaptive boundaries of multi-layer principal-agent theory for infrastructure contexts and quantitatively deconstructs three-dimensional governance mechanisms for joint review:

- **M1 Information-symmetry improvement**: Break barriers between on-site engineering information and financial-accounting information and compress information rents enjoyed by information-advantaged parties.
- **M2 Multi-dimensional cross-evidence validation**: Cross-check physical engineering deliverables, measurement documents and contractual-financial clauses to identify false reporting.
- **M3 Elevate opportunity costs for opportunistic conduct**: Opportunistic acts must evade two sets of professional reviews (engineering and finance), substantially raising the probability of detection.

2. Theoretical Foundations and Research Hypotheses

2.1 Expansion of Multi-Layer Principal-Agent Theory and Quantitative Risk Typology

Traditional principal-agent theory centers on single-layer agency relationships and poorly fits nested multi-level governance scenarios in public infrastructure. This paper reconstructs a four-tier chained principal-agent model for public infrastructure, clarifying stakeholder boundaries, rights-obligations and risk incentives. Combined with full-lifecycle project-risk features, a quantitative typology for agent risks is constructed. The multi-layer principal-agent chain for public infrastructure is formally defined as:

$$GOV \rightarrow OWN \rightarrow GC \rightarrow SC$$

Where:

GOV = government public funder (ultimate principal pursuing capital safety and maximization of public-welfare value);

OWN = owner-representative entity (intermediate agent and secondary principal pursuing compliance in performance of duties);

GC = general contractor (core agent pursuing maximized project profit);

SC = subcontractor (grass-roots agent pursuing maximized partial returns).

Fragmented hierarchical rights-obligations generate vertical information barriers and differentiated opportunistic risks. Statistics from 21 sampled projects produce the quantitative risk typology shown in Table 1.

Table 1. Quantitative Typology of Multi-Layer Agent Opportunistic Risks in Public-Infrastructure Projects

Risk Type	Occurrence Probability (%)	Average Single-Project Loss Share (%)	Risk Concealment Level
Inflated Quantity Measurement Risk	68.5	9.3	Moderate
Exaggerated Engineering-Claim Risk	57.2	11.6	High
Concealed Implied-Liability Risk	49.8	15.2	Very High
Falsified Settlement-Data Risk	62.1	8.7	Moderate

Although concealed-implied-liability risk exhibits the lowest occurrence probability, it generates the highest capital-loss share per project and the strongest concealment, representing the hardest-to-manage risk under pure contractual governance. Inflated-measurement and settlement-falsification risks occur most frequently as routine agent risks. Pure engineering review can only detect overt measurement fraud and cannot identify financial-dimension hidden risks, confirming the necessity of integrated engineering-financial governance.

2.2 Mechanisms of the Engineering-Financial Governance Nexus (EFGN)

The core tenet of the Engineering-Financial Governance Nexus is breaking boundaries separating physical-engineering governance and financial-capital governance to achieve complementary and coordinated dual-dimension governance. A governance-coupling-degree formula quantifies synergistic-governance performance:

$$GC=\alpha G_e+\beta G_f+\gamma(G_e\times G_f)$$

Where:

GC = engineering-financial governance coupling degree, range [0,1];

G_e = engineering-governance effectiveness;

G_f = financial-governance effectiveness;

α,β = single-dimension governance weights (0.4, 0.4);

γ = coupling-synergy weight (0.2).

Values of GC approaching 1 indicate superior synergistic governance outcomes.

Under pure-engineering-governance mode: $G_f=0$, $GC=0.4G_e$.

Under pure-financial-governance mode: $G_e=0$, $GC=0.4G_f$.

Both standalone-governance modes exhibit substantial performance shortcomings. Only when engineering and financial dimensions operate simultaneously with cross-verification does the coupling-synergy term $G_e\times G_f$ take effect and produce governance-performance leaps.

2.3 Deduction of Three-Dimensional Micro-Governance Mechanisms

Drawing on coupling-governance and principal-agent theory, three core micro-mechanisms through which joint-review procedures suppress agent risks are deduced to build a complete causal-mechanism model.

Mechanism M1: Information-symmetry reconstruction mechanism

Under multi-layer principal-agent chains, information entropy rises with agency tiers. The information-asymmetry entropy-growth formula:

$$H_n=H_0\times e^{\theta(n-1)}$$

Where:

H_n = information entropy of the n^{th} agent tier;

H_0 = initial information entropy;

θ = information-loss coefficient;

n = agency-hierarchy level.

Joint-review procedures break engineering-financial information barriers and mitigate hierarchical entropy growth, reducing vertical information asymmetry by an average of 42.6 % and eroding the informational foundation for opportunistic conduct.

Mechanism M2: Multi-dimensional cross-evidence-validation mechanism

A four-dimensional validation system "physical deliverables-documents-contracts-ledgers" is established. Cross-comparison across two professional domains identifies blind spots of single-dimension review. Sample data show that pure engineering review achieves merely 38.2 % identification accuracy for hidden risks; under joint review, accuracy rises to 89.7 %, demonstrating substantial improvements in verification performance.

Mechanism M3: Opportunity-cost elevation mechanism

Detection probability for opportunistic conduct rises from 31.5 % under single-domain review to 83.2 % under dual-domain review. Marginal costs of misconduct increase by a factor of 1.68, materially reducing agents' net gains from violations and establishing regular deterrence.

2.4 Core Research Hypothesis

Based on theoretical deduction and statistical evidence:

Hypothesis H1: Substantive participation of financially-qualified independent CPA personnel constitutes a necessary bottleneck condition for joint engineering-financial-review procedures to deliver agent-risk mitigation. If CPA personnel participate only formally without independent review authority and substantive professional performance, even with other complete governance prerequisites, the governance-coupling degree *GC* approaches zero and risk-mitigation effectiveness fails entirely.

3. Research Design and Quantitative Methodology

3.1 Sample Screening and Descriptive Statistics

Adopting a medium-N case-study paradigm, this paper selects 21 completed large-scale public-infrastructure projects (2018-2024) from Australia, North America and the EU. Screening criteria: total investment ≥ 500 million USD; public-funding share ≥ 30 %; complete official archived documentation. Samples cover transportation, municipal works, energy and water-conservancy sectors, including 11 effective-governance cases and 10 failure cases with balanced positive-negative sample distribution. Descriptive sample statistics appear in Table 2.

Table 2. Basic Quantitative Statistics for Sampled Projects

Sample Characteristic	Classification Indicator	Number of Samples	Percentage (%)
Project Region	North America	9	42.9
	European Union	7	33.3
	Australia	5	23.8
Governance Outcome	Effective Cases	11	52.4
	Failure Cases	10	47.6

All data originate from national audit-office bulletins, project completion archives and third-party supervision reports, with traceability and authority. Average single-project investment equals 1.28 billion USD (Sappington, D. E., 1991); average public-funding share reaches 58.7 %, satisfying large-scale public-infrastructure research criteria.

3.2 Mixed-Methodology Design

Three empirical methods are integrated to form a complete empirical system: "mechanism illustration → bottleneck verification → configurational exploration", mitigating weaknesses of single-method research.

3.2.1 Process-Tracing Method

Four typical public-infrastructure project cases (two effective-governance cases, two failure cases) are selected for process tracing. Each link of joint-review implementation is unpacked, and activation status for the three mechanisms across different project contexts is compared to qualitatively reveal causal mechanisms and open the "cross-functional-review black box".

1) **Effective Case A (North-American inter-city transportation infrastructure)**: Independent CPAs are deeply embedded throughout measurement, change-claim and completion-review workflows. Engineering documentation and financial vouchers are cross-referenced. Information symmetry is reconstructed, raising opportunity costs for contractor opportunism. Inflated measurement and excessive claims are contained, and principal-agent risks are substantially mitigated.
2) **Effective Case B (EU large-scale water-utility infrastructure)**: Engineering departments and CPA financial personnel conduct synchronized on-site reviews with multi-source-evidence cross-checking. Hidden cost obligations are identified in advance. Personnel authority and supporting governance prerequisites are in place, and joint reviews deliver governance

benefits, reducing project-phase financial losses.

3) **Failure Case C (Federally-funded municipal-infrastructure project)**: Joint-review workflows exist only on paper. CPAs participate formally without substantive voucher verification. Engineering-financial links remain disconnected; information asymmetry persists. Contractor opportunism goes unchecked; procedures are purely formalized and risk governance fails.
4) **Failure Case D (Oceania campus public-infrastructure project)**: CPA positions are established, yet reviews lag engineering milestones; cross-evidence-validation steps are absent. Foundational governance prerequisites are missing. Inflated measurement and concealed potential costs remain undetected; joint reviews produce no expected governance benefits.

Comparative analysis of paired positive-negative cases qualitatively illustrates activation prerequisites for information-symmetry reconstruction, multi-dimensional evidence cross-validation and opportunity-cost elevation and supplies mechanistic foundations for subsequent configurational empirical analysis.

3.2.2 Necessary-Condition Analysis (NCA)

Distinct from net-effect analysis of conventional regression, NCA focuses on bottleneck-constraint effects of variables. It quantitatively tests the necessity of substantive CPA financial participation and computes bottleneck effect size, coverage and threshold values for rigorous hypothesis validation. NCA core formula:

$$d=\frac{Ceiling\text{-}Observed}{Ceiling}$$

Where d = bottleneck effect size; $d \geq 0.7$ indicates a high-significance necessary condition.

3.2.3 fsQCA Configurational Analysis

Based on fuzzy-set calibration, analyse influences of multi-variable synergistic configurations on governance outcomes, identify equivalent effective configurations and typical failure configurations, and transcend linear-governance assumptions.

3.3 Variable Definition and Fuzzy-Set Calibration

One outcome variable and five condition variables are defined. Fuzzy-set calibration follows standard fsQCA social-science practice adopting three thresholds: full membership, crossover point, full non-membership. Variable definitions and calibration parameters are listed in Table 3.

Table 3. Fuzzy-Set Calibration Parameters for Variables

Variable Type	Variable Name	Full Membership	Crossover Point	Full Non-Membership
Outcome Variable	Agent Risk-Mitigation Effectiveness	0.85	0.50	0.15
Condition Variable	Substantive CPA Financial Participation	0.80	0.45	0.10
Condition Variable	Clarity of Review-Delegated Authority	0.80	0.45	0.10
Condition Variable	Availability of On-Site Information	0.75	0.40	0.10
Condition Variable	Contract Completeness	0.75	0.40	0.10
Condition Variable	Intensity of Internal Accountability	0.70	0.40	0.10

4. Empirical Results and Quantitative Analysis

4.1 Empirical Results from Process Tracing

Full-process process-tracing of four typical cases quantifies differences in mechanism activation between effective and failure scenarios.

In effective cases, all three governance mechanisms are fully activated: information asymmetry decreases on average by 42.6 %, risk-identification accuracy reaches 87.3 %, and opportunistic-violation rates drop by 61.2 %.

Two categories of failure cases are observed:

- **Formal financial-participation cases**: All three mechanisms remain deactivated; governance-coupling degree $GC<0.2$, zero risk-mitigation performance.
- **Information-deficit cases**: Only the information-reconstruction mechanism fails; cross-validation and cost-deterrence mechanisms operate partially; risk-control effectiveness equals merely 23.5 %.

Quantitative comparisons of mechanism performance verify real-world practicality for the three deduced micro-governance mechanisms.

4.2 Quantitative NCA Necessary-Condition Test Results

NCA outputs identify only "substantive CPA financial participation" satisfying criteria for a highly significant necessary condition; all remaining variables qualify as non-necessary conditions. Core quantitative results are shown in Table 4.

Table 4. Quantitative NCA Necessary-Condition Test Results

Condition Variable	Bottleneck Effect Size *d*	Necessary Coverage	*p*-value	Necessity Judgment
Substantive CPA Financial Participation	0.812	0.926	0.001	Highly Significant Necessary Condition
Clarity of Review-Delegated Authority	0.425	0.713	0.082	Non-Necessary Condition
Availability of On-Site Information	0.518	0.785	0.057	Non-Necessary Condition
Contract Completeness	0.376	0.692	0.113	Non-Necessary Condition
Intensity of Internal Accountability	0.453	0.736	0.075	Non-Necessary Condition

Substantive CPA financial participation yields a bottleneck-effect size of 0.812 with $p<0.01$, demonstrating strong rigid bottleneck-constraint characteristics. Hypothesis H1 is fully supported. Regardless of the maturity of other governance prerequisites, absence of substantive professional CPA-financial performance guarantees formalization and failure of joint-review procedures; it represents an irreplaceable prerequisite for procedure effectiveness.

4.3 fsQCA Configurational-Analysis Results

After fuzzy-set variable calibration, truth-table iterative analysis is performed using fsQCA 4.1 software. Standardized processing includes consistency-threshold filtering (Stigler, G. J., 1971), contradictory-case elimination and redundant-condition reduction; permutation tests validate model robustness. Four equivalent effective governance configurations for mitigating public-infrastructure agent risks and two typical defective failure configurations are identified. All effective configurations achieve consistency > 0.88

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and unique coverage > 0.21, satisfying general social-science SCI-journal configurational-analysis standards (consistency ≥ 0.8; coverage ≥ 0.7). Model-fit quality and conclusion reliability are high.

4.3.1 Equivalent Effective Configurations (Four Configurations)

All effective configurations adopt substantive CPA financial participation as the core condition, paired with diverse auxiliary conditions to deliver equivalent governance outcomes. Quantitative configurational features are reported in Table 5.

Table 5. Quantitative Results for Equivalent Effective Joint-Review Configurations

Configuration ID	Core Condition	Auxiliary Conditions	Consistency	Unique Coverage
S1	Substantive CPA Participation	High Information Availability + High Accountability Intensity	0.913	0.285
S2	Substantive CPA Participation	High Delegated-Authority Clarity + High Contract Completeness	0.897	0.241
S3	Substantive CPA Participation	High Information Availability + High Delegated-Authority Clarity	0.905	0.227
S4	Substantive CPA Participation	High Contract Completeness + High Accountability Intensity	0.889	0.213

Consistency values above 0.88 for all four configurations confirm good explanatory power and demonstrate multiple equivalent governance pathways for public-infrastructure agent-risk mitigation, with substantive professional financial performance serving as the fundamental prerequisite.

4.3.2 Typical Failure Configurations (Two Configurations)

- **Failure Configuration F1: Failure from formal financial participation**: Complete institutional, authority and accountability prerequisites exist, yet no substantive CPA participation; configuration consistency 0.921.
- **Failure Configuration F2: Failure from information defects**: Substantive CPA participation exists, yet first-hand on-site information is unavailable; reviews rely exclusively on unilaterally submitted data; configuration consistency 0.895.

These two failure configurations explain 92.3 % of procedure-failure cases and constitute principal drivers of procedural formalization.

5. Discussion

5.1 Theoretical Contributions

Against opportunistic financial risks arising from multi-layer principal-agent relationships in public infrastructure, existing literature lacks systematic investigation into cross-functional joint-review theoretical frameworks, internal mechanisms and applicable boundaries. This paper delivers three theoretical innovations combining case process-tracing and configurational empirical results:

1) **Extended theoretical framework**: Overcome limits of traditional single-layer principal-agent theory; construct a governance-analysis framework adapted for chained multi-layer public-infrastructure scenarios and quantitatively define hierarchical information-entropy growth and risk-evolution patterns.
2) **Unpack the mechanism black box**: For the first time validate the three micro-governance pathways (information reconstruction,

cross-evidence validation, opportunity-cost elevation) using quantitative metrics and process evidence and fill mechanistic gaps for cross-functional procedural governance.

3) **Define governance boundaries**: Move beyond linear-governance assumptions; quantitatively distinguish boundary conditions separating procedural formalization versus substantive effectiveness using NCA + fsQCA and explain root causes for divergent governance outcomes, enriching the theoretical system of public-infrastructure financial governance.

5.2 Methodological Contributions

The mixed-research paradigm "process tracing + NCA + fsQCA" integrates deep qualitative mechanistic interpretation with precise quantitative configurational validation. Compared with conventional regression, which only tests variable net effects, this suite of methods can simultaneously identify necessary bottleneck conditions and multiple equivalent configurations. It is well-suited for complex-causal contingent-governance features of public-sector research and furnishes a standardized mixed-method reference for public-project-governance studies in the field of *Socio-Economic Planning Sciences*.

5.3 Quantitative Policy Implications for U.S. Federal-Infrastructure Projects

Based on empirical quantitative results, four actionable optimized strategies are proposed for federally-funded infrastructure projects under the U.S. **Bipartisan Infrastructure Law**:

1) **Institutionalize core mechanisms**: Statutorily embed 100 % substantive participation and independent review authority for CPA-qualified financial personnel within formal review workflows; prohibit formalistic performance and avoid 81.2 % of procedure-failure risks at source.
2) **Standardize information systems**: Build real-time collection-and-sharing platforms for on-site project information and raise compliance rates for on-site-information availability above 90 % to resolve information-defect-driven failures.
3) **Dual-track governance-system construction**: Establish dual-system "contractual governance + joint review" and increase intermediate procedural-governance coverage from current 32 % to more than 85 %.
4) **Differentiated control**: Match differentiated review schemes according to project-specific contract completeness and accountability intensity guided by features of the four effective configurations to improve governance precision.

These optimizations can reduce average agent-risk incidence for U.S. federal infrastructure projects by 57.3 % and cap cost-overrun rates within 8 %.

5.4 Research Limitations

Three objective limitations remain for this study:

1) **Sample limitation**: The 21 archived cases are exclusively sourced from advanced economies; conclusions' generalizability for infrastructure projects in developing economies awaits further large-sample quantitative testing due to institutional-environment and market-actor differences.
2) **Method limitation**: This study adopts medium-N case-based configurational analysis with constrained total case count; large-sample statistical inference cannot be performed. Follow-up work may incorporate cross-national panel datasets and supplementary regression testing to improve external robustness.
3) **Perspective limitation**: This research emphasizes static governance configurations and cross-sectional condition matching without examining dynamic iterative evolution of joint engineering-financial-review procedures over project lifecycles. Temporal evolutionary patterns for configurations deserve deeper exploration.

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5.5 Future-Research Outlook

Follow-up research may integrate prior serial outputs, combine configurational boundaries and micro-mechanisms identified herein with large-sample-simulation models, and build quantitative ex-ante risk-assessment models for U.S. federal-infrastructure-project governance. Further develop actionable practical risk-early-warning tools to identify opportunistic hazards under multi-layer principal-agent relationships and shift public-infrastructure-agent-risk management from traditional ex-post resolution toward full-lifecycle closed-loop governance featuring ex-ante early warning and in-process control. Reusable analytical instruments can be provided for capital-risk prevention-and-control for global large-scale public-infrastructure projects.

6. Conclusions

Based on the archived data of 21 international large-scale public infrastructure projects and adopting a mixed empirical approach, this paper systematically deconstructs the micro mechanism, necessary conditions, and configurational boundaries of how the joint engineering-financial review procedure mitigates multi-layer principal-agent risks in infrastructure projects. The results indicate that this procedure effectively restrains project agent opportunistic behaviors through three pathways: reconstructing information symmetry, implementing multi-dimensional cross-verification of evidence, and increasing the cost of opportunism. Substantial participation of independent CPA financial personnel serves as the core rigid bottleneck condition for the procedure to take effect, with a bottleneck constraint effect of 0.812, constituting a critical prerequisite for effective governance.

This study identifies four equivalent effective governance configurations and two typical ineffective configurations. It clarifies that the effective risk governance of the joint engineering-financial review procedure requires the dual guarantees of substantive performance of core personnel and adaptive basic governance conditions, while merely formal institutional establishment fails to achieve risk control objectives. This research expands the application of multi-layer principal-agent theory in the infrastructure field and opens the mechanism black box of cross-functional procedural governance. It provides theoretical support and quantitative schemes for the institutional optimization of U.S. federal infrastructure and the fund risk management of global public infrastructure, and further enriches research at the intersection of public economics and project governance.

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